Training and labour legislation

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Training and labour legislation
Héctor-Hugo Barbagelata

Formation et legislation du travail
Héctor-Hugo Barbagelata

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Héctor-Hugo Barbagelata

Training and labour legislation

Trends in recent legislation on vocational training

International Labour Office
POLFORM CINTERFOR

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Prologue

Many of our industrial societies are undergoing a dymamic mutation caused mainly by technology, which launches us into the age of information and communications. Changes are so rapid, dramatic and inevitably also so creative and destructive from a social point of view, that we do not manage to control them in a satisfactory manner, particularly regarding the «social» element.

I is for that reason that the mutation is also a *crisis* for our legislation and industrial relations systems including social policies– as clearly shown by the increasing *fracture sociale*.

At the same time, other local communities and hundreds of millions of workers continue to perform traditional agricultural activities, which is a clear illustration that although often called a «global village»– our world grows at different rates in different places.

What is occuring in our developed world is not so much a transition from an agricultural society towards an industrial one, and more recently towards a services / information sector, where most of the active population would be concentrated, but rather a merging together of the various sectors into a single one, in such a way that the information sector becomes predominant and somehow absorbs the agricultural and industrial ones.

This reality becomes evident if we analyse the cost of any given product. For example, let us take the cost structure of a motor car. That cost does not primarily depend on the wages paid to workers at the assembly line; the bulk of it is made up by expenditures connected with conception, design, research, advertising, financial services, distribution, marketing, insurance, etc. To sum up, all of them services or forms of knowledge that can also be obtained from distant places by means of bits.

In other words, value-added sources are going from the material to the immaterial, from the product itself towards knowledge about it, its intellectual property... the storing, handling and dissemination of knowledge. This knowledge is so rich, varied and rapidly changing that it is impossible for any one enterprise to have it always available; on the other hand, that is not necessary, as data can be obtained through technological information-communication highways, sometimes from very remote locations, as indicated above.

These factors have led to a heyday of the larger enterprises, which in a process of out-sourcing delegate tasks and services that other companies can

perform better and more economically. This brings about a competitive interaction among subcontractors that cheapens, improves and speeds up services.

Such tendencies lead in turn to chains of (economic) contracts among outside suppliers at one end, and SMEs at the other, constituting networks.

Simultaneosly, labour relations are becoming decentralised and employment links individualised. Former employees of many companies become independent consultants that try to handle their own portfolio of clients, and join networks in projects of varying duration. They are freer, but also much less secure.

So it happens that many persons are losing their jobs and, in time, some of them get other jobs that –as Robert Reich, Professor and U.S. Secretary of State rightly pointed out– are more complex, for they require problem-solving skills.

Needless to say, all this has a far-reaching impact on educational and vocational training needs.

Education / vocational training have an ever increasing importance, as they must escort future employees into the world of labour and prepare them to act in it, taking into account the differing rates of development of the diverse regions and subregions of the world.

We can assert with no hesitation whatsoever that the best insurance for employment nowadays is the right for people to be trained and to acquire competencies enabling them to secure profitable employment, either as employees, independent workers or entrepreneurs.

Consequently, «comunication skills», *savoir faire*, are just as important as basic or technical knowledge. In an infomation society, it is more important than ever that workers should be pro-active, should understand problems, help to solve them and collaborate in teams.

For others, the acqusition of basic skills such as reading and writing may also be important steps for a significant participation in an increasingly complex world.

Therefore, Professor Héctor–Hugo Barbagelata's study on the current situation regarding legislation on education / vocational training, and the conditions under which the Law applies, is more than welcome. Of special importance is his survey of apprenticeship, in view of the urgent need to establish links between education and employment.

The right to an ongoing education / vocational training should be, now more than ever, a proclaimed goal as element of social justice, as the ILO rightly upholds.

Professor Barbagelata's study offers a complete and detailed picture of the rights to vocational training, and bears witness once again to the great South American tradition of legal scholarship in labour matters.

Professor Roger Blanpain
Catholic University of Louvain, Belgium
Member of the Royal Academy

Introduction

The present comparative study of legislation on vocational training throughout the world, prepared by an international authority in the matter, Uruguayan Professor Héctor-Hugo Barbagelata, is a very significant contribution to the current debate on the reform of training policies and systems in order to meet the new needs of a labour world that is undergoing rapid and deep transformations.

In effect, as a result of the impact of globalisation of economies, liberalisation of markets, technological innovations and restructuring of production and trade, there is a growing tendency towards investing in human capacity, in response to the implacable competitive challenge that countries, enterprises and individuals themselves have to face.

Changes in the organisation and management of productive processes, and in the content of work posts, are bringing about a veritable revolution in the way of acquiring, adapting enriching, using, recognising and valuing the qualifications of a labour force. At the same time, in an effort to become competitive in the world market, or remain competitive, most countries have opted for a pattern of economic growth that has proved unable to generate the number and level of jobs required to absorb the productive capacity of the men and women who wish to work, and are available to do so.

In view of this picture, pressures and expectations lead to a reform of education and training systems, in the hope that they can iron out the differences between manpower supply and demand, and reconcile the needs of economic growth to those of social equity, on the basis of an improved human capital. In industrialised countries as well as in those in transition, and the ones in varying phases of development, training policies and systems are under close scrutiny, and show renewed dynamism in their pursuit of modernisation in order to attain higher levels of efficiency, effectiveness and equity.

If legislation is the key to knowledge of social reality, as the author says following Emile Durkheim's reasoning, this comparative study is of vital interest to promote the renovation and reform of vocational training systems.

On the one hand, the thorough study that Professor Barbagelata makes of the legislation of this kind in force in a great number of countries from all continents, provides an overview of the current situation, as well as an idea of the concerns and intentions reflected by each law when it was promulgated. On the other, his strict comparative analysis of legislation adopted over the last five years in a diversity of countries tells us about international trends, revealing the achievements and gaps of those laws and of course, hinting at the distance that may exist between norms on vocational training , and the degree of actual application of them.

The frequency, wealth and depth of vocational training regulations within the framework of recent labour legislation, shows the growing importance of this aspect in the broader context of human resources policies, employment policies and labour and social policies. At a deeper level, the author points to at least four main sets of trends in world regulations:

i. Emphasis on economic considerations and access to employment

A comparative analysis of recent legislation on vocational training shows a distinct process of reformulation of objectives, particularly in developing countries. The role of vocational training is emphasised *vis-à-vis* economic goals and access to employment, albeit «without necessarily sidestepping educational objectives and references to the contribution of vocational training to individual realisation and development, and improvement of the living standard of workers».

According to the author, three objectives emerge in the various legislations in connection with the economic and employment dimensions of vocational training, with differing degrees of importance:

– meeting the need of national communities to have human resources capable of promoting or sustaining economic development;

– meeting the needs of enterprises for qualified manpower, and therefore focusing the attention of vocational training systems on that target; and

– facilitating access and reentry into the employement market.

ii. Widening recognition of the right to training

The subject of wider recognition of the right to vocational training appeared early on in international legislation, and has been improved by succesive rules. It was already present in the Preamble to the ILO Constitution (1919), right through to the Philadelphia Declaration (1944) and in subsequent laws.

Apart from the international sphere, it has also been included by several countries in their recent internal legislation, although not in a general manner.

iii. Growing decentralisation

Professor Barbagelata identifies four ways in which increasing decentralisation is implemented through legislation on vocational training:

– by widening participation of the various social agents in the formulation of training policies, and also in aspects regarding their application and operation of the relevant services;

– by incorporatig private actions and services centered round enterprises into national training systems.

– by reallocating the resources that finance training; and

– through territorial decentralisation processes in the management of training systems and activities.

iv. Growing importance of practical training with the consequent development of new labour and training contracts, and revaluing of apprenticeship contracts.

In some way as a corollary to pevious tendencies, practical training in plants and enterprises is given preeminence. As a result of this, recent legislation includes «new models of contracts and labour relations regarding training and, of course, a revaluing of apprenticeship contracts».

The author devotes a considerable part of his study to rules governing apprenticeship contracts, which embody the combination and integration of the above trends within a specific area, namely the training of young people in transitional schemes from school to work. Professor Barbagelata's critical analysis of apprenticeship, and his recommendations about its regulation, are highly pertinent at a time when countries with different backgrounds in the setting up and operation of policies and programmes for training the young, go back again to the

essential principles that underlie the different forms and approaches of apprenticesip schemes that have been tried out in all parts of the world.

The present study means the attainment of an objective shared by the Training Policies and Systems Branch (POLFORM) of the ILO, at world level, and Cinterfor at the level of the Americas. This objective is to provide ILO member nations – and specially their employers' and workers' organisations – with an instrument for legislative orientation in defining new options and avenues for change in voctional training policies and systems.

POLFORM and Cinterfor are honoured to publish and distribute jointly the result of this study, entrusted to Professor Barbagelata. The first edition of this book was published in Spanish as a tribute to the author himself, and it is now been published in English and French for the benefit of countries throughout the world.

María Angélica Ducci
Chief, Training Policies and
Systems Branch, ILO (POLFORM)

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Foreword

§1. Preliminary remarks

1. A research project about legislation on vocational training requires, first and foremost, a clarification of the terms describing it and constituting the title of the study.

The first of them, legislation, does not call for many explanations, apart from the fact that it is taken in its broadest sense; it includes, by whatever name they are known in each country: constitutional norms; laws issued by central legislative bodies; those passed by states or provinces, members of a Federal State; municipal ordinances; as well as regulations dictated by administrative entities of different juridical nature and, in particular, by vocational training institutions.

2. The term vocational training (VT) raises more difficulties in a study of this kind.

This is due not only to the fact that there is no generalised agreement as to its meaning, but to several other things, such as the indiscriminate use of many terms[1] that cannot always be considered synonymous, and the added difficulty of their translation into different languages.

In any event, no nuances or variants have been established among the different terms for the purposes of this research, on the undersanding that they all refer to the same thing. That is to say, training dispensed

[1] Different languages use, more or less freely, different terms which are at times synonymous, and at others imply relevant or slight differences. Thus, in English the words or phrases mainly found are: *training* and *vocational training*, but *vocational education*, *skill training*, *on-the-job training*, *service training*, *occupational training*, *practical training*, etc. are also employed. Similarly, the most current expression in French is formation profesionnelle, but though the term formation has a more general meaning, other phrases, sometimes synonymous are usually found such as: *education non formelle*, *enseignement professionnel*, *instruction technique*, *formation pratique*, *formation ocupationnelle*, *formation sur le tas*, etc. This also happens in Spanish with: *formación profesional*, *formación*, *formación productiva*, *formación técnico-profesional*, *educación profesional y técnica*, *instrucción técnica*, *capacitación*, *preparación profesional*, etc.

«mainly outside the formal education system, either in an enterprise or in a workers' training centre»[2] or, from another viewpoint, all educational modalities aimed at training for the performance of a job and for obtaining occupational qualifications, except at higher level.

3. Such a definition of vocational training is not therefore in keeping with what the training imparted by any institution, centre or enterprise in any given country ought to be to deserve that name.

In other words, the instrumental definition that we shall be using to discuss the regulations of the different countries is not in line with the conceptual approach of item 2.1 of Recommendation 150 / 1975[3]. This does not mean to say, however, that we shall not bear it in mind in taking a second look at those same laws and at the vocational training systems that they have created, particularly concerning their compliance with the demands of the right to VT and the legitimate expectations of trainees.

4. For reasons that lie within the objective pursued, this research survey –and in consequence the present report–, will be circumscribed to rules directly relating to vocational training as described above.

That is to say that despite the latitude ascribed to the term legislation, neither the research project nor the study will include provisions that are linked to training but pertain to the educational system or to schooling legislation.

5. To finish these preliminary remarks, we should add that despite the fact that this study deals only with VT legislation within the bounds indicated above, it in no way denies the importance of other sources of VT Law; nor is it a purely formal exercise that ignores the facts of reality or the force of established norms.

Quite the contrary, we are very well aware of the importance that those other sources have for VT, particularly tripartite or inter-professional agreements and, in general, collective bargaining at all levels. Likewise, we are far from merely adhering to the letter of laws that in many places have not even begun to be applied, and nearly always have only limited force, effectivenes and efficiency.

Apart from the nearly insurmountable difficulties that research of that scope would imply, and the information imbalances that might result if we try to make it world-encompassing, there are other arguments

[2] J.R. Hernández Pulido, *Relaciones industriales y FP*, Mexico, INET, 1978, p.39-40 and notes 26 and 27 a p. 52 and 53.

[3] The text of this provision states that the essence of the concept consists of *«unveiling and developing human aptitudes for an active, productive and satisfactory life and, together with the different forms of education, improving individual aptitudes to understand, individually and collectively, all aspects of working conditions and the social environment, and bringing influence to bear upon them».*

to confine our project to legislation as it emerges from the texts. We shall see them in the following section.

§2. Object and method

6. Our purpose in undertaking this research was to try to find out how VT problems were seen in the present-day world, and in what direction answers were pointing.

We thought that an adequate way of conducting our work would be to examine legislation adopted in recent years on the subject.

7. Our justification for using this approach in surveying the training problems of different countries, and the solutions found to them, stems from acceptance of Emile Durkheim's dictum that legislation is the passkey to the knowledge of social reality.

We should also bear in mind that, over and above their application, regulatory texts document what jurists have since ancient times called *mens legis*, i.e., the purpose pursued by the Law. They therefore tell us about matters that were considered and the course that was intended for them.

In other words, knowledge of the legislation enables us to interpret it in two different ways: as an instrument to learn about the situation at the moment of promulgation and, simultaneously, as an expression of intent to modify that situation to a lesser or greater degree, although ironically, those changes often cause things to remain the same.

8. If legislation reveals concerns and intentions that, in view of their source, may be assumed to be predominant in a given country at a given moment, it is quite valid to infer from legislation the tendency followed by the society that adopted it, with regard to certain matters.

In connection with VT, the study of recent legislation seems then to be a suitable method for prospecting the trends and paths followed by each country.

9. Regarding the time-frame of the process of generation of the legal decisions we have to examine in order to detect trends, the very fast rate of current social development, both for individuals and for nations, has made it considerably shorter than it was in the past.

We may even think that tendencies prevailing now can, indeed must be detected in no less than five years' time, or in the frame of the present decade, on the understanding, however, that we are not establishing set limits, which would be artificial.

10. In this case, we are not trying to learn about the problems and legislative solutions of any one country, but about the world situation as a whole.

In detecting trends, the main advantage of a study covering a large number of countries, as opposed to one that includes a single nation, lies in the fact that in the latter case sudden mutations may occur, changes of tack that alter course, something that obviously can hardly happen in several countries at the same time.

10a. The difficulties of a comparative study are very great, especially if we wish to reflect trends at global scale. For the purposes of our rationale, we shall summarise them into two main tendencies.

First of all, and in relation to the time-frame we have established, it could happen that the conclusions resulting from comparing different legislations might not be valid, as legislative procedures may not take place simultaneously in a sufficiently representative number of countries to reflect a joint or shared movement or trend.

Secondly, and complementing the above, in order to decide that the trends detected are worldwide, legislations passed during the period under review should cover all geographical regions of the planet, and include countries reasonably representing all degrees of human and economic development, following varying traditions and governed by political systems of all kinds.

11. Such difficulties do not seem an impediment to researching the trends of training in the present-day world.

In effect, the great and pressing importance, nowadays and everywhere, of problems that we generally think VT may help to solve, has focused the attention of Governments and legislators from the most diverse and distant countries.

As evidenced by the non-exhaustive subject guide that we append to this document, that attention has resulted, during the period under review and immediately before it, in a vast amount of legislation that covers a sufficiently large number of countries, from all continents and of all sorts, to justify the assertion that it is in fact a repesentative sample of the universe under consideration.

12. The technique we used followed the lines of those usually employed in Comparative Law research. That is to say that after a survey –as exhaustive as possible– of the relevant texts, we proceeded to contrast the provisional categories stemming from our working hypothesis, with the data from the legislations surveyed.

We then systematised the data according to the established criteria, and made new groupings as superfluous details were eliminated, in order to shed light on the general trends.

We endeavoured to build a network of conceptual categories, based on references to the various legislations, avoiding insofar as possible the mere inventoring of the laws and tendencies of each country.

In consequence of the above, references to legislative texts should be taken as backing to the assertions made. For the same reason, we picked examples for their clearness or the weight they had, although they might not be unique of their kind.

§3. Presentation plan

13. In accordance with what we have already stated, we shall try to establish, on the basis of our research, the trend lines that seem to be most widely accepted.

This may be done in two different ways. The first one would be to try and give an overall view, like an all-embracing synthesis, taking simultaneously into account the legislation relative to all training modalities.

A second approach, not contradictory but complementary to the first one, would be to analyse in some depth the different forms that regulations of training actions can assume.

14. For the purposes of our study we shall try to follow both paths at the same time, at least in part.

We shall consequently develop a first stage presenting an overall view of the current situation and the trends that can be discerned in training legislation at world level.

In a second stage we shall deal with specific case studies. On this occasion, however, they will be confined to apprenticeship contracts, for several motives that can be briefly summed up as follows:

a) for a number of reasons, apprenticeship contracts are the most homogeneous in the various legislations, and therefore lend themselves better to detailed comparison;

b) they are at present the training variant where the more widespead trends detected come together most clearly;

c) there is a firm current of opinion at international level, in the sense that a process of revaluation of apprenticeship schemes is taking place everywhere;

d) through the study of legislation on apprenticeship contracts, we can learn how certain things work that pertain to training as a whole: for example, the role of policy-making and supervisory bodies, training plans, the requirements that trainers must fulfill, links with the educational system, promotion policies, evaluation and certification of training, questioning of the preeminence achieved by practical training, etc.

14a. After this second part, which is understandably longer, come the conclusions, with a section devoted to a recapitulation of the broad tendency lines and another one with references and comments on legis-

lation about apprenticeship contracts, including value judgements regarding their effectiveness *vis-à-vis* the right to training.

The work is completed by several annexes (a legislation guide, already mentioned; a list of abbreviations and acronyms utilised and their meaning, and a bibliography), and of course an index.

Annex 1
SUBJECT GUIDE OF THE LEGISLATION CITED

1. General regulations

1.1 Definitions, matters of principle, policy, promotion, right to training, equality of opportunities, etc.

1.1.1 Africa:

- Algeria.- L.90.11.
- Chad.- D. 1/1989
- Côte d'Ivoire. - D.92.316 and Res.57/1994 (AGEFOP)
- Gabon.- D.273/PR/MINLHRVT/1994 (Sp. Fund); LC/1994, art 103.
- Namibia.- Law of 23.09.94 (National Vocational Training Act, 1994- No. 18/1994).
- South Africa.- Law No. 125/1993.- Technikons Act, 1993.
- Tanzania.- 8.12.1994.- Voc.Ed. and Training Fund (Regl. 1995 GN No. 615/1994).
- Tunisia.- L.93-10.

1.1.2 The Americas:

- Argentina.- 1994 Const., art.75.19; Nat. Empl. law No.24013/1991 (Reg. by DD. 751/91 and 2726/91; Fed. Ed. Law; INET law; Law 24.667(SMEs), art. 96; Programmes: Priv. Employment (PEP,

Res.ESs1 8/94; PRIDIS, MLSS Res., 86/94; «Work Rem.», MLSS Res. 448/94; PRONAPAS, MLSS Res. 1.051/94; PRONASE, Res.ESs 33/94; D.2072/94, Empl. in crisis.
- Brazil.- Law 8.069 of 13.07.90.- «Estatuto da Criança e do Adolescente»: Apprenticeship, educational work, etc., art. 63.
- Chile.- Training and Employment Statute. DFL No.1/1989-MLSS. (Regulated by D.S. No. 146/1989, MLSS).
- Colombia.- 1991 Const. (arts.53,54,67,64,70).- Law 119, 9.02.1994 (SENA); Ag. No.12,28.08.1985 (SENA: definition of integral VT).
- Costa Rica.- L. for the Prom. of the Eq. of Women/1991, arts.19-20.
- Ecuador.- 07.1994 (SECAP).
- El Salvador.- D.554, 8.07.1993 (INSAFORP).
- Mexico.- System for the Standardisation and Certification of Occupational Competencies (2.08.1995).
- Nicaragua.- D.3/91, 10.01.1991 (INATEC), Regl. Ag.41/1995.
- United States.- Reg. JTPA/1994 Part 628 (NEW Programme).
- Uruguay.- L. 16.045/1989, arts. 2.12 -j and 4.
- Venezuela.- 1993, L. of Equal Opport. for Women, arts 8 to 10.

1.1.3 Asia:

- Iran.- LC/1992.
- Japan.- 5.04.1993 - Skill Training System.
- Korea.- L.L. No. 4099/1989, (modif. L.L. of 1953).
- Philippines.- L. 2.03.1994 (Incentives to Sc. and Technol; L. of 25.07.1994. TESDA/1994 (No. 7796/1994).
- Vietnam.- LC, arts. 109-111.

1.1.4 Europe

- Common decisions on the social dialogue on VT.
- Council Decision of 6.12.1994.- Action programme for the application of a VT pol. of the E.C. (D.O.C.E. 29.12.94) (94/819/EC), «Leonardo da Vinci Programme».
- E.U.- Council Res. of 11.06.1993, about VT for the 90s. (D.O.C.E., 8.7.93) (93/C 186-02).
- Germany.- 12.01.1994 - Amend. law for the promotion of VT.
- Greece.- Law 2009/1992. Nat. system of Ed. and VT.
- Italy.- L. 10.04.1991, No. 125 (positive actions for the eq. of men and wom. at work).
- Spain.- Roy. Dec. 631/1993 (3.05.1993) Nat. Plan for Training and Prof. Inst.

1.1.4 Oceania:

- Australia.- (Western) Ind. Training (Apprent. Training) Amend. Reg. 1993 (EM 301); Austr. nat. Train. Authority Amend. Act (No. 111/1993); Voc. Ed. and Training Funding Laws Amend. Act 1993 (No. 119/1993).
- N. Zealand.- Law No. 108/1988 of 30.06. Prog. of acc. to VT.

1.2 Creation or regulation of organisations on policies and systems' supervision

1.2.1 Africa:

- Chad: Decree 31.12.1993. D. 765/PR/MPC/93.- Creation of a (Tripartite) National Committee for educ. and VT in relation to employment; Decree 31.12.1993 - D. 766/PR/MPC/93.- Ditto of a monitoring body on educ. and VT in relation to empl.
- Tanzania.- 15.12.1994.- (on VT Board).
- Tunisia.- L.93/1493 of 12.07.1993, arts. 6 and 8.
- Zimbabwe.- 24/1994.

1.2.2 The Americas

- Argentina.- N. Employment Law No. 24.013/1991, arts. 128, 129, 135-f, 136, 137. Reg. D. 2725/91, art. 25 and ff. MLSS, Secr. TSS-D.1442, 12.08.92.
- Brazil.- L.8315/1991 (SENAR).
- Chile.- Training and Employment Statute.- Sup. Decr. with force of law No.1/1989- MLSS, arts. 2-a, 9 and ff. (Reg. by SD No.146, MLSS).
- Colombia.- Law 119/1994. Restructuring of the SENA.
- El Salvador.- L.554/1993 (INSAFORP).
- Mexico.- System for the Standardisation and Certification of Occupational Competencies (2.08.1995).
- Nicaragua.- D. 3/91, 10.01.1991 (INATEC).
- United States.- Department of Labor, Employment and Training Administration (ETA), 20 CFR Parts 626 & 638. Rin 1205-AA Job Training Partnership Act: Job Corps Program under Title V-B.- Agency Employ. & Train. Administration Labor.-

1.2.3 Asia:

- Japan.- 5.04.1993 - Skill Training System.
- Philippines.- L. 7796/1994, est. of the TESDA.

Europe:

- Belgium.- D. 3.07.1991, creation of the VIZO (Institutes for the QT of the middle classes of the Ger.& Flemish Comm.).
- France.- D. 94-574 of 11.07.1994 (on reg. Committees of VT, social promotion and employment (mod. of Tit. I of Book IX of the LC); D. 94-575 of 11.07.1994 on attrib. of Dep. VT Committees (Mod. of the LC).
- United Kingdom.- Law of 26.05.1988 Tit.II Employment and Training Nos. 24-29.- mod. several previous laws (Training Committee - Vocational Training Board).

Oceania:

- Australia, Employment Services Act 1994 (No. 176-1994.- The Nat. Eployment Serv. (CES) is responsible for the the *training programs* managed by local committees.

1.3 Creation or regulation of VT services and actions

1.3.1 Africa:

- Namibia.- Polytechnic of Namibia Act, 1994 (No. 33 / 94).
- South Africa.- 9.05.1994.- Amend. to the reg.of Technical Colleges (No. R 914 / 1994).
- Tanzania.- 15.12.1994.- Order 616 / 1994 (on VT centres).
- Zimbabwe.- L. 24 / 1994.

1.3.2 The Americas:

- Argentina.- INET Law, 1995.
- Chile.- Training and Employment Statute. Supr. Decree with force of law No. 1 / 1989- MLSS (SENCE, art. 38 and ff.) (Reg. by SD No. 146 / 1989, MLSS, Tit. III); LC (text on coord. & syst.),DFL No. 1, 7.1.94, Tit. VI, arts. 179-183.
- Ecuador.- Res. 28.07.94.- Agreement Min. Lab. & Hum. Resources
- New Regulations Org. & Func. of SECAP.
- Mexico.- System for the Standardisation & Certification of Occ. Competencies (2.08.1995).
- United States.- Job Training Reform Amendment / 1992.
- Venezuela.- D. 273 of 11.08.1994.- Creation of Special Centre for the Job Training of young people and adults with learning difficulties.

1.3.3 Asia:

- Iran.- 27.12.1992.- LC (Reg. about the creation of VT centres.
- Japan.-5.04.1993.- Skill Training System.

1.3.4 Europe:

- Belgium.- (Flemish Comm.) D.of the FLemish EP of 9.05.1993 on part-time occ. education of sec. level (French Comm.) Dec. of the French Comm. Com. of 17.03.1994 Creation of the Inst. Brux. Franc. pour la FP.
- France.- D. 94-936 of 28.10.1994 - On organ. entitled to receive VT contributions paid in by employers.
- Russia (Fed.).- Ord. No. 1237 of 3.11.1994.- Prototype reg. for general education schools offering night courses.

1.4 Matters relating to the labour market and retraining

1.4.1 The Americas:

- Chile.- Training and Employment Statute.- Sup. Decr. with force of law No. 1/1989- MLSS (R. SD No. 146/1989).
- Mexico.- System for the Standardisation and Certification of Occ. Competencies (2.08.1995).
- United States.- Law of 4.04.1988 on notification of workers' readaptation and retraining.

1.4.4 Europe:

- France.- L. 89.149 (mod. the LC) Right to retraining.
- Greece.- L. 1836/1989 (Promotion of employment and VT).
- Spain.- Roy. Dec. L. 18/1993 of 3.12.1993 (urgent measures for the promotion of employment). L. 10./1994 of 19.05.94 (ditto).
- Sweden.- Ordinance 1993:1450 on employment market (mod. Ord. 1987:406).

2. Financing of VT (support funds, taxes, contrib. etc.)

2.1 Africa:

- Chad.- Decree 31.12.1993.- D. 767/PR/MPC/93.- Creation of a Nat. Fund for the Support of VT (tripartite management).
- Côte d'Ivoire.- D. 87-737, creation of the IPNETP.
- Malawi.- Ord. 3/1993 of 21.01.1993 on VT cont.
- Mauritania.- 5.09.1994.- D. 94-084 Creation of a support fund for VT activities (FAAF).

- Namibia.- L. 18/1994, Nat. Voc. Train. Act, arts. 44 and ff.
- South Africa.- 7.09.1993.- Prov. for a Special Fund for Tech. Ed and VT.
- Tanzania.- 8.12.1994.- Vocational Ed. & Training Fund; 15.12.1994 Exemptions from the Voc. Train. Tax (GN No. 615/1994); 15.12.1994.- Order 619/1994 (on VT taxes).
- Tunisia.- L. 88/145, and D. 93/696, 5.04.1993.
- Zimbabwe.- L. 24/1994.

2.2 The Americas:

- Canada-Quebec.- L. 22.06.1995 (Creation of the Development Funds for Cooperation and Employment of the Nat. Unions' Fed.).- L. 22.06.1995 (Incentives to manpower training).
- Chile.- Training and Employment Statute -DFL No. 1/1989 MLSS, arts. 14 and ff. (Reg. by SD No.146/1989, MLSS, 7.12.1989, Tit. III, Para. VI); L. 19.214/1993. Fund for VT and Union Training.
- Colombia.- L. 119/1994, art. 30, 4-b.
- El Salvador.- D. 554/1993, art. 26-c (INSAFORP).
- Peru.- L. 26.272/1993 (SENATI).

2.3 Asia:

- Singapore.- L. No. 19/1991 (mod. the Skills Dev. Levy Act, Ch. 305/1985, rev. ed. Reg. No. S 318/1993.- S.D.L.

2.4 Europe:

- France.- L. 90-579, 4.07.1990; L. 91-1405, 31.12.1991; D. 94-936 of 28.10.1994 - on Organ. entitled to receive VT contributions paid in by employers.
- Poland.- L. 29.12.1989, art. 37/12.

3. Grants, scholarships, stipends and subsidies paid to students and *stagiaires*, paid leave for training, etc.

3.1 Africa:

- Egypt.- Ord. 2/94 Min. of Employment- on training allowances.

3.2 The Americas:

- Brazil.- L. 8069/1990, art. 64.
- Costa Rica.- Reg. of 20.02.1995- INA scholarships.
- Chile.- Training and Employment Statute.- Supr. Decr. with force of law No. 1/1989- MLSS, arts. 26 and ff. (Regulated by SD No. 146/1989, MLSS. Tit.III, Para. VII).
- Uruguay.- L. 16.320/1992, art. 327 para. b.

3.3 Asia:

- Iran.- LC / 1992-
- Kuwait.- Law No. 10 / 1995, 15.02.1995, (on ed. and VT stipends for students).

3.4 Europe:

- Belarus.- LC 1992, arts. 193-194.
- France.- D. 94-495 of 20.06.1994- Remuneration of *stagiaires*, mod. LC, arts. R.961-2,3,9,15 and R. 963-1.
- Spain.- Res. 25.02.1993.
- Sweden.- Ordinance 1994:322, mod. that of 1992:330, about financial subsidies for young trainees; Law of 16.06.1994, 1994:358, mod. Law 1983:1030 on adults' education and subsidies to the unemployed; Law of 23.06.19911994:1170; Law amend. the one on *«Students' allowance»* (Provincial or municipal programmes for the ed. of adults).

3.5 Oceania:

- Australia.- Law No. 183 / 1994 of 23.12.1994- Student Assistance; Law of 23.12.1994- Student Assistance (Prov.).

4. Apprenticeship contracts

4.1 Africa:

- Algeria.- L. 90-34; D. 90.288, 1990; D.93-67 / 1993 D. exéc. No. 95-31 of 18.01.1995 (mod. D. exéc. 91-519 on application of law 81-87 regarding apprenticeship).
- Chad.- D. 767 / PR / MPC.
- Côte d'Ivoire.- LC- 1994, Tit. 1, Chap. 2, arts. 12.1 to 12.11. D. 92 / 05.
- Egypt.- Ord. 2 / 94.
- Gabon.- Ord. 09 / 93 / PR; D. 273 / PR / MINLHRVT; LC L.3-1994, arts. 81 and ff.
- Madagascar.- L. 95-004 (crafts).
- Malawi.- Ord. 3 / 1993.
- Mauritania.- 94-084 FAAF.
- Namibia.- Law 33 / 1994.- Nat. Voc. Training Act / 1994.- (Part V. Emp. and Train. of App.I.- Arts.17-28).
- South Africa.- L. 157 / 1993; Amend. of Apprent. Conditions, 29.09.1995.
- Tanzania.- D. 8.12.1994, Voc. Ed. Train. Fund,; Order 616 / 1994.
- Tunisia.- L. 93-10, Chap. IV, arts. 21-28; D. 94-1600; Min. Res. 17.01.95; Min. Res.27.02.96.
- Zimbabwe.- L. 24 / 1994 (Manp. Plan and Dev. Act / 1994).

4.2 The Americas:

- Argentina.- Law 24.465, 15.03.1995, arts. 4 and 5; D.738/95, Chap. 3, arts. 7 and ff.
- Brazil.- L. 8.069/1990, arts. 64,65 and 67.
- Canada.- (Ontario).- Reg. 228/95 of 12.04.1995- On qualif. and apprenticeship.- Quebec.- L. 22.06.1995.
- Chile.- Training and employment Statute.- DFL No. 1/1989- MLSS, arts. 14 and ff.(R.S.D. No. 146/1989, MLSS, Tit. III, Para. VII); LC, DFL, 1/1994, Tit. II, Chap.I, arts. 78 and ff.
- Colombia.- Ag. 18-107, 07.06.1994 (SENA).
- Costa Rica.- Regs. INA 2842/1991; 30.06.1993, and 06.02.1995.
- Dominican Republic.- LC L.16/1992, B.IV, Chaps. II and III.
- Ecuador.- L.19.04.1995.
- Guyana.- Ind. Training L./1993.
- Nicaragua.- D. 3-1991, INT; D. 40-94, Org. L. INATEC; Reg. CFPAc. 41.95.
- Paraguay.- LC L.213/93 and mod. by L.496/1005, arts. 105-127.
- Peru.- L.26.272/1993 (SENATI); L.26.513, TO DS 05,95- TR.
- United States.- JT Reform Amend./1992.
- Uruguay.- Law 16.873, 3.10.1997.
- Venezuela.- OLL, 1990, Tit. V, Chap. I, arts. 247 and ff., and 266 and ff.; Res. Min. Ed. 1255-A/1992; Pres. D. 3230/1993; Adm. D. 768-93-08/13.04.1993.

4.3 Asia:

- Bahrein.- Ord. 20/1994.
- China (PR).- Lab. Law, 5.07.1994, Chap. VII, arts.66- 69.
- Iran.- LC L. 27.12.1992, arts. 112 and ff.
- Korea.- LC, L.4099/1989, arts. 74-77.
- Kuwait.- L. 1995.
- Philippines.- LC, 21.03.1989, L.7796.- TESDA, 1994.
- Vietnam.- LC L. 23.06.1994, Chap. III, arts. 20-29.

4.4 Europe:

- Albania.- LC, L. 7961/1995.
- Austria.- Ord. M.AS.EC, No. 1085- 30.12.94.
- Belarus.- LC, arts. 180-182 and 187 and ff.
- Belgium.- D. 03.07.1991; Arr. 22.10.91; Arr. 24.10.91; Arr. French Comm. Exec. 24.10.1991; D. of Flemish EP 9.06.93; D. French Comm., 17.03.93; Arr. French Comm. Govt., 18.05.1995; Arr. Wallon Govt. 6.04.1995.
- Croatia.- Lab. Law 758/1995, Chap.5.

- Denmark.- L. 21 / 1989 (on Ed. and VT).
- France.- Laws (mod. LC): 90-579; 90-613; 91-1; 91-1405; 92-675; 92-1446; 93-1313; 94-638; and Decrees: D.90-55; 91-688; 91-831; 91-1083; 91-1107; 92-463; 92-886; 92-1065; 92-1075; 93-18; 93-280; 93-316; 93-541; 94-398; 94-399; 94-495; 94-496; 95-998.
- Germany.- L. 20.12.1993 and 12.01.1994, Amend. the BBiG / 1969 Law.
- Greece.- L. 1836 / 1989 (Promotion of Employment and VT).
- Holland.- L. WCDO, 01.08.1993.
- Ireland.- 1995.- L. 24.07.1995.- Labour Services Act Appr. Rules, 1995, S.I. No. 198 / 1995 (Rules of the Apprenticeship System).
- Luxembourg.- 4.09.1990 (On tech. ed. and VT at sec. level, which incorporated apprent. to the intermediate cycle of Technical Ed.)-
- Poland.- L. 29.12.1989.
- Portugal.- D.L. 436, 23.11.1988.- D.L. 383, 9.10.1991, and Reg. No. 1061.
- Spain.- Roy. Dec. 2317 / 1993, 29.12.1993 (Contracts for periods of practice and apprenticeship); MLSS Order 19.09.1994 (on some training aspects of app. contracts and certif.).- WS, mod. laws 10 and 11 / 1994, text ref. R.Dec. 1 / 1995, art. 11.- Res. Gen. Dir. INE, 18.10.1994 (dev. of aspects of app. c.).
- Sweden.- Ord. 1993:1950; 1994:358; Laws: 1994:322; 1994:1170.

4.5 Oceania:

- Australia.- L. 111 and 119 of 1993 and 183 of 1994.

5. Contracts for periods of practice, *stages*, adaptation to employment, training, contact relations, merits, retraining, etc.

5.1 Africa:

- Morocco.- L. Ní 1 / 93.23.03 (*stages* for training, adaptation and emp.).
- Tunisia.- Res. Min. of VT 30.05.1995 (conditions etc. of alternating training mode).

5.2 The Americas:

- Argentina.- Nat. Employment Law No. 24.013 / 1991 (Labour practice contract for young people, arts. 55 and ff., D.R. 2721 / 91, arts. 16 and ff.; Labour-training contract, art. 58 and ff.; D.R. 2725 / 91, arts. 19 and ff.).
- Brazil.- Law 8.859 / 1994, mod. Law 6.494 on «Estágio de estudantes».

- United States.- Job Training Reform Amend./1992, Reg. ETA in force 30.06.1995.
- Uruguay.- Law 16.873, 3.10.1997.

5.3 Asia:

- Philippines.- LC, arts 73-77, contracts for semi qual. activities.

5.4 Europe:

- Belgium.- Roy. Decr. 495/1987 (training contracts for the young).
- Denmark.- L. No. 2110-1989 (On ed. and VT).
- France.- L. 31.12.1991 (Guidance contract); D. 94-495 of 20.06.1994- Remuneration of VT *stagiaires* receiving distance instruction (mod. LC, arts. R.961-2, 3, 9, 15 and R.963-1).
- Italy.- L. 29.12.1990, No. 407, art. 8 (Rules about train. and work).L. 19.07.1994, No. 451 - (Urgent provisions regarding empl. - Conv.of D.Law No 295/1994; D. Law 4.12.1995, No. 515, art. 8.- (Tirocini Formazioni e di Orientamento).
- Spain.- L. 22/1992: Roy. Decr. 2317/1993 (29.12.93) Practice and apprenticeship contracts; WS mod. laws 10 and 11/1994 of 19.05.94, arts. 11 and 23 (text ref. Roy. Decr. 1/1995).

6. Special rules on VT (not included in other items).

6.1 The Americas:

- Argentina.- Law 24.467, 15.03.1995, Section VII, art. 96.
- Brazil.- L. 8.069/1990.- Estatuto da criança e do adolescente, (Apprenticeship, educational work), arts. 62-69.
- Venezuela.- D. No. 273 of 11.08.1994 - Creation of a special job training centre for young people and adults with learning difficulties.

6.2 Asia:

- Bahrein.- Order No. 20/1994, MLSS -(on mod. Order 13/1979 about reg. of VT for young people in the private enterprises' sector).

6.3 Europe:

- Italy.- L. 5.02.1992, No. 104, Framework law for physically handicapped persons.
- Sweden.- Ord. of 16.06.1994, 1994:936, on young people under training.

7. Evaluation and certification

7.1 Africa:

- Algeria.- L. 90-34, art.2 and Exec. Dec.93-67, art. 11 Exec. Dec. No. 94.469 of 25.12.1994- On Classif. of workposts in vocational training services.
- Côte d'Ivoire, art. 12.9 and 12.10.
- Gabon.- LC, art. 95.
- Namibia.- N.V.T. Act / 94.
- South Africa.- 14.12.1993 Law No. 185 / 1993.- Certi. Council for Techn. Ed., Amend- Act 1993; L. 29.09.1995.
- Tunisia.- L. 93-10, art. 28.
- Zimbabwe.- L. 24 / 1994.

7.2 The Americas:

- Argentina.- Nat. Employment Law No. 24.013 / 1991 Certif.: arts.54 and 62, D.R. 2725 / 91, arts. 18 and 21; Min. Res. 11 / 91, art. 8; L. 24.465 / 1995, arts. 4 and 8.
- Canada.- (Ontario) Reg. 228 / 95 of 12.04.1995- On commercial qualification and apprenticeship.
- Colombia.- Ag. 18 / 1994 (SENA), arts. 10, 11 and 13.
- Costa Rica.- Reg. B.D. INA 30.06.1993.
- Dominican Republic, Res. 15 / 88.
- Guatemala.- LC 1989, art. 172.
- Mexico.- 1995 - System for the Standardisation and Certification of Occ. Competencies.
- Nicaragua.- Ag. 41 / 1995-INATEC, arts. 53 and 54.
- Panama.- D. 36-91.
- Paraguay.- LC, art. 110.

7.3 Asia:

- China.- L. 05.07.1994, art. 69.
- Philippines.- L. 7796 / 1994, art. 14 B.
- Sri-Lanka.- L. 12.1995.

7.4 Europe:

- E.U.- Common Decision («Social Dialogue on VT») on occupational qualifications and certifications (13.10.1992) Cons. Res. «Transparency of occ. qualif.» (DOCE C 49, 19.02.1993).
- Belgium.- D. 3.07.1991, art. 4.
- France.- LC, arts. L.117-7; L.117-9; L.117 bis.5 final para. and R.151-5.
- Germany.- 29.12.1993, Law on crafts and VT (certification).

- Italy.- L. 451 of 19.0.1994, art. 16.9.
- Spain.- Roy. Dec. 2317 / 93, art. 12; Roy. Dec. 797 / 1995 (19.05.1995) Directives on certification of occupations.

Annex 2
LIST OF ABBREVIATIONS AND ACRONYMS

A	Author
ABITUR	Access Degree to University (Germany)
Ag.	Agreement
AGEFOP	National VT Agency (Côte d'Ivoire)
Alger.	Algeria
Amend.	Amendment, amended
APL	Accreditation of previous training
Arg.	Argentina
arr.	arrèté (decision)
art.	article
Auth.	Authority
B.	book
BAC	General Baccalauréat (France)
BAC-PRO	Professional BAC (France)
BBiG	Vocational Training Law (Germany)
BEP	Certificate (Brevet) of prof. studies (France)
Berufschule	Professional school (Germany)
BIBB	Federal Vocational Training Institute (Ger.)
BIT	International Labour Office
Bol.	Bolivia

BT	Technical Certificate (Brevet) (France)
BTN	French Baccalauréat (France)
BTS	Higher Technical Certificate (Brevet) (France)
C. or ILC	International Labour Convention (ILO)
c.a.	collective agreement
CAI	Industrial Apprenticeship Contract (Belgium)
CAP	Certificate of Occupational Aptitude (France)
CATP	Certificate of Occ. & Technical Aptitude (Lux.)
CCM	Certificate of Manual Aptitude (Luxembourg)
CEDEFOP	European Centre for the Development of VT
CEREQ	Centre for the Study of Qualifications (Fr.)
CF	Training Credits (France)
CFA	Apprentices' Training Centre (France)
CFPA	VT and Apprenticeship Certificate (France)
CFPS	Specialised VT Centre (Algeria)
CIAJ	Youth Guidance & Information Centre (Alger.)
CINTERFOR	Interamerican Centre of VT Research & Docum.
cit.	cited
CITP	Technical & Occ. Beginners' Cert. (Luxembourg)
CONAMED	Nat. Centre of qualif. assessment (Bolivia)
CONEFE	Nat. Job Training and Ed. Com. (Chad)
Const.	Political constitution
CPA	Preparatory Apprent. Course (France)
D. or Dec.	Decree
D.L or D.Law	Decree-Law
DEVG	Diploma of General University Studies (France)
DFDFP	VT Development Funds (Côte d'Ivoire)
DFL	Decree with force of law
DOL	Department of Labor (United States)
D.S (S.D.)	Supreme Decree (Chile)
DUT	Technologial University Diploma (France)
E.P., Exec.	Executive Power
EC	European Communities
Ed.	Education
ESC	European Social Charter
ETA	Employment & Training Administration (U.S.)
EU	European Union
FAS	Training & Employment Council (Ireland)
FCCM	PT Inst. for Middle Classes (Belgium).

FNJ	National Youth Fund (Côte d'Ivoire)
FORCE	Formation Continue en Europe
FOREM	Comm. and Regional VT & Employment Office
Fr.	France
FLL	Federal Labour Law (Mexico)
GDP	gross domestic product
Ger.	Germany
GLL	General Labour Law
GNVQ	General National Vocational Qualification
HAVQ	Higher Secondary General Education (Holland)
Hol.	Holland, Netherlands
i.a.	inter alia
IACG	Interamerican Charter of Social Guarantees
IEFP	Employment and training institute
ILO	International Labour Organisation
ILRv.	International Labour Review (ILO)
ILR	International Labour Regulations
INA	National Training Institute (Costa Rica)
INATEC	National Technological Institute (Nicaragua)
INDFE	National Job Training Institute (Algeria)
INDPFC	Nat. Institute Ongoing Training (Tunisia)
INEM	National Employment Institute (Spain)
INFOTEP	Nat. VT and Tech. Ed. Institute (Dominican Rep)
INSAFORP	Salvadoran VT Institute
Inst.	Institute, institution
Int.	International
INTECAP	Tech. Train. & Productivity Inst.(Guatemala)
IPESCR	Int. Pact on Economic, Social & Cultural Rights
IPNEPT	Nat. Ped. Inst. of Tech. Train. (Côte d'Ivoire)
ISFOL	Inst. for Dev. of Workers VT (Italy)
It.	Italy
ITB	Industrial Training Board (UK)
ITO	Industrial Training Organisation (UK)
JTPA	Job Training Partnership Act (United States)
L.	Law
LBO	Lower Secondary Occ. Training (Holland)
LC	Labour Code

LL	Labour Law
LM, MINLAB	Labour Ministry, Ministry of Labour
LSSS	Labour & Social Security Secretariat
Lux.	Luxembourg
MAVO	Lower Secondary General Ed. (Holland)
MBO	Intermediate Occ. Education (Holland)
MINLHRVT	Ministry of Labour, Human Resources and VT
MLSS	Ministry of Labour & Social Security
mod.	mofified, modifying
Nat.	National
NCVQ	National Council of Vocational Qualification
NEF	National Employment Fund
NEW	Non-traditional Emp. Prog. for Women (US)
NMW	National minimum wage or salary
No.	number
NVQ	National Vocational Qualifications
OECD	Organ. for Economic Cooperation & Development
OJT	On-the-job-training
OLL	Organic Labour Law (Venezuela)
op.	opus
ord.	ordinance
Organ.	organisation
OT or PT	Ongoing training, permanent training
p.	page
para.	paragraph
Ped.	Pedagogic, pedagogical
prof.	professional
q.w.	qualified workers
qual.	qualification
R	Recommendation (ILO)
ref.	reformed
Reg.	regulation, regulated
Res.	Resolution
rev.	review
Roy. Dec.	Royal Decree

S.	See
SCJ	Supreme Court of Justice
SECAP	Ecuadorean VT Service
SENA	National Training Service (Colombia)
SENAC	Nat. Commercial Training Service (Brazil)
SENAI	Nat. Industrial Training Service (Brazil)
SENAR	Nat. Rural Training Service (Brazil)
SENATI	Nat. Industrial Training Service (Peru)
SENCE	National Training & Employment Service (Chile)
SENET	National Technical Education Service (Bolivia)
SINETEC	Nat. System of Tech. & Technological Ed. (Bol.)
SIVP	Stage d'initiation à la vie prof. (France)
SME	small & medium enterprises
Sp.	Spain
SS	Social Security
SSP	San Salvador Protocol
t.	tome, volume
TEC	Training & Enterprises Council (UK)
tech.	technical
TESDA	Tech. Ed. & Skills Dev. Authority (Philippines)
tit.	title
train.	training
TUC	Trade Union Congress (UK)
TVEI	Technical & Voc. Education Initiative
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
US	United States
VBO	Preparatory Ed. to VT (Holland)
VIZO	Flemish Inst. for Autonomous Enterprises
voc.	vocational
vol.	volume
VST	Vocational Skills Training
VT	vocational training
VTI	Vocational Training Institution
WS	Workers' Statute (Spain)
YT	Youth Training (UK)
YTS	Youth Training Scheme (UK)

Conclusions

§1. General conclusions

1. As an initial general conclusion, a research study of this kind leads to unveiling the importance that VT legislation has acquired in recent years.

This importance is made evident, of course, by the profusion of laws and regulatory decrees on the matter that have been passed in such a wide and varied number of countries that we may deem the legislative process as global.

2. On the other hand, it is quite clear that the thrust of this regulatory activity results from universally shared concerns, that may vary considerably according to different degrees of economic and human development, but which are substantially the same everywhere.

Prominent among them are, on the one hand, the conviction that neither individuals nor nations have a future unless they attain ever higher levels of education and training; and on the other, confidence in the promotion of training as an instrument for checking generalised unemployment and ameliorating the situation of some particularly disadvantaged groups.

3. The purpose of this study, as established in the introduction, was not to conduct an in-depth examination of the juridical framework of VT but only to submit the results of a comparative law investigation limited to the recent past, fundamentally the last five years.

On this assumption, after some introductory considerations we tried to summarise all this vast regulatory universe, and came to the sugges-

tion of four main trends within the fabric of the various legislations, namely, emphasis on economic factors and employment; wider recognition of the individual rights to training; speeding up of decentralisation in various spheres, and growing importance of practical training and development of new types of contracts and training relationships at enterprises, with a concomitant revaluing of apprenticeship contracts.

The lines traced by these tendencies are not fine, but broad; rather, each one of them constitutes a bundle blending a large number of factors that interact with one another and with other trends, and with the society in which they are immersed.

4. Consequently, upon reviewing we should no longer look at each detected tendency independently, as if they had a structure of their own, but combine them harmoniously together and consider the diversity of their component parts.

For example, upon verification of a reformulation of training objectives, with a preeminence of economic aspects and access to employment, we cannot leave aside a number of other factors. We cannot, of course, overlook the anxiety and pressing needs caused by unemployment and reflected in this trend, but must also bear in mind that it occurs within a context in which the right to training is expanding, decentralisation is increasing and practical training at the workplace has acquired special relevance.

5. Nevertheless, the preeminence of economic motivations and concern about employment have not banished interest in other objectives.

In particular, the acceptance of training as part of the regular educational system has not dissipated, nor has the wish to improve living and working conditions at individual and general level. On the contrary, many countries are still endeavouring to connect the two systems and promote free circulation between them. Special priority is given to this matter and, in a more general way, to school-work links.[1]

Furthermore, as this trend is integrated with the rest and with the reaffirmation of the right to training, we must needs conclude that preferential attention to some objectives does not only not detract from the others but –insofar as it may be properly understood and implemented– strengthens them.

6. In effect, if training is channelled towards employment, the right to training and the right to work are unified and mutually reinforced;

[1] V. Tokman, «Visión desde la OIT del trabajo de los jóvenes en la región», in *Boletín Técnico Interamericano de Formación Profesional* (Boletín Cinterfor), No. 128, 1994, p. 37 and ff.

from a mere aspiration, the right to work becomes a concrete expectation through job training.

On the other hand, if the right to training is transmuted into effective employment, apart from contributing to solve an agonising problem for individuals, it means the beginning of a more auspicious personal stage, with better prospects for progress and an occupational career in the form of that new dimension called a lifelong education.

7. Moreover, in present circumstances, when a training frozen in time is no longer conceivable, the renewed links with enterprises afforded by on-the-job approaches have other positive consequences for the effectiveness of the right to training.

That is so because those who have the right –apart from their legitimate expectation that the State or other public entities may fulfill it– have in this new scenario the possibility of individually or collectively demanding that employers comply with their concrete obligation to provide training, or the means to attain training.

8. From another viewpoint, if the reciprocal ties and prospects between stress on economic and employment aspects and the decentralisation process are quite evident, it is not difficult to relate conditions for the effective exercise of the right to training to some facets of the decentralising trend.

That is in fact the case, provided that decentralisation is approached as an instrument for getting closer to those entitled to that subjective right, not only by increasing their possibilities of exercising it effectively, but by upgrading their efficiency as well.

9. The same could be said –as already indicated in Part I– about the interrelations between the trend towards a greater emphasis on practical training, the reformulation of training objectives and the process of territorial, services and other forms of decentralisation.

As we went into great detail in that respect in connection with apprenticeship contracts, and objections to them became evident, we shall give preferential space to that in these conclusions.

But before passing on to that point, and by way of introduction since apprenticeship was a priority in relation to it, we shall review general trends, their interrelations and their combined effect on VTIs.

In fact, and as already underlined, such trends seem to be acting on national VT systems in such a way that those institutions are losing the leading role they once played, especially in some regions like Latin America, and even run the risk of disappearing owing to lack of purpose and resources.

§2. Conclusions in relation to the current situation of apprenticeship contracts and their prospects

10. If, in order to reach some conclusions about the current situation and prospects of practical training (with apprenticeship as its crowning example), we examine the regulations that have been adopted or revalidated recently in different countries, we realise at once that a confrontation of negative and positive opinions on it is impossible in abstract terms.

That means to say that such a confrontation would only be valid and consequently useful on the basis of concrete situations that occur within the framework of the respective countries' systems and practices.

11. On that understanding, we must point out that:

a) Most criticisms are surely valid when apprenticeship contracts are implemented under legislations that limit themselves to authorising them, without introducing mechanisms to ensure the effectiveness of the training imparted and have, at best, just a few provisions to prevent the most serious abuses;

b) The same will apply to systems that, even with satisfactory regulations of apprenticeship contracts, have not foreseen or do not enact the indispensable control mechanisms to guarantee that labour standards are not transgressed nor the training expectations of apprentices frustrated.

c) At all events, i.e. even with a satisfactory regulation of apprenticeship contracts, it does not seem reasonable to have great hopes about their effectiveness to meet the pressing expectations of young people regarding access to the labour market for a number of reasons –which are quite obvious– and fundamentally taking into account that:

- recognition of the undeniable advantages that the development of the various VT modes –apprenticeship among them– can have for individuals and communities, even as *«an important instrument to reinforce employment and facilitate access to workposts to the unemployed»*[2], should not make us forget the limitations of training in generating jobs[3];
- however appropriate legislative precepts may be, their implementation is very difficult in many countries owing to lack of human or material resources;

[2] Textual wording of Item 1-d) of Res. of the Council of the European Union of 11.06.1993, regarding VT in the 90s (93/C 186/02).

[3] P.D. Weinberg, «Contribuciones a la generación de empleo», in *Boletín Cinterfor*, No. 90, Montevideo 1985, p. 3-25.

• a cultural fact that must be borne in mind is that, even in countries like Germany, where apprenticeship has attained a high degree of development and acceptance, it is looked upon by young people and their respective families as a residual alternative and, quite naturally, as less prestigious and desirable than academic education.[4]

12. Over and above these reservations, we can categorically affirm that the prospect that apprenticeship may make its expected contributions to a reasonable extent, will greatly depend on its satisfactory regulation.

Comparative law can be very useful for defining what must be understood by satisfactory legislation of apprenticeship contracts.

The above does not of course imply the transfer or copy of legal systems that are alien to the realities and legislative techniques of each community. It means identification of the areas that have appeared as crucial in the experience of the different countries, as well as the innovations and improvements painstakingly achieved to correct the dysfunctions of the systems in force.

12a. It is therefore advisable to review the regulations adopted in the last few years, in order to detect their main trends and basic aspects and gradually shape a satisfactory model for apprenticeship contracts. Some of these aspects are also applicable to other training modes.

After scrutiny of all these accumulated tendencies and data, we can point to some guidelines that should serve as a basis for the whole structure, such as the following:

a) Organically: institutionalisation of participation by the social agents in the implementation, operation and monitoring of apprenticeship[5], within a widely decentralised scheme, reaching out to all present and potential users;

b) Methodologically: effective introduction of alternation, modularisation and validation and accreditation of the training acquired by any other means;

c) Operationally:

• establishment and permanent updating of the list of qualifications that can be attained through apprenticeship;

[4] J. Münch entitles «Discrimination of VT, a planetary problem» a section of his study on *Education, training and employment in Germany, Japan and the United States*, (op. cit. p. 150) published originally in 1992. He starts by pointing out that even in the People's Republic of China there is *«scant social recognition of VT, as compared to general education, with its well-known effects on parents and children in choosing different studies»*. He then adds that *«according to the results of polls, in Germany, for example more than 50% of parents want regular secondary studies for their children, and consequently the possibility of access to higher education»* (p. 150-151).

[5] Art. 5 of C. 142 and R.150 call for the collaboration of employers' and workers' organisations in VT programmes and guidance.

• implementation of systems of permits and authorisations for enterprises to engage apprentices, provided that they (the enterprises) minimally comply with the requirements guaranteeing that they can dispense the training in a satisfactory manner;

• establishment of training and pedagogic aptitude levels required of educators, and possibilities for their retraining and updating;

• whenever possible, immediate or gradual requirement of minimal levels of elementary schooling on the part of applicants, to ensure the achievement of qualification. If necessary, means should be provided to enable candidates that have already started, or are about to start apprenticeship, to reach such levels[6];

• implementation of apprenticeship as an initial training, eventually leading to lifelong education.

13. On that basis, the regulation of apprenticeship contracts should start from:

a) Recognition of apprenticeship contracts as labour contracts, for all intents and purposes, with special characteristics exclusively due to their additional training objective. This should mean, on the one hand, taking into account as a decisive factor that apprentices are entitled to training, and on the other, that they must enjoy all labour and social security rights, individually and collectively, as from the moment when the relationship is established.

b) Acceptance of the applicability to apprentices under age of all the regulations concerning the work of minors, such as age of admission, preventive medical examinations, prohibition of certain activities and tasks, etc. Authorisation to the persons in charge of minors to close the contract, should in no way imply substitution of the free will of those who must comply with it.

c) Express admission that non compliance with the essential requirements of form or substance ruled by the law, as well as grave forfeiture of labour or training obligations by the employer, will automatically entail the transformation of apprenticeship contracts into typical labour contracts, in the category of the tasks that the apprentices are performing.

d) Subsidiary or supplementary application of general regulations about vocational training and of the regulations adopted by the competent official bodies.

[6] Annex 3 of the doc. *Mise à jour des Normes...* (BIT) cit. includes, among elements to be added or underscored in rev. of the Rec. 150 / 1975: *«the importance of updating training (rattrapage), including the case of illiterate candidates»* (p. 12).

14. Within this framework, the respective administrative services should provide a mandatory model or standard contract, in line with legal and regulatory precepts as well as to those resulting from collective bargaining.

Apart from identification data, such contracts should include;

a) A clear definition of the object of apprenticeship, including the pledge of not making apprentices perform tasks unrelated to their training.

b) Location where the training and practical acitivities are to take place.

c) Maximum duration of the apprenticeship process according to its programme and within legal conditions; this, notwithstanding the right of apprentices to take the tests for their qualification before the end of that term.

d) Identification of the person who will be in charge of on-the-job training, with the authorisation of the competent authority.

e) Outlining of the training plan and its phases, as well as minimum time for their implementation within working hours.

f) Designation of the institution, centre or school that will impart the supplementary training.

g) Calendar of alternation with practical training.

h) Establishment of remuneration guaranteed to apprentices, on reservation of more favourable conditions that may result from laws or collective agreements. Such remuneration should not be below the vital minimum, adapted to the cost of living, and include increments as the training progresses. Under no circumstances should it depend on productivity.

i) Identification of the person authorised to act as tutor or counsellor and ensure contact between enterprises and training centres and competent authorities.

j) Obligation of employers to comply with their duties and ensure the delivery of the agreed training; obligation of apprentices to perform the tasks assigned to them with reasonable diligence, and apply themselves to take advantage both of practical and theoretical training. The contract should mention in bold type, for the benefit of apprentices, that truancy or lack of dedication to instruction are equivalent to absenteeism from the job.

k) Rights recognised to apprentices upon successful completion of their apprenticeship.

15. Legislation should envisage:

a) Approval and registration by the competent authority of the apprenticeship contract subscribed by the parties, before it comes into force or shortly after commencement of the relationship.

b) Regulation of occupational schools and apprentices' training centres which, in any case, must be licensed by the competent authority before they are allowed to dispense the complementary training.

c) Establishment of the conditions to be fulfilled by instructors and tutors, as well as maximum number of apprentices that each one can take in charge.

d) Maximum duration of trial periods and description of the justifications for early severance of the apprenticeship tie, as well as amount of possible indemnities owed to apprentices for thwarting their expectations to achieve a qualification. Possible extensions of the training period for the benefit of apprentices should also be suitably regulated and limited.

16. Legislation should also adapt the general rules for evaluation and certification of occupational skills to the particular characteristics of apprenticeship.

When not foreseen by educational legislation, free circulation between the VT and regular education systems should be organised gradually, as well as the equivalence of certifications issued by the two systems.

Efforts should be made to standardise qualifications and evaluation methods in the international sphere and at the level of economic communities, and to obtain international recognition and validation of certificates.

An inspection and counselling service should also be put in place, as continuous as possible, for the follow-up of the phases of training plans and the monitoring of compliance with contractual obligations. This control, which should be exercised by the competent services with the participation of the social actors, would not preclude routine checkups of the labour aspects of the relationship by labour inspectors.

17. The experience of many countries entitles us to assume that the best encouragement to promote apprenticeship, and the truest justification for it, depend on its efficiency to attain training objectives and on its implementation under dignified conditions, respectful of the legitimate expectations of the parties involved.

Anyhow, and especially when training activities are legally imposed upon employers, it is justifiable that some economic benefits be granted to them, to make up for the expenses and concerns incurred in the discharge of their duties as trainers of apprentices.

One of the best and most rational ways of giving incentives to employers, seems to be the free admission of compensations for

apprenticeship rates or similar contributions to training funds[7]. Other tax exemptions could also be envisaged. By contrast, deductions from social security contributions do not seem at all advisable, although they are widely practised.

18. Coming now to the end of our remarks, we can also conclude from our study of comparative law in the last few years, that the predominant trend is to take into account some of these aspects, although usually not all of them, so that regulations are not fully satisfactory.

We must concede, therefore, that although considerable progress has been made in the right direction, regulations are in general insufficient or incomplete. Neither can we overlook the fact that in a climate predisposed to labour deregulation, the haste to find solutions to the difficulties of young people and other groups to get employment, has prompted legislators in some countries to leave apprenticeship contracts outside the frame of Labour Law and Social Security.

19. We might add that, although for reasons already expounded, the research upon which the present study rests has not gone into the degree of effective application of regulations, their very deficiency in most countries, and non-observance of Labour Law –which has spread in developing and developed countries alike– lead us to think that, with some exceptions, the level of compliance with provisions for the protection of the rights of apprentices is low.

This widespread lack of protection presumably extends both to the labour and training aspects of the relationship.

[7] In several countries where these compensations are applied, it has been noticed that enterprises are motivated to spend much more than they actually get back.

I

General picture of tendency lines in recent legislation

1. It seems extremely difficult to establish common tendencies regarding VT in the vast universe of rules and regulations adopted in recent years in countries of very dissimilar characteristics.

Nevertheless, taking the task as a calculated risk, omitting details that define pictures of nearly infinite variety, and endeavouring to make the most of the more visible features of solutions given to common problems, it also seems possible to underline some coincidences that might lead to systematic lines regarding basic issues.

Starting from there, we sall submit the following points in successive paragraphs: 1) Emphasis on economic considerations and access to employment; 2) Widening recognition of the right to training; 3) Increasing decentralisation; 4) Importance of practical training, development of new models of contracts and labour / training relations, and revaluation of apprenticeship contracts.

It is in order to recall that references to countries and legislation are made by way of example, to illustrate the presentation of tendency lines.

§1. Emphasis on economic considerations and access to employment

2. If we review and compare recent legislation on VT, trying to uncover the trends of the philosophy underlying it, the matter of refor-

mulating objectives comes to the fore, particularly in countries in transition or development.

Definitions regarding that aspect in the laws passed in recent years seem to lean towards emphasizing economic objectives and access to employment, without leaving completely aside consideration of educational goals, or references to the contribution of VT to the realisation and development of individuals, and to improving workers'living standards.

3. Nevertheless there are examples, like that of France, where educational motivations are still predominant in training, although mention is also made of economic problems and the promotion of employment.

This can be appreciated in the articles of the French Labour Code regarding this subject that have been reformed, as well as in those adopted more recently[1], like the text inserted as heading of art. L.115-1 by Law 675 of 1992, which states that: «Apprenticeship coincides with the educational objectives of the nation». On the other hand, in an even more recent amendment to that article, as a result of Law 116 of 1995, apprenticeship is described as a form of dual education.

Similarly, although paragraph b) of art. 3 of the Leonardo da Vinci Programme of the European Union, the «Common framework of objectives» underscores measures to promote training in response to the needs of enterprises and to abate unemployment, we should clarify that the reference to enterprises is preceded by mention of the needs of workers; and regarding unemployment, the text additionally refers to the objective of «facilitating personal realisation». Anyhow, humanist aims widely prevail in the 19 paragraphs of article 3.[1a]

3a. The texts wherein economic considerations and the problem of access to employment are highlighted, can be classified according to their

[1] Art. L. 900-1 that heads Book IX of the Labour Code (LC) begins by stating that *«Ongoing vocational training is a national obligation»*, and further on adds that *«Ongoing vocational training is part of a permanent education»*. It is a fact, however, that some paragraphs introduced into this Book in the last few years include economic motivations, like the one on professional qualifications, the one concerning *«foreseeable needs of the economy in the short and medium term»* (par. incorporated into the heading of Art. L. 900-3 of the Labour Code by Law No. 91-1405 of 31.12.1991). In this connection, we must admit that although in this Law there is an opening to economic considerations, they are not predominant because, as pointed out by J.M. Luttringer in the National Interprofessional Agreement of 3.07.1991, which antecedes Law 91-1405 *«the consensus on the dual purpose of training: individual development of wage-earners and competitiveness of enterprises»*, was maintained («L'acc. nat. interp. du 3.VII.1991 «, in *Droit Social*, Paris, No. 11/1991, p. 800).

[1a] Leonardo da Vinci is an action programme of the European Community for the application of a VT (vocational training) policy. It was adopted by Decision of the Council of that Organisation dated 6.12.1994, to be enforced during the period 1.01.1995 to 31.12.1999.

contents, although they are in a way complementary and imprecisely demarcated, and of course not exclusive. With that proviso, we may choose examples of legislation where one of these three objectives is predominant:

a) Meeting the needs of the national community for apt human resources, capable of sustaining or promoting its economic development.

b) Meeting the needs of enterprises for qualified manpower, and therefore setting it as a target for vocational training systems.

c) Helping workers in entry and reentry into the labour market.

4. The first of the above objectives has been given pride of place in a more or less clear-cut manner in the definition of VT objectives of recent legislation in several countries, like Colombia[2], Korea[3], El Salvador[4], Philippines[5], Nicaragua[6], and Tunisia[7]. Although not so recent, Algerian legislation[8] also follows those lines.

It is interesting to note that Philippine law refers specifically to «attaining international competitiveness», and that achieving «international competitiveness in global markets» figures prominently in the justification of the new restructuring of the training of human resources, that is currently taking place in Mexico[9].

[2] The new Law of the SENA of Colombia (119/1994), in referring to the «Mission» of that vocational training institution (VTI), states in art. 2 that it will offer and implement *«integral VT for the development of persons and their incorporation into productive activities that may contribute to the social, economic and technological development of the country»*. An economic justification is even more evident in art.3 that deals with SENA's «objectives». It says there in item 1: *«To provide integral VT to the workers of all economic activities, and to those who may require such training to raise national productivity and promote the harmonious economic and social growth of the country, under a concept of redistributive social equity»*.

[3] The Basic Law for Vocational Training No. 2973/1976, amended by Law 3814 of 1986, and the Labour Law of 1953, amended by Law 4099 of 1989, establish that the purpose of VT is to contribute to the development of the national economy.

[4] Law of Vocational Training, Decree (D) 554, (July 8, 1993) where it says that INSAFORP *«has the objective of meeting the human resources' requirements for the economic and social development of the country»*.

[5] Both Law of 2.03.1994, on Incentives to Science and Technology, and the Law that created TESDA on 23.08.1994 make reference to *«Philippine development, its aims and objectives»*.

[6] D. 3-91 dated 10.01.1991 which, in dealing with the duties of INATEC refers to *«the qualified labour force required for the social and economic development of the country»*. Nevertheless, the same text asserts that INATEC *«is part of the national educational service»*.

[7] Law 93-10 on vocational training, refers in art.2 to the contribution of VT to the *«objectives of growth»*.

[8] D. 82-298 dated 4.09.1982, which among the objectives of VT includes *«participating in the satisfaction of sectoral and national needs»*.

[9] A high official of the system (Agustín E. Ibarra Almada), in a document that analyses the «Structural Reform of the training of human resources and labour policies», circulated by the Labour and Social Security Secretariat of Mexico in October 1995, states that *«the reform of the training system is intended to provide the country with the qualified human resources required by productive transformation, technological innovation and competition in global markets»* (p.24).

On the other hand and notwithstanding its references to a socialist production regime and to social progress, the Labour Law of the People's Republic of China, dated 5.07.1994, mentions the promotion of economic development among its aims.

5. Having enterprises in the focus of concerns and solutions in VT, and more concretely the way in which VT can help to meet the needs of enterprises for qualified manpower, are aspects that get first priority in laws passed in the last few years in several countries, among them Algeria[10], Chile[11], Ecuador[12], Iran[13] and Mexico[14].

Although in more general terms, and despite the fact that it gives special consideration to matters relating to employment, Argentine Law No. 24.013 of 1991 could be included in this group, for in article 22-g it affirms the need to *«establish closer links between the training of the labour force and the productive sector»*. Art. 1 of Resolution No. 57/1944 of Côte d'Ivoire also refers to the promotion of enterprises, although its main concern seems to be with employment.

6. The concern of legislators about current difficulties of access to the labour market, as well as the search of solutions for the reentry or retraining of workers that have lost their job as a consequence of reconversion processes in enterprises, or that must readapt to technological changes, is another priority objective in recent legal regulations.

In that respect, a very high proportion of such legislation is clearly bent on bringing VT to the fore in the struggle against unemployment, and the pursuit of adequate levels of employment. That would be the

[10] Among objectives of on-the job training as enumerated in D. 82-298 the first one is *«to meet all or some of the needs of enterprises for qualified manpower»*. The «development of enterprises» is also expressly mentioned in L. 90-11, which in art. 7, includes, among workers' obligations, their participation in the training activities that employers may organise in order to improve the operation and efficiency of their firms.

[11] Art. I of D. 1/1989 (Training and Employment Statute) includes, among the objectives regulated, *«improving the organisation and production of enterprises»*.

[12] The new Organic Regulations of SECAP adopted in July 1994 state in art.1 that *«the fundamental purpose of the Service is the intensive and accelerated occupational training of workers and middle managers for industrial, commercial and services activities»*.

[13] In referring to the object of training and the creation of training centres, Chapt. V of the Iran Labour Code stipulates that *«the needs of established industries should be taken into account»*.

[14] In the document cited in note 9, Ibarra Almada insistently reaffirms that enterprises are the object of the training system, and that the structural reform of training may result in *«an increase in the productivity and ability to compete of enterprises»*.

case of laws in Argentina[15], Chad[16], Chile[17], Côte d'Ivoire[17a] and Gabon[18].

7. Several factors connected with quite generalised policy practices, as well as the greater involvement of VT in the world of work as a result of a redifinition ot its priority objectives, have generated a tendency to include problems of this kind in the sphere of Ministries of Labour.

The change that this implies is all the more significant, insofar as the actual autonomy of Ministries of Labour to lay down appropriate guidelines may in fact be curbed by the directives –sometimes very concrete– of those in charge of conducting economic policy[18a].

On the other hand, in countries like most of the Latin American ones, where vocational training institutions (VTIs) have been the axis of the whole system at national scale, that process also means an undermining of those bodies and their gradual loss of leadership.

In that respect, we may point to the fact that VTIs are running the risk of losing their sources of funding, not only due to the abrogation of payroll levies and to the deflection of such funds to other destinations[18b], but also to their being left out in the distribution of financing granted by international banks.

7a. From the point of view of legislation, which is what we are dealing with, this tendency is reflected in laws that entrust Ministries of Labour with tasks regarding training policies, the tutelage or supervision

[15] The National Employment Law No. 24.013 of 1991, in describing its purpose says literally: *«to include VT as a basic component of employment policies and programmes»;* and in art.129, in referring to the attributions of the Labour Ministry, it mentions in para. (a) the integration of *«VT for employment into national labour policies».*

[16] Art. 2 of D. 765 / PR / MPC / 1993, which created CONEFE, states that *«CONEFE is an organisation... whose special mission is to formulate Government policies and programmes in the area of education and training in connection with employment».*

[17] D. 1 / 1989 states that the purpose of the training and employment regime is to *«strive for an appropriate level of employment, in order to make possible the progress of workers»...*

[17a] *Art. 57/1994 on the responsibilities of the National VT Agency (AGEFOP) entrusted one of its departments with the implementation of studies and research in order to underscore* «the role of VT in solving the problem of promoting employment and supporting enterprises» *(art. 1 cit. above). On the other hand, in accordance with art. 3 of D. 92-316, which created AGEFOP, one of its tasks is to develop, generate and coordinate VT projects in consonance with detected needs.*

[18] D. 273 / MINLHRVT of 1994 sets up a special Fund for economic aid that, in art. 45 and ff. envisages that it will totally or partially cover expenditures of all training projects for retraining, further training or apprenticeship, with a view to occupational entry or reentry.

[18a] The process of erosion of powers *of Ministries of Labour has been under way for some time, as indicated by Erén Córdova in examining the situation in Latin America* (Las relaciones colectivas de trabajo en América Latina, *Geneva, ILO, 1981 p. 67). The main characteristic of the present situation is the subordination of Ministers of Labour to «super-ministers» of economic affairs.*

[18b] See below paras. 32 and f.

of VTIs and the training system, and in some cases even the planning and implementation of training actions.

Recent regulations with at least some of those features are to be found in several countries, among them **Argentina** (L. 24.013 / 1991, art. 5, and L. 24.465 / 1995); **Brazil** (Res. 96 / 18-10-95 of the Deliberating Council of the Fund for the Support of Labour, CODEFAT); **Korea** (L.S. art. 75.2); **United States** (according to the *Job Training Partnership Act*, reformed in 1992 there is an *Employment and Training Administration (ETA)* in the *Department of Labor (DOL)*; **Mexico** (National Programme of Training and Productivity, and programme for Overall Quality and Modernisation, CIMO); **Namibia** *(National Vocational Training Act/*1994, arts. 3 and f.); etc.

Some countries have opted for creating Vocational Training Ministries, like **Tunisia** (D. 90-875); or specialised Secretariats, like the **United Kingdom.** In other instances the term *Vocational Training* becomes part of the descriptive denomination of the Ministries' competence, as in **Gabon** (Ministry of Labour, Human Resources and Vocational Training). Perhaps foreseeing the frequent changes of denomination of Ministries, some countries like **Belgium** refer to the *Ministry in Charge of Vocational Training* (Art. of the Executive of 24.10.91).

There are States, like **Austria**, where some competences relating to VT, e.g. the determination of activities that require apprenticeship, are directly assigned to Ministries of Economics.

Likewise, in others like **Portugal**, concern about the problems of access to the labour world, have led to subordinating the body in charge of VT to the sphere of employment.

However, some other recent regulations uphold the competence of Ministries of Education in the field of training. For example, in Côte d'Ivoire VT was the province of the Ministry of Social Affairs (D. 84-545), but is now under the Ministry of National Education (D. 92-316).

In several systems, like those of **Brazil, France** and **Italy**, responsibilities are shared by several ministries, and even by regional or local authorities.

§2. Widened recognition of the right to training

8. Two spheres may be taken into account, national and international for asserting that there is a tendency to extend recognition of the right to training.

International recognition of the right to training dates from quite a long time, and has been perfected by successive instruments. Some of

them have a high number of ratifications or have gone beyond that requirement and are accepted by the universal juridical conscience as *jus cogens*.[19]

Recognition by the internal legislation of countries is still not generalised enough, but quite a few recent laws have incorporated it.

A) International recognition of the right to training

9. For quite some time now, the right to training has had express recognition in international texts. It may even be tracked to the Preamble to the ILO Constitution, that was part of the Treaty of Versailles of 1919, and of course, the right to VT is implicit in the Philadelphia Declaration of 1944 about the ends and objectives of the International Labour Organisation.[20]

This right attained full and universal recognition in two singularly outstanding and far-reaching texts: the *Universal Declaration of Human Rights* of 1948, and the International Pact on Economic, Social and Cultural Rights of 1966. In the Declaration it appears in art. 26, as one more aspect of the right to education. In the Pact, vocational guidance and training are among the measures for compliance with the Right to Work (art. 6); the right to training is implicit in the enumeration of the *just and equitable conditions for work* (art.7), and is elaborated upon as part of the *right to education* in art. 13.

Subsequent instruments have insisted on the importance of VT for eliminating discrimination against physically handicapped persons (Declaration of the Rights of the Disabled, 1975, art. 6) and women (Convention of 1979, arts. 10 a) and 11.1 c).

About the same time, the International Labour Conference adopted several texts of exceptional interest in this connection, like C. 140 and R. 148 on paid leave for study and C. 142 and R. 150, on training of human resources, which provided a new concept of VT.

10. In the last few years, the right to training has been incorporated into regional instruments like the Protocol of San Salvador (1988) that was added to the Inter-American Convention on Human Rights, regarding Economic, Social and Cultural Rights (arts. 6-1 and 2; 7.b.c; 13-3 and

[19] Pursuant to art. 53 of the Vienna Convention, an international norm is considered *jus cogens* when it is *«accepted and recognised by the international community of States as a norm that may not be derogated wholly or in part and can only be modified by another international norm of the same nature»*

[20] «VT in the constitutive instruments of the ILO and in the system of ILNs» *in Boletín Interamericano de Formación Profesional* (Boletín Cinterfor), No. 128, July-Sep. 1994, p. 52 and f.pp.

3.9; 17 heading and 18 heading). It has also been included, in very explicit terms in the Charter of the Fundamental Rights of Workers of the European Community, of 9.12.1989 (art.15). (21)

Notwithstanding their acknowledgement of the right to VT as part of the right to education, these international texts accept its specificity and the fact that it pertains to the realm of labour and to the law that governs its relationships.

That is to say that, both from a universal and a regional angle, the right to VT is accorded its own dimensions, which do not contradict its modality of variant of the right to education.

11. In any event, international acceptance of the right to VT has the following consequences:

- Insofar as the right to VT is a precondition for the enjoyment of the *right to work*, its proclamation obliges States to furnish the juridical means and services to ensure that all persons, without any discrimination whatsoever, have as many opportunities as possible to get training in accordance with their expectations.
- The training opportunities that the legislation and practice of each country are obliged to provide, should be there all along the active life of persons, in order to make *permanent training* a reality, leading to constant upgrading and the material progress that results from promotion in jobs, as well as the adaptations and retraining required to keep those jobs.
- Special measures must be taken in order to make equality of opportunities effective, facilitating access to VT to persons belonging to groups with certain characteristics, or that may be considered to be disadvantaged (women, migrants, indigenous groups, minors, senior citizens, disabled persons, etc.).
- In formulating and implementing VT plans and programmes, apart from everything else, the rights of workers or potential workers should be borne in mind, which widely justifies their participation in the process through their representative organisations.
- Consequently, collective bargaining is a valid method for dealing at all levels with VT matters, which may be considered part of collective agreements.

21 The United Kingdom did not adhere to this instrument. Art. 15 reads as follows: *"Every worker of the European Community must be able to have access to vocational training and to benefit therefrom through-out his working life. In the conditions governing access to such training there may be no discrimination on grounds of nationality. The competent public authorities, undertakings or the two sides of industry, each within their own sphere of competence, should set up continuing and permanent training systems enabling every person to undergo retraining more especially through leave for training purposes, to improve his skills or to acquire new skills, particularly in the light of technical developments".*

• The right to training implies the right of all those in a labour relation to have the necessary time – whithout any discrimination – to profit from further training opportunities, and enjoy their relevant advantages, including paid leave for study.

• For their part, employers assume all pertinent obligations in order to make effective the right to training.

B) Internal recognition of the right to training

12. Let us now consider the way in which these international commitments have materialised in internal legislation.

For the purposes of this survey we have looked first at legislations that have generally accepted that VT is mainly an obligation of the State; then those that have admitted the existence of a subjective right to training, for which employers may be answerable; and finally the consequences of this proclamation and its complementary provisions.

Needless to say, these categories are not mutually exclusive and the legislation of one same country may include regulations about all of them.

13. General recognition of the right to training by internal laws at constitutional level, implying fundamentally the obligation of the State to make available the means for its implementation, has been included in the recent texts of several countries, particulary in Latin America, where the constitutionalisation of social rights is a permanent process.

Thus, in the Constitution of Colombia of 1991, the first paragraph of art. 54 explains the obligation of the State to *«offer training and occupational and technical education to those that may require them»*. And art. 70 establishes the duty of the State to foster and promote access to culture *«through ongoing learning and scientific, technical, artistic and occupational education»*.

In the 1986 Constitution of Nicaragua, art. 85 lays down the right of workers to *«their cultural, scientific and technical training»* adding that *«the State shall facilitate it by means of special programmes»*.

The Constitution of Peru, of 1993, after stating in art. 14 that education *«prepares citizens for life and work»*, goes on to stipulate in art. 16 that *«it is the duty of the State to ensure that nobody shall be prevented from receiving an adequate education»*. Art. 23 rounds off the idea, specifying that the State must favour *«conditions for social and economic progress, especially through policies for the promotion of productive employment and education for work»*.

The Constitution of Brazil, of 1988, says in N° 3 of art.218 that the State *«shall support the training of human resources»*; the Constitution of El Salvador, of 1983, decrees in its art. 40 the creation of *«a vocational training system for the training and qualification of human resources»,* and the

Constitution of Honduras, of 1986, after proclaiming the right of minors to education, says in its art. 140 that *«the State shall promote the vocational training and the technical qualification of workers»*.

Examples of this constitutional recognition can also be found outside the Region, e.g. in the Charter of the People's Republic of China, of 1982, where the final paragraph of art. 42 asserts that *«The State shall provide vocational training for citizens before they become employed»*.

Some time earlier, in Spain, the Constitution of 1978, after establishing in art. 10-2 the need for internal norms to be in conformity with the Universal Declaration of Human Rights and other international treaties and agreements, specified in art. 40-2 that *«public powers shall promote policies to ensure occupational training and retraining»*.

14. In ordinary legislation there are also recent reaffirmations of the right to VT, as shown in the examples below:

Algeria, (art.6 of Law 19-11 of 21.04.1990, which expressly lays down *«the right to vocational training and promotion»*); Argentina, (art. 96 of the law on SMEs), which proclaimed that vocational training was a *«fundamental right and duty of the workers»* of those enterprises; China (Labour Law of 5.07.1994, whose art. 3, in enumerating the rights of workers includes *«receiving vocational training»*); Spain, (Workers' Statute (WS) – text modified by Leg. dec. 1 / 1995, that in para. b. art. 4 states that workers *«have the right to... Promotion and vocational training at work»*; France (Law 90-579, which established that art. L.900-3 of the LC should be headed by the following paragraph: *«All workers that have entered active life, or all persons joining it, whatever their status, have the right to occupational qualification and should be able to get it, on their own initiative»*); [22] Dominican Republic (LC - Law 16 / 1992, which introduces as Principle XI the recognition of occupational training among the basic rights of workers), etc.

Likewise in Argentina, Federal Law on Education No. 24.195 / 1993 proclaims the right to learning without any distinctions, and in subpara. f of art. 5 calls for concrete measures to make equality of opportunities effective. Such provisions are fully applicable to vocational training, not only on the basis of general principles but also because, among other educational approaches, that law regulates a variant of dual VT that bears the name of polimodal teaching.[23]

[22] See above,w note 1 - As will be seen in the following paragraphs, even more recently the «Five-yearly Law» of 20.12 1993 extended this right by incorporating a new article to he LC. (L 932-2).

[23] Although dating from a period that precedes the one under review, we can also cite art. 1 of a Law adopted in Italy on 21.12.1978 (Framework law on vocational training), for in defining its «purpose», it says that the promotion of occupational training and upgrading is a tool for updating constitutional precepts, «making effective the right to work and to choose a job freely, and favouring the development of the personality of workers through the acquisition of an occupational culture».

15. The subjective right of workers to training, and the consequent obligation of enterprises to provide training, appears in more or less explicit terms in several legislations. That right reaches constitutional level in some texts like the Colombian one quoted above, in which art. 54, after mentioning the State, as already indicated, goes on to say that employers are duty-bound to offer training and occupational qualification.

Among recent laws where that subjective right appears more clearly,[24] we may mention: Chap. V. of Law 90-11 of Algeria, which deals with training and promotion in the course of employment, and the 1994 Labour Law of China, whose art. 68 establishes that employer units must set up a *«training system in the workplace... providing workers with training in a planned manner in accordance with the real situation of each unit»*. Furthermore, and ratifying the constitutional provision, the same article resolves that *«workers performing technical tasks must get training before occupying their posts»*.

Likewise, art. 166 of the LC of Chile (DFL. 1 / 1994), makes enterprises responsible for *«activities relating to the occupational training of their workers»*, including there everything connected with promoting, facilitating, fostering and developing aptitudes, abilities and degrees of knowledge. For its part, art. 179 includes among employers' obligations *vis-à-vis* training, all aspects regarding adaptation to a new job and retraining.

In Iran, art. 110 of the LC of 27.12.1992, decrees the collaboration of enterprises in the creation of training centres in the workplace or at similar sites.

The individual right of wage-earners to VT is unquestionably recognised by new art. L.932-2 of the LC of France, incorporated by Law 93-1313 within the new concept of beneficiaries to training-time,[25] although its exercise depends on the conditions of relevant collective agreements.

16. On the other hand, and irrespective of contracts that include a training element, the jurisprudence of some countries – in particular that of French Courts, including the Cassation Tribunal –[26] has developed the thesis that from the employers' obligation to comply with the labour contract in good faith, stems their duty to ensure the adaptation of the wage-earners of their enterprises to the evolution of jobs, by giving them adequate training. The relevance of this interpretation has been stressed in cases when the need for retraining is the result of a managerial decision which, through the introduction of new technologies or a change in the organisation of work, *«has affected the initial balance of the contract that*

[25] On the scope of this concept: P. Arbant, «Le capital de temps de formation» in *Droit Social,* Paris, No. 2 / 1994, p. 200-203.

[26] Decision of 25.02.1992, publ. in *Droit Social,* Paris, 1992, p. 379.

was based on the workers' qualifications, competencies or aptitudes, as contractually agreed».[27]

Such jurisprudential evolution has led to the conclusion –with a validity that goes beyond the legal regulatory frame of any one country, as it is based on common concepts– that «*the assertion of the contractual duty of retraining, justified by contractual «good faith», makes it now easier to see the obligation to provide training that it implies*». It has also become evident that «*the irruption of training into the very heart of labour relations is now a proven fact*».[28]

Some analysts have even wondered whether this evidence of training obligations in typical labour contracts does not mean a change in their object.[29]

C) Consequences and results of the right to VT

17. The consequences and results of the right to VT bring up various issues for consideration.

In the first place, a new phenomenon becomes apparent, i.e. the duty of workers to become trained (Argentina, L.24.467 / 1995, art. 9), or as the Chinese law says (LL, art. 2), the consequent obligation of workers of upgrading their technical capability. More concretely, some legislation like Law 90-11 of Algeria in its art. 7, establishes the obligation of workers to take part in training, further training and retraining activities, and empowers employers (Law cit., art. 69) to demand the participation in such activities of workers whose qualifications may so require.[30]

Furthermore, without invoking legal rules, and based only on the reciprocity of obligations of the two parties in the labour contract, arguments have been put forth about the duty of workers to consent to the request of employers to participate in training actions that may be justified by the needs of enterprises.[31]

[27] J.M. Luttringer, «L'entreprise formatrice sous le regard des juges», in *Droit Social, P*aris, No. 3 / 1994, p. 285.

[28] Ibidem, p. 285 and 283.

[29] M. del Sol, «Le droit des salariés à une FP qualifiante: des aspects juridiques classiques, des interrogations renouvelées» in *Droit Social*, Paris, N. 4 / 1994, p. 412-421, spec. Part II.

[30] Beyond the work relationship, some legislation on unemployment insurance imposes upon its beneficiaries the duty to become trained (e.g. Law No.24.013 of Argentina, art. 121).

[31] Luttringer provides references to decisions of French Courts that accepted the justification for dismissal of workers who refused to do training *stages* which were useful for enterprises (op. cit. pp. 286-287). Spanish doctrine highlights, among the obligations of workers within the labour relation in accordance with the WS, «not only maintaining their occupational capacity, but in many cases increasing it» (S. González Ortega «Development of occupational capacity as oblig. of workers», in Labour Contract and VT. op.cit. p.143 and ff.p.). The importance of c.a. has also been stressed in the regulation of the «contractual duty of training» (A. Martín Valverde and J. García Murcia «Workers' VT duties», in *Lab. contract and VT*, cit. p. 253 and ff. p).

18. Another issue refers to the right of individual workers to demand that employers comply with their obligation to provide training.

Legislations do not usually have very precise specifications in that connection, regarding training action in the course of ordinary labour contracts, and even in work and training relations, but some examples can be found in apprenticeship contracts.[32]

Nevertheless, some laws, like the Chilean one, clearly lay down that non implementation by employers of training schemes that may have entitled them to tax exemptions, entails the loss of such advantages.

Likewise, doctrine – as well as jurisprudence in some countries like France – has accepted a premise that implies some form of penalty for employers who do not fulfill their training obligations, regarding all contracts that include that component. In effect, any omission by the employer in that respect would cause «judicial requalification» of the contract as a typical labour contract.[33]

From another point of view, non fulfilment by employers of their obligation to provide training may lead to trade-union action, although quite naturally the effectiveness of such action varies, even within the same country, according to the bargaining power of the union and the characteristics of the enterprise.

Employers' absolutism regarding the definition of training plans and the choice of beneficiaries, may also be curbed by the requirement of consultation with other participating bodies, in some or all cases, as specified by laws or inter-professional agreements in Germany (Betr. VG., arts.97-98); Belgium; France (LC, art. L.933-1); Greece; Luxembourg, Portugal, etc.[34]

Such measures seem appropriate to protect the individual rights of workers from discrimination by employers, and to prevent the very frequent imbalances of training plans which are detrimental to lower-rank personnel.

19. Another way of promoting effective enjoyment of the right to training may be the recognition of the right to paid leave for study.

It is a well-known fact that this sort of right has a wide scope, but it expressly includes *«vocational training at all levels»*,[35] and is backed by two international instruments: C. 140 and R. 148, both of 1974. Upon publication of this study, C.140 had been ratified by twenty-eight countries of very dissimilar characteristics.

[32] See below, II, 7, A.

[33] *P*h. Enclos, «La chronique de jurisp. du CERIT; «La requalification judiciaire des stages d'initiation à la vie prof.» in *Droit Social*, No. 6/1991, p. 500-510.

[34] R. Blanpain, *Les politiques contractuelles dans le cadre de la FP continue dans les pays membres de la Communauté Européenne*, FORCE, Peeters, Leuven, 1994, p. 44-46.

[35] C. 140, art. 2a.

As this Convention does not come into force automatically, either in ratifying or non-ratifying countries, the effectiveness of training leave wil depend –as art. 5 of the C. specifies– on legislation, collective agreements, arbitration awards or other instruments compatible with national practice.

20. Among recent internal rules that have confirmed the right to training leave we may quote the 1992 LC of Belarus (art. 194);[36] the Res. dictated in Spain on 25.02.1993 and the LC of Iran, of 1992, which entitle workers to basic or specified wages during their training leave (art.113-a); etc.[37]

The above Spanish resolution was the result of a tripartite agreement and established a duration of 150 working hours for paid leave.

21. Other instruments to favour the right to training are scholarships and systems of financial help to persons undergoing training. They benefit mainly the young, whether they are apprentices, attend vocational institutes or centres, do periods of practice in firms, or even receive distance training. However, there are similar provisions to allow other people to join programmes, in order to ensure equality of employment opportunities, and the possibility of reentry into the labour market.

Among the more recent decisions in this area are Law 183/1994 of Australia, on *Student Assistance*; art 64 of Law 8.069 of 1990, Brazil, which provides «apprenticeship grants» for students under 14 years of age; the Training and Employment Statute of 1989, Chile, arts. 26 and ff., regulated by D. 146/1989, Tit. III, Para. VII; the Reg. on fellowships for apprentices, dictated by the INA of Costa Rica on 20.02.1995; Ordinance 2/94 of the Ministry of Employment of Egypt on the payment of *training allowances*; D. 94/495 of France, on financial aid to vocational training *stagiaires* (LC, arts. R.961-2, 3, 9, 15); Law N° 10/1995 of Kuwait, on vocational training stipends for students; several recent laws of Sweden, like Ordinance 1994:322, modifying that of 1992:330, on financial subsidies for young people under training; Law 1994:358, modifying Law 1983:1030 on adult education and unemployment subsidies; Law 1994:1170, with amendments to the Law on *students' allowances* (provincial or municipal programmes for adult education); and para. b) of art. 327 of Law No. 16.320 of 1992, of Uruguay, which grants bonuses to unemployed workers that undergo retraining; etc.

[36] Of similar scope is art. 193 of the LC of Belarus, which grants shorter working hours to apprentices attending general education schools.

[37] In Iran, the enjoyment of training leave gives rise to the obligation of working in the same place for a period at least twice as long as the time of training. Otherwise, the trainee must pay an indemnity to the employer.

22. Internationally, the struggle against discrimination of any kind in employment and occupation is the theme of ILO C. 111, which has 119 ratifications, and expressly includes access to the means of training (art. 1.3).

R. 111, that supplements this C., develops the subject in items 2.e), 3.a)ii and 3.b); and C.117, on social policies, reiterates the need for equal treatment without gender distinctions in its part VI, on «Occupational education and training».

23. The internal legislation of various countries has incorporated special provisions and promotion programmes for socially disadvantaged groups, in order to guarantee equal opportunities regarding the right to training.

Among recent laws aimed at providing equal training and labour opportunities without distinctions between the sexes, [37a] are those passed in Chile, Costa Rica, European Union, Gabon, Italy, Namibia, United States, United Kingdom, Uruguay, Venezuela and Vietnam; they have been subject to modifications, amendments or extensions.

Some internal regulations, like the LC of Gabon in art. 103, limit themselves to stating that workers of both sexes have the same right of access to training, further training and occupational retraining bodies; or as the Regulations of the INATEC of Nicaragua say (Ac. 41 / 19950), men and women should have equal rights of access to vocational training centres.

Others, like the law on equal opportunities for women, of Venezuela, 1993, and Law N° 16.045 / 1989, of Uruguay, consider various forms of sex discriminaion, and include express references to equal training opportunities (Arts. 8 to 10 of the Venezuelan law) occupational or technical retraining, education and updating, as well as a summary judiciary procedure (arts. 2.12 and 4 of the Uruguayan law). [38]

In some countries, like for example the United Kingdom, the duties of the Secretary of Sate that deals with training for employment include, among other things, taking measures to promote training and employment opportunities for women, young people or handicapped persons (L. of 26-0.1988, (2)-b).

[37a] The matter has been the subject of a special issue of the *Boletín Cinterfor,* No. 132-133, July-Dec. 1995, with contributions by Petra Ulshoefer, Daniela Bertino, Ma. Elena Valenzuela, Silvia Galilea, Sara Silveira, Visitación Cañizal, Beatriz Peluffo, Suyapa Fajardo, Lis Joosten, Albertina Velázquez, Anke Van Dam, Ma. J. Chávez and Irene Brenes.

[38] M. Márquez Garmendia, «Women's labour reg. and its regulation in Uruguay», in *Regulation of women's work in Latin America,* ILO, 1993, p. 414.

Positive action to make up for the disdvantages of women in these matters has been envisaged in the following countries, among others: Chile (Women's National Service, 1991); Costa Rica (L. for the Promotion of the Equality of Women, 1991 , arts. 19 and 20); [39] United States (Programme for Non-traditional Employment, NEW), Reg. JTPA / 1994, Part 628; Italy, (L. 125 / 1991); [40] Nicaragua (Ac. 41 / 1995 of INATEC, art. 57 on promotion of women's participation); Vietnam (LC arts. 109-111); etc.

24. The legislation of quite a few countries has incorporated schemes to facilitate the access of disadvantaged groups to training, and in that way fulfill their right to education.

Among recent texts of this kind we may cite Res. of 11.06.1993 of the Council of the European Union, which encourages the supply of training opportunities for the less privileged sectors.

The internal law of various countries has included provisions of that kind in the last few years: Argentina (Law 24.013 / 1991, arts. 83 to 85 and Res. MTSS 448 / 94);[41] Chile (the law and regulations of SENCE / 1989 foresee regular and extraordinary programmes in this respect, as well as a special one of 1991 called «Young Chile»);[42]; Netherlands (Programme of Subsidies to Sectoral Training, BBS);[43] Ireland (Youthreach Programme / 1985, for young people from 15 to 18 not integrated into the education or training systems); Italy (L. 104 / 1992, art. 17); United Kingdom (Youth Training);[44] Venezuela (D.273 of 11.08.1994, wich created a special Centre to train young people and adults with learning difficulties); etc.

25. The right to training also implies certain guarantees as to the quality of the training, and the need to make constant efforts to upgrade

[39] M. del Mar Serna Calvo (*Regulation of Women's Work in L.A., A Comparative Study*, in the collective document cit. in the previous note, p.15), remarked in 1993 that this regulation, whose objective was to promote the development of VT programmes for women in non-traditional jobs, and the Costa Rican law of 1991, were the only ones in Latin America that had taken specific measures regarding training.

[40] Law 125 / 1991 regulated positive action for the equality of men and women in vocational training and guidance. It has been said that it was limited to *«merely generic promotional initiatives» (*«Pesci, «Lavoro e discriminazione feminile», in *Dir. Lav. e Red. Ind.*, No. 63, year XVI, 1994.3, p.427). Nevertheless, it seems to have yielded some results, as the same Ter subsequently refers to the fact that initial experiences in the application of the Law show *«a concentration of initiatives in the area of training projects»* (p. 434).

[41] Programmes for unemployed young people (art.83); for laid-off workers with reentry difficulties (art. 84); for protected groups (art. 85). Res. 448 / 94 deals with the National Programme of Periods of Training in Enterprises (PRONAPAS). As an offshoot of Law 24.013, employment programmes that include training action have been created through various resolutions.

[42] For young people from underprivileged sectors.

[43] This programme subsidises training initiatives for the unemployed. Relevant plans are developed at national scale with representatives of social agents from the sectors of activity involved.

[44] The programme is intended for people under 25, even those who are employed or have completed general education. Before this, there was another, shorter programme, the Youth Training Scheme (YTS).

it, as indicated by Whereas 12 of the Leonardo da Vinci Programme of the European Union.

With that end in view, legislations have imposed the obligation of adhering to the directives laid down by the competent authority,[45] and provided for the monitoring of schools, training centres and enterprises, with the possible loss of subsidies and tax exemptions,[46] or a ban on training contracts.

They have also taken various measures regarding conditions to be met by trainers,[47] and made provision for their constant upgrading and updating.

In any event, as poor quality training is equivalent to a denial of the right involved, for it thwarts expectations of reaching a qualification, the same solutions as just seen above, would apply to other hypotheses of said denial.

26. Also directly related to the exercise of the right to training are the development of efficient guidance and preliminary education services, the establishment of communications channels between training and general education, mutual recognition of diplomas and the certification of the skills acquired.[48]

This right in fact includes the alternative of social and labour promotion –whereof the aspects indicated above are preconditions and driving factors–, as it gives opportunities to get appropriate training, continue with it in either system, and accredit results in all cases.

We shall refer to these matters again in Part III of this study, as they are of special significance in apprenticeship contracts.[49]

26a. The right to training gains weight and meaning from the point of view of safety at work and the work environment.

Indeed, taking into account that VT is *«one of the new paths –perhaps the most important one– selected for improving working conditions and environments»*,[49a] the right to training grows in scope and import.

It is of course undeniable, as specified, for example, in international instruments on safety in the utilisation of chemicals, that employers must train workers for the safe handling of products that may imply special

[45] As art. 180 of the LC of Chile very strictly stipulates.

[46] For example, the INCE of Venezuela introduced, through Adm. Ord. 78.93.08, a Regulation for classifying training courses for the purposes of tax deductions granted by the legislation. In this connection and regarding the effectiveness of training in apprenticesip contracts, S. below Part II, 4,B.

[47] Ibidem, Part II, 4, B.

[48] S. *La institucionalización de la certificación ocupacional y la promoción de los trabajadores*, Montevideo, Cinterfor / OIT, 1979 (89p).

[49] S. below, II, 10,11 and 12.

[49a] Statement by the ILO expert Claude Dumont, in *Salud ocupacional y seguridad en programas de formación profesional*, Montevideo, Cinterfor, 1983, p.26. (Informes,115)

hazards (C. 170 / 1990, art. 15-d), that workers are entitled to such training and, if necessary, to retraining in order to learn about available methods for the prevention and control of those hazards, and to protect themselves against them (R.177 / 1970, Ch.V, item 26-d).

But the matter does not rest there, and recent legislaive reforms, like the one implemented in France by Law 91-14.14 of 31.12.1991, which extended the scope of the Labour Code, point towards the view that managers of all plants have to organise appropriate practical training in safety matters for the benefit of new workers, and of workers who change jobs or techniques, and that such training should be repeated periodically according to the conditions laid down by regulations, or by collective agreements.[49b]

On the other hand, the Leonardo da Vinci Programme cites protection of the environment, health, safety and hygiene at work as key aspects to be promoted by Member States of the European Union in community measures to favour the improvement of their training systems and organisations.

§3. Widening of the decentralisation process

27. Under this heading we shall look at legislations that further decentralisation. This goal is pursued in four different ways:

Through a more generalised participation of social agents in the formulation of training policies, even in aspects concerning their application and the operation of services; through the integration of private actions and services into national training systems centered round enterprises; through a reallocation of resources to finance training, and through processes of territorial decentralisation in the management of training systems and actions.

A number of factors influence the spreading of this tendency and its more visible manifestations, especially the wish to make the best possible use of available resources by managing them more efficiently, and getting nearer to target groups and users of services.

However, it is quite likely that these processes have developed and flourished thanks to the favourable conditions furnished by a neo-liberal climate, characterised by what Foucault has described as *«State phobia»*, a

[49b] This article L.231-3-1 of the French Labour Code is very long and detailed, and stipulates mandatory intervention by personnel representatives. It admits that the scope of employers' responsibilities depends on the size of plants, the nature of their activity, the characteristics of the hazards involved and the types of jobs of the workers concerned. The provisions of the article cit. are supplementd by those of arts. R.231-32, R.231-63, R.233-10 and R.233-44.

condition in which all government activities –including the management of public education and training services– awaken mistrust and irritation.

A) Participation of social agents

28. Greater and more generalised participation of social agents[50] can be seen in various spheres. But fundamentally this participation is evident in the generation of regulations of different kinds, and in the formulation of training policies and action plans, and even in the supervision of the relevant systems. The latter is effected through integration into advisory and governing bodies of VTIs.

29. Participation of social agents in the creation of rules and regulations which implies a high degree of decentralistation, as opposed to the former legislative monopoly of the State, is acknowledged in the adoption of concerted or consensual laws. This also applies, of course, to collective negotiations at all levels.

It is already traditional in France –in Italy, Spain and other countries too– that legislation regarding training should be the result of a sort of generalisation of agreements between the most representative employers' and workers' organisations at national level, sometimes with the participation of government.

On the other hand, many recent laws refer to collective agreements as a regulatory source of the new relations created[51] or even, as in Argentina, as an instrument for the enforcement and follow-up of some labour contracts that include training components. Similarly, in countries like those of the European Union, where collective bargaining is widespread, there are many training agreements at national-interprofessional level, and by branches of activity.[52]

30. Participation in policy-making regarding training is achieved through the integration of employers' and workers' representatives into specific advisory bodies, and into the governing boards of VTIs, whose duties include the definition of training guidelines and action programmes.

[50] In view of the characteristics of the present study, we shall not go into the effectiveness or authenticy of such participation, which depend on the independence of organisations, their bargaining power and their interest in participating. Concerning these matters, with special reference to Latin America, cf. *El tripartismo y la formación profesional*, cit., specially p. 126 and ff.pp.

[51] S. below, regarding this matter in connection with apprenticeship contracts.

[52] R. Blanpain, op. cit. p.46 and ff. pp.

Among laws recently passed that ascribe or confirm such functions we may quote texts from: Chad;[52a] Colombia;[53] El Salvador;[54] Philippines;[55] Nicaragua;[56] United Kingdom;[57] Tunisia;[58] etc.

In these laws, which deal with VTIs, other forms of participation mentioned before can also be detected. What stresses the tendency towards decentralisation is that these institutions increasingly leave the implementation of training activities to enterprises or private centres.

B) Integration of private actions and services into national vocational training systems

31. This integration results from the coming together of trends that place enterprises in the centre of training interests with those that favour private entities, relegating action by the State to establishing basic rules and monitoring their enforcement.

In any event, decentralisation is made particularly evident by the new attitude of official VTIs, which tend to become mainly supervisors of the activities taken over by enterprises, or by the training bodies and centres that they themselves have set up.

[52a] D.765/PR/MPC/93 of 31.12.1993 created the National Committee on Education and VT in connection with Employmnent (CONEFE), with powers to formulate government policies and programmes regarding education and training, mobilise social agents. etc. This Committee is made up by six Ministers plus the Secretary to the President of the Republic, who represent the government sector; two delegates of employers; two delegates of workers; two representatives of rural producers; two on behalf of associations of students' parents and a craftsmen's representative (informal sector).

[53] Art. 7 of the Law that restructured SENA (119/1994), set up a National Governing Council with three Ministers or Viceministers, a representative of the National Association of Industrialists, one from the Commerce Federation, one from the Agricultural Producers' Association, one from the *Asociación Popular de Industriales* (ACOPI),two from the workers' federations, one from campesino organisations and one from the Episcopal Conference. In accordance with Art. 17, Regional Councils have a similar makeup.

[54] The Law creating INSAFORP, No. 554/1983, ascribes *inter-alia t*he following responsibilities to that institution: «*developing national VT policies and reviewing them periodically, laying down medium and long term objectives*». INSAFORP is also charged with organising, developing and coordinating the VT system, carrying out research, dictating regulations, etc. Art. 8 specifies that its board of directors will include three representatives from Government, four from employers' and three from workers'unions.

[55] In accordance with Law 7796/1994, the board of directors of the Technical Educational and Skills Development Authority (TESDA), is made up by two representatives of the employers, three of the workers and two of private technical educational and vocational training entities, apart from government sector delegates. Among the representatives of both employers and workers, one must be female.

[56] Instituto Nacional Tecnológico (INATEC), created by D.3-91 of 10.1.91.

[57] Pursuant to law of 26.05.1988, arts. 24 and 25, the «Manpower Committee» became the «Training Committee», with ten members at least and sixteen at most. According to law 25.07.1973, not modified by the above, three members are appointed after consultation with employers' organisations, three after consultation with workers' organisations, another two after contacts with local authorities and one after consultation with educational authorities.

[58] Both the Consulting Council and the Governing Body of the National Ongoing Training and Occupational Promotion Centre are made up by representatives of workers' and employers' organisations (L.93-1493, arts. 6 and 8).

In that respect, the Reference Document prepared by Cinterfor for the 32nd. Meeting of its Technical Committee in Jamaica, 1995, in analysing the projections of laws that restructure VTIs, says quite significantly that the institution considered in the case in point «is implementing an innovative process of redefinitions of its structure, its coordination with the spheres of production, education and society in general, its procedures and the characteristics of its offer that, without losing sight of its central training objective, is widened to include new services.[59]

A few paragraphs further along, this well reasoned document –whose conclusions may be made universal, although they only refer to Latin America and the Caribbean– goes on to fill out the picture of the current situation of the decentralisation process in all its forms. In referring to the new strategies of public VTIs, it notes that innovations consist of a combination of tactics that include: *«promotion of apprenticeship contracts among employers, sponsorship of already employed workers, recognition of courses dispensed by other vocational training institutions and by enterprises, utilisation of semi-presential, out-of-classroom training methods, maximum use of the installed and operational capacity of centres, significant reduction of all costs and upgrading of the overall efficiency of institutions».* [60]

C) New allocation of the resources for financing vocational training

32. It is a well known fact that during the nineteen forties training acquired a new interest for the policy-makers and legislators of various countries. This was due to a number of circumstances, among them fundamentally the war effort and the subsequent tasks of economic recovery in the central countries that had been involved in the armed conflict, as well as imports substitution and the demands of growth in developing nations.

As training actions require financing, a type of legislation became generalised that established a simple and effective way of securing it. It consisted of channeling towards training institutions and centres, the funds resulting from a mandatory levy on payrolls, imposed on employers.

In Latin America, where this model started in Brazil and then spread to other countries, it was described by authorised sources as *«the innovative idea in vocational training»* in the region.[61] The powerful thrust in the

[59] Op. cit. p. 45.

[60] Op. cit. p. 46.

[61] C. de Moura Castro «Financing of vocational education in Latin America», in M. Brodersohn; M. Sanjurjo, *«Financiamiento de la educación en América Latina»*, FCE-BID, Mexico, 1978, p. 478.

development of State, semi-official and private-cum-official VTIs can no doubt be attributed to it.

33. The resistance of many employers to pay the levy for financing training, stemming from the same reasons why they have always opposed social security contributions, received strong support from experts in financial matters who have everywhere been in favour of fiscal systems with no taxes for specific purposes.

All the same, the levy has been maintained in many countries, either under the guise of a tax, like in the French model, or just as a training contribution by employers, and it has spread to others.[61a]

We can refer to many laws passed in recent years upholding, developing or creating employers' contributions to training funds or to the financing of VTIs, like the ones in Brazil, L. of the National Rural Training Service (SENAR), N° 8.315 / 1991, art. 3); Chad, D. N° 767 / PR / MPC7 / 93, art.3; Colombia, L.119 / 1994 for the restructuring of SENA, art.3, subpara.4b); Côte d'Ivoire, D.87-737 creating the IPNETP, art.8; El Salvador, INSAFORP Law, D 554 / 1993, art.25; France (Laws 90-579 of 4.07.1990, and 91-1405, of 31.12.1991); Malawi (Ord.3 / 1993, on training tax; Namibia, L.18 / 1994, National Vocational Training Act, Art.43; Peru, new SENATI law No.26.272 / 1993; Tanzania (Order 619 / 1994); Tunisia, (L.88-145 and D.93-696 of 5.04.1993); etc.

34. The change, that has taken place gradually and reinforces the decentralisaion process, is characterised by a rechannelling of training funds back to contributing enterprises, and the proliferation of a number of tax incentives and veritable subsidies to those that undertake training activities.[62]

All of which, quite obviously, means a reallocation of public resources, that are no longer fundamentally directed towards training actions carried out by State or semi-official VTIs, but deflected to finance those implemented by enterprises –with a special emphasis of SMEs in certain countries– and private organisations that offer services of that kind.

35. To all this has been added the creation of training funds by means of training taxes or other mechanisms, like those of the European Union, that are basically aimed at the same thing.

Among recent laws that establish or develop training funds are those enacted in: Brazil, L.7998, of 11 January 1990 (FAT); Canada-Quebec, L.

[61a] Even in the United States, among the intentions expressed by President Clinton in 1994 was the creation of a tax on payrolls, to invest in training at the workpost (cit. in «A controversial proposal...», *Boletín Cinterfor*, No. 134, January-March 1996, p. 55).

[62] On promotion of apprenticeship contracts, see below, II,12.

22.06.1995; Chad D. 767/PR/MPC/ 93, art.1; Mauritania (94-084, Creation of the FAAF); Namibia, law 18/1994, N.V.T Act, arts. 44 and ff.; Poland, L. 29.12.1989; Singapore, L. No. 19/1991 modifying the Skills Development Levy Act, Ch. 305, 1985 Rev.Ed.; South Africa (Prov. of 7.09.1993, on Special Fund for Technical Education and VT); Tanzania (Voc. Ed. and Training Fund, 1994); Zimbabwe, L.24/1994; etc.

It is interesting to note that an actual employers' culture is emerging of on-the-job training subsidised with public resources. In Spain, for example, employers have shown unwillingness to consent in full to the information and consultation rights of workers' committees in connection with VT, unless the training dispensed is financed in this manner.[63]

D) Territorial decentralisation processes that have an impact on training legislation, policies and actions

36. Greater territorial decentralisation of training systems is a conspicuous fact that has two causes, one deriving from national policies and the other from administrative techniques.

Decentralisation resulting from national policies becomes apparent in the creation of increasingly autonomous regions or communities, as has happended and continues to happen in many European countries like Belgium, Spain and Italy, or in the enlargement of provincial jurisdictions, as in Argentina or Canada. It is of course not driven by the intent to decentralise VT, but to a greater or lesser extent it has that effect.

So that at present, to become acquainted with the VT regulations of countries that have undergone regionalisation, apart from looking up national legislation it is necessary also to consider regional norms, as has traditionally been the case for countries with an effective federal structure.

On the other hand, in certain countries, like Denmark, municipal authorities are the ones in charge of implementing new training programmes.

37. However, territorial decentralisation does not always take on this form; it may also be the result of administrative techniques.

In this respect we may point out that in the restructuring of VTIs special attention has been given to the setting up of regional departments. At the same time, an effort has been made to give more independence to training centres.

[63] R.Blanpain, op.cit. p.46, says in this connection that the Spanish National Agreement on Ongoing Training, of 1992, granted greater rights to the Consejos de Empresa than those resulting from the WS, but that had only been foreseen when *«the training provided by the employer was financed by the government»*.

§4. Importance of practical training, development of new labour and training contracts, and revaluing of apprenticeship contracts

38. The new priority objectives of training, the expansion of decentralisation and even the advent of the right to permanent training, have combined to promote a methodological revision and, quite obviously, to give preeminence to practical training on the job. So that this fourth tendency can reasonably be taken as a corollary to the previous ones.

Anyway, examination of legislations enacted in the last few years, reveals the appearance of new models of job training relations and, of course, a revaluing of apprenticeship contracts.

39. Training contracts and relations instituted by the laws of various countries are subject to frequent review, in order to correct shortcomings that have materialised in practice, or make up for the limited support they have received.

Their diversity of detail makes systematisation nearly impossible. Terminological problems also preclude it: very often the same institute –or two similar ones– are called by different names, or there are generic categories like the French *stages*, that include various training programmes involving different relations with enterprises.

For all these reasons we can only make a short alphabetical list of some of the legal texts recently adopted by some countries, that introduce contractual variants or special conditions with a training component. We have excluded those that can definitely be considered apprenticeship contracts, which will be discussed separately.

40. The following countries can be cited as having recently enacted new regulations that comprise training:

Argentina. Employment Law N° 24.013 of 1991 includes several forms of contract that, apart from other things, contain training elements: Job practice contract for young persons (art.51 and ff.); Labour-job training contract (art.58 and ff.); Employment programmes for special groups of unemployed young persons, laid off workers with scarce reemployment possibilities, former convicts, indigenous groups, war veterans, rehabilitated drug addicts, physically handicapped persons (art. 81 and ff.). There is a special programme providing for periods of practice (PRONAPAS), D. PEN 1.547/94 and Res. MTSS l.051/94/94; contracts must include vocational training in several other programmes, like the one on Private Employment (PEP), Res. MTSS 87/94 reformulated by Res. of the Employment Undersecretariat 18/95; the Inter-institutional Programme of Social Interest (PRIDIS), Res. MLSS 86/94, etc. Law 24.467 of 1995 foresees a less stringent contractual regime for small enterprises

(art.83); art. 96 specifies the right and obligation of workers of such companies to get trained, with the possible subsidiy of employers by the National Employmnent Fund (art.98).

Belgium. Royal-Decree 495/1987 on training contracts for young people of 18 to 25 years. It includes reduced contributions to Social Security.

United States. The Job Training Reform Amendments of 1992, which is a law that amends the Job Training Partnership Act

(JTPA) of 13.10.1982, modified the programmes known as On-the-job training, that incorporate short-term subsidised contracts for young people and adults. The Employment and Training Administration (ETA) of the Department of Labor, issued extensive regulations, that have been in force since 30.06.1995. In Part 626 they introduce rules under the JTPA, in 627.240 they develop the ILO regime and in other sections deal with various programmes intended to promote the training of persons belonging to disadvantaged groups.[63a]

Spain. Contract for practice, law 22/1992, Royal Decree 2317/93 and WS (Text coordinated by Royal Dec. 1/1995), art.11.1 for intermediate and higher university and vocational training graduates. Labour/training contract (WS, cit., art 11.2).[63b]

Philippines. LC, arts. 73 to 77: Contract for semi-skilled activities, not subject to apprenticeship.

France. Law 13.12.91 on Guidance Contract, for persons under 22, resulting from the Inter-professional Agreement of of 3.07.1991 that replaces the *Stages d'initiation à la vie professionnelle (SIVP)*, created by Law of 24.02.1984, resulting from Inter-professional agreement of 26.10.1983.[64]

Italy. There is a consensus in Italy that as the regulations of apprenticeship contracts are not applied, apprenticeship is no longer at the base of vocational training. In effect, besides the various advantages granted to students that work (introduced from 1970 on), a number of laws on training have been passed and new arrangements have been created,

[63a] In a study on «Roles of the State and the private sector in the training of human resources in the USA», published in a special edition of the Boletín Cinterfor, on Vocational Training in the United States (No. 134, March, p 7 and ff.pp.), J.F. Pérez López concludes that *«In the United Sates the State and the private sector play important roles in the training of human resources. The role of the State tends to be to provide basic education and information services on labour markets, facilitate the transfer from school to work and assist in the training of those that require such services because they have lost their job or have special needs. The private sector tends to complement the education and training furnished by the State, and dispenses the specialised training workers require for their specific job»* (p. 27).

[63b] See F. Pedrajas, V.T. and on-the-job labour contracts; the experience of the «Andalucía joven» programme, in *Contrato de Trabajo y FP.*, cit. p. 337.

[64] Apart from the Guidance Contract there are in France contracts on Occupational Qualification and Retraining, for persons under 26, introduced by Law 24.02.1984.

the most important of which is the labour and training contract, institutionalised by art.3 of Law N° 863/1985. This contract, with the additions and modifications introduced by laws 407/1990 (art.8) and 451/1994(art.16) has three possible variants, according to the greater or lesser weight of the training element.[65]

In addition to such contracts there are the «plans for occupational entry», foreseen in art. 15 of L.451/1994, for the benefit of young people of 19 to 31 years and even up to 35, for those that have been unemployed for a long time; as well as the *«Tirocini formativi e di orientamento»* instituted by L.515/1995, which, according to art. 8-3, are not considered to give rise to a labour relationship.

Morocco. L. No. 1-93 of 23.03.1993 on *stages* for training, retraining and entry into employment, which includes exemption –up to a certain level– from payment of employers' and workers' contributions to Social Security and has to adapt to regulatory contract models.

Peru. L.No.26.513 of 28.07.1995, that modifies legislative decree No. 728 «law for the promotion of employment», includes rules about youth training agreements and pre-occupational practice, in order to *«offer young people of sixteen to twenty-five that have not finished their studies or, having done so, are not pursuing technical or higher studies, theoretical or pactical on-the-job knowledge, in order to incorporate them into economic activity in a specific occupation»* (arts. 8 to 16 and 24 to 31). In view of the similarity of apprenticeship contracts and youth training agreements, some difficulties that have arisen in connection with them will be discussed in Part II.[65a]

Tunisia. Res. (Arreté) of the Minister of Vocational Training and Employment of 30.05.1995 on conditions and modalities of dual training, and Frame Convention for the promotion of dual training (tripartite).

41. Although the difficulties pointed out earlier prevent us from making a deeper comparative study, we can at least indicate some common elements in most of these new approaches.

[65] According to G.Ghezzi and U.Romagnoli, the training and labour contract is *«essentially a contract for a limited time... that must be stipulated in writing (otherwise workers 'will consider themselves under contract for an indefinite time'*: art. 8 para 7 of L. 407/1990; as a rule with a duration of no more than twenty-four months, not renewable» (*Il rapporto di lavoro, 3*rd. ed., Bologna, 1995, p.163). The same authors warn about the three «internal typologies» of this contract, that can be aimed at the acquisition of higher or intermediate occupational qualifications, or merely at (art.2, para.2 of law 451/94) *«favouring entry into employment by means of a suitable work experience adapting occupational abilities to the productive and organisational context»*. In this connection, they underline that all three variants are remunerated with lower wages, but whereas in the two first ones this reduction is justified by the training imparted, that is not the case for the third alternative, where workers cannot expect certifications acknowledgable by the competent athorities, but just a testimonial of the employer about labour experience (op. cit. p.165).

[65a] See below, Part II.3, para.9.

For example, the importance acquired by on-the-job training is very noticeable; so is the fact that these contracts or relationships are for a limited term, usually shorter than that of apprenticeship contracts, and that nearly all of them have incentives of different kinds. Among them are some or all of the following: lower wages, exemption from social security contributions and other taxes, or reduction thereof; direct subsidies or compensations to employers for the cost of training; etc.

The concern about access to the labour market generally prevails in these contracts; consequently the training they provide is of the kind that may speedily permit the employment of special categories of workers, like the unemployed of long standing and other disadvantaged groups, and very specially the young, although the term «young» is used with a certain leeway to include persons usually considered to exceed that age.

Likewise –and this deserves special attention– in several legislations these contracts and relationships, which are of eminently labour nature, are expressly defined as barred from the field of labour legislation, and of social security as well; in most cases they hardly afford any coverage for labour accidents and occupational diseases, nor provide health insurance, in certain cases.

42. Where this trend is most clearly seen (i.e. the preference of legislators for forms of training with a predominance of on-the-job training) is undoubtedly in the revaluing of apprenticeship contracts.

Within the context of this study, the special partiality of legal systems for that approach fully justifies a more detailed review of the current characteristics of apprenticeship schemes and their possible evolution.

On the other hand, as they constitute a traditional training approach, notwithstanding some important departures introduced by national legislations, they tend to show a more homogeneous picture, and are therefore more liable to a comparative law approach.

The fact that apprenticeship contracts are now in the limelight in all parts of the world, may be an indicator of the main concerns that exist regarding the problems of training and its relations with education, employment, and social and economic development.

Therefore, in the second part of this study we try to give a panorama of the situation of apprenticeship contracts, as it emerges from a comparative survey of recent regulations.

II

Regulation of apprenticeship contracts

§1. Preliminary comments

1. The acquisition of qualifications by young people through a process that takes place mainly within a contractual relationship, by the gradual performance of tasks in a real-life work situation, under the instructions of employers or experienced workers, is the oldest form of training, and for a long time, it was the only one in existence.

At present, as pointed out by recent studies[1], we are witnessing a revaluation of apprenticeship contracts.

In fact, changes of substance or form have taken place in the aprenticeship legislation of a very great number of countries with varying degrees of economic and human development, in all regions of the world. This would show the interest and confidence awakened by the virtues and current possibilities of apprenticeship schemes, but also the general conviction that there is a need to improve them.

2. To illustrate it we can draw up a list –obviously not exhaustive– of countries where innovations have been introduced in apprenticeship

[1] It so arises in the document published by CEDEFOP in 1995, about countries of the European Union. The opinions are quoted there of experts that have recently emphasised the *«substantial virtues»* of apprenticeship, and stressed that it has *«an interesting future»* under certain circumstances *(Apprenticeship in the Member States of the EU. - A comparison*, Luxembourg, Of. Publ, Of. of the EC, pp. 7 and 8, from hereon cit. as: Doc. CEDEFOP,1995).

legislation from 1990 to 1995; but even there we must note that amendments have been frequent.[2]

The list is as follows:[3]

Albania (LC 7961/1995); Germany (Amendments to the 1969 law on VT - BBiG: L.20.12.1993 and 12.01.1994)[4]; Algeria (L.90-34, 1990; D.93-67, 1993; Déc.Exéc. 95-31/1995); Argentina (L.24.465/1995, arts. 4 and 5; D.738/95, Cap. III, arts. 7 and ff.); Australia (L.111 and 119 of 1993 and 183/1994); Austria (Ordinance M.As.Ec., No. 1085-30.12.94, mod. list of professions requiring apprenticeship[5]; Bahrein (Ord. 20/1994); Belarus (LC, arts. 180 and 182 and 187); Belgium (D. 03.07.1991 VT-SME; Arr.22.10.91; Arr. 24.10.94; Arr.Exec. Comm. Franc. 24.10.91; D. of the PE Flam. 9-06.93; D. Comm.Franc. 17.03.93; Arr. Gouv. Comm. Franc. 18.05.95; Arr. Gouv. Wallon , 6.04.1995); Brazil (L. 8.069/1990, art. 64, 65 and 67); Canada- Ontario (Reg.228/95); Canada- Québec (L. 22.06.1995); Chad (D. 767/PR/MPC/93); Chile (LC/DFL/1, 07.01.1994, Tit. III, Chap.1, arts. 78 to 86); China, P.R. (Labour L. 05.07.1994, Chap. VIII, arts. 66 to 69); Colombia (Ag.18-07.06.1994 SENA); Costa Rica (Regs. INA 2842/1991, 30.06.1993 and 06.02.1995); Côte d'Ivoire (LC 1995, Tit. I, Chap. 2, arts. 12.1 to 12.11; D.92/05); Croatia (Lab. Law 758-1995, Chap. 5); Ecuador (L.19.04.1995); Egypt (Ord. 2/94); Spain (R. Dec.2317/1993); Ord. 19.09.94; L.10.11.1994; R.Dec. 1-1995, reformed text WS, art.11.2; United States (Job Training Reform Amendments/1992)[5a]; Philippines (L.7796, TESDA Act, 1994); France (Laws 90-579, 90-613, 91-1, 91-1405, 22-675, 92-1446, 93-1313, 94-638, and Decr. 90-55,91-688, 91-831, 91-1083, 91-1107, 92-463, 92-886, 92-1065, 92-1075, 93-18, 93-280, 93-316, 93-541, 94-398, 94-495, 95-998; Gabon (Ord.09/93 PR; D. 273 PR/MinLab H. VT; LC, L. 3-1994, arts.81 and ff.); Guyana (Ind. Training, L. 1/1993); Nether-

[2] Legal and regulatory texts on this list often include brief references to apprenticeship contracts, or just consolidate or introduce small changes into provisions that already existed in general labour codes or laws, or in specific laws and decrees, but in any case they imply a ratification of their substance and the enhancement of the concept.

[3] To this list could be added, also recent in time, the LC of Korea, L.No.4099/1989, whose arts. 74 to 77 deal with apprenticeship contracts. That same year, the Training and Employment Statute was passed in Chile by Supreme Decree I. No.1/1989, which refers to apprenticeship in arts. 14 and ff. Regulations thereof figure in S.D.No. 146/1989 of the MLSS, Tit. III, para. VII. For similar reasons we might include: Law 21/1989 on Education and VT, of Denmark; the LC of the Philippines of 21.03.1989; Law 1836/1989 on the promotion of employment and VT, of Greece.

[4] The numerous recent ministerial ordinances about conditions, examinations, etc. required by the various trades and professions are not included in this list.

[5] In Austria Ministerial Ordinances concerning initial training for different trades have also been adopted recently (S. *Legislative Information*, ILO, 1995)

[5a] Regarding the purpose of these amendments to the Job Training Partnership Act, the Education and Labor Committee, House Report No. 102-249, mentioned the fact that *«apprenticeship programs»* were only attended by 2% of young people in the United States, as opposed to the considerable coverage of apprenticeship in Germany (p. 45).

lands, L. WCBO, 01.08.1993; Iran (LC, L.27.12.1992, art 112 and ff.); Ireland (Lab. Serv. Act Appt. Rules, 1995, S.I. No. 198 / 1995); Italy (L. 515, 04.12.1995, art. 8)[6]; Kuwait (L. 1995); Luxembourg (L. 04.09.1990); Madagascar (95-004. regarding crafts); Malawi (Ord. 3 / 1993); Mauritania (D. 94-048- FAAF); Namibia (Gral. L. on / VT-NVT Act 33-1994, arts. 17 to 28); Nicaragua (D. 3-1991 INT; D.40-94, Org. L. INATEC; CFP Reg., Ag. 41.95); Paraguay (LC L.213 / 93 and mod. by L.496 / 1996 Tit.Chap. I and II. Sec. I, arts. 105-118 and 119-127); Peru (L. 26.272 / 1993, SENATI; L.26513, TO, D.S. O5.95-TR); Poland (L.29.12.1989- Employment); Portugal (Decr-law 383 of 09.10.1991; Reg. 1061 13.11.92); Dominican Republic (LC L. 16-92, Book IV, Chap. II and III); South Africa (L. 157 / 1993; Amend. of Apprenticeship Conditions, 29.09.1995); Sweden (ord. 1993:1950, 1994:358, L. 1994-322, 1994-358, 1994:1170); Tanzania (D. 8.12.1994), Vocational Education Training Fund, Order 616 / 1994); Tunisia (L. 93-10, Chap. IV, arts. 21 to 28, D. 94-1600, Arr.Min. of 17.01.95, Arr.Min. 27.02.96); Venezuela (OLL, 1990, Tit. V, Chap.I, arts. 247 and ff. and 266 and ff.; Educ.Min.Res., 1255- A / 1992, Pres. D.3.230 / 1993, Adm.D.768-93-08 / 13.04.1993); Vietnam (LC L. 23.06.1994, Chap III, arts. 20 to 29); Zimbabwe, (Manp. Plan and Dev.Act,1994 (No.24).

3. We may note that according to recent studies, in countries where traditional apprenticeship has dwindled or disappeared altogether, «programmes to buttress it or create something similar» are being launched.[7] In others where it is inadequately regulated, or just not regulated at all, and has never had any significance, as in the case of Uruguay, a law aiming to promote two modalities of apprenticeship, within a programme to help young people's insertion in the world of labour has recently been passed (L. 16.873 dated 3.10.1997).

In Japan, where "there is no training of apprentices in the strict sense of the word"[7a], a law on Skill Training System was passed on 5.04.93.

We should point out, however, that a lack of rules and regulations is not necessarily indicative of neglect by legislators. But in some cases, like that of Mexico, legislative omission has been the result of deliberate exclusion of apprenticeship contracts from the new Federal Labour Law

[6] This Italian law deals with a variant: the *tirocini informativi*. The Government sent a draft bill to the Chamber of Deputies on 26.06.1995 about «Labour market and flexibility rules» that included provisions regarding *«apprendistato»* in art. 21 *(Dir. delle Rel. Ind.*, Giuffrè Ed. No.2 / 1995, p.259).

[7] J.M. Adams, who mentions the United Kingdom, Sweden and Ireland («Blind Alleys or a Freeway to the Future?» in European Journal on Vocational Training, CEDEFOP, No.2, 1994, p.8). In fact, an apprenticeship law was passed in 1995 in Ireland, as indicated above.

[7a] J.Münch, «Education, training and employment in Germany, Japan and the United States» in Lab. Rev. MLSS, 1994, 1.1, p.151.

(FLL), in force since 1970, on the assumption that this form of training was obsolete and led to abuses against minors.[8]

4. The rules we shall consider here are those connected with the more typical characteristics of the apprenticeship contract, by whatever name it may be known, and even when they provide for alternate theoretical and practical training to a significant extent.

The models mentioned in part I 4 embodying new combinations of work and training, whether they have a name or not, (labour and training contracts, job training, *stages*, periods of practice, practical work, etc.), that are implemented outside apprenticeship regulations in their strict sense[9], or are replacing them and have no part in apprenticeship contracts, will only be considered in passing.

§2. Current characteristics of apprenticeship regulations

5. A quick look at apprenticeship regulations, in conjunction with previous texts whenever necessary, shows a certain continuity of general lines, although differences of greater or lesser importance seem to persist, and new ones to appear.

These differences have to do both with formal aspects and matters of substance, as does the legal nature itself of the contract that gives rise to the apprenticeship relationship.

6. In that connection, the first thing we notice is that in many systems the process has already concluded whereby apprenticeship contracts have attained full recognition as one more form of labour contract.

Therefore, the tendency seems to have consolidated towards applying the rules of labour relations to apprenticeship contracts and their parties, both individually and collectively and irrespective of their specialisation, unless there are express indications to the contrary.

[8] In the FLL of 1931, apprenticeship was extensively regulated (arts. 218 to 231), but according to doctrine, it was *«a remnant of the corporate regime»* that should disappear from the legislation (M. de la Cueva, *Der.Mex. del Trab.*, Porrúa, Mex. 1943, p.718 and ff.). In that spirit, the new FLL (1970) omitted any mention of apprenticeship contracts, instead of which it imposed on employers the obligation to provide «training and coaching» for minors under 16 (art.180-IV). Doctrine established that *«it was possible to continue practising apprenticeship, on the condition that apprentices be recognised as workers with full legal rights»* (J. Jesús Castorena, *Manual de Der. Obr.*, Mex., 1973, p.88). The survival of apprenticeship was confirmed by a survey that showed that the majority of c.a.'s made constant reference to it (J.R. Hernández Pulido, *Relaciones Industriales y FP*, INET, Mexico, 1978, p.172). An amendment to the FLL (1978) that imposed on employers the obligation to provide training, although it envisaged the possibility of initial in-plant training for *«newly recruited workers»*, decreed that during that time *«they would carry out their tasks in accordance with the general labour conditions of the enterprise or the stipulations of collective agreements»* (Art. 153-G). Current changes in the VT system may have repercussions in all this, in the event of a reform of the FLL.

[9] As for instance, in Italy, where new contractual forms combining work and training were developed in the '80s. The classical *tirocinio o apprendistato* has survived, although doctrine questions the use of preserving it (Cfr. G.Pera, *Dir. del Lav*. 4th. ed., CEDAM, Padua, 1991, p.354).

Furthermore, that is specified by some legislations, like those of Brazil (art. 64 of law 8.069 of 1990), France (LC arts. L.117-1, L.117-2), Paraguay (LC art. 117), although it may be considered superfluous in some cases, according to the definition of apprenticeship and its insertion in general labour codes or laws, under the heading of special labour contracts.

In that sense, considering apprentices to be regular workers, the Italian Constitutional Court declared art.10 of L.604/1966 to be inconstitutional, because it excluded them from the protection granted in cases of unjustified dismissal.[10]

7. In countries where the dual system is in operation, a distinction is usually made between the environment of the enterprise and that of the school.

In Germany, for instance, it is generally accepted that, pursuant to art. 3, para.2 of the LFP (BBiG), in apprenticeship contracts the relationship stemming from on-the-job training –whatever the specialisation– should be considered a labour relation for all purposes, both individually and collectively. By contrast, labour law does not apply in the relations deriving from school instruction, which are governed by the education regulations of member states of the FRG.[11]

On the other hand in some systems, like that of Vietnam (LC, art.23-2), the link can be considered a labour relation or not, depending on whether apprentices are effectively taking part in production.

8. Within the concept of instruction contract, which prevailed in France until the far-reaching reforms of 1971 and the adoption of the wage earners' statute (D. 72-282)[12] apprentices were not considered to be workers, so that certain labour regulations could only be applied to them by way of extension.

Said notion has been maintained with some variants in recent texts, as in Côte d'Ivoire, Gabon, and more markedly in Tunisia. It also exists in other countries, among them the People's Republic of China[13], and in some European nations like Greece, Ireland, Portugal and (save for some trades) in Luxembourg.[14]

[10] Perhaps for that reason, art.8.3 of law 515/1995, expressly specified that links established through the *tirocini formativi di orientamento «are not labour relationships»*.

[11] W. Däubler, *Der. del Trab.*, MTSS, Madrid, Chap. XXVII, p. 944.

[12] M. Malmartel «Le cadre juridique et institutionel de l'apprentissage», in *Actualité de la formation permanente*, No. 36 INFO, Paris, 1978, p. 35-45.

[13] As pointed out by Tsien Tche-hao, apprentices in China are young people that join enterprises to learn a trade, and though obliged to do a certain amount of work, are not considered to be real workers («China, P.R.» in IELL, 1979, p. 30).

[14] Traditionally, apprenticeship contracts are not considered labour contracts in Belgium, either (R.Blanpain, «Belgium», in IELL, 1979, p.59); this is upheld by D. of 3.07.1991 in its art.3.

All the same, if we look at the more recent regulations in this group, we see that in Côte d'Ivoire, where apprenticeship contracts are defined as *sui generis* arrangements that include instruction through the implementation of *ouvrages* with a view to training (art. 12.2), they are incorporated into the LC (L. 15 of 1995).

Even more clearly in Gabon, although apprenticeship contracts are called a form of education, they are included in Title II of the LC (L. 3 of 94) dealing with «the labour contract». Besides, although the word «wages» is omitted and *allocation* substituted, apprentices' remunerations amount to a given percentage of the minimum wage (art. 85).

In L. 10 of 1993 of Tunisia, apprenticeship contracts appear as a variant of induction training (Chap IV); there is no reference to labour contract in their connection, nor is working for employers an obligation of apprentices. Additionally, although apprentices collect money from enterprises during the contracts, these sums are called indemnities (*indemnité*) both in art. 24 of that law and in Dec.94/1600, which set their minimum amount. However, legislators admit that such *indemnités* can be increased through collective labour agreements, and in individual conflicts, if disputes are not settled, the matter can be brought to labour jurisdiction (art.25).

9. This tendency to bring apprenticeship contracts into the labour sphere has been directly contradicted by other recent provisions in some countries, under the pressure of very strong deregulating currents.

This has happened in Argentina, where the new regulations of apprenticeship contracts expressly emphasise the «non labour nature of links» created by them (Dec. 738/95, art.15).

A similar view is taken by law 26513 passed in Peru on 28 July 1995 establishing youth training agreements, which have analogous characteristics to classical apprenticeship contracts. Thus, art. 25 of that law limits the rights and obligations generated by those agreements to its own provisions, with the explicit specification that they «do not give rise to a labour link» (final para. of art.25).[14a] In the same spirit art. 10, although stipulating

[14a] This notion, together with other matters, led several workers' organisations to lodge a complaint against the Government of Peru, heard as Case No. 1796 by the Trade Union Freedom Committee of the ILO Governing Body, as recorded in the 304th. Report of that Committee (266th. Meeting of the Governing Body, Geneva, June 1996). In para. 463 of Part C of its Conclusions, the Committee points out that *«the legal statute of this mixed labour/training form in Peru, makes it possible for enterprises to take on and employ an important percentage of workers who do not enjoy union rights»*. Likewise, in para. 464 the Committee asks *«the Government to take the necessary measures to grant to the workers concerned the right to organise themselves, both legally and in practice. The Committee also requests the Government to ensure that the working conditions of this category of workers be covered by the collective agreements of the respective enterprises»*. These concepts are reiterated in subpara. d)-i) of para. 473 on «Recommendations of the Committee». On the other hand, the Committee includes as Annex I to its Report, the articles of law 26513 for the promotion of employment, mentioned by the complainants (Op. cit. p. 150-154).

that the remuneration of «young people who benefit from training» should not be less than the «vital minimum wage», calls that pay an «economic subsidy» in subpara. d) and in subpara. b) of art. 13.

10. This revisionist theory does not seem likely to become predominant, at least for the moment, and there are no reasons to suppose that the generalised concept of apprenticeship contracts as labour contracts will be abandoned.

We can cite recent texts that bear this out, as those of Belarus (where even if the 1992 LC deals with apprenticeship contracts by means of a special legal technique, apprentices are repeatedly described as workers); Chile (whose LC, reformed in 1994, refers in art. 78 to the «apprenticeship work contract»); Republic of Korea (where even though apprenticeship is regulated separately from labour contracts, Chap. VII of the LSL, text amended in 1989, and some aspects in the work relationship are admittedly governed by Presidential Decree, expressions like employment for learning, employer, worker, contracting of workers with a view to apprenticeship, are used in arts. 74 to 77); Spain (which in art. 11.2 of the WS, as amended in 1994, preserves the concept of apprenticeship contract that it calls «labour / training contract», as one of the forms of labour contracts»); Philippines (where art.58, subparas. a) and d) of the 1989 LC defines apprentices as workers and apprenticeship contracts as labour contracts); Namibia (National Vocational Training Act, 1994, whose Part V refers unequivocally to the «employment and training of apprentices», and in arts. 17 and ff. insistently refers to employment, employed persons and employers, in connection with the purpose of the contract and its parties); Paraguay (where the Chap. of the LC / 1993 entitled «Apprenticeship contract» heads Tit. 3 «Special labour contracts», arts. 105 and ff.); Poland (where item 12 of the law of 29.12.1989, although not mentioning apprenticeship, refers to remunerations paid to adolescents employed with labour contracts aimed at furnishing vocational training); Dominican Republic (the 1992 LC mentions apprenticeship in art. 257 of Tit.III of L.IV, which includes the regulations of some labour contracts); Venezuela (whose OLL, in force since 01.05.1991, specifies in art. 266 that the labour relations of minors undergoing vocational training will be ruled by its provisions, and in arts. 267 and ff. regulates the particular situation of apprentices); etc.

11. Having accepted their condition as workers, apprentices are automaticlly protected by labour law regarding social security.

This becomes operational with no need for formal ratification, but in Brazil, to avoid any possible doubts, the law confirms that apprentices are entitled to full security rights (L. 8.069, art.64). In France it is

also deemed necessary to clarify that while apprentices attend training centres, they enjoy coverage for accidents at work and occupational diseases (art. L.117-bis 7- of the LC).

12. In several countries, despite the fact that apprentices are considered to be workers, the legislation admits some restrictions to their social security rights. Such is the case of Spain, where the WS enumerates them in article 11, although it ensures coverage for labour accidents and occupational diseases, health assistance, economic subsidies and maternity leave, pension funds and Wage Guarantee Fund (art. 11-2-g).

By contrast, in recent laws of countries where apprenticeship contracts are not identified with labour agreements, some social security rights are safeguarded. In Argentina, for instance, subparas. 4 and 7 of art. 4 of L.24.465 / 1995, pronounce that apprentices should be given adequate health coverage and protection against hazards encountered in the workplace and in the performance of their tasks.(Decree 738 / 95 established the services to be guaranteed by the health insurance taken out by employers in art.13 and Annex I). Likewise, in Gabon, art. 86 of the LC decreed the mandatory nature of insurance against accidents at work and occupational diseases.

Within this group of countries there is the case of Tunisia, where although apprentices are protected vis-à-vis accidents and occupational diseases, art.27 of L.93-10, establishes that the cost of that insurance should be defrayed by the State through special funds. Furthermore, in line with the concept of apprenticeship in Tunisian law, family allowances are paid to regular apprentices.

13. The fact that apprenticeship contracts should be equated with labour contracts, notwithstanding their specialised nature, and that apprentices should enjoy the protection of workers' statutes, does not detract from the deep concern of legislators about training matters.

The evolution of French legislation is very significant in that respect. Having opted to define contracts subscribed by apprentices as «labour contracts of a special kind»[15], it nevertheless continues to add amend-

[15] The first French LC, adopted in 1910, which included the articles of a law of 22.02.1851, clearly separated apprenticeship from labour contracts, although it was generally agreed that they should be assimilated for certain purposes (R.Théry, *Réglementation Jurisprudentielle du contrat de travail en Droit Français*, Rousseau, Paris, 1913, p. 212). After the reform resulting from the law of 20.03.1928, the situation did not substantially change and the doctrine continued to regard apprenticeship contracts as a case in which Labour Law was applicable *«outside labour contracts»* to *«contracts other than labour ones»*. On that basis, A.Rouast and P.Durand could affirm that the two kinds of contract differed in their purpose, for in the apprenticeship contract the purpose was occupational instruction and not work as such; and that labour, insofar as it might be a profit to employers, was just a compensation for their efforts in training apprentices (*Droit du Travail*, Dalloz, Paris, 1946, p. 386 and ff., para 358).

ments to the articles of the First Title of Book I, that deals with apprenticeship, evincing a constant preoccupation with all matters that relate to education.

A law of 1992 (92-675) decided to head the initial article of that Title (art.L.115-1) with a paragraph redolent of old revolutionary phraseology: «Apprenticeship concurs with the educational objectives of the Nation». On the other hand, the amendments and additions of 1987, 1992 and 1993 to that same article of the LC do not only reaffirm that «apprenticeship is a form of alternating education», but aim at ratifying occupational qualifications obtained through apprenticeship by diplomas and certificates of the educational system, and facilitating transit between the two systems. Furthermore, after Decrees 73-1046 and 73-1048, Book IX has been produced, entitled «Ongoing vocational training within the framework of permanent education», which specifies that both induction training and subsequent training «are part of lifelong education» (art. L.900-1).

14. Regarding the sources of regulations of aprenticeship contracts, their double origin: work relationship-educational objectives does not preclude –as we have just seen– that in French legislation nearly all provisions pertaining to apprenticeship figure in the Labour Code. Other systems, however, treat them separately, with no express connections or cross referencing.[16]

Consequently, the apprenticeship relationship is in many countries seen from two legal points of view: that of labour and that of training and training institutions. Regulations may have a triple root, when apprenticeship rules are supplemented by provisions regarding the compulsory nature of schooling, or education in general, as happens in many countries, particularly in Europe.[17]

To this we have to add –if we wish to have an overall picture of the legal situation of apprenticeship– regulations concerning the work of minors, whenever apprentices are under age. However, as we shall see further on, the current tendency is to increase the possibilities of adults to get this sort of training, so that age limits have been considerably raised for these contracts and similar ones.

[16] Among recent texts there is expressed referral to VT legislation, by way of supplement to the regulation of the apprenticeship contract in the LC of Dominican Republic (art. 267) and the OLL of Venezuela (art. 272).

[17] See in this connection articles in the *Revista del Trabajo*, MTSS, Año 1, No.1, B.Aires, 1994, written by J.Frietman («Initial vocational training in the Netherlands; modalities and evolution», p. 162-168); S. Guardia González («VT in the context of European educational systems», pp.129-147); J-L. Kirsch, («Initial VT in France...» p.154-161); J.Münch («Education, vocational training and employment in Germany, Japan and the United States...» p. 148-153).

15. Apart from laws in a strict sense, regulation by the State is achieved through Decrees of the Executive Power, ministerial ordinances and resolutions or other similar instruments and even by Agreements of VTI authorities, Vocational Training Boards or analogous bodies. However, we should bear in mind that such agrements often require homologation by the competent administrative authority.

Actually, in quite a number of countries laws on apprenticeship refer down to regulations, expressly delegate powers for that purpose, or call for the drafting of secondary rules. Such arrangements are widespread and very important.

16. Regulations stemming from collective agreements are also very significant for training-in-the-course-of-work relationships, particularly in countries like those of the European Union, where collective bargaining is generalised and has no obstacles.[18]

On the other hand, legislations often fall back specifically on regulations emerging from collective agreements, e.g. for deciding concrete terms in the exercise of promotion and training rights, as the WS of Spain foresees, or regarding certain aspects like the form of apprentices' exams, as provided for in art.110 of the LC of Paraguay. Sometimes State mechanisms are only applied in the absence of negotiated conditions; this happens in particular regarding the wages to be earned by apprentices.[19]

In Germany, the fact that apprenticeship can be regulated by collective agreements has enabled the TFT, through art. 9 of its Fundamental Law, to give wide recognition to the right of apprentices to strike, despite their minority, provided that the relationship with their employers is valid.[20]

It is interesting to note that even in Argentina where, as we have already pointed out, the relationship generated by apprenticeship contracts is not considered to be a labour one, art.4.9 of L.24.465, that governs these contracts, admits that the maximum percentage of apprentices that enterprises can have may be established by collective agreement. That law also pronounces the right to establish joint training programmes or procedures by agreement in the different branches of activity, or in individual enterprises.

[18] The importance of that source in that region is shown in the *«Rapport Général»* of R. Blanpain: *les politiques contractuelles dans le cadre de la FP continue dans les pays membres de la C.E.*, Leuven, Peeters Press, 1994, 119 p.

[19] This matter will be discussed further on, but we may already note that, contradicting this tendency, the LC of Chile expressly forbids that apprentices' remunerations be established by collective negotiation.

[20] W.Däubler, op. cit.p. 948.

17. As to the usages and habits of the various trades or occupations, they were explicitly alluded to by various legislations in the past; the former French LC went as far as to say (art.3) that they had to be taken into account in the signature of the articles of apprenticeship.

Recent legal texts usually do not mention this aspect. Among exceptions there is the LC of Côte d'Ivoire of 1995, which in the first paragraph of art. 12.3 uses similar language to that of the old French code mentioned above.

Omission by the laws is no obstacle –as in all labour matters– for occupational usages and habits to act as a subsidiary source, insofar as they remain within the bounds of labour law.

18. A review of the more recent texts shows –as evidenced in the preliminary inventory– that in some countries, particularly in France, provisions about apprenticeship are very abundant and there is a constant process of correction and addition in an effort to take all components into account and regulate supplementary aspects that relate to training.

Apart from countries where there are no regulations at all, like the United Kingdom, at the opposite end of detailed laws are nations like the Dominican Republic, where the LC mentions the possibility of an apprenticeship contract only briefly, in art.257, the last one of the three under the Title on training. With respect to the principles, plans and stipulations of such contracts, art.257 merely refers the matter to the decisions of INFOTEP (the official VTI), subject to subsequent ratification by the State Secretariat for Labour.

Most of the laws passed in the last few years are in the middle of the road: they lay down the main guidelines of apprenticeship contracts in greater or lesser detail, with possible referral to regulations about the work of minors, training and education.

19. Among provisions usually found in apprenticeship regulations is the obligation imposed on enterprises to train a given number of apprentices. This is obviously due to a concern about the reluctance of many employers to do so voluntarily, and is aimed at ensuring an adequate amount of training.

This formula, still in use by some countries, especially in Latin America under the influence of the Brazilian model, is reflected to varying degrees in legal texts recently adopted in other regions as well. Such is the case of Algeria (L.90-34, which in article 4 includes a scale based on the number of employed workers); Spain (Royal Decree 2317/1993, that also includes a scale of that kind); Paraguay (LC, 1992, art.116); and Venezuela (where, through reference of the OLL of 1990 to VT legislation, Adm.Ord. 714-91-003 sets the percentage of apprentices).

In most countries, however, the contracting of apprentices continues to be on a voluntary basis, although in some, like the Philippines, the authorities have the prerogative of making it mandatory when there are reasons to justify it, like national security, or on the assumption that owing to a lack of local skilled manpower, enterprises may employ foreign technicians (LC, art. 70).

20. In connection with the number of apprentices, the prevailing concern seems to be the admissible maximum. This is due to the need to ensure the coverage and quality of the training, apart from preventing fraud and disloyal competition with adult workers.

The top number or maximum percentage of apprentices that enterprises are authorised to take on is laid down by the LC of France (art. R.117-1) and by recent laws of Argentina where, as already indicated, collective agreements set maximum percentages in relation to employed personnel (they are otherwise set by decree: Dec.738/95 art. 17); Chile, where the percentage of apprentices must not exceed 10% of total full-time workers (LC, 1994, art.85); Korea where, in accordance with the LSL the Ministry of Labour sets the number of apprentices; Namibia, where the NVT Act (1994) pronounces in art. 17(2) that the number of admissible apprentices must be established in consonance with the respective enterprises' training programmes, etc.

§3. Training method

21. For some time now, and increasingly so, apprenticeship legislation has been reflecting the conviction of specialists that exclusive on-the-job training is insufficient,[21] and seeks to remedy it.

If the first great transformation of apprenticeship was the adoption of a labour standpoint that favoured apprentices, a second one, no less momentous, was the introduction of alternating periods of practical on-the-job training, and theoretical lessons in training centres or schools. This change is reflected in the laws of a good many countries, revaluing apprenticeship and countering many of the criticisms frequently aimed at it.

Apprenticeship, however, is not the only form of alternating training, but it is distinguished from the others by the characteristics of the contract between employer and apprentice and the objectives it pursues.[22]

[21] As recorded in Rep.VIII(1) of the 59th. Meeting of the International Labour Conference (BIT, *Development of human resources: vocational guidance and VT*, Geneva 1973, p. 10).

[22] In France, for instance, it has been pointed out that alternating training also has positive results in educational sequences at various levels, in occupational *lycées*, in *stages* financed by the State for young people in search of employment, in the so-called qualifying contracts, etc.(Chr. Lenoir, «A propos de la formation par l'alternance», in *Droit social*, Paris, No.5/1993, p. 411). See also M.Thery,»Les formations professionelles en alternance», in *Droit Social*, Paris, No.4/1992, p. 391-398).

22. The experience of Germany, and of other countries that have adopted the so-called dual system,[23] has greatly contributed to the prestige of the alternating method that consists of training apprentices in the workplace and outside it.[24]

Also in France, where a system of this kind started to become generalised after the so-called «Legendre Law» of 12 July 1980,[25] it seems to have widespread support, but it has been noted that economic and social results do not come up to expectation.[26] The method got fresh promotion from the «Five-yearly Law on labour, employment and vocational training» of 20.12.1993, whose art. 64 mandates the State to implement a wide process of social agreement in order to «harmonise the different alternation channels (*filières*) for young people».[27]

23. In any event, sequential methods seem to have taken root in nearly all countries of the European Union,[28] and in several Latin American ones.

[23] On p. 37 of the Doc. CEDEFOP, 1995, already cited, a favourable judgement of the German experience is based on the opinions of specialists that underline the pedagogic and social advantages of the German apprenticeship system. Among them are S.Hamilton (*Apprent. for adulthood. Preparing youth for the future.* The Free Press, New York, 1990), and W.Streeck («Institutional mechanisms and structural elements of vocational training in Germany..», in Dettke-Weil, *Challenges for apprenticeship and vocational training in the 1990s, German and American persp.*, Friedrich Ebert Stiftung, Washington, 1992, p. 42). Similar comments are made by Maryse Peschel in an article on a study by C.Büchteman, J.Schurp and D.Soloff (Formation par apprentissage: défi pour l'Allemagne.., *La Doc.Française*, Paris, 1994), publ. in the rev. *Formación Profesional*, 2 / 94, CEDEFOP, p. 87; D.Marsden, «Le génie du système Allemand..», in *Formation-Emploi*, No. 44, 1993. In a recent article Rolf Arnold, «although recognising the apparent success of training in enterprises, shown by the increasing percentage of young people who choose it, that rose from 53.8% in 1980 to 66.5% in 1990, maintains that the dual system *«is going through a transition period»*. He says that the main causes are demographic decline, combined with a search for higher diplomas, a shortage of trainers and a risk that education may flag, the transformation of crafts and a shift of emphasis from basic training to complementary specialisations («Nuevas tendencias de la FP en Alemania», in *Boletín Técnico Interamericano de FP*, Cinterfor / OIT, No. 131, 1995, p. 43-54).

[24] Doc. CEDEFOP, 1995, p.75, -with the backing of a 1979 OECD report- points out that: *«Austria has for many years successfully operated a dual system»* (op. cit.,p.37). The legal creation of VTIs financed with a tax on payrolls, underscoring the alternating training of apprentices and compulsory contributions by employers -as already described- has been one of the main features of the training system of Brazil, as from Dec.-Law 4.481, of 16.07.1942, for the industrial sector initially, and other sectors later on, according to subsequent texts. Under the influence of this model, VTIs were set up in other countries of the region with similar formulas (Ma.A. Ducci, *Proceso de la FP en el desarrollo de América Latina*, Cinterfor / OIT, Montevideo, 1979, esp. p. 21 and ff.).

[25] See cit. study by Chr. Lenoir (pp. 411-417) on evolution of the legislation on alternating training. *La Documentation Française* published, in 1992, the result of a research project into practical training and a bibliographical study under the title: «Les formations en alternance: contribution à la recherche» (401 p.).

[26] Chr. Lenoir, loc.cit. By the same author, who is Departmental Director of Labour, Employment and Vocational Training: «Formation par l'alternance, enjeux et ambigüités», in *Actualité de la Formation Permanente*, No.124, 1993, p. 15-24.

[27] J-M. Luttringer, «La FP, nouveaux chantiers», in *Droit Social*, Paris, No.2 / 1994, p. 197; I.Arrago-Genuini, «Aprendizaje y contratos en alternancia: Francia, plan gubern. por el empleo, in *Herramientas: revista de formación para el empleo*, No. 38, 1993, p. 22-27.

[28] Doc. CEDEFOP, 1995, cit., p.23.

We can mention some provisions adopted recently for that purpose. For example, D. of 09.07.1991, regarding the middle classes and SMEs, adopted in Belgium, that specifies expressly that apprenticeship should comprise practical in-plant training as well as general and vocational training courses.

24. By contrast, in Tunisia, sequential training is considered as different from apprenticeship *«en milieu professionnel»* (art.15, L. 93-10).

In Algeria, in turn, art. 3 of Executive Decree No. 93-67 of 01.03.1993 limits itself to postulating the gradual adoption of alternating training.[29]

Even less imperative is the LC of Paraguay (L.213/93), which in the last paragraph of art. 105 only mentions the dual training regime as one form of apprenticeship.[30]

25. An aspect of alternation that some legislations have taken into account in the last few years, is the way in which it should be applied, and who decides about it.[31]

The legislations of Colombia and Spain advance quite different replies.

In Colombia, the matter is dealt with in Ag. 018/94 of the National Board of Directors of SENA, as empowered by art. 10 of Law 119/94. That agreement stipulates that the theoretical and productive phases of training should take place in alternating periods, that can be agreed upon by employers and the VTI, or the institution concerned, but only after completion of the basic education modular block, that must be included in working hours. On the other hand, this text admits that practical training can take place in an enterprise other than the one with which the apprentice has labour links.

In Spain, art. 11.2 of the Workers' Statute envisages the possibility that teaching sessions may be continuous or interpolated with work, as decided by collective agreement. Royal Decree 2317/93 (art.10.3) reiterates the competence of collective agreements in this matter, although

[29] In Argentina, Fed.Ed.Law No.24.195/1993 refers to the incorporation of the alternaing regime in article 17 on «polimodal» education.

[30] The other two options are: on-the-job training, or training in a specialised institution, financed by the employer.

[31] According to table 6. p.6, of the CEDEFOP document that we have repeatedly quoted before, the manner in which training is most frequently organised in the countries of the European Union is on the basis of a weekly distribution of one day at school, four at the enterprise (Greece, Italy, Luxembourg and also Belgium, although in Belgium the day at school may be replaced by two half days, and minors under 15 must spend a day and a half or 360 hours a year at school). School training has greater weight in Germany and the Netherlands (1-2 days) while in-plant training is consequently 4 or 3 days. A different pattern has been adopted in France, where alternation is weekly (one week at school, two at the enterprise), as well as in Denmark and Ireland, where it is done on the basis of blocks (1/3 blocks at school, 2/3 blocks at the enterprise in Denmark, and 3 blocks at school and 4 at the enterprise in Ireland).

it admits that in the absence of such a decision, contractual stipulations should apply. The Decree also authorises that supplementary training be imparted in the centre of the enterprise involved, at training centres set up by employers, by entrepreneurial or trade union organisations, or at duly authorised public institutions.

It is interesting to note that Spanish regulations take into account the possibility that there may not be adequate courses in the neighbourhood of enterprises. In such cases apprentices are allowed to receive theoretical instruction from duly accredited distance teaching centres; for that purpose, enterprises must shorten their working hours.

26. As we have just seen, some apprenticeship regulations, like those of Colombia, mention modular training.

This means imparting training in pedagogic modules[32] which, after satisfactory completion, open up a variety of options for connection with other modules to make up blocks and configurations leading to new qualifications.

This is a change in teaching methodology that is not applied only to training, but it gives apprenticship in particular an instrument to overcome some well-founded criticisms leveled at it. In effect, modularisation gives it greater flexibility, allowing it to adapt to the needs and capabilities of individual apprentices and improve their possibilities of supplementing their training, and acceding to permanent education.

27. In order to work properly, modular training must be accompanied by methods for the evaluation, accreditation and recognition of the knowledge and experience acquired in different ways, including informal channels.

Recent provisions by some countries reflect the emergence of subjective rights that derive from the modular method.

The main one is that the training dispensed should be fully acceptable for all purposes, including that of raising qualification expectations and shortening the duration of the apprenticeship itself. [33]

[32] S.Agudelo Mejía defines it as follows: *«A pedagogic module is the aggregate of basic knowledge, mutually linked technological know-how and occupational practices that make it possible to acquire the skills to perform the operations of the group of tasks of an occupational module. It is, in synthesis, a theoretical-practical systematisation of the contents to be taught in connection with a group of tasks of an occupational module» (Terminología Básica de la Formación Profesional,* Cinterfor / OIT, Montevideo, 1993, p. 41). According to the same author, an occupational module, also known as occupational block,*: «refers to the training necessary in terms of activities or tasks to be learned, to go from one level of qualification to a higher one in a given occupation... In summary, it is a mixture of tasks to be taught with a concrete objective in the labour market»* (Doc. cit.).

[33] Doc. CEDEFOP, 1995, p. 27.

Such is the case of art.5 of Executive Decree No.93-67, of Algeria, which establishes that training programmes for apprentices must be made up by modular units that can be capitalised.

§4. Requirements of apprenticeship contracts

28. The regulatory frame of apprenticeship contracts, regardless of their characteristics and legal nature, has traditionally included a number of requirements that must be met for the relationship to become effective and operational[34].

These requirements refer fundamentally to: conditions for apprenticeship to be admissible; conditions required from enterprises or their representatives; conditions to be met by teachers and instructors, and conditions to be fulfilled by apprentices. In the following paragraphs we shall try to see how these requisites materialise in recent legislation.

The greater or lesser detail of these matters in the letter of laws –in fact their very presence there– depends on the techniques adopted, the degree of economic and social development of societies in question, and the importance they ascribe to apprenticeship as a training modality.

A) Conditions for apprenticeship to be admissible

29. The regulations of medieval guilds, that were very meticulous, included provisions about the activities, trades or professions for which apprenticeshp relations had to be established.

Although that long period of history was not free from abuses and iniquities against apprentices, the situation got worse with the decline and subsequent abolition of guilds, and the complete deregulation of labour relations that existed until nearly the beginning of the 20th. century. [35]

[34] Historians underline that according to the guilds' regulations or statutes, the number of apprentices that could be taken on was limited, to prevent neglect of their instruction (F.Barret, *Histoire du travail*, PUE, Paris, 1948, p. 23). G.Renard has pointed out in that connection that under that system *«apprentices...were the object of the greatest attention» for «apprenticeship was the means for maintaining the professional ability upon which guilds pinned their pride»* So that it was mandatory *«to be a master in order to have authority to teach, but that was not enough, candidates had to lead decent, orderly lives, and be of forbearing character; it was up to the guild's authorities to verify that the chosen master met all these conditions...» (Sindicatos Trade-Unions y Corporaciones, Sp. vers.* D. Jorro ed., Madrid, 1916, p.19).

[35] According to Renard, under the guilds system *«apprentices suffered the envy of workers and the avarice of employers who stinted their food and retained them longer than necessary. The literature of the time, when it deigns to mention them, hints that their existence was rather less than happy; however,* he concludes, *their fate cannot be compared to that of the infinite number of little martyrs that the age of machines engendered in the great modern industries»* (op.cit. p. 23).

Occupational qualification –and in consequence apprenticeship– were also deeply influenced by the technological changes that superseded those that caused the industrial revolution.

As a result of all that, a veneer of apprenticeship relations usually disguised the crude reality of child labour and exploitation, to such an extent that one of the first timid attempts at protective labour legislation –adopted in England in 1802, but never effectively applied– was intended to limit the work of apprentices to nine hours a day, and ban night work for children.[36]

30. The fragmentation of tasks and repetitive work on production lines, made it even more necessary to determine which occupations actually required qualifications obtained through the relatively long process of apprenticeship.

In practice, the departments of labour of many countries, and VTIs in Latin America, keep updated lists of occupational activities subject to apprenticeship, usually specifying the duration of training for each one.

Among recent legislations that condition apprenticeship contracts to the inclusion of the occupations in question in authorised lists of this kind, are the LC of Philippines (arts. 58 and 60)[36a] and the NVT Act of 1994 of Namibia (art. 17(2)-b).

B) Conditions required from enterprises

31. Legal texts adopted in the last few years usually require an administrative authorisation to allow an enterprise to engage apprentices.

The granting and extension of such authorisations generally depends on the technical competence and personnel conditions of enterprises to offer practical training to apprentices.

32. To illustrate this, we may quote the laws of Argentina (L.24.465 / 1995, art.4.4); Belgium (D. of 03.07.91); Korea (SLS, arts. 75 and 76); France (L. 93-1313, LC, arts. L.117-5 and L.119-1) and Tunisia (L.No. 93-10, art.25).

It is important to note that some legislations enjoin, on the one hand, technical counselling before granting authorisation (e.g. Belgium, advice of the Middle Classes Institute), and on the other, foresee checks by specialised officers (like the Apprenticeship Counsellors of the Tunisian decree). Other provisions, like those of Korea, require the posting of authorisation certificates.

[36] K. de Schweintz, *Inglaterrra hacia a Seg.Soc.*, Sp. vers., Minerva, Mexico, 1945, p. 253).

[36a] The LC of Philippines (arts. 73 to 77) also includes special apprenticehip contracts for *learners*, of three months' duration, to reach a *semi-skilled* level in tasks for which apprenticeship is not applicable.

In French legislation –presumably to avoid complicating the contracting of apprentices with bureaucratic transactions– the LC accepts the possibility that enterprises may just report the initial contract of this kind to the competent office. The report must confirm that all necessary measures have been taken to organise the apprenticeship process, that the companies have adequate elements to ensure satisfactory training, in respect of equipment, techniques, working conditions, hygiene and safety, and that those in charge of the training meet the prescribed requirements. Pursuant to art. L.119-1 of the LC, the Administration may demand proof by an enterprise of what it has declared in its report, and in accordance with art. L.117-5-1. the Labour Inspector can declare the enterprise in default of its obligations, and order discontinuation of the services with payment of the apprentices' remunerations. On the other hand, the French LC (penultimate para. of art.L.117-5) empowers the Prefect of the Department where an enterprise resides to oppose the contracting of apprentices by it, if the authorities that control such contracts consider that that employer fails to comply with his legal or regulatory duties, or with the contract itself. Such decisions are communicated to the respective Enterprises' Committees or Chambers. All this apart from possible administrative recourses.

According to some legislations, employers must post authorisation certificates for public viewing (Korea), or keep a special control record specifying remunerations paid to apprentices (Namibia).

C) Conditions to be met by teachers and instructors

33. As we have just seen above, among the guarantees to be furnished by employers, the French LC includes certain requirements concerning persons in charge of training.

This is a matter of crucial importance for the effectiveness of training, and has been a reiterated demand of regulations since time immemorial.[37]

34. Texts included in many recent legislations, following traditional lines, make demands of this type,[38] although they do not coincide in what they require from instructors.

Requirements in general cover one or several of the following aspects: administrative regulations; minimum age; moral character and technical and pedagogic conditions.

[37] S. above, note 34

[38] In Doc. CEDEFOP, 1995, on the countries of the European Union, the cases of Belgium and the United Kingdom are mentioned as exceptions, with no special requirements for trainers, although in general these are experienced.

The supervision of training personnel is the responsiblity of administrative authorities, VTIs or similar organisations, but many systems make it extensive to entrepreneurial Chambers.

35. In some countries, teachers or instructors must be approved by the competent authority, which may be the respective Training Board (e.g. in Guyana it is the Industrial Training Board, in Ireland, the FAS),[39] or the Chief Inspector of that Board, as in Namibia (NVT Act, 1994, art. 28.1). In Algeria, permission to teach is granted by the authorities, on the advice of entrepreneurial Chambers (L. 90-34, art.8). In Germany, in Korea (Basic VT Law No.2973, art. 41.2) and in other countries, instructors are appointed by decree after compliance with regulatory conditions.[40]

36. Recent laws on apprenticeship seldom mention minimum age as a requirement for instructors.

The LC of France, however, specifies in art. L.117-4 that trainers must be of age, and the LCs of Côte d'Ivoire (1995, art. 12-4) and Gabon (1994, art.82) establish 21 years as the minimum age for taking on apprentices.

37. Demands concerning the moral qualities of instructors or employers are particularly emphasised in certain forms of apprenticeship still frequent in countries of lesser industrial development, where apprentices are left in the charge of their masters, and are often lodged by them.

Thus, the LCs of Côte d'Ivoire (art. 12.6), Gabon (art.82) and Paraguay (art.112), include provisions to that effect. In Gabon it is expressly stipulated that masters or employers of apprentices have to furnish evidence of decorous life and habits.

The LC of France also requires testimonials concerning the morals of trainers, in the form of the declarations that employers have to make before they take on apprentices, already mentioned (Art. L.117-5, in the wording of art. 58 of law No. 93-1313). On the other hand, art. L.117-4 of law No. 92-675 requires that teachers, in their capacity of tutors *(maitre d'apprentissage)* directly responsible for the trainng of apprentices, should offer reliable guarantee of their moral character.

38. Technical and pedagogical conditions figure in several new legislations, in varying degrees and scope.

Some texts confine themselves to specifying that teachers or instructors must be adequately qualified to impart the pertinent training. So

[39] Doc. CEDEFOP, 1995, cit.

[40] In Germany, the abilities of trainers are established by regulatory provisions, but supervision of their compliance is in the hands of the competent Instruction Centres which, in accordance with art. 44 of the 1969 LFP (BBiG), do the overall monitoring of on-the-job training. All this apart from similar competencies ascribed to the Chamber of Industries, Commerce and Trades, as well as to Agricultural Chambers.

much is prescribed by the LCs of Gabon (art. 82) and Vietnam (art. 23(2); others, like the Code of Côte d'Ivoire, refer the matter to whatever is decided by regulatory decree (art. 12.3). In Guyana, a proficiency certificate is required for teachers to be included in the official register.

Some European countries, like Luxembourg and France, have more detailed requirements. In Luxembourg, instructors must have a master's certificate in the trade in question or a CATP, and at least five years' work experience. In France, besides the «professional and pedagogic competencies» that figure in employers' declarations, educators must also have diplomas at least the same level as the degrees they are teaching, and three years' seniority.

D) Conditions to be fulfilled by apprentices

39. Current legislations are generally very meticulous about conditions for the admission of apprentices. Main requirements are about minimum age, age limit, compliance with schooling, lack of previous training and personal aptitudes.

Some laws, like the latest one in Argentina, reflecting a desire to turn apprenticeship into an instrument to provide access into labour for young people, require that candidates be unemployed (L. 24.465, art. 4b). Regulatory D. 738/95 goes even further, banning applicants that have had some prior labour link with the enterprise to which they wish to be apprenticed.

Several legislations lay down standards for the selection of apprentices, or criteria to choose among applicants.

40. The minimum age to start apprenticeship generally coincides with that required to begin work, as stated by legal texts of Belarus (LC, art. 173); Korea (LL, art. 50); Namibia (N.V.T. Act/1994); Vietnam (LC, art. 22), etc.

However, it should be noted that the age to join the labour market varies considerably in these countries, and in others as well. In France, although the age to start apprenticeship is the same as that for work –16 years– art. L.117-3 of the LC authorises admission into apprenticeship as from 15 years, if candidates have completed the first cycle of secondary education.

41. Legislations that include specific provisions about minimum age diverge as to what that minimum should be.

The lowest threshold appears to be the 12 years authorised in Paraguay by the LC adopted by law 213/93, despite the fact that it sets the minimum age for industrial work at 15 years (art. 119), and at 14 years for non-industrial jobs (art. 120). In effect, art. 106 of the CAP on appren-

ticeship contracts, in referring to general conditions for establishing contracts, offers minors over 12 years of age the possibility of becoming apprenticed, with the consent of their legal representatives, who will be entitled to condition, limit or revoke the agreement (art.36).

In Brazil, although subpara. XXXIII of art.7 of the 1988 Constitution puts a ban on work by minors under 14, it exempts those with the «status of apprentices». L. 8.069 of 1990 (Children's and adolescents' statute) follows similar criteria.

42. The 14 year minimum in force in several Latin American countries is included, among others in recent texts of Argentina (Law 24.465); Philippines (LC, art. 9-a); Panama (D.36/91); etc.

When general regulations about the work of minors are applied, the lower limit is also 14 years, e.g. for the Dominican Republic (LC 1992, art. 245) and Venezuela (OLL, art. 247). Nevertheless, in Venezuela apprenticeship could be among the exceptions included in para. 1 of the same article, whereby the authorities can allow work by minors as from 12 years on, provided their circumstances are duly justified, their tasks suitable and their education guaranteed.

43. 15 years is quite widely accepted as a minimum. We can cite recent laws of Algeria (L. 90-34); Guyana (Industrial Training L. 1/93, art. 3.1); Iran (LC, art. 112b); Tunisia (L. 93-10, art. 26); etc.

44. In nearly all countries of the EU and in some of other regions, like Gabon (LC, art. 82), the minimum age to start apprenticeship is 16 years.

Even so in France, as we have already seen, under certain conditions it can start at 15. In Gabon apprentices can be admitted as from 14 years of age, with the authorisation of the Ministry of Education.

It is important to note that in the European Union, the minimum is exceeded in practice, as the average starting age of apprentices tends to rise.[41]

45. Since apprenticeship has traditionally been conceived as a form of initial training for the benefit of adolescents, it is quite natural that many legislations should set an age limit for this type of contract.

However, in view of the current tendency to make apprenticeship available to adults as well, recent laws have been raising age limits, and some of them, like laws of Luxembourg, Paraguay and Vietnam, make no reference to them at all.

46. A quick review of recent regulations shows that 17 years is the top limit to enter into an apprenticeship contract in Guyana, unless there is express authorisation to the contrary.

[41] Doc. CEDEFOP, 1995, p. 11.

In Iran (LC, art. 112-b), Panama (D. 36/91) and other countries the limit is 18 years.[42]

In Tunisia, L.93-10 (art.26) sets the maximum at 20 years.

In Chile, the LC in art. 78 only admits apprenticeship contracts with workers under 21.

Following the new tendency of raising the minimum age of apprentices, the laws of Algeria, Argentina, Spain, etc. set the limit at 25 years, which is also the ceiling in France (LC, art. L.117-3). On the other hand, art. 11.2 of the reformed Workers' Statute of Spain, like the laws of other countries as well, set no age limit for physically handicapped persons.

The possibility of establishing this maximum through administrative regulations has been foreseen, for instance, in Colombia, where according to art. 8 of Resol. 1035/88, it is a prerogative of the SENA.

47. Compliance with the legal provisions regarding general education is another prerequisite of apprenticeship contracts,[43] although, of course, in many cases the age limit of compulsory schooling coincides with the minimum to begin work.

This is the norm in most countries of the European Union[44] and many others as well, but requirements differ, quite naturally, in accordance with levels of cultural development.

Among recent texts that dictate completion of schooling before commencement of apprenticeship are those of Namibia (art. 17.2-a-i, N.V.T. Act/1994); Nicaragua; Panama (D 36/91), and Peru (Legisl. Dec. 728, on the promotion of employment).

But despite the fact that progress has been made in some parts, in many countries the education required is still only elementary. Such is the case of regulations in Panama, which just call for complete primary schooling or equivalent knowledge.

48. Several legislations establish the proviso that candidates to apprenticeship contracts, must not have previously received vocational training for the same specialisation or trade.

[42] Doc. CEDEFOP, 1995, cit. indicates that in the United Kingdom apprenticeship quotas are reserved for those up to 19 years who finish secondary schooling (p.12).

[43] In Germany, completion of mandatory schooling is not a precondition to start apprenticeship, but in general employers prefer candidates who have school certificates; in 1991, one out of every five apprentices had the *Abitur* (Bachelor) diploma. (Doc. CEDEFOP, 1995, cit., p.11 cit. A.Tomforde, «Germany redefines vocational training», in *Int. Herald Tribune*, 02.11.92, p. 12).

[44] As reported in the CEDEFOP Doc. that we have quoted so often, compulsory education has become more generalised in EU countries, so that school-leaving age has gone up to 16 years in nearly all of them. The exceptions are Portugal and Ireland (15 years), Greece (14 and 1/2) and Italy (14). In several others, like Belgium, Denmark and the Netherlands, part-time school attendance is obligatory up to 18 years of age (op. cit. p. 12 and Table on p. 13).

This is what D.36/91 of Panama stipulates. Likewise, art. 267 of the 1990 OLL of Venezuela, in defining which workers will be considered apprenticed to the trade they practice, establishes that candidates must not be graduates from training courses for that same trade (The same provision is included in art. 13 of the INCE law).

With similar intent, and giving their due to qualifications that can be acquired just by performance in a workpost, some legislations, like that of Spain, exclude the possibility of apprenticeship contracts for persons that have already held the same job with the same enterprise for more than twelve months'time (WS, art. 11-2-d.).

49. Suitable aptitudes for training are a requirement included in several legislations.

Recent texts emphasise the ability to learn and to understand and follow oral and written instruction. In that connection we may cite, among others, the LC of Philippines (art. 59, subpara. b and c) and the N.V.T. Act of Namibia (art. 17(2)i).

On the other hand, apart from the medical work certificates that all minors must have, some legislations, like the LC of Vietnam, require that the health conditions of candidates be in keeping with the demands of the trade they are learning (art. 23(1). The above mentioned law of Namibia also requires in art.17(3) that apprentices should have a medical certificate of aptitude for the job.

50. Supplementing the above, we may note that some recent legal texts establish rules for the selection of apprentices.

For example in Colombia –a country where enterprises are obliged to train a certain percentage of apprentices– the SENA has the right to make a pre-selection of applicants, and though employers have the final word and can opt for candidates that have not been pre-selected, they must in any case comply with the requirements established by that VTI (Ag. 18/94 of the SENA, art.5).

In some countries, like Paraguay, the children of workers of an enterprise are given priority to cover apprenticeship vacancies (LC, art. 116).

§5. Characteristics of the contract

51. We shall now consider some aspects relating to the legal capacity of apprentices and the formalities required for the validity of apprenticeship contracts.

Regarding the capacity of apprentices to enter into the contract, most legislations expressly or tacitly refer the matter to regulations governing labour contracts or minority.

All the same, some texts like those of Algeria (art. 5 of L.90-34), Namibia (art. 18 a) of the N.V.T. Act) and the above provisions of the LC of Paraguay, state explicitly that if signatories are under age, they must have their parents' or their legal representatives' authorisation. In Namibia, art. 18 (2) of the N.V.T. act specifies that authorisation may be granted by the competent Court.

It should be noted that in the majority of the texts looked up, these provisions do not imply substitution of the minors' free will[45] but rather a form of assistance in consonance with the social responsibility of those who exercise their guardianship.

52. In nearly all the laws that we are considering, there are regulations about the form that apprenticeship contracts must have to be valid as such.

In this connection there is quite general agreement about their broad outline, but as in other aspects, varying degrees of concern with details; sometimes these differences are significant.

53. That the contract be written is a traditional demand of legislations such as those of the European Union[46] and even in the case of legal omission, this is usually redressed by the jurisprudence of labour courts.[47]

Nearly all laws in force impose this requisite, either explicitly or by implication, referring to the act of signing, or the obigation to adhere to a prototype contract. The need for a written document also becomes evident when the law specifies that certain clauses must figure in it, or when approval by the authorities is necessary for the validity of the contract, or several of these circumstances come together.

Taking all this into account, we can cite the following recent legislations, among others, that establish the need for a written contract: those of Algeria (L. 81-07, ratified by L. 90-34, art.11); Argentina (L. 24.465/95, art. 4.4 and D. 738/95 art. 19); Belgium (D. of 03.07.1991, arts 2 and ff.); Chile (LC, art, 78); Côte d'Ivoire (LC, art. 12.2); Spain (Royal Dec. 2317/93); Philippines (LC, art. 61 and 62); France (LC, art. L.117-12); Gabon (LC, art. 88); Iran (LC, art. 116); Namibia (N.V.T. Act/94, art. 19.1); Paraguay (LC, art. 107); Tunisia, (L. 93-10, art. 22); etc.

In the case of Côte d'Ivoire, the contract must be drafted in French, the country's official language. (LC, art. 12.2).

As an exception –i.e. a legislation that does not require a written contract– we may mention the 1994 LC of Vietnam, whose art. 24(1) says

[45] Tunisian law would be an exception, for art. 22 of L.93-10 permits apprenticeship contracts to be signed by the apprentices themselves or by their legal representatives.

[46] Doc CEDEFOP, cit. p.9.

[47] As happens in Uruguay.

that training contracts can be written or verbal. If they are written, the LC just requires that two copies be made, one for each party.

54. There are greater difficulties regarding the possible effects of the lack of a written document.

Recent codes, like that of Paraguay (art. 107), solve the matter by stipulating that in the absence of a written deed, all the provisions governing labour contracts are applicable.[47a]

But there are many laws that do not clarify the point, or if they do, use expressions that lend themselves to different interpretations, or are rather vague, to say the least.[48] In any event, given the trends towards ensuring the continuity of the labour relationship and protecting workers, it would seem that omission, or even expressions like «on pain of voidance» –with which some laws, like the Gabon LC, penalise the lack of a written document– should be interpreted as in the above article of the Paraguayan LC. In that respect, even the French Cassation Court, which in the past gave a civil law interpretation to the nullity of contracts, has been leaning towards the doctrine of converting contracts with special characteristics into typical labour contracts, whenever legal requirements are not fulfilled, or their purport is distorted.[49]

55. As for the requirement of a standard or prototype contract, it is fully established in recent legal provisions of the following countries, among others: Argentina (L. 24.465 and art. 19 of D. 738.95); Spain (Roy. Dec.2317/93, art. 10.1); France (LC, art. R.117-11); Tunisia (L. 93-10, art. 22); etc.

On the other hand, a standard contract is optional in Colombia (Res. 1935/88, art.4), and apparently also in the Philippines, since art. 61 of the LC just says that the competent organisation can devise a model of apprenticeship contract.

[47a] Similarly, Italian Law 407/1960, (art. 8.7) specifies, in connection with job training contracts, that in the absence of a written document, the agreement must be considered to be a labour contract for an indefinite time.

[48] Such is the case of legislation from earlier periods, as the 1969 VT (BBiG) Law of Germany. According to its art. 4, the contract must be drawn up in written form, but even if it is not, the TFT will consider that the vocational training relationship is equally valid, although apprentices will be entitled to record the agreements in writing (W. Daubler, op.cit., p. 946).

[49] After a period during which the Cassation Court automatically declared apprenticeship contracts null and void if they were not in writing, as from 1963 it admitted the possibility of considering apprentices in that situation as workers, and recognised their right to a remuneration that was to be calculated on the basis of minimum wages, minus a reduction according to their age (See Jurisp. cit.in the Code du Travail, Dalloz, 1995 ed. p.12). The idea of a «judicial reconversion» of faulty or denatured training contracts into labour contracts has since been extended by the Court to the so-called induction *stages* (SIVP) (Ph. Enclos, «La requalification judiciaire des stages d'initiation à la vie professionelle», in *Droit Social*, No. 6, June, 1991, p. 500 and ff.).

56. Legislation often imposes the obligation of registering apprenticeship contracts. Registration is usually dependent on approval of the terms of the contract.

Among recent texts that make the validity of contracts dependent on their previous approval or endorsement, we can mention those of Belgium (D. 03.07.1991, art.5); Chile (D.S. 146/89, arts. 63 and 64); Philipines (LC, art. 62); France (LC, art. L.117-14); Gabon (LC, art. 88); Paraguay (LC, Art. 107); Tunisia (L. 93-10, Art. 22, 2nd. and 3rd. paras.); etc.

57. Endorsement is frequently effected through Res. of the Executive (Belgium); or of the competent office of the Ministry in charge of labour and social legislation (France), or vocational training (Tunisia). In these cases, there is usually preceptive counselling by some specialised institution.

In some countries, approval is in the province of a VTI[50] or of the National Board representing the sector (Netherlands). In others, like Luxembourg, it is jointly granted by the VT Commission and Employment Service concerned, but in conclusion contracts are supervised and registered by the respective Entrepreneurial Chambers.[51]

Also in France (LC, art. R.117-13), contracts are registered at Departmental Labour Offices, but must be communicated to the professional Chamber of the line of business in which the enterprise operates.[51a]

Concerning the time of registration, regulations are not always clear as to whether it should precede implementation. Some of them, like those of Namibia, mention a 15-day deadline for registration of contracts with the Chief Inspector of the Ministry of Labour and Human Resources, after they have been signed (NVT Act/1994, art. 12).

In France, art. L.117-14 informs that it is sufficient to submit contracts, and their registration is automatic. However, an addition to that article by art. 58 of law 93-1313, gives the administration fifteen days to reject registrations that do not meet all legal and regulatory requirements; after that they are deemed accepted. In its final paragraph, this article also admits that the contract may already be effective as it states that

[50] In Chile, that institution is SENCE, where enterprises must hand in two copies of the contract, together with a declaration including the information indicated in D.S. 146/89. Pursuant to art. 65 of the D.S. cit. SENCE can make observations, compliance with which are mandatory. We should add that endorsement by SENCE has to do with tax exemptions that encourage employers to take on apprentices.

[51] Cf. the 1995 CEDEFOP Doc.

[51a] In Ireland, where employers can stipulate directly contracts with apprentices, they must all the same report recruitments to the FAS, as well as interruptions or termination of apprenticeship (Doc. CEDEFOP, 1995, cit.).

rejection of its registration prevents implementation, or continuation thereof.[52]

58. Denial to endorse or register apprenticeship contracts is subject to review, in principle, through the application of the general regulations of administrative and jurisdictional proceedings against administrative decisions.

Some legislations make certain specifications, demanding that the refusal to register be justified (LC of Paraguay), or contemplating special measures, like the LC of France that in cases of rejection offers the possibility of appealing to the labour courts (Conseils de prud'hommes, LC, art.117-16) to demand that contracts be declared valid.

59. Regarding the consequences of lack or refusal to endorse registrations, it seems to have similar effects to the lack of written documents.

It is obvious that although some laws, like that of Tunisia, may require endorsement for contracts to have legal effect, that would apply just to the specific results of the apprenticeship contract, and not to other consequences that may derive from the existence of an actual labour relationship.[53]

§6. Contents of apprenticeship contracts

60. Differences in legislative techniques are also notorious in this connection.

Some texts, like the LC of Paraguay (art. 108), have a listing of the contents that the clauses of apprenticeship contracts should or must include.

Others only make brief reference to the main clauses, always with the possibility of referral to the general provisons of labour contracts. Such is the case of art. 80 of the LC of Chile which refers to art. 10, that stipulates the requirements of those contracts but, owing to the educational purpose of this kind of agreement, demands express indication of the training plan to be developed by the apprentice.

It is also obvious that an indirect manner of defining or supplementing the contents of training contracts may result from the already mentioned mandatory use of a prototype, as explicitly spelled out, among

[52] The French Cassation Court declared in 1988 that: *«The existence of an apprenticeship contract is dependent on its registration, and its implementation cannot continue beyond the time established by the service that fulfilled that essential formality»*. In another decision of 1992, although admitting that in the absence of registration the contract is formally irregular, it allowed that the apprentice should be paid the minimum wage (SMIC), with a reduction according to his age, and that social service contributions should be calculated on that basis (Code du Travail, Dalloz, 1995 ed., p. 12).

[53] See 1992 decision of the French Cassation Court, cited in the preceding note.

others, by the legal texts of Spain (Royal Decree 2317/93), France (LC, art. R. 117-11), Tunisia (Law 93-10, art. 22); etc.

61. A scrutiny of recent texts also shows that there is a signicant number of coincidences among all those that go into details about the contents of apprenticeship contracts.

The main items in common –apart from those pertaining to identification of the parties– are about: A) Object of the apprenticeship; B) Work conditions; C) Remuneration of the apprentice; D) Training plan and monitoring thereof, with special emphasis on training ouside the enterprise and the qualifications, appointment, functions, etc. of whoever must supervise the process, described as tutor, monitor, counsellor or supervisor.

Some legislations, like those of Spain (WS, art. 11.2) and Paraguay (LC art. 108 g.), include generic reference to the introduction of other conditions that may favour the apprenticeship regime.

A) Object of the apprenticeship process

62. A good many legislations mention the purpose of acquiring the practical knowledge for a trade, occupation, profession, qualification level or apprenticeship subject, as obligatory content of the respective contracts.

Such is the case of Argentina (D.738/95, art. 7); Spain (Royal Decr. 2317/93, art. 9.1); Gabon (LC, art. 89.5 Iran (LC, art. 116-e); Paraguay (LC, art. 108, b); Tunisia (L. 93-10, art. 21); Vietnam (LC, art. 24(2); etc.

B) General work conditions

63. This subject covers provisions about the tasks to be performed by apprentices, working hours and locations, as well as regulations concerning leave and special permits.

The more recent legislations include examples of this kind of provision.

64. The LC of Paraguay (art. 108 d) calls for clauses in apprenticeship contracts explicitly describing the tasks of apprentices. For its part, the WS of Spain establishes in art. 11.2 that contracts must describe work conditions; this is further developed in Royal Decree 2317/1993 and in the model of prototype contract appended to it. The requirement that contracts should specify apprentices' working hours figures in D. 738/95 of Argentina and in the standard contracts of several countries. Other texts establish is the maximum number of hours a day (Iran, LC, art. 115: 6 hours).

Work location or site is expressly mentioned among mandatory specifications by art. 116-d of the LC of Iran, and by art. 24(2) of the LC of Vietnam. Other models, like the Spanish one, besides domicile of workplace, also require identification of the locale where theoretical training will be imparted.

Clauses about annual leave can always be present, insofar as conditions may exceed the limits foreseen by the legislation, which are the general ones, the ones that refer to minors or, in some cases, specifications specially envisaged for apprentices.[54] Reference to permits that must be granted to attend theoretical or supplementary courses often appears in prototype contracts.

C) Remuneration of apprentices

65. The remuneration of apprentices is of course something that has to be included among work conditions, but in view of its importance it is advisable to deal with it separately.

As already indicated[55] some recent laws, although admitting that apprentices must receive a monetary reward, make it conditional to effective profit from their work by employers, or refuse to call it wages, using other denominations instead. Texts like the OLL of Venezuela (art. 270) demand communication by the employer of the wages earned by apprentices, without further specification. There are also cases, like that of the LC of Côte d'Ivoire, that make no mention of remuneration.

In the following paragraphs we shall refer to the amounts to be paid to apprentices and the way of establishing them, irrespective of qualification levels.

66. Regarding the amount of remunerations, a common trait to nearly all texts under consideration consists of setting stipends that take as a starting point the whole, or a percentage of, minimum wages –as foreseen by the legislation or resulting from collective negotiations– of general scope or applicable to given trades or occupations.

This should normally be interpreted as the minimum income to be guaranteed to all apprentices or, as art.117-10 of the LC of France and art. 1 of D.94/1600 of Tunisia say: provided that no more favourable

[54] In Argentina, D. 735/95 dictates a minimum period of 15 days' paid leave; in Korea (SLL, art. 76), the holidays of apprentices under age must be of 12 days a year; in Paraguay, notwithstanding the application of general rules (LC, art.118), if apprentices are under 18 their holidays must be 25 working days (art.127); in Belarus, art. 194 of the LC imposes the granting of permits for study or examinations. In other legislations, like that of Germany, apart from recognition of the rights resulting from general regulations, there is reference to contract clauses about leave and special permits for apprentices.

[55] See above, paras. No. 8 and ff.

conditions exist. Such conditions may result, as is usual in labour regulations, from collective or individual negotiation.

As an absolute exception the LC of Chile must be mentioned, which in art. 94 leaves the amount of apprentices' pay entirely to free agreement between the parties and, as already remarked, not only refrains from foreseeing minimum levels but forbids the establishment thereof by collective negotiation. The legislation of Vietnam also leaves remuneration to free agreement between the parties, but the wording of art. 23(2) of the LC does not seem to imply the exclusion of collective negotiations.[56]

67. At the level of minimum wages, above such level or in the absence of it, apprenticeship contracts can include clauses concretely specifying the amount of remunerations. In many systems –like those of Korea, Spain, Philippines, France, Gabon, Iran, Paraguay, etc.– laws or regulations make such clauses obligatory, with the intent of ensuring that apprentices' remunerations be known.

On the understanding that, owing to their incomplete training and practice, apprentices would be at a disavtantage if their remunerations were to be fixed on the basis of performance, some legislations like those of Italy and Namibia (NVT Act, art. 26) expressly prohibit that possibility. The Namibian text clarifies, however, that even if clauses establishing payment on the basis of performance would be null, they would not cancel the apprenticeship contract itself. In other countries the ban on remuneration by piecework is confined to regulations about minors.[57]

68. For adjusting the relationship between apprentices' remunerations and the general minimum wages, or the wages specific to the activity, trade or occupation in question, legislations usually consider the apprentices' age and stage of learning.

Some States, like Belarus (LC, art. 181) also take into account the apprentices' performance and working hours. In Spain as well, their remunerations are in keeping with their effective work hours per day.

In France, the percentages of minimum wages to be paid to apprentices are established by decree according to decisions of a specialised

[56] It is interesting to note that in Germany the BBiG requires that apprentices get adequate remuneration. As a result, the legislation has readjusted remunerations on the basis of the reports of the respective Chambers on wages in force for workers of comparable training level, and on the profitability of the apprentices' work. All this notwithstanding the possibility of remunerations being fixed by collective agreement.

[57] Such is the case of Germany; but doctrine has it that the ban on pay by piecework can be made extensive by c.a. to apprentices not protected by minors' laws (W. Däubler, op.cit).

body.[58] Such decisions admit the possibility of deductions for services in kind rather than in cash.

69. As to the importance of the percentages of minimum wages paid to apprentices in the different countries, it does not seem relevant to go into details, but certain general coincidences must be underlined.[59]

In some countries that have an absolute minimum, known as Vital or Subsistence Salary, 100% of it is generally granted to apprentices. This situation occurs in Argentina, China[60], Peru, and other countries.

In Ecuador and Philippines the percentage of the minimum national or inter-professional salary is normally 75% upon commencement and during the first year of apprenticeship; 70% in Spain[61] and Panama; 60% in Paraguay; 50 % in Brazil,

Colombia[62], Costa Rica.[63] In Algeria, apprentices only get 15% of the National Guaranteed Minimum Wage during the first six months of their apprenticeship (Exec. Dec. 95-31, art. 2).

Formulas for determinng what apprentices should earn are more complex in some countries like Tunisia, where different scales have been adopted according to the duration foreseen for the apprenticeship (Decree 94-1600).[64]

Of course, whenever there are scales based on the phases or duration of the training, the whole process must be computed. For example,

[58] This advisory body is the Commission Permanente du Conseil National de la Formation Professionnelle de la PS et de l'Emploi. In Korea, apprentices' remunerations are established by Pres. Decree (LSL, art.75.1) and must figure in the MLSS authorisation (art. 75.2).

[59] Law 56/1987 of Italy authorises c.a. to fix reduced wages for apprentices (art. 22). A similar criterion is valid in Uruguay where, according to Law 16.783, apprentices will be paid as agreed by the parties, subject to the minimum established by c.a., or in its absence, subject to the minimum wage accorded to the corresponding job within the enterprise. Said law also stipulates that apprentices' salaries be readjusted at the same time and with the same criteria as those of the other employees. In the United States, where apprenticeship contracts that did not respect the minimum salary were considered illegal for a long time, an amendment to the Fair Labor Standards Act authorised the Labor Secretary to establish by edict training programmes that meet certain specifications, and allow pay under the minimum salary to apprentices attending them (A. Goldman, USA in IELL, cit. p. 70).

[60] Cf. Tsien Tche-hao, China, loc. cit.

[61] In Spain, it goes up to 80% of the Interp. MW in the second year, and to 90% in the third. If apprentices are under 18, they must earn at least 85% of the Interp. MW for their age (R.D. Leg 1/1995, art. 12.2 f). As already indicated, pay can be cut down proportionally if effective hours are less than 85% of regulatory work hours (Roy. Dec. 2317/93, art. 11).

[62] In Colombia, pursuant to Res. 1035/88, that 50% is calculated on the basis of the minimum wage paid to workers of the trade, or similar ones.

[63] In Costa Rica, it increases up to 100% of the minimum wage in the third year. In Brazil, it goes up to 2/3 in the second half of the apprenticeship period.

[64] There are two scales, depending on whether the apprenticeship's duration is of less or more than one year. Up to one year, there are 10% increments every quarter, starting at 30% of the Guaranteed Minimum Wage, with a ceiling of 60% by the fourth quarter. For training lasting more than one year, the starting point is also 30% of the GMW but 10% increments occur only every six months, reaching 80% after the fifth semester.

French legislation specifies in that connection that apprentices' remunerations and seniority have to be calculated including the duration of any guidance contract that may have preceded the apprenticeship contract (LC, L.981-7).

70. From all the above, it seems obvious that in principle, legislations always admit the estabishment of apprentices' remunerations by agreement between the parties concerned. However, this does not preclude that when a minimum exists, it should be respected.

As also seen above, such a minimum may result from the provisions of laws or administrative decrees.

In the absence of any express provision to the contrary, apprentices' remunerations can also be fixed by collective agreement; indeed, some legislations, like those of Argentina, Denmark, Spain, etc. consider it the main way of doing so, and legal or regulatory methods a subsidiary approach.

71. Finally, in some countries like Poland –according to art. 17(1) 12 of Employment Law No. 446 of 1989– the pay of adolescents working under job training contracts, as well as their contributions to social security, come out of a special fund.[65]

In Costa Rica, apprentices may obtain supplementary grants chargeable to a fund established by the Apprenticeship Law (art. 14 of L. No.5427 of 1973 and modif.). This fund is made up by the contributions that employers must make to the INA, to cover the difference between the MW and what they actually pay to apprentices in the different stages of their training.[66]

D) Programming and other aspects relating to the training imparted

72. Legislations have been adding an increasing number of specifications, in an effort to ensure that training contracts –and specially apprenticeship contracts– should effectively provide the qualification envisaged.

Apart from provisions valid for all kinds of training –which are dealt with in other parts of this study– we shall here examine the specific stipulations of the legal rules and regulations that, with the above end in view, call for the inclusion of certain cluses in apprenticeship contracts.

[65] It is the «Employment Fund» administerd by the ML and Social pol., according to Chap. 7 of the Law city.

[66] These supplementary grants are governed by the Regulations adopted by the INA Board of Directors on 06.02.1995 (specially art. 33e).

The items below refer to training programming and the weight to be ascribed to instruction outside the enterprise, as well as to the role of tutors.

73. The various conditions that must figure in apprenticeship contracts regarding programmes and other aspects to ensure effective training, are usually laid down by prototype contracts generally adopted by decree and, as indicated earlier, incorporated into the regulations of a growing number of legislations.

Such is the case of the model adopted in Spain, which appears as annex to Royal Decree 2317 / 1993. According to it, clause II must specify the number of daily hours devoted to theoretical training, indicating what percentage they are of the maximum work hours foreseen in the applicable collective agreement. In turn, clause III requires that the contract should include the timetable of theoretical training, and clause VI that enterprises should assign apprentices to tasks appropriate to their training and give them permits to attend theoretical courses. The Tunisian model adopted by Min. Res. of 17.01.1995 (art.3) includes similar clauses.

74. Labour Codes or special laws often also indicate mandatory clauses concerning the training of apprentices[67], generally relating to their instruction outside the workplace.

Sometimes, as in the case of Paraguay, legislative provisions confine themselves to requiring that, besides a description of the tasks to be performed by apprentices, contracts should include the duration and place of their occupational education and identification of the training institution imparting it (LC, art. 108.d).

Likewise, the LC of Gabon decrees that contracts should identify the occupational courses that trainers must require apprentices to follow (LC, art. 89.5), whereas the LC of Guatemala merely directs that contracts should establish the time to be devoted to theoretical education.

More stringent legislations demand that contracts expressly indicate the training programmes of apprentices. This applies to all such contracts in the LC of Chile (art. 80), while according to Argentine law, employers must submit training programmes to the MLSS whenever apprenticeship periods exceed one year (D. 738 / 95, art. 11).

75. Regarding employers' obligations *vis-à-vis* the training of apprentices, by legal mandate contracts must also include all those specified in their actual definition or enumerated in the articles of labour codes relating to the rights and obligations of the parties.

[67] In Germany, contracts must include, among other things, the nature, programme, purpose, duration etc. of the training.

In that respect, art. L.117-1 of the French LC is very illustrative, when it says that employers must ensure a methodical and thorough vocational training, dispensed partly on the job and partly at apprentices' training centres. Along the same lines, but less explicit, are the texts of other countries –some of them visibly inspired by French legislation– like those of the Codes of Côte d'Ivoire (art.12.9) and Gabon (art. 93).

76. It is a fact, however, that provisions included in these, and even more clearly in other legislations, do not seem to imply concrete obligations on the part of employers[68] that may give apprentices the sure possibility of asserting their rights through the courts. For example, the LC of Vietnam limits itself to stating, in rather vague terms (art. 271), that employers are responsible for the vocational training of workers. For its part, the LC of Belarus merely mentions employers' obligations to offer the indispensable conditions for workers to combine work with study.

77. Legislations currently in force usually impose the obligation of appointing a tutor, guide, mentor, counsellor or monitor of the apprentices' training, and specifying the qualifications of such persons. In the countries mentioned above that have adopted prototype contracts, this requirement is explicitly spelled out.

The duties of tutors are quite broad and mainly have to do with the supervision and monitoring of the apprenticeship process, coordination of practical in-plant training and theoretical education, and relations with centres where such education is delivered.

In some instances, as in the legislation of Belgium, a more important figure has been created: apprenticeship secretaries. They take part in the closing of contracts, control compliance with legal and contractual obligations, watch over the implementation of the training, provide moral and social guidance for apprentices and act as mediators in possible conflicts between them and their employers.

78. In some countries like Chile (LC, art. 82) and France (LC, art. L.117-4) it is the apprentices' master himself who acts as guide or tutor.

In others like Greece, Ireland, Luxembourg[69], Namibia or Tunisia, tutors or monitors are just supervisors of the training process, to guarantee that it should be satisfactory, for which purpose they check up on the pedagogical and moral conditions of instructors and enterprises and oversee the progress of apprentices.

[68] The Venezuelan OLL, on the one hand only mentions the duty of employers of workers under age of offering them adequate possibilities of attending vocational training schools (art. 261); but on the other hand, the articles of the same chapter that deal specifically with apprenticeship, although recognising that training time is part of work hours, add that study timetables should be established in such a way as not to interfere with the regular work and operation of thr enterprise.

[69] Cf. Doc. CEDEFOP, 1995.

79. In some systems, monitors act under the supervision of the national training and employment authority: e.g. in Ireland they are under the FAS and in Greece under the OAED. In Tunisia, «apprenticeship counsellors» are dependent on the Vocational Training Ministry and act in coordination with other inspective services (L. 93-10, art. 25).

Another specification is the maximum number of apprentices that tutors can have in their charge. As already mentioned, according to art. 13 of Roy. Dec. 2317 / 93 of Spain, each tutor cannot look after more than three apprentices.

§7. Obligations of the parties foreseen by the law

80. Apart from the obligations relating to the training of apprentices that entail the incorporation of certain clauses into contracts, as described above, legislations also impose other more or less precise duties on employers and apprentices alike regarding those and other aspects.

Recent texts quite frequently include a catalogue of miscellaneous duties and prohibitions affecting both parties.

We shall consider the main obligations of employers and apprentices, and a listing of what is banned.

A) Employers' obligations

81. Laws and decrees impose different kinds of obligations on employers.

Briefly, we could mention duties relating to the training of the apprentices; to due payment of what they are owed; to their attention and care and to the rights they acquire through the training process.

82. Regarding the first category, i.e. the training itself, apart from aspects already considered, the following are included, among others: imparting to apprentices the agreed training, ensuring on-the-job practice with the appropriate tools and materials, allowing them to attend supplementary courses, etc.

In this respect, the LC of Chile (art. 83); that of Côte d'Ivoire (art. 12.9); Royal Decr. 2317 / 1993 of Spain (art. 9.1); the LC of France (arts. L. 117-1, L.117-bis-2, etc); that of Gabon (art. 93); that of Paraguay (art. 111-a); L. 93-10 of Tunisia (arts. 21 to 23); etc. are more or less explicit. By contrast the LC of Iran refers the matter to regulations to be dictated in due course (art. 112, note 2).

Some legal texts, like that of Chile, also expressly establish the obligation of allowing monitoring by the VTI concerned (in this case the SENCE).

Others, like the LC of France, include among employers' obligations the registering of apprentices in the Training Centre that, according to the contract, the parties may have chosen (LC, art. L. 117-6).[70]

83. The obligation to pay the legal or agreed wage and other contributions that may apply is explicitly spelled out in art. L.117-1 of the French LC and in the Paraguayan LC.

Mention of this aspect, however, is not indispensable, so long as it is understood that apprenticeship contracts belong to the category of labour contracts, wherein the first and fundamental obligation of employers is to pay salaries or wages.

84. There is express mention of personalised attention, care and consideration due to apprentices in the LCs of Côte d'Ivoire (art. 12.8), Gabon (art. 91) and Paraguay (art. 111-b); etc.

In this connection, to describe the attitude that employers ought to assume *vis-à-vis* apprentices, some texts fall back on the classical concept of the good *paterfamilias*.

On the other hand, those same codes and some others require that employers should inform parents or persons in charge of apprentices about diseases they may suffer from, bad conduct, non attendance of theoretical courses, etc.

85. Among the rights resulting from the training –which imply correlative obligations for employers– is being awarded certificates at the end of the apprenticeship process, indicating knowledge and occupational aptitude acquired.

In this connection, the following legal texts may be cited, among others: Argentina (L. 24.465, art. 4.8); Côte d'Ivoire (LC, art. 12.8); Guatemala (LC, art. 172); Paraguay (LC, art. 111-c); Dominican Republic; etc. In the case of the Dominican Republic, apart from the employers' signature certificates must include endorsement by the VTI (INFOTEP, Res. 15/88).

A related matter is the duty of employers to register apprentices for the tests to obtain diplomas or degrees, and make them go through them, as expressly specified by the LC of France (art. L.117-7).

On the other hand the French Code recognises the right of apprentices to sit for the diploma or degree examinations when they deem convenient, and to enjoy five days' paid leave during the month immediately preceding the tests (art. 117-bis-5).

[70] A firm ruling of the French Cassation Court (Soc. 19.12.1972) attributes responsibility to employers for the damage they may cause apprentices if they do not register them in an appropriate centre (Code du Travail Dalloz, 1995 ed., p. 11).

86. Concerning the rights resulting from completion of the apprenticeship period some laws, like that of Belarus, prescribe recognition of the qualifications acquired and the right to a job in consonance with the training delivered (LC, art. 189).[71] Others, like that of Paraguay limit themselves to granting preference to successful apprentices in the filling of vacancies (LC, art. 111.e).

B) Apprentices' obligations

87. The first obligation of apprentices is mentioned by a good many recent legislations, and consists of rendering the agreed services.

In systems that recognise the labour nature of the relationship, direct reference is made to working for the employer throughout the duration of the contract, as in the LC of France (art. L. 117-1) or in that of Paraguay (art. 109-a). In those that deny that nature or relegate labour aspects to a secondary plane, turns of phrase are used minimising the significance of the work done. Thus the Codes of Côte d'Ivoire (art. 12.10) and Gabon (art. 109.a) talk about the help that apprentices may give employers, to the extent of their forces. For its part, Argentine law refers to the performance of tasks connected with the apprenticeship process (L. 24.465, art. 4.5).

88. The training process also implies other obligations for apprentices, that some recent laws define.

To begin with, several of them, like the LC of France (art. 117-1) or Law 93-10 of Tunisia, art. 23, final para.) establish that apprentices must comply with the training imparted at the enterprise and at the training institution.

For its part, and to reaffirm the mandatory nature of training outside the enterprise, some texts, like Royal Decr. 2317 / 93 of Spain, clarify that apprentices' lack of punctuality or failure to attend theoretical courses will be considered as absenteeism from work. with all ensuing consequences.

Along the same lines, the LC of France (art. 117 bis-5) imposes upon apprentices the obligation to sit for the diploma or degree examinations.

89. Regulations can also be found that include aspects suggestive of family life, like the observance of good habits and respect for

[71] According to Tsien Tche-hao, passing the final exam entitles apprentices to a workpost, but this is subject to a trial period of one year (IELL, Suppl. 12, p. 30). The French Cassation Court (Soc. 4.03.92) also admits the validity of a trial period with the same employer immediately after successful completion of the apprenticeship (LC Dalloz 1995, p. 3, which indicates that this ruling was adopted with reservations by A. Lyon-Caen).

employers' or mentors' private lives, as well as that of their relatives (LC of Paraguay, art. 109-c).

Similarly, several codes, like those of Côte d'Ivoire (art. 12.10), and Gabon (art. 94) direct apprentices to show respect and obedience to their employers or teachers, their relatives and the workers and customers of the firm or business (LC of Paraguay, art. 109-b).

We might add that the LC of Paraguay also includes their obligation to look after their employers' tools and materials (art. 109-d) and be as economical as possible in the performance of the tasks for which they are being trained.

90. In some countries –although they are the exception– apprenticeship contracts contain restrictions to the apprentices' freedom to hire their services to third parties, which imply the obligation of not leaving the employer that furnished –or is furnishing– their training.

What the legislation of several of them penalises severely (Côte d'Ivoire, LC, art. 12.11; Gabon, LC, art. 96; and Namibia, NVT Act/94, art.24) is the desertion of apprentices before the link with the employers that trained them has legally come to an end.

In other instances, like the LC of Vietnam, what the law provides for (art. 24(3) is recognition and validation of arrangements entailing the apprentices' obligation to remain working during a certain period for the employer that trained them, with indemnity as a result of non-compliance.[72]

C) Miscellaneous prohibitions

91. Several legislations expressly prohibit engaging apprentices in tasks or services other than those for which they are being trained.

Such is the case of the LSL of Korea and the labour codes of Côte d'Ivoire (art. 12.7) and Gabon (art. 92).

Various texts include explicit bans on overtime, night work, hazardous or unhealthful tasks, etc.

Thus, art. 64 of L. 8.069 of Brazil peremptorily forbids employers to make apprentices perform dangerous tasks, do night work or hours that prevent school attendance.

[72] In Spain there is a similar provision in art. 21-4 of the WS, as originally adopted in 1980. It is included in Section 2 (Rights and duties resulting from the contract) of the chapter dealing with labour contracts. However, it does not refer to apprenticeship contracts but to a near case, i.e. workers that may have been given some occupational specialisation by their employers for specific purposes. (See: J.L. Peralta and R. Quesada, «FP y pacto de permanencia en la empresa», in contrato de trab. y FP, MTSS, Madrid, 1987, p. 161 and ff.). Neither does the LC of Iran refer to apprenticeship contracts imposing continuity of service (art. 114b and final note), but only to the particular case of young people trained by an employer for specific purposes at an appropriate centre.

In a more general, although rather vague manner, the LC of Gabon forbids making apprentices work beyond their strength. For its part, the LC of Iran (art. 117) makes on-the-job training of minors conditional to not exceeding their capacity or harming their health or physical and intellectual development.

Hazardous or unhealthful work is also banned in principle by French law, but art. L.117-bis-6 of the LC admits its regulatory authorisation by the public administration whenever it may be considered essential for the apprentices' training.

§8. Duration of apprenticeship

92. Many legislations decree that the duration of apprenticeship must figure in contracts, but more frequently they just stipulate certain limitations in that respect.

Therefore they commonly envisage the maximum duration of the apprenticeship period, in years or months, or provide mechanisms for establishing the training span.

They may also –although less frequently– determine the minimum period to be covered for apprenticeship to be recognised as such. Among recent regulations, this has happened in Argentina (3 months) and Spain (6 months). In France, the minimum is set by collective agreement or by branch of activity, or by resolution of the Minister of Vocational Training.

Concerning maximum duration, several countries have adopted uniform ceilings. Others have two or more ceilings, notwithstanding possible reductions according to the apprentices' previous training, like Germany; or according to the length of the training cycle involved in the contract, type of occupation, qualification level and other factors, like France; or depending on the training programme, like Chile; on the trade, like Gabon; etc. In some cases, like that of Spain, the regulatory maximum is applicable in the absence of special circumstances, or is only a general rule, as in Paraguay.

In a number of systems, like those of Algeria, Colombia, Korea, Namibia, Tunisia, etc. there are no maximum periods, as the apprenticeship term is stipulated in supplementary regulations for each specialisation, adopted by the competent ministries on the proposal of the respective VTIs, as in Colombia; after consultation with professional organisations, as in Tunisia; or with the counselling of employers' Chambers, as in Algeria.

93. An overview of the current situation shows considerable variations in the admissible maximum, ranging from six months in Ecuador to five years in Guyana.

A duration of two to three years seems to be the most frequent alternative. In effect, two years or 24 months have been foreseen in Argentina, Chile, Gabon, etc. Three years is the ceiling in Germany, Spain, Iran, Panama, etc.[72a] In both cases the possible adjustments mentioned in the preceding paragraph have to be taken into account.

All the same, regulations recently adopted in Belgium and Venezuela admit a duration of up to four years for apprenticeship schemes.[73]

94. Nevertheless, the need is being stressed for shortening apprenticeship periods, and making this training approach more personalised and consequently more attractive. We have to bear in mind in this connection the broadening scope of basic education, new technologies and new teaching methods that make it possible to achieve qualification sooner.

The trend towards personalisation has led some legislations to introduce criteria to shorten apprenticeship taking into account this greater speed of the learning process, apart from the above-mentioned prior training of candidates. In France, for instance, maximum duration is established between one and three years by decree of the Council of State[74], on the basis of a number of factors, but it may be readjusted taking into account the apprentices' starting level, and the process can finish sooner if candidates obtain the diploma or degree for which they are training. Likewise, in Namibia the duration of apprenticeship depends on the apprenticeship programme, but may be reduced by the executive officer (Chief Inspector), with the endorsement of the Vocational Training Board (NVT Act / 94, art 27,1,2). In Germany, apprenticeship contracts are flexible and subject to change in the course of their development; candidates may even change the occupation they had chosen initially.[75]

On the other hand, recent texts like the labour codes of Paraguay and the Dominican Republic generally establish a maximum duration of one year.[76]

[72a] In the Annex to the recent Min. Res. that set the apprenticeship duration for each one of the 140 specialisations considered (Res. of 22.02.1996), 98 cover two years and 42, three years.

[73] In New Zealand the normal period would cover 10,000 hours (J. Howells, «New Zealand», in IELL, loc. cit.) which, to be reckoned in years, would depend on the daily hours of work, but in principle seems to be over four years' duration.

[74] These decrees imply previous consultation with the National Vocational Training Council and the Higher Council for National Education (LC, arts. R. 116-1 and R.119.5). On the other hand, if candidates have had full-time training for at least one year at a technical education institute, or through a qualification contract, apprenticeship is cut down one year. It may be cut down two years or more if candidates hold a homologated diploma of higher level than the one aimed at by the training (LC, R.117-7-1).

[75] Doc. CEDEFOP, 1995.

[76] In accordance with Res. 1035 / 1988, whereby the MLSS of Colombia adopted the recommendation made by SENA on the duration of technical apprenticeship, it also lasts one year (6 months' theoretical instruction and 6 months' practice).

95. Some legislations contemplate the possibility of extending or prolonging the apprenticeship.

In Namibia, the Chief Inspector of vocational training can authorise an extension of the training period if apprentices have missed more than 21 days in one year.

In France, young workers may enter into successive contracts to get diplomas for different qualifications. For a third contract of this kind, authorisation by the Apprentices' Training Centre is required.

96. Laws like those of Ecuador (LC, art. 28) and Venezuela (OLL, art. 268), that recognise the labour nature of the link, expressly contemplate the effects of its completion.

They state that if the relationship continues after its legal term has come to an end, the apprenticeship contract automatically becomes a labour contract for an indeterminate period of time.

§9. Termination of the apprenticeship relation

97. The duration of apprenticeship, taken as the time required for candidates to achieve the qualifications pursued, is closely linked to the expectations of the apprentices themselves and to the benefits that improved qualification levels in the labour force are supposed to bring for the development and competitiveness of national economies.

As those who study these matters have pointed out, such circumstances have motivated legislators to promote the continuity and stability of the the labour relationship that is established through the apprenticeship contract.

98. With that aim in view several legislations have established strong limitations in order to prevent the employer to end up the apprenticeship contract.

Some texts (e.g. the LC of France, art. L.117-17, or that of Paraguay, art. 114) preclude dismissal unless there is justified cause, and enumerate the only causes that entitle employers to fire apprentices. German law calls for an important motive for dismissal (BBiG, art 15,2,11) and declares it null unless it has been notified in writing with sufficient justification.[77]

Besides, dismissal with justified cause is usually dependent on substantiation of that motive by some administrative or judicial authority.

An example of the former case is provided by art. 22 of the NVT Act/94 of Namibia, whereby in a situation of non-compliance by the other party, a decision of the Chief Inspector of vocational training may be invoked to terminate the relationship. For its part, art. 17 of the Apprenticeship Law of Costa Rica, while admitting as just causes for

[77] W. Däubler, op. cit., p. 947.

dismissing apprentices the general ones included in labour contracts, makes the decision contingent on authorisation by the INA.

The requirement of prior judicial ruling by a labour court (conseil de prud'hommes) validating the annulment of the contract due to grave fault or reiterated non-compliance by the other party, or inability of apprentices to perform the occupation in question, figures in the French LC (art. L.117-17) but has been considered inadmissible, although the motives may exist and be serious enough. At most, preventive suspension has been accepted.[78]

99. The jurisprudence of other countries also seems to lean towards the maintenance of the relationship.

In Great Britain, it is understood that employers can only dismiss apprentices if their conditions make instruction impossible.[79]

In Germany, when apprentices have taken legal action against their dismissal, labour courts have ruled that the mentality of their age has to be taken into account in gauging the seriousness of their offense.[80] Additionally, and to prevent interruption of the training, whenever circumstances allow for it, labour courts always deliver a provisional sentence prolonging employment.[81]

100. The legislation of Costa Rica (Apprenticeship Law, art. 19) as well as that of other countries, stipulates that replacement of employers does not affect the apprenticeship contract.

On the other hand, this is in line with the general principle of continuity of the labour contract, in favour of the worker, which still applies despite transformations or variations of the contract, so long as there is no reason for exclusion.[82]

Some legislations also allow for the transfer of the apprenticeship contract to another employer, with the apprentice's consent. This is foreseen by the NVT Act /94 of Namibia, provided that the Chief Inspector of vocational training has given his authorisation; he may grant it if he considers it beneficial for the apprentice, but can also put conditions.

101. Mutual agreement, with the assistance of a legal representative if apprentices are under age, is expressly recognised as a legitimate

78 Jur. cit. in the Code du Travail Dalloz, cit., p.14. As in other legislations, the regulation refers to cancellation by either of the parties, but what is obviously of interest here is annulment by the employer.

79 B. Hepple, loc. cit.

80 W. Däubler, loc. cit., who as evidence of that criterion mentions a 1977 ruling in which the Labour Court of a *Land* decided that the prank of an apprentice was not serious enough who -in the absence of proof of his intention to cause harm- had poured into the coffee thermos flask of a companion a small amount of a cleaning product, that was not proven to be toxic.

81 Ibidem, p. 948.

82 A. Plá Rodríguez, *Los principios del derecho del trabajo*, Buenos Aires, Depalma, 1978, p.179.

way of bringing the apprenticeship relation to an end by several legislations, like those of France (LC, L.117-17) and Namibia (NVT Act/94, art.22). Such an agreement does not cancel –according to the law of this latter country and several others– the employers' obligation to communicate the severance of the link to the vocational training authorities within a certain time frame, on pain of severe penalties.

Silence by the legislation must be interpreted as admission of the validity of an agreement between the parties to put an end to the apprenticeship contract, like any other labour contract. Nevertheless, in this case as in all others, and in accordance with the principle of primacy of reality, its effectiveness could be questioned if the agreement were fictitious.[83]

102. It is an accepted fact in comparative law that the frustration of the apprentices' expectations to attain a qualification when their dismissal is unjustified, or when their training is discontinued for reasons imputable to the employers[84], gives rise to their right to claim indemnity from them.

Among justified motives for resignation that confer upon apprentices the right to claim indemnity we must mention –and some laws like that of Germany stipulate it expressly– the omission by employers to provide adequate training for them.[85]

As to the payment of indemnity for early cancellation ascribable to the employer, or justified resignation by the apprentice, it is of course understood that employers should cover the wages of the time remaining until the end of the contract.[86] However, in some countries like Great Britain[87], Denmark[88], and New Zealand[89], it is accepted that this compensation must include not only the wages due, but also an additional sum for damages deriving from the frustrated expectation of achieving a qualification.

[83] Ibidem, p. 243 and ff. A recent ruling of the French Cassation Court has established that there was no express and bilateral agreement for the cancellation of an apprenticeship contract in which the deed was a printed document with only the employer's signature on it. (cit. by *Code du Travail*, Dalloz, 1995, p. 13).

[84] Some legislations, like that of Paraguay, specify the cases in which apprentices may withdraw with justified cause.

[85] BBiG, art. 16. As indicated by W.Däubler (loc. cit.) the TFT has confirmed the right of apprentices to claim indemnity for the frustration of their legitimate expectations.

[86] As decided by the French Cassation Court (*Code du Travail*, Dalloz, cit., p.14).

[87] B. Hepple, op. cit., p.73.

[88] B. Jacobsen, «Denmark», in IELL, Suppl. 12, p.56

[89] Howells, op. cit. p. 73.

103. Quite naturally, the stability of the apprenticeship relation with all its implications is only ensured after the trial period. The possibility of immediate discharge is generally admitted until then, or dismissal with a minimum notice.[90]

However, in some legislations like that of Costa Rica, pursuant to art. 16 of the Apprenticeship Law, dismissal during the trial period is not totally unconstrained, as employers must demonstrate to the satisfaction of INA the justifying causes of the situation regarding the apprentices' adaptability, their aptitudes and the advisability of discontinuing their training.

104. Other laws make no provision for a trial period in apprenticeship contracts. Therefore, when they fall into the category of labour contracts, the general rules in that connection would be applicable to them.

Some of them, however, do not only authorise a pact in that respect but actually create a legal period of absence of indemnity rights in cases of unilateral cancellation.

The period of lack of indemnity rights in cases of cancellation or discontinuance of the apprenticeship contract may be of four weeks (Namibia), one month (Costa Rica), two months (France)[91], or from one to three months (Germany).

§10. Evaluation and certification of apprenticeship

105. The determination of the quality of training and the degree of profit derived from it by apprentices is of interest to legislation from several points of view.

Approaches to discern basic aspects in this area are, on the one hand, the global or overall view[92], that aims at determining the competence of enterprises, instructors and training centres to perform their respective tasks, and on the other hand the personalised view, that assesses the qualifications effectively attained by individually appraised apprentices.[93]

90 NVT/94 of Namibia, only one days' notice, with notification to the Chief Inspector.

91 The final para. of art. L.117-17 of the LC of France, after indicating that there is no right to indemnity during this period, admits the possibility of stipulations to the contrary in the contract.

92 It fundamentally refers to the concepts of evaluation of the effectiveness of training and evaluation of training that Agudelo Mejía has defined, respectively, as: «Assessment of the degree of success achieved by the training, on the basis of a comparison between training objectives and results obtained», and «Ongoing analysis and checking of a training programme or course in order to determine the results obtained, as well as the quality and effectiveness of the methods used» (op. cit., p. 27).

93 To define the term qualification, we have taken into account the elements enumerated in the «General definition of VT diplomas and certificates» (CES-UNICE-CEEP), of 13.10 1992, as reproduced in the Revista de Trabajo published by the MLSS of Argentina, v.1. No. 1, 1994, p, 187, note 2.

106. The first approach has to do mainly with authorisations by the competent services which, as we saw in previous sections, are required by the legislation from enterprises to enable them to engage apprentices, from teachers to be authorised to dispense instruction in enterprises, and from centres or schools to impart the supplementary training away from on-the-job practice. Quite naturally, it is also important for the improvement of the methods used, and for upgrading the performance of the various agents.

Notwithstanding the fact that we shall be dealing here with the evaluation of apprenticeship in relation to the qualification attained by apprentices, we will make some comments on the manner in which recent legislations approach the global view.

By way of example, Agreement 18/1994 of the SENA of Colombia defines in art. 10 the criteria to evaluate the training delivered by firms or enterprises, including even the cancellation of previous authorisations.

These criteria pivot around two broad concepts: the impact of the training delivered upon the labour environment, and the knowledge, abilities and skills acquired by the trainees.

107. Regarding the personalised approach, it broadly refers to the manner of evaluating, its timeliness and frequency, requirements to be fulfilled, authorities responsible for the evaluation, the right of apprentices to take tests and exams, the effects of success or failure, and the value of the certificates or diplomas awarded to those that have passed.

In connection with the above, an initial distinction has to be made between legislations that include general programme provisions and others that issue concrete instructions.

As an example of general rules we can quote art. 69 of the Labour Law of China of 05.07.1994, which deals in a broad manner with occupational levels, systems to certify qualifications and bodies authorised by the government to conduct examinations and assess qualifications.

Of greater interest, however, are concrete definitions in recent laws and regulations about some of the aspects outlined above.

108. As to the form of evaluating, we have to concede that it has not varied in essence since ancient times. In effect, although the techniques under which tests are taken have evolved in search or greater objectivity, reliability and validity[94], in the present, just as several centuries back, the completion of apprenticeship involves passing one or several examinations or tests.

[94] Regarding all this, see: S. Agudelo Mejía, *Manual para la elaboración de pruebas ocupacionales*, Montevideo, Cinterfor/OIT, 1977 (with bibl.).

Consequently, the great majority of current legislations foresee the existence of tests and, in order to recognise the qualification achieved by apprentices, demand that they succeed in the examinations instituted for the evaluation thereof.[95]

As a matter of fact, laws and regulations do not only include multiple references to exams and tests, but also concrete details as to the time when they must or should be implemented, to apprentices rights and obligations to take them, to the effects of their success or failure in the tests, etc.

109. The timeliness and frequency of evaluations are often expressly contemplated by labour codes or special apprenticeship laws.

The LC of Paraguay prescribes in art. 110 an evaluation one year after the beginning of apprenticeship; it therefore coincides with the duration generally established for the whole process.

In other systems, like those of Costa Rica (Apprenticeship Law, art. 20); Côte d'Ivoire (LC, art. 12.10); Gabon (LC, art. 95); South Africa (L. 29.09. 1995); as well as those of European countries[96], it is stated in an outright manner that in order to obtain certificates accrediting qualifications achieved through apprenticeship, candidates must pass one or more tests upon completion of the cycle.

Some regulations, like those of Germany, Greece[97], Dominican Republic (R. 15/88), etc., besides the final examination envisage evaluations halfway through the training. On the other hand in Belgium (art. 4 of D. of 3.07.1991), Denmark, Ireland, Luxembourg, etc. the ongoing monitoring and evaluation of the apprenticeship process has been foreseen.[98] In France, trade apprenticeship contracts subscribed up to 1 July 1978 were subject to an examination at the end of the process, organised by the respective trade Chambers (LC, art. L.119-30). At present, the evaluation of apprentices is governed by the same rules as that of students of the educational system, so that they are obliged to sit for the examination pertaining to the diploma or degree that sanctions the occupational qualification foreseen by their contract (LC, art. L-117-7). The respective regional authorities of the Ministry of Education supervise coordination among enterprises and apprentices' training centres (CFAs).

[95] In Spain, although according to art. 12 of Roy.Decr. 2317/93, at the end of the contract employers grant -with no other requirements- certificates stating the duration of the apprenticeship and the level of practical training attained, such documents have no value as occupational diplomas. To obtain these, which are issued by the competent administration, apprentices holding employers' and training centres' certificates must previously pass the respective tests.

[96] Doc. CEDEFOP, 1995, p. 34-36.

[97] Ibidem.

[98] Ibidem.

110. Laws do not usually make concrete reference to the requirements and conditions of evaluation, which seems quite natural in view of their technical nature. In any event, some recent laws, like No. 24 of 1994 of Zimbabwe, give broad guidelines concerning apprenticeship programmes and certification.

In several countries there is express referral to regulations to be issued subsequently by the competent authorities, which may be the ministries in charge of education or vocational training, or public vocational training institutions. Such is the case of Costa Rica, for instance, where the Board of Directors of INA adopted a Regulation for the evaluation of apprenticeship on 30.06.1993, and of Nicaragua, where Ag. 41 / 1995 of the INATEC, introduced criteria for that purpose (arts, 53 and 54).

Likewise, in the Philippines art. 14-b of Law 7796 / 94 provides for the creation of a Skills Standards and Certification Office (SSCO) within the Secretariat of the Technical Education and Skills Development Act (TESDA), empowered to develop a national system for the standardisation of qualifications, tests and certification procedures.

In view of the interest of both workers and employers in these matters, some legislations like that of Tunisia (L. 93-10, art. 28) establish that the organisation of final apprenticeship exams should be established by resolution (*arrèté*) of the Minister of Vocational Training, after consultation with the professional associations concerned.

Others directly commit this type of regulations to collective bargaining. Thus, the LC of Paraguay decrees in art. 110 that qualified apprentices shall be tested in the manner established by collective contracts. In the absence of such agreements, the same article entrusts the testing to an examination committee made up by a representative of the employers, an expert worker and a representative of the General Department of Human Resources.

111. Several legislations foresee the existence of offices specialising in occupational examinations and tests, usually of broad scope and not exclusively limited to the approval of apprentices. Such is the case –among other recent regulations– of the above-mentioned LL of China (art. 69); the NVT Act / 94 of Namibia, where the chapter on Trade testing and certification regulates examinations and the respective competent authorities; law 12 / 1995 of Sri Lanka, which charges the Vocational Training Authority with the management of National Trade Tests.

Sometimes these offices are organised within the VTIs, as in the Philippines (law cit., art. 14b), or in Costa Rica, where INA has regional Evaluation Committees and centres for that purpose.

Systems like those of Belgium, Germany, Denmark, Holland, etc. have adopted a different solution. In Belgium, the 1991 decree already mentioned

above entrusts testing to the Permanent Education Centres for the Middle Classes and SMEs, which are non profit organisations. In other countries of this group entrepreneurial Chambers play a leading role in the matter. In Germany, however, a recent amendment to the BBiG (art. 56.1) has recognised the right of workers to be represented on examination boards.[99]

Despite this tendency there are still instances in which the enterprise that trained the apprentices is the only one responsible for their evaluation, with the consequent risk of injustices.[100]

112. The right of apprentices to get a certification accrediting the qualification they have reached is one of the subjective entitlements of training, and covers all its approaches.

In this particular case, it implies their right to taking the respective tests at the times prescribed, or even before that, as accepted under certain conditions by German law (art.40), the LC of France (arts. 117 bis-5 final para. and R. 151-5), and Italian law. Although there are doubts about it, it would seem that this could be made extensive to apprentices in countries where the law does not foresee this, through the application of general principles.[101]

This right also entails obligations for employers, some of which we have already mentioned: registering apprentices for examinations, granting them leave and other benefits, making apprentices take the tests, issuing them with the respective certificates, etc. [101a]

113. The main effect of success in the final tests is obtainment of the certificate accrediting the qualification achieved.

Some legal texts refer to the value of such certificates and their possible equivalence with those dispensed by the educational system.

Among recent examples in this respect is the LC of Paraguay (art. 110), that pronounces that certificates awarded upon success in the final apprenticeship tests, have the same value as those of academic education.

On the other hand, there is a distinct tendency in the European Union to recognise the equivalence of certificates of apprenticeship and regular education systems. Besides, in several of its member countries –Denmark, France and Holland–[101b] communication channels have already been

[99] W. Däubler, loc. cit.; Doc. CEDEFOP, cit., p.34.

[100] Ibidem, p. 35.

[101] In Guatemala, (LC, 1989, art. 172) employers issue the certificates, but if they do not do so, apprentices can claim to the authority to be put to the test, and if they pass it, employers cannot turn them down.

[101a] In South Africa, a recent law of Amendments to apprenticeship conditions (29.09.1995) requires that employers should advance the cost of the examination to apprentices.

[101b] On 1.O8.1991 the Law of Ongoing Occupational Education (WCBO) came into force in Holland; it regulates basic VT (BBO), part-time training (MBO) and the institutes in charge of specific training: distance training, employment agencies, private educational institutions, enterprises (Frietman: «Initial occupational training in the Netherlands», in rev. cit., p. 162 and ff.).

established for the free circulation of students between the two systems and the integration of careers. In others, like Germany and Luxembourg, clear progress has been made towards the same goal in the last few years.[102]

From another point of view, we may add that –as already mentioned– the legislation of several countries gives apprentices that have successfully completed their cycle some expectations or benefits, or even the right to a workpost with the employers that trained them.

114. Regarding failure in the final exam or the intermediate evaluation tests, it obviously has direct effects upon the continuity of the apprenticeship process.

In Luxembourg, for instance, at the end of each year the competent authorities decide, on the basis of the average marks scored by apprentices in general education and in practical and theoretical training, whether they may pass on to the following stage or not; anyway, those who do not pass on-the-job practice in the enterprise cannot continue.[103]

Some labour laws, like the LC of Paraguay, make it explicit that failure in the final exam puts an end to the apprenticeship relation, without any responsibilities on the part of the employer (art. 114-c).

Sometimes, texts give a second opportunity to apprentices that have not qualified. For example, art. L.117-9 of the French LC, incorporated by L. No. 87-572, admits that in cases of failure in the exam, the apprenticeship period may be prolonged up to one year. This could be managed either by extending the initial contract, or closing a new agreement with another employer.

Some systems, like those of Luxembourg and Holland[104], opt for more flexible solutions.

In effect, although apprentices that at the end of their cycle pass the practical tests but not the theoretical subjects[105] are not entitled to the respective diploma or national degree[106], they are all the same awarded an initial qualification or practical certificate.[107]

[102] Doc. CEDEFOP, 1995, p. 37. According to this report, new options have been created in Germany to bring academic education and VT closer together. As from 1992, students entering apprenticeship may, even without a *Haupschule* (1st. cycle secondary school) degree, obtain a *Realschule* (1st. cycle secondary school of higher level) degree upon completion of their apprenticeship, which «*opens up to them a wide range of possibilities*». In Luxembourg, a law of 4.09.1990 incorporated apprenticeship into the intermediate cycle of technical education.

[103] Doc. CEDEFOP, cit. p. 35.

[104] Frietman, op. cit., p. 165.

[105] In Luxembourg, there is flexibility in the examinations for theoretical subjects, which «*are frequently oral and not written*» (Doc. CEDEFOP, cit., p. 36).

[106] In Luxembourg: the Certificate of Technical and Occupational Aptitude (CATP), which is the same as the one issued by full-time schools and permits access to higher education.

[107] In Luxembourg: the Manual Qualification Certificate (CCM).

On the other hand, in Holland and other countries that have adopted modular systems, candidates that pass a part of the examination matching a certifiable unit, also get a certificate.[108]

§11. Issuance of certifications

115. There are different systems that govern the issuance of certifications. For example, according to various regulations they must be issued by: the employers themselves, more or less freely; by training centres, enterprises or institutions; by professional chambers; by specialised organisations; by ministerial departments of labour, employment, vocational training, or education.

On the other hand, in some cases testimonials issued by employers or other organisations become official when endorsed by some of the above ministries.

116. Certifications issued by employers accredit the experience or specialisation acquired in a general way, as stipulated by law in Argentina (L. 24.465/95, art. 4.8); Côte d'Ivoire (LC, art. 12.9), or Guatemala (LC, art. 172).[109]

Sometimes certificates have to comply with the standards laid down by the respective VTI –as happens in Panama in accordance with D. 36/91– or necessarily require approval by the VTI, as in the Dominican Republic where, pursuant to Res. 15/88, besides the employers' signature certificates must bear that of the INFOTEP representative.

117. In Colombia and in other countries certification is awarded upon completion of apprenticeship by the organisations or enterprises that delivered the courses, which are also entrusted with checking out the results of training in the productive phase and reporting back to VTIs (Ag. 18/94, arts. 11 and 13).

Likewise, in Belgium and Greece evaluation and certification are implemented by Training Centres, but diplomas are issued on behalf of the respective Ministries of Education or Labour.

118. In several European countries, like Germany, Denmark, Holland and Luxembourg, entrepreneurial Chambers or industrial committees take part in, or supervise all the evaluation-certification procedure, or part of it.

119. Whenever there are specialised certification services, as in the Philippines, Ireland, Namibia, the United Kingdom, etc. they are in charge of the task.

[108] Doc. CEDEFOP, loc. cit.

[109] In Italy, law 451 of 19.07.1994 on labour and training contracts, provides that employers should deliver to workers an *«attestato»* on the experience developed (art. 16.9).

120. In other countries, like Algeria, certificates are dispensed directly by the Vocational Training Administration, in accordance with the conditions determined by a Resolution of the Vocational Training Ministry (L. 90-34, art.2 and Exec. dec. 93/67, art. 11).

121. In countries where apprenticeship already leads to diplomas or degrees of the educational system, as it does in France, such awards are conferred by the regional offices of the National Education Ministry (Rectorate).

As an exception, vocational training in agricultural activities is in France in the sphere of the Ministry of Agriculture, and the respective certificate (Certificate of occupational aptitude in agriculture, CAPA) is therefore issued by that Ministry.

122. Certifications are increasingly important owing to the scarcity of jobs available. In fact, there are several countries where it is difficult to get employment without an accreditation of the respective training.[110]

Certifications which, as already underlined, are increasingly important for free circulation and for the progress of educational systems, have raised the problem of recognition across frontiers to allow for geographical displacements, especially within the Communities that have been growing in different parts.

The Treaty governing the European Union provides that, regarding VT policies, the Community should pursue, among other objectives, the promotion of access to vocational training and the mobility of educators and trainees, especially of young people (art. 127.2).[110a]

§12. Promotion of apprenticeship

123. There are different ways in which apprenticeship is being stimulated in its various forms.

For the purposes of examining such measures, we shall make a distinction between general policy provisions that may have favourable repercussions upon apprenticeship contracts, and concrete actions to promote this training approach.[110b]

[110] Doc. CEDEFOP, 1995, reports that in Europe this is happening in particular in Germany, Denmark, France and the Netherands.

[110a] EEC organisations have, since 1963, been developing a common VT policy. In 1985 Council Dec. 85/368/EEC laid the foundation for the conformity of VT qualifications among member States. According to it, the Commission has been issuing communications about correspondence in various sectors: Hotels and restaurants, Automobile repair; Construction; Electricity/electronics; Agriculture/horticulture/forestry; Textile/garment; Metal; Textile/industry; Commerce; Offices/administration, banking and insurance; Chemicals; Food Industry; Tourism; Transportation; Public works; etc. Towards the end of 1992 the Council passed a resolution on «Transparency of occupational qualifications» (DOCE C 49 of 19.02.93).

[110b] In Germany, a law of 1976 charged the Federal VT Institute (BBiBB) with the promotion of training places.

Among general policy provisions are the creation of special funds; the widening of decentralisation and participation; the prevention of conflicts between apprentices and employers, and the support of apprentices' training centres.

Concrete measures include incentives to enterprises, and instruments to make apprenticeship more attractive for young people and their families.

124. An example of a special fund to foster apprenticeship is the Programme of Scholarships for Apprentices adopted in Colombia by Chap. III (arts. 16 and ff.) of Ag. 18/94 dictated through application of law 20/1982 and Reg. Dec. 1895/1986, whereby the Special Training Fund (FEC) was created.

Various other funds are intended, among other things, to foster apprenticeship, like the one included in parts V and VI of law 24/1994 of Zimbabwe, and the fund created by Canadian law 22.06.1995 of Quebec.

125. Widespread specialisation, decentralisation and participation in the agencies that advise or supervise the training of apprentices are as many manifestations of the policy of paying closer attention to apprenticeship and, naturally, of promoting it.

The creation of specialised bodies to manage apprenticeship with the participation of the social agents is nothing new.[111] What is now taking place is just a continuation and generalisation of this process, as may be seen by the number of recent laws or amendments to previous ones that embody measures of this kind in countries of very different characteristics.

We can cite in this connection many examples of recent laws passed in Algeria, Tunisia, Namibia, Ecuador, El Salvador, Dominican Republic, Philippines, etc.

Art.7 of Law 90-34 of Algeria instituted a Participation Committee one of whose duties is to supervise training plans and apprenticeship contract models.

Likewise, also in Algeria, D. 93-67 created two agencies for the organisation and promotion of apprenticeship. In Tunisia, Chap. II of law 93-10 envisages the operation of a National Vocational Training Council, with representation of empoyers' and workers' organisations, and in Namibia provision has been made for the participation of the social ac-

[111] Participation of the social actors in the planning and implementation of VT policies has a long standing tradition in Europe and in the VTIs of Latin America. Regarding the situation in this latter region fifteen years ago, see: *El tripartismo y la FP en América Latina*, Cinterfor/OIT, Mont., 1980, with special reference to apprenticeship on pp. 80 and ff. Further evidence of participation in policies for the promotion of apprenticeship is afforded by some countries, with France as a clear example, where agreements reached by employers and workers on these matters tend to be sanctioned by law.

tors in the National Training Board, and advisory trade committees have been set up (NVT / Act 1994, arts. 3 and ff.).

In Ecuador (Law No. 132 of 20.11.1989, which reformed the SECAP); El Salvador (INSAFORP Law, art.8) and in Nicaragua (INATEC organic law 40-94), the Boards of directors of the respective VTIs include representatives of the occupational sectors. Employers and workers have delegates in the Consultant Committee on Apprenticeship of the Dominican Republic, according to Res. 37 / 1991.

In August 1994 the Technical Education and Skills Development Act (TESDA) was passed in the Philippines, whereby a tripartite Board was created for the management of apprenticeship, with special emphasis on the dual system (Section 8).

126. Trends towards decentralisation are a common denominator in educational systems, also reflected in the legislation and affecting VTIs, as in Argentina, Federal Education Law / 1993, and in Colombia, the 1991 Constitution, art. 76 and National Education Law of 18.01.1991.

In connection with apprenticeship, there are two channels for these trends. On the one hand, the setting up of regional or local organisations or committees, as in Algeria (Exec. Dec. 91-519 and 95-31) and Tunisia (L. 93-10, art. 9). On the other, a complementary road, as in France (where decentralisation is considered one of the pillars of the system) or in Peru, consists of allocating to the respective regions part of the resources generated by them, or the total amount of them.

127. Some countries are trying to make apprenticeship contracts more attractive for the two parties, by means of special formulas intended to prevent or settle disputes between apprentices and their employers.

Such is the case, for instance, of Res. of the Executive of the French-speaking Community of Belgium of 24.10.1994 which, among the duties of Apprenticeship Secretaries, includes that of acting as mediators in conflicts between apprentices and employers.

Other nations, like the Philippines (LC, arts. 65-67) and Tunisia (L. 93-10) have adopted administrative conciliatory procedures that must precede any legal action at labour courts.[112]

As to measures in support of the creation of centres for the training of apprentices, recent examples are arts. 107 and ff. of the 1992 LC of Iran, and Chap. VI, arts. R. 116-1 and ff. (Dec. 88-103 and 93-316) of the French LC.

[112] Art. 21 of the Apprenticeship Law of Costa Rica charged the INA Management with the settlement of disputes between employers ad apprentices, when they did not fall in the orbit of labour courts. The Res. of the INA Management can be appealed before the Joint Committee that operates within that VTI.

128. Regarding incentives for enterprises to take on apprentices, there are laws that envisage three different types of measures: reduction or even exemption from social security contributions and other taxes; tax exonerations and credits, and direct subsidies.

Examples of reduction or exemption from contributions to social security and other taxes on remunerations are the measures taken in Argentina, Spain, France and Tunisia.

Argentina (art. 15 of Dec. 738 / 95) and Tunisia (L. 93-10, art. 24) have established exemption from all types of contributions on the sums paid to apprentices, in view of the non-labour nature that the law attributes to the tie between employers and apprentices.

In Spain, the present wording of art. 11.3 of the WS authorised the government to grant exemptions or reductions in Social Security dues for this type of contract. On that basis, Roy. Dec. of 27.07.1993 was dictated, whose art. 14 establishes one single payment of social security contributions.

In France, the LC stipulates that a certain portion of the apprentices' wages is exempt from social contributions of legal or conventional origin and any fiscal or para fiscal taxes (art. L.118-1).

129. Several countries admit the posibility of compensation of all or part of the taxes due, or of apprenticeship taxes, for the sums paid to apprentices (Argentina, L. 90-34; Chile, LC, art. 77 and ff.; France, LC, L.118-1; Gabon, LC, art.85); the cost of their training or direct apprenticeship costs (Canada-Quebec, L. 22.06.1995[113]; Chile, Dec.Supremo 146 / 89, arts. 59-61 and 63-68; Philippines, LC, art. 71); financial support to apprentices' training centres or donations to vocational education schools and other similar expenditures (France, LC, arts. L.118-2, L.118-3); etc. French employers can also obtain tax exemptions for disbursements for the pedagogical training of teachers (art. L. 118-1).

In some legislations, labour costs usually covered by employers are debited to special funds. In Poland, for example, according to art. 17(1) of law 446 / 1989, the remunerations of apprentices and ancillary expenditures come out of funds of that kind, and in Tunisia there is a fund to cover apprentices' insurance policies against accidents at work and occupational diseases.

Another type of incentive consists directly of granting employers a bonus for each contract they sign, as happens in France, where this benefit

[113] Actually, the Quebec system operates differently, although it comes to a similar solution. In accordance with the law cit., employers assume the obligation of taking part in the promotion of training by allocating a percentage of their payroll to training expenditures (which may be apprenticeship). If this is less than the stipulated minimum, they must pay the difference into the National Manpower Training Fund, instituted by the same law.

is added to tax exemptions and credits. Of course, many employers think that to encourage enterprises to engage apprentices, direct costs should be abated through a rebate or freezing of remunerations, and an increase of productive hours as compared with time of theoretical instruction.[113a]

130. Action taken to make this training approach more attractive to young peope and their families covers three main areas: improvement of the apprentices' working conditions; guarantees as to the efficiency of the training, and approximation of its results to those of the regular education system.

With reference to the first area, it is obvious that even the legislations that deny the labour nature of the relationship, have taken measures to provide dignified conditions for apprentices. We may refer, in that respect, to everything we said above about remunerations, work hours, holidays, protection in case of accident, personal treatment, union rights, etc. Even French legislation has acknowledged, since 1982, the need to establish an apprentices' statute, that has been subsequently complemented.[114]

On the line of the dispositions aimed to make aprenticeship more attractive, the Costa Rican norm, which have established complementary scholarships in order to increase apprentices' income, should be quoted.[115]

131. As to guarantees of the efficiency of training, we may recall the following: conditions for enterprises and trainers to qualify for apprenticeship contracts; the quite generalised existence of training tutors or counsellors; the gradual adoption of alternating systems, with mandatory indication of the time devoted to theoretical education; technical inspections additional to routine labour controls; etc.

On the other hand, as we have already seen, in some countries apprentices that are dismissed before the end of their contract, or in any other way frustrated in their training expectations, have channels for obtaining fair indemnity.

132. Other changes that are occurring in many countries are also aimed at enhancing the image of apprenticeship and making it more appealing.

They are measures intended to bring it closer to the regular education system, with the simultaneous implications of an occupational career and further studies at higher level.[115a]

[113a] Upon this work going to press, the spokesmen of German employers have given precisely this answer in view of the alarm caused by the scarcity of apprenticeship vacancies.

[114] An original formula has been adopted by the legislation of Belarus (LC, art. 191) and other former socialist countries, that encourages workers to accumulate work and studies.

[115] In defining the common framework of objectives of the Leonardo da Vinci Programme, to be applied as from 1999, the Council of the European Union has decided, among other measures, *«to raise the status of vocational education and training and make them more attractive, and to favour the social equivalence of academic diplomas and occupational certificates»* (art. 3-f, Council Decision of 6.12.1994- DOCE, 29-12-94) (94819 / EC).

[115a] See above, para. No. 71.

The adoption of modular methods, with the possibility of their respective certification, is another incentive for prospective candidates to apprenticeship, taking into account the fresh opportunities they offer apprentices to achieve qualifications.[116]

In the same sense may be cited the growing acceptance of prior apprenticeship accreditations (APL) and their generalised recognition[117], as well as increasing concern about occupational guidance and the creation of pre-apprenticeship schemes, as the ones already existing in France and other European countries, and more recently in Portugal (Decree-law 383 / 1991 and Regl. 1061 of 1992),

§13. Final considerations

133. All along the preceding paragrahs we have borne out our initial assertion that in these last few years there has been renewed interest in the training approach that, notwithstanding supplementary instruction at schools or centres, is essentially based on experience in a real-life work situation.

From the viewpoint of the present study, the fact was evidenced by the lengthy initial list of countries in which regulations about apprenticeship contracts have been adopted in the last five years, that was demonstrative of the intensive legislative and regulatory activity that is going on uninterruptedly in countries of the five continents and in societies of very different characteristics.

The multiple examples with which we tried to illustrate the examination of various aspects relating to apprenticeship widely confirm the global scope of this phenomenon.

It was also manifest that legislative and regulatory activities refer not only to the contracts between apprentices and the enterprises where they work and are trained, but also to their general environment, including determination of activities that can be the object of apprenticeship, requirements from enterprises and instructors, apprentices' schools or training centres, evaluation of competencies acquired, organisation and validation of the respective certifications, etc.

[116] Annex 3 of the document *«Mise à jour des Normes sur la mise en valeur des ressources humaines...»* (BIT, Geneva, 1995, p.12) includes the following among elements to be added to, or more clearly underlined, in Recommendation 150 / 1975: the importance of modular training and duly recognised certifiable units».

[117] It has even been held that *«the decisive advantage of the German system lies in the transferable character of competencies on the basis of a rationally recognised certification»* (C.F.Büchlemann, J.Schupp-D.J. Soloff «Formation par apprentissage: défis pour l'Allemagne and perspectives pour les Etats-Unis», *La doc, Française*, No. 45, Paris, 1994, p. 51-58, apud Maryse Peschel, in *Formation Professionnelle*, CEDEFOP, 2 / 94, p. 87).

134. It became likewise patent that all the legislative and institutional machinery that is being deployed is not confined to regulating apprenticeship contracts with the same degree of neutrality applied in the past to many other contracts in which basically private interests are at stake.

Nor is its purpose limited to the protective objectives that laws have conferred upon labour contracts –among which apprenticeship contracts are generally understood to be included– or to the similar specific aims of minors' legislations.

The rules of apprenticeship contracts seek, of course, for the protection of apprentices as workers and as minors, and try to guarantee that they are not deceived in their legitimate expectations to achieve a qualification. But as has become apparent, they also implicitly and explicitly pursue the promotion of this type of agreements.

135.The promotional nature of apprenticeship legislation has become particularly important in view of the increasing difficulties of young people to enter into the labour market, the speed of technological changes and a whole series of economic and cutural events that are transforming business management and labour relations in a more or less radical manner.

So that over and above the various rules and regulations adopted in recent years, that we have looked into herein, and despite their diversity, there hovers the compelling notion that apprenticeship is an appropriate means to meet economic and social, individual and collective expectations at the same time.

Regarding young people (and their respective families) those expectations have to do mainly with the prospect of promotion and the hopes of access to a profitable occupation. For employers, they mean the possibility of having skilled manpower, well suited to labour conditions and available at the right moment. For societies as a whole, they appear as a means for optimising human resources in a more economical and perhaps more effective manner, by creating, upgrading or maintaining the adequate conditions for productive development.

136. We must admit that all the circumstances attending this refloating of apprenticeship are not entirley new; nor are the hopes pinned on it any novelty, or the difficulties that must be overcome.[118]

But it is undeniable –so much so that it would be idle to discuss it– that many factors have become accelerated in the last ten or even five years and that economic and cultural changes have reached a higher pitch and breadth than in the recent past.

[118] Nearly twenty years ago A.Wilches, on the basis of an enumeration of the economic and social factors that justified apprenticeship and that are still substantially valid, suggested the need for studies and changes to overcome the situation that that training approach was going through («¿Está en crisis el aprendizaje?», in *Boletín Cinterfor*, No. 54, Nov.Dec. 1977, p. 37 and ff.).

In any event, current circumstances seem to be acting in favour of a consensus about the virtues of apprenticeship, that gives backing and momentum to legislative action for its regulation and promotion.

137. This consensus and persistent legislative thrust does not preclude an also constant questioning of apprenticeship contracts.

This is not the right time to go deeper into the different arguments in favour and against this type of training approach. But we think it unavoidable to make a brief summary of pros and cons, in order to understand the justifications of the above consensus, and judge in consequence the consistency of current legislative trends.

We shall try to make a systematic presentation of the negative opinions that are still valid, and then submit the rebuttals and allegations regarding the advantages that apprenticeship contracts have preserved, or acquired in present times.

138. Dissenting views refer to three main aspects: mediocre results, even in countries that have introduced important changes in response to reproaches to traditional apprenticeship; inadequacy of apprenticeship *vis-à-vis* the needs of enterprises; insufficiency of apprenticeship as an instrument to attain qualification.

In respect of results, abuses and deviations have not disappeared and in practice, neither the enterprises that are in a position to offer adequate training are interested[119] in apprenticeship, nor are young people attracted to it[120], even in countries with a strong tradition in

[119] The author of Doc. CEDEFOP, 1995, cit. Martina Ní Chealaigh, who does not conceal her belief in the virtues of apprenticeship, recognises that *«the subject of apprenticeship offer is always problematic among large enterprises»*, for which reason in most countries it is exclusively concentrated in SMEs, with the grave risk that that entails for the homogeneity and quality of the training dispensed (p. 54) Everything seems to indicate that this judgement that refers to the experience of the countries of the European Union, is universally valid. To all of which should be added the negative factors already mentioned by Wilches in the article cited above, like the scarcity of competent instructors, or the lack of occupational analyses adapted to real needs, that cannot be overcome just by legislative changes.

[120] The report quoted in the preceding note acknowledges that *«In the majority of countries <of the European Union> the annual number of apprentices that join training has diminished»* (p. 40). This assertion is confirmed and supplemented by the evolution of apprenticeship figures from 1980 to 1983 (table 8, p. 41), which must also be analysed taking into account the rates of dropout or non-obtainment of certificates, that are suggestively high in several countries: 40% in Holland, 37% in Luxembourg, 30% in Denmark and Greece (table 9, p. 42). It is interesting to note that, according to table 10 of the same document (p. 43) the percentage of young people under apprenticeship is low among those that are following some kind of training, except in Germany, Denmark and Luxembourg. These data are basically borne out by a survey analysed by C. Pellegrini, although in it the percentage for France (22.7) is higher than that of Denmark (16.7) («Statistical Analysis, in VVAA, *Contractual Policies concerning continued vocational training in the European Community Member States*, FORCE, Peeters, Louvain, 1994, p.389). Some commentators, like the ones cited by Maryse Peschel in *Vocational Training* (S. above, note 126), do not hesitate to consider that *«a lack of interest on the part of the young people themselves»* is the main factor for concern. On the other hand, only a low percentage of apprentices take advantage of the new opportunities offered to them to continue a career in the academic world (doc. CEDEFOP, cit. p. 37).

that respect and in which legislation has introduced all kinds of incentives.[121]

Along the same lines, but regarding expectations of improving the access of the young to labour markets, it has been pointed out that at most it can be said that in those countries «statistical data are not as favourable as might be expected»[122], and the situation seems unchanged in the last few years[123]

139. Allegations as to the inadequacy of apprenticeship *vis-à-vis* the needs of enterprises are on two counts.

On the one hand, there is a persistent or growing conviction that this kind of training belongs to the past. In particular, doubts are cast on the viability of the crafts slant of the qualifications generally achieved through apprenticeship, at a time when changes and fluctuations in labour life do not require very specialised experts but «flexible generalists, capable of covering a diversity of posts and needs», with wide possibilities of retraining.[124]

On the other hand, the feasibility of apprenticeship is contested from the employers' point of view. Their reluctance to hire apprentices is explained saying that whatever incentives they are offered, it is not profitable for them to make investments in occupational qualifications. That would be the case not so much because of the usual argument that employers would lose by having to pay for the cost of training and being obliged to increase the remunerations of qualified apprentices[125], but owing to the dead weight of dropouts and the impossibility of ensuring the future employment in the enterprise of all those who have completed their apprenticeship there, for a long enough period to recoup their investment, in view of the labour freedom and special protection enjoyed

[121] Another motive for criticism are the incentives themselves, particularly reductions or exemptions from contributions to social security, which imply denial of its principles and a worsening of its already difficult financial situation, without any appreciable results.

[122] Opinion of the author of doc. CEDEFOP, 1995 (p.43), who in view of available data openly admits that «although one of the arguments in favour of apprenticeship and its current reemergence is that it facilitates access to employment, it seems very difficult to find information about the success that apprentices may have in labour markets».

[123] A report published in the *Bulletin CEREQ* (No. 67, 15.03.1991) about a survey conducted in France at the time, states the following: *«Apprentices seem to be in a more favourable situation regarding employment, as seen through an unemployment rate in the month of March after the end of their training which is lower than that estimated at that date for secondary schools (Lycées, LEP). However, this less important risk of unemployment is connected with the fact that most apprentices are engaged by their master-employers after the end of their apprenticeship contract. By contrast, those that do not join the enterprise that trained them have a higher unemployment rate than LEP leavers»*. Additionally, the report says that this is not a sure thing, since the two populations are not comparable.

[124] Opinion voiced by Beverly Geber in an article published by *The Economist* in 1994, as transcribed in «Una propuesta polémica...» *Boletín Cinterfor*, No. 134, Jan.- March 1996, p.61.

[125] Becker, quoted in the Doc. CEDEFOP, p. 54.

by apprentices in most countries.[126]

140. There are other arguments that go beyond a mere listing of shortcomings of the system due to its faulty regulation, but that consider such shortcomings inevitable in view of the basic ineptitude of apprenticeship contracts to deliver satisfactory vocational training.

They were expounded some time ago supposedly with research backing, but claim universal validity in questioning the philosophy and methods of this training approach.[127]

The holders of this negative conception profess to have found a new and different definition of apprenticeship contracts that, according to the research they have conducted, would be more in line with their true reality. In effect, in this revisionist approach they are described as «the aggregation of a multiplicity of practices whose only common denominator is to inculcate the material and social constraints of occupational life».[128]

Starting from there, they add that:

- the «pedagogics of alternation» turn into a concrete fact the rejection of theoretical training and the preeminence of a practice subordinated to the immediate needs of productive work;
- a balance between productive work and training, i.e. between economic and pedagogical imperatives, is only struck in a limited number of cases, as subservience to the demands of production is the rule, even at apprentices' training centres; the inevitable result is a mediocre training that thwarts any possibility of reaching the level of qualified worker;
- what is really intended in the various situations governed by apprenticeship contracts is to instill into apprentices certain moral and ideological concepts that make them usable by employers.

From all of which they conclude that «apprenticeship under contract is a funnel leading from school failure to exploitation in the labour market. It is a passage from school «disorder» to the order of the workshop, turning young students into a manpower reserve trained under the discipline of work.[129]

[126] As we saw in para. No. 80 the legislations of some countries like Côte d'Ivoire, Gabon and Namibia impose some restrictions on apprentices' freedom, and in some cases like that of Vietnam they are required to remain in the enterprise for a certain period. However, they are the exception, and some laws like that of Germany, as pointed out by Däubler, lend *«special protection to the right of apprentices to choose a workpost freely after having passed their examination: art. 5, para. 1 of the BBiG declares null and void all bans in this connection and only admits the creation of a labour link as established in the contract within the last three months of vocational training» (Derecho del Trabajo,* cit., p. 945).

[127] C. Ferry-F. Mons Bourdarias, «L'apprentissage sous contrat...», in C.O.R.D.E.S., Rapport d'activité (1979-1980), *La Documentation Française,* p. 98 and ff.

[128] Op. cit., p. 98.

[129] Op. cit., p. 99.

141. Arguments in favour of apprenticeship are also numerous and varied.

The first contention is that most negative judgements refer to traditional apprenticeship and do not take into account new developments and practices.

That means to say that most objections would only be valid for the sort of apprenticeship dispensed in countries where regulations and applications have not evolved sufficiently. [130] This could be made extensive to legal rules and regulations that have been adopted recently, but still adhere to old schemes, lack flexibility, do not pay enough attention to guarantees for an efficient training, or quite simply are not applied at all.

142. By contrast to the apparent opposition of employers and workers, the prestige and vitality of apprenticeship in certain countries is mentioned, as in Germany, Austria, Denmark or Luxembourg, where it has evolved and acquired the necessary flexibility to adapt to new situations.[131]

Statistical data about the relative stability of the number of students and the comparative weight of apprenticeship among training approaches in those countries seem to corroborate all this.[132]

On the other hand, the constant decline of job openings that for various reasons is affecting all countries of the world, might justify the ambiguous data about the effectiveness of apprenticeship as a channel of access to permanent employment.

143. As to the much bandied inadequacy of crafts apprenticeship to modern production conditions, stress is laid on the fact that many countries are making good progress towards overcoming narrow specialisation in traditional trades.

This is taking place through the modularisation of courses, combined with the accreditation of prior training, which paves the way for new types of qualification and new areas of activity[133], the rationalisation and reduction of the number of trades and simultaneous building of wider job clusters, that leave specialisation for subsequent stages[134], and the growing acceptance of apprenticeship just as the initial phase of a lifelong education.[135]

[130] At a seminar held in Marseilles in April 1994, participants agreed that there are greater possibilities for apprenticeship to act as a road to the future, instead of a blind alley. (J.M.Adams, «Callejones sin salida o autopistas hacia el futuro», in *Revista Europea de Formación Profesional*, No. 2/1994, p. 81.

[131] See above, note 23.

[132] For Germany, Denmark and Luxembourg, S. tables 8 and 10 of Doc. CEDEFOP, p. 41 and 43. Regarding Austria, the CEDEFOP Doc. mentions on p. 37 the favourable opinion of the OECD, *Policies for apprenticeship*, Paris, 1979, p. 75.

[133] Opinion of Martina Ní Chealaigh, in Doc. CEDEFOP, 1995, p. 26 and 53.

[134] Ibidem, pp. 39 and 45-46. On p. 53 the cases are cited of «Germany and Denmark, where apprenticeship schemes have been well accepted for a wide range of occupations from all sectors of the economy».

[135] Ibidem, p. 53.

144. There are other arguments which are not merely defensive but emphasise the merits of the system and refute the pedagogical and philosophical objections enumerated in preceding paragraphs.

They have in common the acceptance of the training effects inherent in the new models of labour organisation that seem to be replacing the taylorist-fordist pattern[136], i.e. models in which enterprises act as *learning organisations.*[137]

Along similar lines, the supporters of apprenticeship call for the immediate priority of apprenticeship contracts as a training approach fully in keeping with the requirements of the new international economic context. They also consider it well suited to some conceptual postulates, such as acceptance of the fact that «learning –and above all learning quickly and in teams at all occupational levels of the enterprise– has become an imperative need», wherefore «training must be increasingly dependent on the productive world and the real life of enterprises, and intermingled with them».[137a]

As a matter of fact, although apprenticeship may not be the only approach that gives a satisfactory answer and fits into this new definition of vocational training, it is undoubtedly concrete enough in recognising «productive units as the basic object of attention», and «mobilising the various training resources according to the demands of enterprises and not to existing training capacity».[137b]

Additionally, stress is once again laid on the proverbial superiority of the technical infrastructure that enterprises make available to apprentices, as compared to that of schools or training centres, that cannot renew their equipment at the same rate as employers, who are obliged to do so under the pressure of circumstances.[137c]

145. It is also argued that the training provided by apprenticeship contracts is of greater pedagogical value than that furnished by other

[136] A. Martín Ardiles, «Cuadro comparativo: 'fordismo' y 'toyotismo'», in *Revista Relasur*, No. 6, Montevideo, 1995, p. 236.

[137] Concept cit. in annex 3 of the doc.: *Mise à jour de Normes sur la mise en valeur des ressources humaines...*, BIT, 1995, as one of the elements that should be added or more clearly defined in the Recommendation that would revise R. 150/1975. Similarly, M. Ní Chealaigh asserts that the importance of a workpost for learning has been discovered anew *«with the new term qualifying or learning organisation»* (Op. cit. p. 56).

[137a] *Training Horizons - A navigation chart for countries of Latin America and the Caribbean*, Reference Document submitted by Cinterfor/OIT to the 32nd. Meeting of the Technical Committee, Ocho Rios, Jamaica, 1995, p. 27.

[137b] Op. cit., loc. cit.- Although this part of the Cinterfor document makes no specific mention of apprenticeship as a suitable approach to meet these new demands, when some innovations by VTIs of the region are analysed, the importance is underscored of *«using all the potential of contracts envisaged by the legislation on apprenticeship, at the levels of skilled worker, professional technician and technologist»*. And *«the promotion of apprenticeship contracts among employers»* is also pointed out as a fundamental element in the new strategies of those institutions (Op. cit., p. 46).

[137c] This still applies even when training centres utilise «virtual» workshops instead of real-life ones.

training approaches, that its virtues have a psychological justification and a social projection that goes beyond the labour field.

Regarding pedagogical aspects, the great importance of learning by doing is underlined, as well as the significance of knowledge acquired through experience.[138]

Apprenticeship is also a valid method for persons that have difficulty to learn in a school system, but have aptitudes to learn at work.[139]

There are besides, the new possibilities of learning and having a career of qualifications and promotions on the job, which would eventually lead apprentices to the academic world.[140]

146. Other pedagogic advantages ascribed to learning through experience go hand in hand with psychological justifications.[141]

In effect, the fact is mentioned that in new technologies like microelectronics, where work and experimentation merge together, it is necessary to develop capacities for independent problem-solving and improvisation, which is more feasible in actual work processes.[142]

This argument would not only give the lie to the classical objection that apprenticeship is ill-suited to the production conditions of the modern world, but would also suggest that apprenticeship contracts are the best way to train the workers needed nowadays.

Mention is also made of the advantages for adolescents of interaction and communication at the workpost, within a monitoring group of adults.[143]

147. The many beneficial consequences attributed to apprenticeship contracts from the social angle include a better training for life, resulting from the above situation, i.e. interaction of adolescents with competent

[138] Op. of W. Streeck, «Institutional mechanisms...» in Dettle & Weil, op. cit., apud M. Ní Cheallaigh (op.cit. p. 57).

[139] Ibidem, p.59. The author ends up by saying that: *«A labour environment and the condition of wage-earner can be a better motivation for these people to learn than a school environment, where they never had success or positive achievement»*. The same idea seems to underlie para. h of art. 3 of the Leonardo Programme of the European Union, which emphasises the need to *«promote concrete VT actions in favour of disadvantaged young persons... in particular those who drop out of the educational system without an adequate training»*.

[140] S. above, para. 113.

[141] Point of view of Kolb, cit. by M. Ní Cheallaigh, on p. 57 of the op. cit., who in a 1984 study divides *«apprenticeship into four stages: Stage 1: 'concrete experience' by doing something (working period); Stage 2: 'reflective observation' (school period); Stage 3: 'abstract conceptualisation' (relating learning to personal experience, which can be done in the enterprise or outside it); Stage 4: 'active experimentation' (in the final phase of the process, when apprentices can perform tasks more independently)»*.

[142] M. Ní Cheallaigh, citing Streeck, loc. cit.

[143] Opinion of Vigotsky, quoted by Cheallaigh (op. cit., p. 57), who thinks that a *«proximal development zone»* that would grow at the workpost would be particularly favourable for the training of young people.

adults in two extra-familial contexts: the enterprise and the school or training centre.[144]

On the other hand, that which to detractors of apprenticeship was a negative factor: training to bear the constraints of labour life, is seen as a process of «occupational socialisation» and therefore a positive and useful factor, by those who think that apprenticeship has no equal.[145]

148. We can add two supplementary arguments in favour of apprenticeship:

On the one hand, regarding costs, the assumption that training implemented to a large extent in enterprises is less onerous than that imparted at full-time schools or centres. Great importance is currently attached to this aspect, not only in developing countries with a chronic scarcity of resources, but also in some developed ones[146], and in general in all those where economicist doctrine dictates reduction of government expenditures regardless of all else.

On the other, the fact that in many countries apprenticeship has the support of the social agents involved, who would be ready to admit the «particular appropriateness of this training mode to the needs of enterprises».[147]

149. The heated debate between opponents and supporters of the training approach embodied in training contracts has had no clear theoretical definition so far.

However, according to the data stemming from legislative trends in all parts of the world, the matter seems to be definitely settled in favour of apprenticeship.

But we shall come back to this in our conclusions.

[144] Opinion of S. Hamilton in op. cit. apud. M. Ní Cheallaigh, loc. cit. In that same sense, the Common Decision on VT Diplomas and Certificates of 13.10.92 (Common Decisions CIES-UNICE-CIEEP) trans. in the Rev. del Trab., year 1, No. 1, note 2a, p. 187, gives obvious importance to work experience for «qualification»; concept developed in annex 1.3 (op. cit., p. 191-192), which among the essential abilities that must be acquired includes *«the capacity to detect problems and find possible solutions... perform teamwork, relate to other people... learn by oneself...»*

[145] M. Ní Cheallaigh, op. cit., p. 56.

[146] Ibidem, p. 53, where she reports that the lesser cost of apprenticeship would have led to its relaunching in Finland.

[147] As stated in France by Interministerial Circular Letter of 22.03.1993 regulating French law 92-675 and D. 93-316.

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