



## Discourse of termination of employment at FIAT: A conceptual, legal and terminological analysis\*

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### ABSTRACT

Terminological and conceptual differences within the general discourse of labour and employment law comprise the object of studies covering different research fields, e.g. Comparative Labour Law, Industrial Relations, Legal Studies, Semiotics, Social Sciences, and Translation Studies. A significant amount of scholarly attention has been paid to conceptual differences arising from the notion of 'termination'. In addition, a substantial body of research has been devoted to the investigation of those concepts in the disciplines of labour law and industrial relations which pose special challenges from a terminological point of view when compared and contrasted with apparently similar notions in other national legal systems. Taking as a point of departure the previous literature, this paper provides a comparative analysis of some concepts associated with the termination of employment in a number of countries, primarily considering aspects of relevant national labour laws, then further investigating issues from both the linguistic and semantic point of view. The adopted approach will be of an interdisciplinary nature, mainly involving notions pertaining to linguistics and industrial relations. In this connection, this paper will examine a practical case, namely the case of FIAT, a multinational with its headquarters in Italy. The system of labour law in a number of countries where FIAT has employees will be briefly analysed, followed by some

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considerations of a terminological and conceptual nature. The analysis will point out a number of questions in both linguistic and conceptual terms that are of interest in comparative terms, as the result of different cultural, historical and political developments.

**KEYWORDS:** termination of employment, comparative labour law, industrial relations discourse, legal language, conceptual and terminology issues.

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## Darbo santykių nutraukimo „Fiat“ įmonėje diskursas: koncepcinė, teisinė ir terminologinė analizė

### ANOTACIJA

Terminologiniai ir koncepciniai skirtumai bendrame darbo ir užimtumo teisės diskurse nagrinėjami atliekant studijas, apimančias įvairias tyrimų sritis, tokias kaip lyginamoji darbo teisė, darbo santykiai, teisės studijos, semiotika, socialiniai mokslai ir vertimo studijos. Daug dėmesio mokslininkai skiria koncepciniams skirtumams, susijusiems su sąvoka „nutraukimas“. Taip pat atlikta daug tyrimų, skirtų šių sąvokų analizei terminologiškai sudėtingose darbo teisės ir darbo santykių disciplinose jas lyginant ir gretinant su tariamai panašiomis sąvokomis kitose nacionalinėse teisinėse sistemose. Remiantis turima literatūra, straipsnyje pateikiama lyginamoji kai kurių su darbo santykių nutraukimu skirtingose šalyse susijusių sąvokų analizė, ypatingą dėmesį skiriant atitinkamų nacionalinių darbo santykius reglamentuojančių teisės aktų aspektams, taip pat toliau nagrinėjant klausimus tiek lingvistiškai, tiek semantiškai. Pasirinkta tyrimo kryptis yra tarpdisciplininio pobūdžio, daugiausia analizuojanti sąvokas, susijusias su kalbotyra ir darbo santykiais. Šiame straipsnyje nagrinėjamas praktinis pavyzdys – „Fiat“ įmonės (savo būstinę Italijoje turinčios tarptautinės bendrovės) atvejis. Trumpai analizuojama darbo teisės sistema šalyse, kuriose „Fiat“ turi savo darbuotojų, nagrinėjami terminologinio ir koncepcinio pobūdžio klausimai. Tyrime nagrinėjama daug lingvistinių ir koncepcinių klausimų, kurie yra svarbūs lyginamosios analizės kontekste, nes yra sąlygoti skirtingų kultūrinių, istorinių ir politinių tendencijų.

**REIKŠMINIAI ŽODŽIAI:** darbo sutarties nutraukimas, lyginamoji darbo teisė, darbo santykių diskursas, teisinė kalba, koncepciniai ir terminologiniai klausimai.

### Introduction

One of the main issues for multinationals is to comply with legislation enforced in the countries they operate in, as it can present major differences around the globe, depending on factors, such as the system adopted (e.g. common- or civil-law countries) or on reasons related to ideological, historical, linguistic and social aspects.

This is particularly the case of laws regulating the termination of the employment relationship, as at the international level a fragmented scenario emerges in their implementation, especially when employers decide that workers' services are no longer needed. Reasons for such a conflict between domestic and foreign laws are to be found in the changing nature of industrial relations, labour standards, and employment conditions, attempts to bring labour law regulations worldwide in line with the standards of the International Labour Organisation (ILO), or – more simply – intrinsic differences in laws governing the employment relationship.

For instance, an investigation of provisions regulating the termination of employment at the international level reveals a number of difficulties, primarily arising from conceptual and linguistic variations in legal institutions and principles adopted in each country.

Against this background, the aim of this paper is to provide a comparative analysis of some concepts associated with the termination of employment in a number of countries, primarily considering aspects of relevant national labour laws, then further investigating issues from both a linguistic and semantic point of view. Without claiming to be exhaustive, this study is intended to address the issue by examining the conceptual framework behind the discourse of labour relations more generally, rather than simply reviewing the rules governing them in each country. The approach adopted will be of an interdisciplinary nature, mainly involving notions pertaining to linguistics and industrial relations, in order to take cognizance of the relationship between “words and things” (Hyman, 2005).

In this respect, the paper will examine a practical case, namely the case of FIAT, a multinational with its headquarters in Italy. The system of labour law in a number of countries where FIAT has employees will be briefly analysed, followed by some considerations of a terminological and conceptual nature. Official translations into English of domestic laws, together with unofficial, although highly reliable, documentation issued by such organizations as the ILO will be examined in this study. Providing a comparative analysis is clearly a very complex task. As Hyman points out:

*Cross-national comparison obliges the researcher to relativize perspectives on institutions and practices which are commonly taken for granted; and one of the tasks of scholarship is surely to make the strange familiar and the familiar strange. The broader the range of comparative reference, the more strongly grounded are our generalizations and the more encompassing our causal inferences* (Hyman, 2007).

Bearing this in mind, an attempt will be made to address the fact that the parties to the employment relationship differ in important respects in conceptual terms among the countries surveyed, with these variations affecting our perception of the above-mentioned concepts.

For the purposes of this study, it should be pointed out that the selection of countries to be surveyed was made considering a limited number of countries where FIAT vehicles are manufactured at the time of writing, such as Brazil, China, Hungary, India, Poland, Russia, and South Africa.

## 1. Theoretical background

Previous literature discussing terminological and conceptual differences within the general discourse of labour and employment law comprises studies covering different research fields, e.g. Comparative Labour Law, Industrial Relations, Legal Studies, Semiotics, Social Sciences, and Translation Studies. For instance, Blanpain and Colucci highlight that “one of the main difficulties, which presents a real pitfall for the comparative scholar, is the fact that identical words in different languages may have different meanings, while the corresponding terms may embrace wholly different realities” (Blanpain, Colucci, 2002). Significantly, in the Prologue to the *European Labour and Social Security Law Glossary*, they also stress that “another difficulty is defining and explaining the meaning of words and notions constituted by various ideological approaches, according to the different interests or beliefs of the actors involved [...] ideological perceptions constitute a serious obstacle to fruitful comparative analysis” (Blanpain, Colucci, 2002).

More generally, the assumption that the language of law – therefore comprising labour law terminology – must be analysed against the background of political and ideological surrounding is also confirmed by Goodrich, who maintains that such language “is a prominent indicator of social and historical genesis [...] an historically and rhetorically organised product” (Goodrich, 1987). It follows that, as a “product”, terminology must be placed and investigated within a given situational context, otherwise “to use language in isolation is like playing the game of *solitaire* [...] an unknown game played by an individual in total solitude is, precisely, one we could know nothing about” (Steiner, 1992).

Expressions and terms acquire different shades of meaning due to a number of factors, which sometimes make their interpretation rather difficult,

unless considered within the appropriate context. This is a part of a process defined by Hyman as *particularistic universalism*, according to which the attempt is “to provide a conceptual framework applicable across national boundaries; yet our analytical vision is almost inevitably conditioned by national experience” (Hyman, 2005). In analysing the discourse of Industrial Relations more generally, he has also pointed out that “the starting point of genuine comparative understanding must be to escape the fatal attraction of superficial similarity. We must dare to call distinct realities by their own name, avoiding simplistic translations yet seeking to give appropriate weight to both commonality and difference” (Hyman, 2005). However, notwithstanding the work of translators, whose task is to “re-experience the evolution of language itself, the ambivalence of the relations between language and world, between ‘languages’ and ‘worlds’” (Steiner, 1992), the role of the English language as a *lingua franca* between extremely varied legal institutions is well-established, although in some cases the results are not satisfactory.

English usage can give rise to some ambiguities, also in intralinguistic terms. It is significant in this respect that, for instance, “job security and employment security are used interchangeably”, although “job security refers to the degree of certainty that people can keep their present position, and employment security refers to the degree of certainty that they can find another job on the labour market” (Blanpain, 2010). Problems in terms of equivalence are also underlined by Koch and Singam, who focus on semantic issues. An example may be taken from trade union law: “The English term ‘shop steward’, for example has no equivalent in German, the term *Vertauensmann/frau* defining quite different functions; in effect the underlying concepts are not translatable” (Singam, Koch, 1994). As a result, and in contrast to past experience, when “law and language have been treated as discrete phenomena – the conjunction ‘and’ has marked a constant separation of distinctive area of expertise” (Goodrich, 1987), semantic issues within the discourse of labour law need to be dealt with by means of an interdisciplinary approach. More importantly, scholars have stressed the significance of investigating and comparing functions carried out by institutions, in an attempt to find functional equivalents. As Blanpain notes, “this cannot be repeated too often – we must compare functions and not institutions” (Blanpain, 2007).

## 2. Termination of employment at FIAT around the world: A conceptual and terminological comparison

### 2.1. Brazil

Since 1976, FIAT vehicles have been manufactured in Brazil, with a number of models that have been produced since then. Here, the main source of legislation regulating the termination of employment is to be found in the 1943 Consolidation of Labour Laws of Brazil (further - CLL), that lays down basic provisions relating to dismissal, wages, employment contracts and so on. At the textual level, an examination of the English version reveals a number of peculiarities in conceptual and linguistic terms that deserve further investigation. The first aspect to consider is that, in contrast with labour law provisions in many other countries, FIAT employees in Brazil can enter into an employment relationship also on the basis of an oral agreement. In this sense, Art. 443 of the CLL specifies that “an individual contract of employment may be entered into tacitly or explicitly, *orally* or in writing [...]” (emphasis added).

Another feature of Brazilian labour contracts is that they are intended to be for an indefinite period on a general basis, to the extent that fixed-term contracts can be entered into only in very rare cases for a maximum of two years (Art. 443 of the CLL). Further, “the concept of unfair dismissal is not applied in Brazil since there is no need to justify dismissal providing a fee was paid” (Noronha, 1999). This means that in the event of unjustified dismissal, employees are entitled to compensation. Usually, “dismissal compensation is paid from the *Fundo de Garantia por Tempo de Serviço (FGTS)* accumulated by every worker with a signed labour card. The employer contributes an amount equivalent to 8% of the employee’s current monthly wage” (Henley *et al.*, 2007). To be more precise, “standard dismissal procedures are routinely called ‘unfair’ in Brazil’s legal terminology” (Economic Survey of Brazil, 2005).

In this sense, it is interesting to consider the conditions for the termination of employment regarded as *just cause*. Significantly, Art. 482, para. “f” of the CLL specifies that one of the reasons for dismissal is “habitual drunkenness or drunkenness while on duty”. Of interest is the fact that just cause dismissal also applies in the event of habitual indulgence in gambling (Art. 482, para. l of the CLL). The need on the part of the legislator to clearly indicate those two conditions – therefore considering them far from being obvious motives for the termination of employment, as in the case of other countries – is relevant

in terms of cross-border management, in that both issues – alcoholism and gambling – are deemed to be serious matters that require ad-hoc provisions.

It seems also useful to examine the concept of ‘employee’ adopted in Brazilian labour legislation, defined as “any person who performs services other than casual services for an employer under the direction of the employer and in return for remuneration”. Of relevance is the fact that such a definition encompasses a wide range of labourers, and that a distinction is made only in reference to casual work.

There are, however, some aspects which are primarily of a linguistic nature. For instance, under Brazilian labour law, a clear distinction has to be made between the notion of ‘salary’ and ‘remuneration’. Unlike some other systems, where they are often used interchangeably, in Brazil “salary is viewed as a fixed monthly compensation and/or variable compensation, such as commissions. Remuneration includes all benefits the employee receives by reason of employment, such as housing allowances and other in kind benefits” (Viegas *et al.*, 1997).

Another issue which might be misleading is the concept of ‘establishment’ (*estabelecimentos*) in both versions, the use of which is widespread in the Consolidation of Labour Laws, especially when compared to other languages and international institutions. In general terms, its meaning in the CLL is clear: “Transference shall be permissible if the *establishment* where the employee works is closed down” (Art. 469, para. 2 of the CLL).

In some cases, however, there are some problems in interpreting what the legislator means, to the extent that the scope of application of the provision might be affected: “If any employer, whether individually or in conjunction with other employers, suspends work in his *establishment* without the previous authorization of the competent court, or contravenes, or refuses to carry out, a decision issued in a collective dispute, he shall be liable to the following penalties” (Art. 722 of the CLL). In the first case, the term *establishment* clearly indicates ‘business premises’, while in the second the word might also refer to the workplace in a broader sense, therefore including the area immediately surrounding the premises. Accordingly, it would be hard to assess workers’ liability in the event, for instance, of an industrial action. With reference to this, Blanpain has rightly pointed out that “a comparison of the terms used shows that they have different connotations, signifying establishment, undertaking, work centre, local unit or place of work” (Blanpain, 2007).

As a result, a misunderstanding might arise at both the intralinguistic and interlinguistic levels. Such vagueness in legal texts has been also stressed

by Gotti, who has highlighted that it is “mainly due to the adoption of general terms conveying wide semantic values, with the result that their meaning in the context of those provisions is not as clear as expected” (Bhatia *et al.*, 2005).

## 2.2. China

FIAT has operated in China since 1999 on the basis of a joint venture with Nanjing Auto, which has led to the production for the local market of such well-known models as the FIAT Palio, Palio Weekend, and Siena. Apart from local laws and regulations, the employment relationship is governed by the following provisions: Labour Law of the People’s Republic of China (1994); Labour Contract Law of the People’s Republic of China (2007); Law on the Mediation and Arbitration of Employment Disputes of the People’s Republic of China (2008). More generally, it is of relevance that law in China is not perceived primarily as a tool for repression.

As argued by Josephs, it would be more appropriate to state that, in order to ensure a certain level of social organization “law evolves naturally, inextricably intertwined with the practical concerns of government [...]. Hence, law contributes to the preservation of social order and stability” (Blanpain *et al.*, 2007). With regard to contracts of employment, there are three main types of employment relationship, namely, open-ended, fixed-term relationship and completion of a specified work/project. In conceptual terms, it is interesting to note that open-ended employment is labelled as ‘lifetime employment’, which means that employees carry out their duties for a company over their entire working life. Although mainly applied to civil servants, the concept of lifelong employment is worthy of note as it is closely associated with such features as loyalty to the organization and commitment at work, while posing serious challenges in terms of individual performance and motivation.

Strictly connected with lifetime employment is the concept of ‘iron rice bowl’, an idiomatic expression relating to positions characterized by high levels of job security. More specifically, in Chinese terminology, iron rice bowl refers to “an occupation with guaranteed job security, as well as steady income, such as government employees, military personnel, and state owned enterprises. Compared to Iron Rice Bowl, insecure jobs are referred to as Porcelain Rice Bowl” (Brown, Brown, 2006).

This system was originally conceived as a tool to maintain social stability under the Mao Zedong regime: “After liberation in 1949, the new Communist regime was deeply concerned about the possibility of disaffected elements in

the city who might stir up social instability [...]. Thus was created the iron rice bowl” (Murray, 1994).

Equally significant is the fact that no definition of the concept of ‘employee’ is provided in national labour legislation, although an indirect explanation is given in labour union law, according to which an employee is an individual who performs physical or mental work in enterprises, institutions and government authorities and who earns wages or salaries. Therefore, following a number of historical developments, “gone is the distinction between ‘cadres’ (*ganbu*) and ‘staff and workers’ (*zhigong*) that dominated Chinese labour law for four decades” (Baker, McKenzie, 2005) with the new concept that comprises both white- and blue- collars workers. In conceptual terms, it is also interesting to point out that in Chinese labour legislation such terms as ‘unfair dismissal’, ‘summary dismissal’, ‘disciplinary dismissal’ are never specifically mentioned. Indeed, Section 29, par. 4 of the Labour Act only provides general conditions under which a labour contract can be revoked, *inter alia* broadly envisaging that “other circumstances stipulated by laws, administrative rules and regulations”.

This is an aspect that deserves further consideration. In *Language and Control*, Fowler *et al.* (1979) discuss the use of language as a social practice which contributes to regulating social relationships of all kinds. This partly explains the usage of certain expressions – in both English and Chinese versions – as is the case of Labour Act, in lieu of others, therefore stressing the power of language “to reveal and communicate” (Fowler *et al.*, 1979). With reference to linguistic variations, Fowler *et al.* have pointed out that “they express social meanings [...]. Very often the effect is to reaffirm and consolidate existing social structures” (Fowler *et al.*, 1979). In addition, “a major function of sociolinguistic mechanisms is to play a part in the control of members of subordinate groups by members of dominant groups [...]. Power differential provides the underlying semantic for the systems of ideas encoded in language structure” (Fowler *et al.*, 1979).

Such a stance is also taken by Fairclough, according to whom there is a strong relationship between language and ideology: “Ideologies are closed linked to language, because using language is the commonest form of social behaviour [...] a means of legitimizing existing social relations and differences of power” (Fairclough, 2001). Therefore, the recourse to some linguistic devices on the part of Chinese legislators might be due to their willingness to affect the perception which ‘members of subordinate groups’ have of some institutions of labour law.

This is also one of the reasons for using such expressions as ‘consultations’ instead of ‘bargaining’ or ‘negotiations’. In this case, “Article 8 of the Labour Act refers to the equal consultation between the assembly of employees of workers congress and the employer regarding protection [...]. Although the terminology of collective bargaining, or collective negotiations is not explicitly used [...]. In Chinese ‘collective consultation’ is a more friendly and compromising way of saying ‘negotiations’” (Chen, 2011). In linguistic terms, it seems also worthwhile pointing out some aspects of the Chinese language, such as the way the concept of obligation is expressed.

In providing an overview of Chinese Labour Law, Josephs recalls that “although Chinese does enable express distinctions to be made between the obligatory (‘must’ or ‘shall’) and the discretionary (‘should’ or ‘may’), legal language can also be impliedly deontic, depending on context” (Josephs, 2003). Therefore, it is important to understand the way the term *deontic* is constructed in the Chinese culture. Ross and Ross have highlighted the difference between a deontic duty, that is, an obligation one is required to perform and which is defined by rules and societal conventions and a technical duty, an obligation the fulfilment of which makes it possible for something else to be secured.

Now, this difference is significant because “technical obligations are associated with certain specific negative consequences if they are not fulfilled [...]. In contrast, no direct consequences are necessarily associated with the nonperformance of deontic obligations” (Ross and Lester, quoted in Turner-Gottschang *et al.*, 2000), therefore making “the performance of deontic obligations less certain” (Turner-Gottschang *et al.*, 2000). Issues arising in semantic terms – especially at the time of translating national legal institutions into English – might be summarized as follows:

*In Western tradition, obligations are specifiable in the law only if they are strong obligations for which enforcement is enhanced by the threat of negative consequences for nonperformance. This principle does not hold in Chinese, where obligations specified in law might be deontic [...]. If a Chinese weak obligation is translated by a word indicating deontic obligation in English, especially should, the result is a legal document that specifies a legally enforceable obligation and is thus incongruous or in acceptably vague in the context of Western law. But if a Chinese weak obligation is translated by an English word of strong obligation, especially must or shall, the result is an exaggerated representation of the strength of the Chinese obligation.*

Therefore, translators should bear in mind that a distinctive feature in the Chinese culture is that moral duties, that is, deontic obligations, have acquired

an institutional status, so citizens are required to comply with them. Accuracy in translation is therefore needed to highlight this aspect.

### 2.3. Hungary

At the Esztergom plant, near Budapest, the FIAT Sedici is assembled. Labour relations in Hungary are mainly regulated the Labour Code, 1992, as amended by 2006, which makes a general provision about employment matters. A close investigation of the Act reveals some interesting insights into the concept of termination of employment. First, in contrast to what is provided, for instance, in Brazil's labour legislation, employment contracts in Hungary can be concluded only in writing (Section 76, para. 2 of the Labour Code).

Another conceptual distinction is that Hungarian workers at FIAT plants can be hired on a temporary basis for a maximum of five years. Subsequently, such an agreement is automatically converted into an open-ended contract "if the employee works for at least one extra day following the expiry of the original term with the knowledge of his/her immediate superior" (Section 79, para. 4 of the Labour Code). Turning to the terms of the employment relationship, a type of contract which is specific to Hungary legislation is the so-called *study contract*. This form of employment is interesting in both conceptual and linguistic terms, as under the terms of the agreement "the employer undertakes to provide support for the duration of studies while the other party undertakes to complete the studies as agreed and to remain in the employer's employment for a predetermined period of time following graduation" (Section 110 of the Labour Code).

Of relevance is the fact that these contracts cannot be compared to apprenticeship programmes, nor to work training contracts, so – although found elsewhere – they can be regarded as peculiar contractual arrangements. A more detailed investigation also reveals a lack of clarity in relation to key aspects of the relation between the employee and the employer. For instance, remuneration is a matter of particular importance. In this respect, it should be highlighted that the definition of 'wage' provided by the Code is anything but clear. In this sense, it does not contain the definition of wage as set forth in the Treaty of Rome and the case law of the European Court of Justice to the extent that court interpretation might be necessary to define the notions of 'financial compensation' and 'fringe benefit' provided directly or indirectly on the basis of the employment relationship.

## 2.4. India

Under agreements with Tata Motors, such FIAT models as Palio Stile and Adventure are produced at the plant of Ranjangaon in India. Here, labour relations are regulated by the Industrial Employment Standard Orders Act (further – the IESA) and the Industrial Disputes Act (further – the IDA), issued respectively in 1946 and 1947, together with case law rulings and collective agreements.

These two provisions give rise to some important issues of a conceptual and terminological nature relating to the termination of employment. To begin with, the English version of the IDA lays down the classification of those regarded as workers, including *badlis*, defined as “a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment” (Section III, 175 of the IDA), while failing to provide further information. It can be inferred, however, that such workers are usually engaged on a temporary basis in order to replace other employees. Thus, in conceptual terms, they might correspond broadly to temporary workers although such a comparison comes nowhere near to encompassing all shades of meaning.

Another interesting aspect which might be the source of misinterpretation is the concept of ‘retrenchment’. In the Indian labour discourse, the term refers to “the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action” (Section I, para. 150B/1 of the IDA) also comprising a number of exceptions. Such a definition differs considerably from the one provided by the ILO (see above), and it also takes on different connotations in other national labour legislations. In general terms, many of the terms used by Indian lawmakers can be traced back to British English. Despite certain differences, the variety of English used in India in judicial and administrative matters is essentially that of British common law (Mattila, 2006).

To understand this, it has to be recalled that much of the legislation prepared by the British during the colonial era remains in force in India. However, there are a number of terms that are typical of American English, such as *lay-off* and *discharge*. In particular, a lay-off refers to “the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched” (Kumar, 2003).

The example of retrenchment is of significance as it demonstrates in some respects how a language evolves and adapts to new societal needs. Speaking of the varieties of English used in former British colonies, such as India and South Africa, and their relationship with legal discourse, Tiersma has acknowledged that “each one of these systems will continue to develop independently, and the legal language in each country will reflect those developments” (Tiersma, 2000). In the same vein, Williams (Wagner, Cacciaguidi, 2006) rightly points out:

*The British brought their language and institutions with them as they colonized various parts of world, so this fossilized type of language could be found in several countries around the globe. Each country has since evolved autonomously, giving rise to a plurality of ‘legal Englishes’ [...]. Within each country the dynamics, priorities and values of the legal discourse community have endowed the language used with a specific character of its own.*

An aspect that is closely associated with this, that is, specific to national labour law, is the fact that the employer, before terminating the contract of a worker, must ask the relevant authority for authorization in order to prove his *bona fide*. In this connection, “an application for permission shall be made by the employer stating clearly the reasons for the intended retrenchment” (Section VB, para. 2 of the IDA), an aspect which is quite specific to Indian legislation.

## 2.5. Poland

The FIAT plant based in Tychy produces a number of models, the most popular of which are the new FIAT 500 and Panda. Private sector employees in Poland perform their work in accordance with the 1974 Labour Code, as amended in 2004. From the conceptual point of view, there are a number of aspects that are worth considering as being specific to the Polish culture. Firstly, a clear distinction is made between the ‘right to work’ in the strict sense of the term and the right to ‘employment’. In this respect, under Polish labour law “the concept of right to work is no longer viewed as a right to employment for all” (Davenport *et al.*, 2000), and this idea is translated into higher levels of protection against unjustified termination of employment.

Equally relevant is the fact that one of the reasons to terminate a contract of employment is ‘drunkenness’, which is explicitly stated in the Code. In this respect, an employee might be summarily dismissed if he or she “is drunk at the workplace or commits abuses in connection with social security allowances” (Davenport *et al.*, 2000). As in the case of Brazil, alcoholism is therefore

regarded as a major issue at the national level, leading legislators to indicate drunkenness on duty as one of the main reasons for the termination of employment.

Another significant issue in conceptual terms is the fact that, in accordance with Section 42, para. 3 of the Labour Code, a worker can also be dismissed if refusing an alternative position offered by the employer, which is, as Davenport *et al.* (2000) have noted, “in direct contrast to the rule under common law where the employee is entitled to claim wrongful dismissal if the terms and conditions of his or her contract are substantially and unilaterally changed by the employer”.

Apart from conceptual matters, there are also issues arising from the use of appropriate terminology in labour discourse, especially in translating from English into Polish and *vice versa*. This is the case of the English verb *to terminate*, the usage of which is widespread to describe the relationship between the employer and the employee. As Rek-Harrop points out:

*The English term's meaning is much broader than that of the Polish term as it might refer to assassination, abortion, end of employment, etc. The Polish language has a more specific vocabulary to describe similar concepts [...]. In the context of the termination of employment when one party exercises its right to terminate the contract for any reason, the correct Polish term is the semi-technical 'wypowiedzenie' (give notice). However, when the termination refers to the cessation of an agreement or contract when both parties amicably choose to finish it, the correct Polish non-technical term used should be the neutral word 'rozwiązanie' (unfasten or undo) (Rek-Harrop, 2010).*

Another term that might be a source of ambiguity is *agreement*, as – depending on the context – it can take on several connotations in the Polish language. Different terms are used to indicate such concepts as ‘the terms of employment’, an ‘arrangement between the parties to finish some conflict’, or something less formal than a ‘contract’.

It is important to bear in mind that “Polish and English history and tradition have also little in common and thus the languages of law have been subject to very different influences” (Rek-Harrop, 2010).

## 2.6. Russian Federation

In partnership with Severstal Auto, a number of FIAT models (e.g. Doblò and Albea) are assembled in Russia. Provisions regulating the relationship between employers and employees are laid down in the Labour Code of the RSFSR, enacted in 1971. As an evolving area of law, and often the result of political and

historical changes, this set of rules has been amended several times since its enactment, also in relation to the transition from the Communist system with a centrally planned economy to the market economy. Further provisions, such as the Federal Act on Collective Agreements and Accords of the Federation of Russia (1992), as amended, the Federal Act on the Procedure of Settlement of Collective Labour Disputes of the Federation of Russia (1995), and the Federal Act on Trade Unions and their Rights and Guarantees for Performance of their Activities (1996), have been also issued to deal with employment matters.

In conceptual terms, labour legislation on the termination of employment adopted in Russia presents some specific features, especially if compared to other countries where FIAT operates. In analysing the grounds for dismissal, for instance, the law provides that the FIAT group is “obliged” to dismiss the chief executive in the event they display an excessive amount of bureaucracy, that is “bureaucratism and red tape” (Section 37 of the Labour Code). Bureaucracy in the Russian Federation is perceived to be an important issue. In this connection, a plethora of initiatives have been set up with the aim of reducing administrative barriers, primarily in relation to starting up a business.

Another relevant issue is that, as in Brazil and Poland, drunkenness on duty in Russia is regarded as a major problem. In this sense, Art. 81 of Labour Code specifies that an employer is entitled to unilaterally terminate the employment relationship with the employee if he/she has reported for work under alcoholic, narcotic or other intoxication. Idleness is also regarded as a lawful ground for dismissal. What is striking is that a “single absence of more than three hours in one working day without providing a good reason” (Section 33 of the Labour Code) falls within the notion of ‘idleness’ and not of ‘absenteeism’.

## 2.7. South Africa

In cooperation with Japanese Nissan, some very popular models are assembled and manufactured at a production facility based in Roslyn (e.g. FIAT Palio and Siena).

Labour law in South Africa is regulated by a number of sources: the Constitution, relevant legislation, and collective agreements. More specifically, provisions regarding the termination of employment are set forth in the 1995 Labour Relations Act of South Africa (further – the LRA) and the Basic Conditions of Employment Act (1997) (further – the BCEA).

Some valuable insights emerge from a conceptual analysis of those texts. To start with, an important distinction is made in the LRA between ‘automatically unfair dismissal’ and ‘unfair dismissal’ in Sections 187 and 188 respectively. In

this connection, there are a number of circumstances in which the termination of a contract of employment is regarded as ‘automatically unfair’: union membership, involvement in a strike, or any other industrial action more generally, maternity, pregnancy and so on.

On the other hand, there are no specific conditions for a dismissal to be unfair, as the employer has to prove that the reasons for the termination were sound, and the procedures were properly implemented, especially when relating to the employee’s conduct or capacity and operational requirements. Accordingly, the determination of the concept of ‘fairness’, either in terms of grounds and procedures, is given high priority. In fact, what emerges from the relevant legislation is that, even though there are well-founded reasons for dismissal, the employer has to follow certain rules to “rightly terminate” an employment contract.

The attention given to the concept of fairness regarding dismissal procedures is clearly an attempt on the part of South-African legislators to comply with relevant ILO guidelines on the termination of employment. In this sense, Levy argues that “the LRA appropriates its terminology, concepts and ingenuity on grounds for dismissal from the International Labour Organisation circa 1985. Indeed, s 188 of the LRA, is adopted almost verbatim from ILO ‘Termination of Employment’ Convention 158 and its accompanying ILO Recommendation 166” (Levy, 2000).

It should be pointed out, however, that the ILO makes use of the word ‘valid’ in lieu of ‘fair’ and this appears to be significant. Drawing on the definition of both words as provided by the Cambridge Dictionary, Levy recalls that “although it could be argued that the LRA’s fair is more subjective and onerous for employers than the ILO Convention’s valid, experience shows that the word fair has not proved an obstacle to South African business” (Levy, 2000). There is also another difference to consider between the two texts at the time of specifying the reasons for dismissal, which might be:

- *related to* the employee’s conduct or capacity (Section 188/1 of the LRA);
- *connected with* the conduct or capacity of the worker (Art. 4 of the ILO Convention No. 158).

Such a difference in language usage results in a variation in semantic terms, as “‘connected with’ means to be ‘joined with something else’ while ‘related to’ means ‘to find or show the connection between two or more things’. It is debatable whether the looser wording of the LRA affords employees any more protection than the ILO instrument” (Art. 4 of the ILO Convention No. 158).

Furthermore, according to relevant legislation, in contemplating dismissal, the employer is under an obligation to consult trade unions, workplace forums or “any person whom the employer is required to consult in terms of a collective agreement” (Section 189/1 of the LRA). As in the case of China, the term ‘consultation’ is not used as a synonym for ‘negotiation’ as it does not involve “a willingness by the parties to compromise to reach agreement” (Section 189/1 of the LRA). In this respect, in *Metal & Allied Workers Union v. Hart LTD*, it was argued that “there is a distinct and substantial difference between consultation and bargaining. To consult means to take counsel or seek information or advice from someone and does not imply any kind of agreement, whereas to bargain means to haggle or wrangle so as to arrive at some agreement in terms of give and take. The term negotiate is akin to bargaining and means to confer with a view to compromise and agreement” (*Metal & Allied Workers Union v. Hart LTD*, 1985). The examples given below show how the choice of appropriate words is important in labour law discourse, as even small changes within the text can result in considerable differences in terms of understanding. In the last case, for instance, a number of efforts have been made to reach consensus, in a process which “went beyond the meaning of ‘consultation’ in the sense of ‘merely taking counsel’” (Levy, 2000).

Another point that deserves further investigation is the meaning of the term ‘retrenchment’, as this word has a widespread use in South Africa labour discourse, although not having a statutory definition. Especially in English-speaking countries in the southern hemisphere, and also in Singapore, the term is often used as a synonym for redundancy, resizing, downsizing and so on.

Accordingly, the process of retrenchment can be conceived as “the situation in which the employer terminates employees’ employment as they have become superfluous due to, for example, an economic downturn” (Beamont, 1991). It is interesting to consider in this connection the definition provided by Westermann-Winter, according to which “a distinction can therefore be drawn between redundancy as a state or condition of superfluity on the one hand and retrenchment as the act of reducing redundant staff. In terms of this distinction, redundancy is regarded as the cause and retrenchment the effect” (Westermann-Winter, 2007). Therefore, the way the notion of retrenchment is construed differs to some extent from the one laid down in Indian legislation and the ILO, upholding Hyman’s claim that “reality is at fault. Institutions differ cross-nationally; so do modes of thought. This can be true even when different countries speak (supposedly) the same language: George Bernard

Shaw described Britain and the USA as ‘two countries divided by a common language’ (Hyman, 2005). A similar stance is held by Tiersma, who has argued that “the dialects of legal English spoken in the other former British colonies do not diverge as much from British usage because they separated from the English at a later date. Nonetheless, each system has its own distinctive linguistic features” (Tiersma, 2000).

## Conclusions

This analysis of some aspects of labour legislation in some of the countries in which FIAT operates points out a number of questions in both linguistic and conceptual terms that are of interest as the result of cultural, historical and political developments, and it poses some challenges in terms of comparative analysis.

The notion of ‘employment relationship’, for instance, though universally understood as the relationship between employers and employees, can take on several meanings, therefore differing in important respects, as in some countries – Brazil’s case – it can be regarded as binding also when agreed exclusively on an oral basis, whereas in most other cases a written agreement is necessary. The same can be said of concepts such as ‘unfair dismissal’. In some jurisdictions, this form of termination of employment – even though conceptually understood – is not applicable at the national level and, as a result, a corresponding equivalent in other national systems under consideration simply does not exist. Reasons for dismissal also vary among different countries.

In this respect, not all labour legislations make special provision for such issues as drunkenness and excessive red tape, because clauses of this kind are a reflection of cultural factors. Closely associated with this aspect is the definition of ‘employee’ adopted in some countries, which is often unclear and therefore a source of misunderstanding. Some legislators adopt definitions that are of a general nature – as in Brazil and China, for instance – that are arduous to compare with those applicable in other countries. Equally in this case, different definitions might translate into pitfalls when it comes to categorizing workers across national borders. In this case, attention should be paid to the way such notions are construed in specific national contexts.

In other cases, the issue is of linguistic nature. In analyzing the translations into English of relevant documentation – or documentation drafted in English more generally – a certain degree of ambiguity can be found that might affect

and compromise not only the understanding of the text, but also the implementation of rules at the domestic level.

The same holds for concepts that can be construed differently around the globe, even where English is the official language. *Wage* and *salary* cannot be always regarded as synonyms, as they might result in different outcomes in terms of application of law; *negotiation* does not necessarily involve the process of *consultation* – with the reverse that might also be possible – as they take on connotations that are hard to understand if not contextualized and examined within the appropriate situational context. *Retrenchment* is differently perceived in India and China.

This is also the case of some notions regarded as ‘culturally-bounded’, that is, belonging to a certain reality, which deserves a more detailed explanation. Evidently, it is hard to identify in other labour law systems an equivalent of such concepts as *iron rice bowl*, *badli*, *employing unit* as specific to a different set of ideas. A concept, whether translated or expressed in the same language, can acquire a different meaning that usually depends on the national legal system. In this sense, it is therefore important to contextualize rather than simply seek a translation equivalent. In conclusion, in some cases there seems to be a lack of awareness of issues arising from conceptual and linguistic factors in the field of labour law.

As Hyman recalls, “to compare is, literally, to put like phenomena together. But it is impossible to establish likeness without awareness of difference: we must recognise all institutional and analytical categories, applied cross-nationally, as provisional” (Hyman, 2005).

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