

Chapter 4

Severance Payment System in Taiwan: A Historical Perspective



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Abstract This chapter investigates the institutionalization of the status and function of the severance payment system in Taiwan for the dismissal protection through comparative labor law. The severance payment system in Taiwan had been overburdened with the role of pension protection by legislation of Labor Standard Act in 1984. As a result, the dismissal protection was negatively impacted. Following the differentiation reform of this institution in the first decade of twenty-first century, the severance payment system in Taiwan has embodied the dismissal protection through the separation of labor pension and unemployment insurance.

Taiwan's severance payment had transplanted originally from European countries in 1920s. The European model of rigid job security, however, has not been followed by Taiwan in 1950s. In the meantime, clearly defined requirements of just causes for fair dismissal help to reduce the litigations of labor disputes. The severance payment system in Taiwan has become a weight for the equitable remedy in the dismissal protection.

Keywords Severance payment · Dismissal protection · Taiwan's labor law

1 Introduction

Given the changing historical context, the severance payment system in Taiwan has varied functions at every stage, not only taking into consideration of the function of social security and human resources, but also meeting the needs of the strategic choice of the industrial relations in Taiwan. As the legal formality is concerned, the severance payment is moderately straightforward with the definition as follows: the lump sum of money paid by the employer to the worker on dismissal other than serious misconducts of the worker, calculated according to length of service and wage level. It's also deemed as severance payment that is included as a part of indemnity

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for settlement of unfair dismissal disputes and the compensation in the case of the forced resignation. For the purpose of this paper, the first section will introduce the current legal system of severance payment in Taiwan. The second part is to demonstrate the evolution and the function of its operation. Lastly the meaning and its implication to the comparative labor law will be reviewed.

Severance pay in Taiwan is the important part of labor protection from dismissal, which is regulated by the second chapter, titled the labor contract, of the Labor Standards Act, LSA. In Taiwan, dismissing employees will be monitored by public law. Employers should conform to the rule of just causes and shall not exercise discretion at will.

According to the labor standards Act of Taiwan, the termination of the labor contract is divided into two major categories: dismissal and resignation. Dismissal is the termination of labor contract action initiated by employers, including redundant and disciplinary dismissal. Resignation is the termination of labor contract action initiated by employees, including forced and voluntary resignation. The arrangements of the termination of labor contracts in Taiwan show in the Table 4.1.¹

There are two kinds of provisions, art. 11 and art. 14, employers have the obligation to give severance pay. Although their natures are different, but the both constitutes the severance payment regulations primarily in Taiwan. Follows are addressing the regulations.

1.1 Obligation to Severance Payment

Dismissed employees have no severance pay if reason of termination is due to employee negligence. Employers have no obligation to pay severance as the dismissal is for disciplinary purpose.²

¹The legal language of Taiwan's LSA has not used dismissal or resignation in its formal wording, but rather is a more neutral term, which is, the termination of the labor contract. This situation is not the same as that of the European countries or even Japan, that take dismissal protection as a core concept. To reflect the characteristics of this legal arrangement, the "dismissal" by an employer and the "resignation" by an employee in the table will be treated as the same weight. (Hwang, 2000, p. 219)

²See: Article 12(1) of the LSA specifies six requirements: (1) Where a worker misrepresents any fact at the time of signing of a labor contract in a manner which might mislead his/her employer and thus caused him/her to sustain damage therefrom; (2) Where a worker commits a violent act against or grossly insults the employer, his/her family member or agent of the employer, or a fellow worker; (3) Where a worker has been sentenced to temporary imprisonment in a final and conclusive judgment, and is not granted a suspended sentence or permitted to commute the sentence to payment of a fine; (4) Where a worker is in serious breach of the labor contract or in serious violation of work rules; (5) Where a worker deliberately damages or abuses any machinery, tool, raw materials, product or other property of the employer or deliberately discloses any technical or confidential information of the employer thereby causing damage to the employer; or (6) Where a worker is, without good cause, absent from work for three consecutive days, or for a total 6 days in any month.

Table 4.1 The legal arrangements of the termination of labor contracts in Taiwan

| Art. in LSA | Art. 11 | Art. 12 | Art. 14 | Art. 15 |
|---------------------|--|---------------------------|---|---------------------------|
| Category | Dismissal | Dismissal | Resignation | Resignation |
| Nature | Redundant (with just cause) ^a | Disciplinary | Forced | Voluntary |
| Subject | Employer | Employer | Employee | Employee |
| Substantive reqts. | Economic, organizational, and technical | Employee negligence | Employer negligence | Personal |
| Procedural reqts. | Notice | Summary | Summary | Notice |
| Effect ^b | Be terminated immediately | Be terminated immediately | Be terminated immediately | Be terminated immediately |
| Protection | Severance pay for just cause dismissals | No | Severance pay as compensation for damages | No |

^aHere “just cause” implies “non-disciplinary just cause.” Article 11 gives a list of causes where dismissals can be justified without disciplinary cause

^bThe meaning of termination expressed in labor contract in the LSA is a nature of formation right (Gestaltungsrecht). Employers or employees can unilaterally change this legal relationship without the consent from the other party. And there is no check or review design in the course of exercising this legal right. As a result, there’s direct and destructive impact on the stability of labor contract. In other words, even if there is an illegality or abuse of power involved, it does not impede the effectiveness of the termination of the labor contract. In contrast to other advanced countries, it has the procedure to verify the legality of the dismissal and the illegal dismissal or the abuse of the employer shall be nullified and void

Only when employers are accorded with the just causes of economic, organizational, technical grounds and have redundancies when necessary, employers have the obligation to pay severance. According to the Labor Standards Act, the list of the just causes for redundant dismissal includes³:

1. Where the employers’ establishments are suspended, or has been transferred;
2. Where the employers’ establishments suffers an operating losses, or business contractions;
3. Where force majeure necessitates the suspension of establishment for more than one month;
4. Where the change of the nature of establishment necessitates the reduction of workforce and the terminated employees cannot be reassigned to other suitable positions; or.
5. An employee is clearly not capable enough to perform satisfactorily the duties required of the position held.

In addition, other provision in the Labor Standards Act and other relevant laws also listed similar reasons that employers may dismiss and should pay the severance, which includes:

³Art. 11 of the LSA.

1. Where the employer cannot continue operating the establishment due to an act of God, catastrophe or other force majeure and a prior approval has been obtained from the competent authorities⁴;
2. When an establishment is restructured or changes ownership, employees other than those to be retained through negotiations between the old and the new employers⁵;
3. Where an establishment has a need to mass redundancy of workers on account of merger and restructure⁶; or.
4. When employees apply for reinstatement after parental leave, employers has one of the listed just causes provided in art. 11 of Labor Standards Act and after receiving permission from a competent authority.⁷

1.2 Severance Payment As Compensation for Damages

When employees resign because of personal reasons, employers do not need to pay the severance. But in cases that employers have faults or negligence listed in the Labor Standards Act the resignation is forced. Therefore employers have to bear the burden of severance payment as damage compensation. The listed negligence of employer includes⁸:

1. Where an employer misrepresents any fact at the time of signing a labor contract in a manner which might mislead his/her worker and thus caused him/her to sustain damage therefrom;
2. Where an employer, his/her family member or his/her agent commits violence or grossly insults the worker;
3. Where the work specified in a labor contract is likely to be injurious to the worker's health and the worker has requested his/her employer to improve working conditions but all in vain;
4. Where an employer, an agent of the employer or a fellow worker contracts a harmful, contagious disease and there is a possibility that the worker may contract this disease;
5. Where an employer fails to pay for work in accordance with the labor contract or to give sufficient work to a worker who is paid on a piecework basis; or.
6. Where an employer breaches a labor contract or violates any labor statute or administrative regulation in a manner likely to adversely affect the rights and interests of the particular worker.

⁴The proviso of Art. 13 of the LSA.

⁵Art. 20 of the LSA.

⁶Art. 2(1) of the Act for Worker Protection of Mass Redundancy.

⁷The just causes specified in Art. 17 of the Act of Gender Equality in Employment are the same as the first four causes specified in Art. 11 of the LSA.

⁸Art. 14(1) of the LSA.

In addition, when an employer who terminates the labor contract with the employee upon the termination of medical care after suffering an occupational accident, have not placed the employee concerned with a suitable job in accordance with his/her physical conditions and capability and provide him/her with auxiliary facilities necessary for engaging in work or the employee concerned cannot reach an agreement on job placement with the employer, the employer shall pay the employees concerned severance payment as prescribed in the Labor Standards Act.⁹

1.3 Amount and Guarantee of Severance Payment

As for the amount of severance payment, current system has two sets of standards, the new one coexists with the previous one. The new standard that applied to most of the employees was established in the new labor pension scheme as an adjustment to the previous one.¹⁰ Employers contribute 6% of the wage of the employees every month to the individual account in the labor pension fund. Employees who are applicable to the new pension scheme on occasions such as redundancy or forced resignation shall have their severance payment paid by the employer based on their seniority after joining the new pension scheme: an equivalence of half a month of the average wage for every full year of employment, in proportion of employment for less than one full year, and the total amount of severance payment shall not exceed more than 6 months of the average wage.¹¹

The previous standard is applied according to the seniority in the same employer before the enactment of the new labor pension scheme and employees did not choose to join the new labor pension scheme.¹² An employer terminating a labor contract with previous standards shall issue severance pay to the employees in accordance with the terms set forth below:

1. If the employee continues to work for establishments owned by the same employer, severance payment is equal to 1 month's average wage for each year of service seniority;
2. The severance payment for the months remaining less than 1 year or for employees who have been employed for less than 1 year shall be calculated proportionally, and any period of employment less than a month shall be calculated as 1 month.¹³

⁹ Art. 25(1) of the Act for Protecting Worker of Occupational Accidents.

¹⁰ Most of the employees who are subject to the LSA have participated in the New Labor Pension Scheme. According to the statistics by the Bureau of Labor Insurance, more than six million employees participate in the New Labor Pension Scheme. See: <http://www.bli.gov.tw/reportY.aspx?y=103&f=h850>

¹¹ Art. 12(1) of the Labor Pension Act.

¹² Art. 8 and 11 of the Labor Pension Act.

¹³ Art. 17(1) of the LSA.

According to this previous standard, longer seniority generates higher severance payment with the most senior one having quite a handsome sum of total amount.

In order to ensure the severance payment workable, wage payment in arrears guaranteed system also covered the severance payment. The guaranteed system in Taiwan has two main components to ensure enough to repayment for wage payment in arrears.¹⁴

2 Evolution and Function

Taiwan's severance payment regulations have a long history that since the 1929 Factory Act, the era of National Government in Nanjing, China. By now almost 90 years, after the tremendous political, economic, and social change, severance payment has become to play eventually an important part and function on dismissal protection in the Labor Standards Act of Taiwan.

2.1 *Factory Act, 1929*

The Nanjing National Government formulated the Factory Act at the end of 1929. In cases of termination of the indefinite labor contract, the Act required employers an obligation to offer a half wage during the notice period as the severance payment. At that time, although no severance payment in the nominal, but it's in fact the severance payment as calculated according to the service seniority and the wage level.¹⁵ Severance payment at that time was quite low and have also a very simple nature without any function to replace unemployment benefit and retirement payment.

The Nanjing National Government adopted a bunch of labor legislations, although in that period China was still an agricultural society when labor problems in earlier days of modern industrial society just begin.¹⁶ Reason behind it mainly can be ascribed to the prevailing political context then. The KMT and the CCP respectively, on the labor legislation, adopted premature advanced means of legislation to contend for the progressive status of ideology (Chang and Bain 2006).

The grounds of the factory legislation also can be noticed of the effort that aimed to catch up western industrialized countries. Factory Act is a result that consulted

¹⁴Art. 28 of the LSA. Please refer to the Appendix 3 in this chapter for the Guarantee of Severance Payment.

¹⁵Art. 29 of the Factory Act: "A factory terminating a contract with advance notice pursuant to Article 27 shall pay half of the wage for the advance notice period on top of such worker's entitled wages. A factory terminating a contract without the Article 27 advance notice shall pay full wage for the advance notice period stipulated by such Article."

¹⁶Including: Act for Settlement of Labor-Management Disputes (1928), Labor Union Act and Factory Act (1929), Collective Agreement Act (1930), Factory Inspection Act (1931), Labor Contract Act (1936).

almost all instances of industrialized countries as the transplantation of law.¹⁷ The Ministry of Industry and Commerce of Nanjing Government therefore “follow the party’s program, audit the internal economic situation and social heredity, consider the external world trend and international agreements, and bring forward to the draft of the Factory Act for one hundred and seven articles” (Ma 1984, pp. 165-168). The regulations on severance pay was also a piece of advanced legislation transplanted from western European countries and wasn’t the spontaneous output emerging from the soil of economic and social maturation in China (Peng and Rao 2006).

After World War II, the National Government in Nanjing enacted the Constitution of the Republic of China in 1947. Though the provisions do not directly touch the dismissal protection and severance payment system, the list of rights includes the symmetric rights to work and to property, along with employment security and promotion in the Section of the Social Security as the fundamental policy of the State. Articles of both dismissal protection and severance payment can be considered as having their legal sources in the Constitution.¹⁸

In 1949, National Government moved to Taiwan. All the principle of the rule of law had halted in Taiwan after the civil war. When Cross-strait relations have calmed gradually since 1960s, burgeoning economy started to grown Taiwan. When the regulations of the Factory Act on the dismissal protection were really enforced, the transplanted and advanced legislations were not enough to cope with the issues from the actual labor relation. Hence, the Executive Yuan, the administrative branch of the government, announced the Order concerning the Hire and Fire Workers in the Factories and Mines at the end of 1960 which clearly specified the employers’ duties on the severance payment. Follows is the primary content:

2.1.1 Limit on the Range of Fixed Labor Contract

The fixed-term labor contract between factories or mines and workers refers to the casual, short-term, seasonal, and specific task¹⁹;

¹⁷There were some clauses related to severance payment in the German 1920 Works Council Act and the Austrian 1921 Severance Payment Act. But Austrian Act then applied just to white-collar workers. The German package of severance payment in the early time was the compensation for unjust dismissal only. I thought the severance payment in the Factory Act of Nanjing Government should be transplanted from Austrian and extended the application to all factory workers.

¹⁸See: Constitution of the Republic of China(Taiwan), Art. 15: ‘The right of existence, the right of work, and the right of property shall be guaranteed to the people.’ And Art.152: ‘The State shall provide suitable opportunity for work to people who are able to work.’

¹⁹Art. 3 of the Order concerning the Hire and Fire Workers in the Factories and Mines.

2.1.2 Obligation to Severance Payment

Except the termination of fixed-term labor contract and the disciplinary dismissal for misconduct, employers should pay the dismissed workers the severance payment²⁰;

2.1.3 Calculation of Severance Payment

1. to continue work for one full year in the same establishment entity the severance payment is equivalent to 1 month wage;
2. to continue work for two full years in the same establishment entity the severance payment is equivalent to 2 months wage;
3. to continue work for three full years in the same establishment entity the severance payment is equivalent to 3 month wage;
4. to continue work for more than 3 years in the same establishment entity the severance payment is equivalent to 10 days wage for every plus year.²¹

From the perspective of the functionalism, there were two main roles for severance pay at that time:

1. To avoid arbitrary dismissal, stabilize labor-management relationship, and ensure human resource, by raising the dismissal costs of employers, is a means of social control;
2. At the same time, employers provide certain months wage as the severance payment to unemployed workers, so as to protect the livelihood during unemployment, also bear the effect of unemployment insurance benefits. However, Order concerning the Hire and Fire Workers in the Factories and Mines is beyond the authorized scope of the Factory Act, there are criticisms such as limitation of judicial remedy and the lack of legal resources.

2.2 *Labor Standards Act, 1984*

Along with the economic take-off in the 1970s, labor problems become increasingly legislative issues in Taiwan. In 1974, Labor Safety and Health Act, a configuration of higher technical legislation was enacted, but the government is rather hesitant with regard to the approach to the industrial relations given the political and social atmosphere. Until 10 years later, in 1984, Labor Standards Act was adopted by the juridification of labor relations and setting up the minimum working conditions.²²

²⁰Art. 4 and 5 of the Order concerning the Hire and Fire Workers in the Factories and Mines.

²¹Art. 4 of the Order concerning the Hire and Fire Workers in the Factories and Mines.

²²Juridification is the process of increasing legal intervention in the employment relationship. See: 'Juridification'. *A Dictionary of Human Resource Management*, Oxford University Press. (2008).

Meanwhile, the regulation of severance payment has also incorporated into this statutory consolidation. The main framework of severance payment under the Act is no different with the current one, but differs greatly in the manner to calculate the sum of money. According to the minutes of the Legislative Yuan, the primary concern is to prevent employers from evading the retirement payment under the same Act through enhancing the severance payment significantly. The amount of severance payment was increased sharply from plus 10 days wages under the order concerning Hire and Fire workers in Factories and Mines to plus 1 month wage under the Labor Standards Act for every plus year later on the fourth year of seniority.²³

The quite generous amount of severance payment to prevent employers' evasive behavior has produced many malfunctions and far beyond employers cost control in cases of arbitrary dismissal that include:

1. May face the risk with personnel inflexibility in enterprises;
 2. May loss the function of employment promotion for dismissed workers;
 3. May raise labor disputes if the regulation is incapable of effective enforcement.
- (Kuo 2007)

In 1987, Taiwan dismantled martial law and caught up with the pace of political democratization. The Labor Standards Act has begun a substantial interaction with economic and social change after 3 years of implementation. Employer was dissatisfied with the higher labor standards and tried to offshore to Mainland China and/or Southeast Asia. Unionists discontented for the loose implementation of labor standards and as a result mobilized political and social campaigns. Severance payment in arrears which also played an important role, takes an extremely high proportion in labor dispute cases.²⁴ Facing such situation, Taiwan's government gradually advances multiple reforms including: 2002 Employment Insurance Act, 2004 Labor Pension Act, and 2015 Amendment of Labor Standards Act. Below illustrates some details:

2.2.1 Employment Insurance Act

After the success of the pilot unemployment benefits of labor insurance in 1999, the Employment Insurance Act was formulated in 2002 which provided 60% insured monthly wage up to 6–12 months for the involuntarily unemployed workers to mitigate the livelihood pressure of the displaced workers;

<http://www.oxfordreference.com/view/10.1093/acref/9780199298761.001.0001/acref-9780199298761-e-674>

²³Please refer to Legislative Yuan's general meeting minutes, *The Legislative Yuan Gazette*, Vol. 73, No. 54, pp. 14–19. Vol. 73, No. 58, pp. 47–48.

²⁴Before the commencement of employment insurance, the dispute cases for severance payment constituted at least 30% of the total labor dispute cases. Please refer to the Ministry of Labor's statistics data website: <http://www.mol.gov.tw/statistics/>

2.2.2 Labor Pension Act

As a trade-off, the employer contributes 6% of monthly wage into the individual account of the labor pension fund, meanwhile, to cut down greatly the amount of severance payment to the maximum no exceeding 6 months of the average monthly wage. The severance payment, therefore, restores simply to avoid employers arbitrary in the dismissal cases as a social control function;

2.2.3 Amendment of Labor Standards Act

The coverage of wages repayment fund expands to cover the severance payment arrears as a guarantee and will effectively reduce the related labor dispute cases.²⁵

Among them, the Labor Pension Act removes and absorbs the pension characteristics of the severance payment system especially. As mentioned above, the handsome severance payment in the old version was intended to prevent employers from evading the responsibility for the pension payment in the Labor Standards Act. But in theory or in practice, this is totally wrong. Therefore, the National Economic Development Conference was held in 2001, as a sort of political consultation, to try to have consensus on the pension system reform.²⁶ The Labor Pension Act enacted in 2004, after a heated debate in the legislative process, and finally adopted the mandatory individual account system that replaced the pension scheme in the Labor Standards Act (Huang 2005).

In order to avoid the rebound from vested interests, the legal design of the Act gave the employees the right to choose between the new and old version within 5 years after its implementation,²⁷ and at the same time maintained employees' right

²⁵According to statistics, since the pension and severance payment were added into the scope of the Wage Arrears Payment Fund, 24 persons have been paid for severance pay under the previous scheme (over NTD 570,000), 297 persons have been paid for severance pay under the new scheme (over NTD 8,280,000). After the payment of the severance pay arrears of Chi Mei Lighting Technology Corp. in February, 2016, a total of 969 persons have been paid (total amount: over NTD 56,380,000) (25 persons being paid under the previous scheme (over NTD 1,060,000), 944 persons being paid under the new scheme (over NTD 55,310,000)). The Bureau of Labor Insurance will demand the employer, liquidator or bankruptcy trustee to repay the advanced payments according to law. Please refer to Ministry of Labor website data: <http://www.mol.gov.tw/announcement/2099/24550/>

²⁶Three consensuses had reached in the Employment Session of the National Economic Development Conference: a. labor pension scheme should be portable to safeguard the rights and interests of the retirement; b. the employer contributions rate defined and adjusted from 2% to 6% gradually; c. individual account scheme, supplementary pension scheme, and other portable pension scheme were adopted parallel and could be chosen by workers themselves, neither approach will increase the government's financial burden. Employees can contribute relatively in the individual account scheme. If the contribution rate of the supplementary pension scheme is more than 6%, workers shall be taken the additional burden mandatorily. The contributions from workers' side will be considered tax-free.

²⁷See: para. 1 and 2, Art. 9 of Labor Pension Act: 'Within the period from the promulgation of the Act to 1 day prior to the enforcement of the Act, employers shall inquire in writing their employees

to his/her previous seniority.²⁸ Employees could choose the new or old version to apply by themselves with the trade-off. The other aspects of the Act is, in order to obtain employers' support, the replacement of the application of previous handsome severance payment with the more reasonable amount of severance payment for the employers who have the sole responsibility.²⁹

In addition, the labor pension fund that entrusts financial institutions with operations in the open market has also got support from economic and financial circles. The minimum profit has been guaranteed by the state treasury to persuade the vast majority of employees to choose new pension system.³⁰ Since then, severance payment in Taiwan finally gets relieved of the pension system attributes.

about their options between the pension system of the Act or retirement mechanism in the Labor Standards Act; employees who have not made a firm option after the expiration of prescribed period shall continuously be applicable to the retirement mechanism in the Labor Standards Act on the date of enforcement of the Act. Employees, who continuously choose to be applicable to the retirement mechanism in the Labor Standards Act on the date of enforcement of the Act, may within 5 years choose to be applicable to the pension system in the Act.'

Art. 10 of Labor Pension Act: 'When employees are applicable to the pension system in the Act, they shall no longer choose to be applicable to the retirement mechanism in the Labor Standards Act.'

²⁸ See: para. 1 and 2, Art. 11 of Labor Pension Act: 'Employees, who were covered by the Labor Standards Act prior to the enforcement of the Act, still work for the same business entity after the enforcement of the Act and choose to be applicable to the pension system in the Act, their seniority prior to their application to the Act shall be reserved.'

When the labor contract is terminated in accordance with Article 11, the proviso of Article 13, Article 14, Article 20, Article 53 and Article 54 of the Labor Standards Act or Article 23 and Article 24 of the Protection for workers Incurring Occupational Accidents Act, an employer shall in accordance with the foresaid statutes use the average wage at the time of terminating labor contract to calculate the severance or retirement payment for the reserved seniority referred to in the preceding paragraph, and the severance or retirement payment shall be paid within 30 days after the termination of labor contract. During the continuing period of a labor contract, when an employer and an employee mutually agree to pay off the employee's reserved seniority referred to in Paragraph 1 with a criterion no less than the payment criteria prescribed by Article 55 or Article 84-2 of the Labor Standards Act, and such an agreement shall be complied.'

²⁹ See: para. 1, Art. 12 of Labor Pension Act: 'Workers who are applicable to the pension system of this Act, and whose seniority that is applicable after this Act is terminated by labor contract in accordance with Article 11, the proviso of Article 13, Article 14 and Article 20 of the Labor Standards Act or Article 23 and Article 24 of Protection of Workers Suffering from Occupational Injuries and Diseases Act, shall have their severance pay paid by the employer based on their seniority: an equivalence of half a month of average wage for every full year of employment, and in proportion for employment less than one full year; the foresaid severance shall not exceed more than six months of average wage, and is not applicable to Article 17 of the Labor Standards Act.'

³⁰ See: para. 2, Art. 23 of Labor Pension Act: 'The return rate generated from the utilization of employees' pension contributed in accordance with the Act shall not be less than the interest rate of a two-year fixed term deposit by local banks; in the event of any deficiency, the Treasury shall make up the shortfall.'

2.3 Operation and Cases

2.3.1 Statistics of Labor Disputes

Concerning the statistics of labor disputes on the severance payment and related issues, disclosed on the official website, the case number of labor disputes accepted by the labor administrative authority is shown in Table 4.2, while accepted by the district court in Table 4.3.³¹ By examining related data and interviewing officials in charge, this study found the following four features:

1. Cases of the labor disputes in Taiwan are mainly individual rights dispute, a majority of them being dismissal-related and occurring mostly after the termination of employment contract, although cases are different in the kinds of issues (Chang 2009). Termination of the employment contract has seriously impacted on the workers and their family. Accumulated dissatisfaction and grievance as a result of dismissal give forth to labor disputes. The vast majority of cases, such

Table 4.2 Statistics of labor disputes accepted by labor administrative authority (by issues)

| Year | Total numbers of disputes | Employment contract | Severance payment | Pension |
|------|---------------------------|---------------------|-------------------|---------|
| 1994 | 2061 | 322 | 572 | 150 |
| 1995 | 2271 | 321 | 585 | 192 |
| 1996 | 2659 | 409 | 830 | 170 |
| 1997 | 2600 | 457 | 678 | 182 |
| 1998 | 4138 | 844 | 1135 | 238 |
| 1999 | 5860 | 1209 | 1915 | 275 |
| 2000 | 8026 | 1380 | 2772 | 424 |
| 2001 | 10,955 | 1682 | 4779 | 525 |
| 2002 | 14,017 | 1803 | 5999 | 533 |
| 2003 | 12,204 | 1446 | 4860 | 428 |
| 2004 | 10,838 | 1238 | 3769 | 384 |
| 2005 | 14,256 | 1309 | 5275 | 630 |
| 2006 | 15,464 | 1356 | 5216 | 504 |
| 2007 | 19,729 | 1626 | 6972 | 582 |
| 2008 | 24,540 | 1737 | 8343 | 762 |
| 2009 | 30,385 | 2230 | 10,372 | 852 |
| 2010 | 23,865 | 1773 | 6722 | 746 |
| 2011 | 22,629 | 1557 | 5817 | 853 |
| 2012 | 23,225 | 1544 | 5757 | 904 |
| 2013 | 23,943 | 2181 | 5769 | 972 |
| 2014 | 22,703 | 1940 | 5509 | 937 |
| 2015 | 23,204 | 1700 | 5618 | 1056 |

³¹ See: Ministry of Labor, Search engine of Labor Statistics, http://statfy.mol.gov.tw/statistic_DB.aspx.

Table 4.3 Statistics of labor disputes accepted by district court in first instance (by issues)

| Year | Total number of dispute | Wage | Employment contract | Pension and severance payment | Bonus | Compensation for occupational accident | Other |
|------|-------------------------|------|---------------------|-------------------------------|-------|--|-------|
| 1997 | 506 | 200 | – | 159 | 1 | 32 | 114 |
| 1998 | 518 | 224 | – | 121 | 4 | 25 | 144 |
| 1999 | – | – | – | – | – | – | – |
| 2000 | 930 | 322 | 3 | 257 | 7 | 37 | 282 |
| 2001 | 1165 | 456 | 3 | 413 | 7 | 32 | 254 |
| 2002 | 1812 | 696 | 5 | 703 | 26 | 37 | 345 |
| 2003 | 2079 | 675 | 3 | 818 | 27 | 50 | 506 |
| 2004 | 1808 | 663 | 6 | 623 | 25 | 70 | 421 |
| 2005 | 1793 | 559 | 2 | 615 | 22 | 96 | 499 |
| 2006 | 2055 | 696 | 6 | 721 | 20 | 100 | 512 |
| 2007 | 2026 | 712 | 3 | 639 | 25 | 87 | 560 |
| 2008 | 2173 | 864 | 2 | 670 | 23 | 93 | 521 |
| 2009 | 2993 | 1045 | 2 | 1029 | 33 | 90 | 794 |
| 2010 | 3092 | 1058 | 1 | 1069 | 38 | 137 | 789 |
| 2011 | 2724 | 813 | 1 | 914 | 40 | 134 | 822 |
| 2012 | 2718 | 942 | – | 777 | 24 | 112 | 863 |
| 2013 | 2833 | 948 | 2 | 802 | 31 | 143 | 907 |
| 2014 | 2741 | 914 | 3 | 723 | 20 | 143 | 938 |
| 2015 | 2880 | 957 | – | 764 | 33 | 181 | 945 |

as overtime pay, wage arrears, severance pay, pension, etc., belongs to the kind of disputes centering on claims and debts that are regulated by legal standards. This is a massive number of debt collections around twenty thousand cases each year.

2. Cases of labor disputes that are linked directly to the employment contract or reinstatement are rare in the district court per year.³² By contrast, similar cases accepted by the Labour administrative authority are still quite a few. Most of them could be settled after mediation and will not appeal to the court. The compensation in the Settlement varies case by case, mainly including the amount of severance pay, wage in the lieu of notice, wage during the proceeding, etc..

But as observed from the trial results, the hidden cases due to the skill of litigation probably will emerge when we look into the Law Bank Network, a database about Taiwanese law and its implementation. The search result illustrates that 157 reinstatement-related cases in 2015 were awarded by the district courts. Although it's not so high but should be a reasonable number. A good question to ask is: how many cases do workers win out of this 157 cases? How many workers do really resume the employment relationship? There is no such statistics available. Given the characteristics of industrial relations and organizational culture of Taiwan enter-

³²In definition of Labor Statistics, the disputes on employment contract include: nature of contract and restored employment relationship.

prises, the reinstatement will mostly likely happen in the government agencies, public-owned enterprises, and larger companies.

According to the Employment Insurance Act enforced in 2002, dismissed worker is entitled to claiming unemployment benefits during the proceeding including the period of the mediation and lawsuit. But worker should return the unemployment benefits to the insurer if the worker has reinstated and compensated by the employer because it does not meet the requirements of unemployment benefits. This regulation has indirectly motivated the parties to reach a settlement.³³ “Give up lawsuit, take money and go away” has become the main phenomenon in the settlement of unfair dismissal disputes.

3. Cases of labor disputes on severance pay and pension, whether in the labor administrative authority or the district court, are quite many, only second to wage disputes. Its peak located around 2009 when global financial crisis hit hardest. Although this number later returned to pre-crisis levels but did not decrease, the mentioned measures such as the employment insurance act of 2002, the labor pension act of 2004 and the amendment to the labor standards law of 2015 seem to have seldom effect on the number of labor disputes. Perhaps it is due to the fact that those middle-aged and beyond workers who chose the old version of severance payment, may have to fight for the legitimate rights and interests severance payment.³⁴ Whether the newly established compulsory funded labor pension that has integrated part of the former handsome severance payment, could reduce the disputes on the severance pay and pension in the longer term is still a question we need to examine. The unemployment benefits and the guarantee for the severance pay may mitigate the severity and solution of the disputes but has nothing to do with occurrence of disputes nevertheless.
4. As to the practice, we will ask firstly: how many dismissed workers have entitlement to severance payment each year? There is no statistics to give an answer directly, but the insured workers who claim as unemployment beneficiary will be a very good reference. Both of them, dismissed workers and involuntary unemployment workers, are required of similar conditions in order to claim the payments.³⁵ In the Table 4.4, there are more than seventy thousand dismissed workers

³³ See: Employment Insurance Act, Art. 23: ‘If there is a labor-management dispute between the applicant and former employer due to the applicant leaving work, unemployment benefit may still be claimed.

If the ruling on the preceding paragraph finds the applicant ineligible to claim unemployment benefit, then the applicant must return already claimed unemployment benefit within 15 days of the judgment. If the amount has not been returned before the appointed time, the case may be referred to court for compulsory execution.’

³⁴ The rate of Labor participation for Middle and Old age is lower than that of other countries for the long term. In 2015, labor participation rate in 55–59 is 55.1% and 60–64 is 35.8%. Both numbers are lower than Korea, Japan, and the USA whose rates are over 70% and 55%. See: Ministry of Labor, 2015 labor Statistics on the Middle and old age, <http://www.mol.gov.tw/statistics/2462/2466/>

³⁵ See: para. 3, Art. 11 of Employment Insurance Act: ‘The so-called involuntarily separation from employment prescribed in this Act refers to separation from employment because the insured unit

Table 4.4 Number of unemployment benefits and cases of disputes for severance payment

| Year | Number of unemployment benefits | Total cases of labor disputes (mediation) | Cases of severance payment (mediation) | Cases of severance payment (district court) | Cases of reinstatement (mediation) | Cases of reinstatement (district court) |
|------|---------------------------------|---|--|---|------------------------------------|---|
| 2015 | 72,623 | 23,204 | 5618 | 256 | 1700 | 157 |
| 2014 | 65,319 | 22,703 | 5509 | 251 | 1940 | 136 |
| 2013 | 74,021 | 23,943 | 5769 | 293 | 2181 | 146 |
| 2012 | 75,821 | 23,225 | 5757 | 304 | 1544 | 115 |
| 2011 | 64,037 | 22,629 | 5817 | 366 | 1557 | 139 |

per year to claim unemployment benefits. How many dismissed workers dissatisfied the termination of employment? It's about twenty thousand per year because more than ninety percentage disputes happened after the termination of employment in Taiwan (Chang 2009). Among twenty thousand cases, more than five thousands have claimed severance payment by mediation and 5% goes to district court. Near two thousand have claimed reinstatement and less 10% goes to district court.

2.3.2 Cases Study

1. TransAsia airway, mainly engaging in the routes of short distance and across Taiwan Straits, announced dissolution and full suspension of all lines on November 22, 2016. TransAsia airway explains the reason for dissolution in their official website: "After the crash of two planes, although all colleagues have done their best efforts and the company has issued a number of innovative measures, the performance is still not able to restore to the previous level. In the meantime, the slumping regional aviation market, the worsening financial situation including total losses of more than 2.2 billion in the last three quarters, and the pessimistic outlook, the board make the resolution to dissolve company after serious consideration and discussions for many times."³⁶ The CEO described the hard decision-making has considered many factors including dismissal cost, and also added, "the choice to dissolve the company at this time is that the company assets are still greater than the liabilities, thus having the capability to promise the rights and interests of passengers, employees, and related partners."

TransAsia Airways has been in the trade for 65 years. Among those 1700 flight crews and ground staffs, many senior staffs applied to the old version severance payment program, thus resulting in the fact that the dismissal cost is quite high.

has closed down, relocated, suspended business, dissolved, or filed bankruptcy, or separation from employment due to one of the causes prescribed in Article 11, the proviso of Article 13, Article 14 and Article 20 of the Labor Standards Act.'

³⁶ See: Wang Shu-fen and Lilian Wu, *TransAsia Airways to be dissolved*, Taipei, Nov. 22 (CNA).

Now the TransAsia Airway has transferred 18.6 million US dollars to the trust for preparation to pay wage arrears and severance pay. Maybe that amount is still not enough.³⁷ This is why TransAsia Airways proclaimed the dissolution to stop further loss and are able to have enough money to pay debts when the company's assets are still greater than debt. Obviously, handsome severance pay is the one of key factors contributing to the early termination of employment contracts.

2. Taiwan government adopted the policy of privatization since 1989. So far, 39 enterprises were completely or partially privatized, and 17 enterprises closed. Among them, the favorable conditions based on the previous handsome severance payment of the Labor Standards Act, to encourage termination of the employment contracts, have a positive effect on the promotion of the labor mobility (Pao et al. 2008).

Chunghwa telecom who completed its privatization in 1995 is an example. Eight hundred employees were laid off with the package of favorable conditions during the process of the privatization. The total number of employees is from twenty-eight thousands to twenty-seven thousands. ChungHwa telecom, after privatization, further lay off five thousands employees and recruit two thousands in 3 years to balance the total number of employees around twenty-five thousands. The "preferential termination and retirement scheme of Chunghwa telecom" provided favorable conditions to eligible employees to apply. Any employee over 50 years old may apply the "16 + 1" project. And employees who were impacted by the restructuring program may apply "12 + 1" project.³⁸

3 Observation of Comparative Labor Law

According to the report by the international labor organization, out of 72 surveyed countries there are 52 countries that have severance payment regulated by law (ILO 2000). According to the World Bank, it shows that 152 in 182 countries with the regulation of severance payment, which is more than 80%. It can be fairly said that the vast majority of the countries surveyed are established by law for the severance payment (Holzmann et al. 2011, pp. 57–74). However, there are different arrangements and effects with their different historical context and strategies chosen by countries. The following is just a preliminary observation from comparative law in certain advanced industrialized states.

³⁷ See: Chen Wei-ting and Evelyn Kao, *TransAsia Airways unveils employees' severance pay plan*, Taipei, Nov. 22 (CNA).

³⁸ So called '16 + 1' refers to average wage of 16 months plus 1 month wage for the lieu of notice period. See: Lin SueHuei, *ChungHwa Telcom lay off preferentially 2500 employees by 4 billions NTD*, China Times 2006-03-02. <http://www.ctwu.org.tw/content/news/news04a.asp?sn=638&cpy=2006>.

3.1 *Severance Payment Not Required by Law*

Although the severance payment is not required by law in the United States and Germany, both countries have different dismissal protection approach. The United States is the country of collective bargaining where dismissal protection follows the same line as well.³⁹ In practice, most employers voluntarily provide some severance payment for employees dismissed for economic reasons (ILO 2000, p. 359). Severance payment is adopted into social plans in Germany to mitigate economic disadvantage with redundancy. The works council could consult with the employer on the matter of severance payment to be covered under works agreement.⁴⁰

The United States and Germany, however, belong to two different orientations on dismissal protection. Principle of employment at will in the United States considers the organizational efficiency that will promote employment. It considers that a lower dismissal threshold will help the efficiency of business and then benefit the employment promotion. On the contrary, the redundant personnel cannot be dismissed that may reduce the performance of the organization and then may limit the capacity to have new employment.

Beside the social plan (Sozialplan), there is a cyclical short-time working allowance (Kug) for dismissal protection in Germany to retain employment and to avoid layoff essentially.⁴¹ It thinks the tripartite, government and both parties in industry, on the dismissal due to the economic reasons have responsibilities to plan and prepare ahead to keep the precious human capital, and to decrease the negative impact to workers and their family even when dismissal is inevitable.

In addition, the German Dismissal Protection Act has been revised in 2004 that adjusted the principle from reinstatement to compensation. In other words, “Give up lawsuit, take money and go away”. Dismissed worker has been compensated for the economic disadvantage (Abfindung), while employers have the flexibility of the human resources management. The severance payment for penalty have legal status in Germany with the function mainly to serve as alternative resolution to lengthy litigation to save time and money on both sides (Wu 2005). In a word, severance

³⁹Of course and first, prohibited discrimination and retaliation for dismissal in the USA. Where employees are represented by a union, their collective agreement nearly always contains a provision that requires ‘*just cause*’ for termination. Such provisions often contain provisions in regard to severance payment and are enforceable through the grievance and arbitration process set forth in nearly all collective agreements. But the coverage of collective agreements is limited by the low rate of union representation (10.7% of the American workforce unionized as of 2016 in both public and private sectors, 6.4% in the private sector). See: <https://www.bls.gov/news.release/union2.nr0.htm>.

⁴⁰ Only in special cases, employers have the duty of severance payment according to: Sec. 1a of Protection against Dismissal Act (Kündigungsschutzgesetz): ‘an employee dismissed on the basis of urgent operational requirement is entitled to severance pay, the amount of which equal 0.5 months’ pay for each year of employment, provided he has not challenged the dismissal within 3 weeks following the notice of termination’ (ILO 2000, p. 159).

⁴¹*Just causes* in Germany include three categories: (1) person-related; (2) conduct-related; (3) economic-related (Weiss and Schmidt, 2008, p. 106).

payment had been a voluntary arrangement because collective bargaining and HRM in the USA, and works councils and social plan in Germany are effective alternatives to dismissal protection for economic reason. Therefore, there is no necessity to juridification which does not play key role (Magotsch and Kremp 2010).

3.2 *Severance Payment Required by Law*

Among advanced countries which have severance payment, UK and France are more rigorous so that severance payment is provided only for collective redundancy, (Blanpain et al. 2012) which is stipulated by law as below:

3.2.1 United Kingdom

The juridification of severance payment in UK was to encourage the labor mobility with the legal obligation of employers to the severance payment. Disadvantages of dismissed workers have been compensated in return for the less conflicts against redundancy from trade unions (Edward 1991, p. 87). Since it's established in 1965, about half a century, the main substance of the severance payment has no change and criticism, except only some legal consolidation. For the reason, the amount of the severance payment is not so high and the employer obligation is clear so that there is low management risk.⁴² In politics, the severance payment is the consensus with the two political parties. In the social economy, it has become the usual practice and custom for both sides in the industry.

At present, there are four kinds of dismissal in the UK: respectively fair dismissal, unfair dismissal, constructive dismissal, wrongful dismissal. Among six types of fair dismissal with *valid reasons*, stipulated in the Employment Rights Act, ERA of 1996, only in the case of redundancy the employer shall have the duty to pay severance payment.⁴³

⁴²The English severance payment is applicable to layoffs due to economic reasons and employees who have worked for the same employer for over 2 years are qualified to apply. The amount of severance payment varied by age: for every year of service, half a week wage paid for those under the age 22; 1 week age for age 22–41 and one and half week age for those over the age 41. Currently the maximum service year for calculating severance payment is 20 years. The maximum weekly wage is capped at £489, the maximum statutory severance payment is £14,670. Severance payments under £30,000 are tax free. See: <https://www.gov.uk/staff-redundant/redundancy-pay>

⁴³See: Sec. 98, ERA. The six types of fair dismissal as follows: (1) the employee's capability or qualifications for performing work of the kind he or she was employed to do; (2) the employee's conduct; (3) the employee's retirement; (4) the employee's redundancy; (5) the employee could not continue to work in the position which he or she held without contravention (either on his or her part or that of the employer) of a statutory duty or restriction; (6) "some other substantial reason" justifying the dismissal of an employee holding the position that he or she held.

3.2.2 France

In the 1970s, the redundancy should be prior approved by the competent authority and has to have real and serious causes (*cause réelle et sérieuse*) in France where nearly prohibition of dismissal is the rule.⁴⁴ Until 1987, the regulations relax from authorization to report/notification. The Juridification of severance payment in 1967 is mainly to serve the function of compensation given the complex and strict dismissal protection.⁴⁵ Recently, the requirements of dismissal with consent were relaxed in 2008, which should not be lower than the statutory termination indemnity, but should not waive the right to remedy by court to avoid the forced consent.⁴⁶

France may still be one of the most employee-protective termination laws around the world and accompanied the adverse effects on the high unemployment rate for young people and racial minorities.⁴⁷

3.2.3 Austria

The Austrian severance payment was legalized for trade-off to relax the law that nearly prohibited dismissal. At present, the situation is like Taiwan with the coexistence of previous and new one. The previous one had established in 1921 that

⁴⁴ *Official Gazette* of the Republic of France, 4 Jan 1975 (Despax et al. 2011, p. 157).

⁴⁵ Severance payment for layoffs due to economic reasons are calculated according to year of service. For the ones between 2 to 10 years, an additional 1/5 of monthly average wage will be added each year. For 10 years of service or more, an additional 2/15 of monthly average wage will be added each year. See: Art. L 1234-9 Labor Code: 'right to severance pay after a tenure of at least 1 year without interruption, except in case of serious misconduct.'

⁴⁶ Whereas an employer and employee may agree to an amicable termination, a common-consent termination requires that certain steps be followed for the agreement to be enforceable: (1) meeting between the employer and employee to negotiate termination conditions; (2) signing of the agreement by both parties with terms and conditions of termination specially stated, including amount of termination payment, which must be no less than the dismissal indemnity; and (3) homologation of the agreement by the department director of employment and vocational training. Such an agreement cannot include a waiver of claims by the employee regarding his or her termination (Swartz 2006).

⁴⁷ 'A recent Organization for Economic Co-operation and Development (OECD) study observes that employee protection legislation has contributed to high unemployment levels in France. Under the Labor Code regulations that ensure that employment contracts are not terminable at will, firing an employee, even an unproductive employee, is extremely costly for the employer. With the exception of "serious fault," even terminations for economic reasons or just cause, which are permissible under the Code, impose on the employer procedural costs and severance payments. A 1995 study shows that employers lose 74% of litigated wrongful termination cases in France (compared with 48% in Canada, 51% in Italy, and 38% in the United Kingdom). One economic study estimates the marginal cost of terminating one worker at 14 months' wages for a median wage worker. As a result, employers rarely create new jobs in France, leaving very few positions open to young people attempting to enter the labor market. Throughout the 1990s, 50% of the unemployed were young people between the ages of twenty-one and thirty.'... The increased costs of termination affect the ways in which employers exercise their discretion in hiring. An employer knowing how costly it will be to fire a full-time employee is less likely to hire candidates whom they consider risky hires. This leads to both "rational" and racially biased failures to hire racial minorities' (Suk 2007).

applied only to white-collar workers and later extended coverage to all labor contracts in 1979.⁴⁸ The new one has established in 2002 that applied only to the newly signed labor contracts after 2003 and the labor contracts before 2003 but agreed to join the new one by the parties.⁴⁹ New severance payment is to correct the shortcomings of the previous one, which consist of two: (1) serious obstacle to the labor mobility; (2) strong criticism from trade unions for the restrictions on claims (Traxler 2001). New severance payment is a kind of financial saving and integrated with occupational pension (Hofer 2007, pp. 41-48).

There are only two limitations, unlike and much more relax than other European countries, in the dismissal protection: (1) *important reasons* are required for summary dismissals⁵⁰; (2) prohibited discriminative grounds for dismissal.

3.3 *Tendency in Comparison*

In contrast to the dismissal at will system, although the dismissal protection is a trend, it tended to be harshly restricted. The dismissal protection law of Germany in 1951 should be a case in point (Weiss and Schmidt 2008, p. 279). From then on, the dismissal with legality has been an exception while the dismissal regarded as illegal is the principle. It was not until the proposal in 2004 that dismissal regulation got amended and relaxed a little bit. In practice, if job security or dismissal protection is made strict, employers are likely not to hire new employees so easily, which will harm the overall employment security. Change of practice from job security to employment security is the current trend.⁵¹

In this process, the severance payment system is like a weight, maintaining the balance of the system of dismissal protection. There is the possibility of relaxing the unfair dismissal litigation and the possibility of relaxing the dismissal, both being conditional on the payment of a certain amount of severance pay. Such is the case in the aforementioned countries as the Great Britain, Germany and other countries.

⁴⁸Under the previous scheme, the minimum year of service qualified for severance payment is 3 years, and the payment will be 2 months wage for the ones between 3 to 5 years; 3 months wage for 5–10 years; 4 months wage for 10–15 years; 6 months wage for 15–20 years; 9 months wage for 20–25 years and 12 months wage for over 25 years of service.

⁴⁹Under the new scheme (Abfertigung Neu), employers will contribute 1.53% of the monthly wage to the individual account in the public fund (MVK), those whose are over 3 years of service are qualified for the options to withdraw all the payment at once when leaving his/her job; to keep the payment in the old employer's public fund; to transfer the payment to the new employer's public fund or to switch to occupational pension scheme. Those whose year of service is less than 3 years can only choose to continue to save.

⁵⁰See: sec. 1162 Civil Code: 'Are considered as "important reasons" those reasons relating to the worker's conduct or capacity'.

⁵¹M. Tiraboschi, 'Labour Law, Training Contracts and the Problem of Youth Unemployment,' in Blanpain (2014, pp. 489-516).

On the other hand, excessive severance pay tends to impede labor market mobility and the integration with occupational pension, as indicated by Austrian case. Although the reform of Taiwan's old severance payment system was similar to that of Austria, it was not exactly the same. It still maintains the appropriate amount of the severance payment and most importantly Taiwan's severance payment system has gotten rid of plagiarism, and shows its own personality through integration with Taiwan's unique culture of industrial relations.

4 Conclusion

Although Taiwan's severance payment from its very beginning was transplanted, but it served as the preliminary function of unemployment benefit when the economic growth increased after 1960s. The Labor Standards Act of 1984 had designed the severance payment with the function of preventing from employers' evasion of the obligations of retirement payment in the same act. Obviously, this arrangement to raise sharply the amount of severance payment has not only failed to achieve the objective, but on the contrary make the matter much worse and has many negative effects on the labor mobility in the SMEs, even with lots of labor disputes. The only positive effect may be that during the period of the privatization of state-owned enterprises, a relatively high-standard arrangement for dismissal and retirement could ensure rights and interests of those aged employees and promote the progress of organizational restructuring and adjustment.

4.1 *Meaning for Employment Contract*

The employment contract is not only an exchange relationship between wage payment and service performance but also a human and ethics relationship that include the employer's protection and employee's commitment, etc. When dismissal cases happened, companies as an employer cannot continue to protect and take care of employees anymore should compensate employees substantially for their loyalty and diligence. Of course, it is entirely reasonable. Unless dismissed employees have serious misconduct, then employers can waive the severance payment.

At present, Taiwan's severance payment has made adjustments by way of the establishment of the social security system. Apart from the pension's alternative function and the income maintenance function during the unemployment period, the severance payment gradually returning to be an alert to employers for more cautious in the dismissal cases. This will enable employers not to dismiss employees so casually. If necessary, it can provide employees with appropriate compensation and is able to demonstrate the spirit of human and ethics relations on the employment contract.

4.2 *Meaning for Labor Law*

Taiwan's severance payment system differs from that of some advanced countries in that dismissal on just causes is still subject to severance payments, while no statutory severance pay or only collective redundancy are entitled to severance pay in those countries.⁵² Legislators in Taiwan may realize that to prioritize legislative debates over contract disputes can help to eliminate disputes between employers and employees and promote harmony.

The juridification of labor relations as a strategy is embedded in the LSA and its practices as follows:

1. Clearly listed the requirements of just causes (economic, organization, and technology) for the fair dismissal including the redundancy and disciplinary dismissal;
2. Clearly listed the requirements of employers' serious misconduct for the forced resignation;
3. Clearly defined the severance payment for the redundant dismissal and forced resignation;
4. Some claims to reinstatement are from dismissed employees in the public sector or larger private companies, while most claims from dismissed employees in SME are about severance payment;
5. Slim policy kick out overloading functions from severance payment to social security.⁵³
6. Therefore, administrative and legislative branch in Taiwan government have more initiative power actively in the process of the juridification on the dismissal protection and employment security.⁵⁴
7. Through the arrangement of severance payment, parties in the employment contract could have more opportunity to weight the advantages and disadvantages and then make the choice freely by themselves rather than by judges in the economic dismissal cases.

Dismissal is definitely a painful event for both employers and employees. This can only be mitigated if employers do not dismiss casually and prepare for financial compensation. The parties of Taiwan's labor relations made the strategic choices of

⁵² Please refer to the appendix in this chapter for the analysis of the ILO database.

⁵³ After Taiwan enacted the employment insurance law in 2002, the system of severance payment can relieve the pressure of unemployed workers as a temporary income support source. However, 2004 Labor Pension Act required the employer to contribute 6% of monthly wage into the individual worker's pension account, and meanwhile, as a trade-off, the amount of severance payment was reduced to the maximum no exceeding 6 months of the average monthly wage. The functions of income maintenance for unemployment and retirement therefore kick out to social security.

⁵⁴ The dismissal protection of the Taiwan's LSA, in essence, listed precisely the requirements of both the fair dismissal and the forced resignation to achieve the effect of administrative and legislative discretion to substitute judicial discretion.

juridification to balancing the relationship between the loyalty from employee and the protection from employer in the severance payment system.

The prospect of the development in the advanced countries, the formulation of social security and active labor market policy helps to slim down the load of severance payment. The appropriate arrangement of severance payment has not only lower the cost over the judicial process for unfair dismissal, but also improved mobility in the labor market. The severance payment in Taiwan still has the space for the improvement especially with the penalty for the unfair dismissal.

Appendices

Appendix 1: Chronology of Severance Payment System in Taiwan and Related European Countries

- 1920 (Germany) Works Councils Act provided severance payment for dismissal compensation.
- 1921 (Austria) Severance Payment Act applied to white collar workers.
- 1929 (Taiwan, National Government in Nanjing of China) Factory Act provided severance payment that was transplanted from Europe.
- 1947 (Taiwan, National Government in Nanjing of China) The Constitution provided the symmetric rights of work and property, and employment security as national fundamental policy.
- 1951 (Germany) Dismissal Protection Act canceled severance payment.
- 1960 (Taiwan) Order concerning the Hire and Fire Workers in the Factories and Mines raised amount of severance payment.
- 1965 (UK) Redundancy Payments Act as one of three pillars for dismissal protection.
- 1967 (France) severance payment system has been adopted in Labor Code.
- 1979 (Austria) Amended Severance Payment Act extended to all workers.
- 1984 (Taiwan) Labor Standards Act clearly defined requirements of just causes and provided handsome severance payment to prevent employers from evading pension obligation.
- 2002 (Taiwan) Employment Insurance Act provided unemployment benefits as income maintenance for involuntary unemployment workers.
- 2002 (Austria) New Severance Payment System combined into occupational pension.
- 2004 (Germany) Amended Dismissal Protection Act allowing compensation to replace reinstatement.
- 2004 (Taiwan) Labor Pension Act merged handsome severance payment into new labor pension system and capped the ceiling of severance payment.
- 2015 (Taiwan) Amended Labor Standards Act extended the coverage of Arrear Wage Payment Fund to include severance payment.

Appendix 2: Severance Pay and Redundancy Payment in Advanced Countries

Compiled by Chang, Chyi-Herng @National Chengchi University, TAIWAN.

Source: Employment protection legislation database – EPLex, ILO http://www.ilo.org/dyn/eplex/termmain.home?p_lang=en

Total advanced country number in EPLex: 21.

Number of no any statutory severance pay: 9#.

Number of no statutory severance pay for individual dismissal: 11*.

Number of unconventional statutory severance pay: 5@

1. Australia – 2012

1. Individual dismissal (non-economic): no statutory severance pay.
2. Economic dismissal (individual and collective): statutory redundancy payment.

2. Austria – 2012@

1. Old severance pay (no specific provision for economic dismissal) are only relevant to worker under an employment contracts concluded before 1 January 2003.
2. New scheme which applies to all employment contracts concluded after 1 January 2003, the employer pays pre-defined contributions (1.53% of the monthly gross wages) to an employee income provision fund. Upon termination of employment (except in case of summary dismissal), any employee in respect of which at least 36 monthly contributions were made (by one or more employers) can chose between receiving severance payment from the fund or saving the entitlement towards a future pension.

If the employee quits or if job tenure is shorter than 3 years, no severance payment will be made but the balance of the account is carried over to the next employer.

3. Belgium – 2017*

1. Individual dismissals (including for economic reasons): no statutory severance pay.
2. Collective dismissal: redundancy payment established by a national collective agreement (N°10 of 1973).

4. Canada (Federal Only) – 2012@

Upon termination of employment by the employer, except in the event of dismissal for just cause (summary dismissal), an employee who has completed 12 months of continuous employment is entitled to severance pay which shall amount to the greater of:

1. two days' wages (at the regular rate for regular hours of work) for each completed year of service; or.

2. five days' wages (at the regular rate for regular hours of work).

5. **Denmark – 2010@**

1. White-Collar workers:

Sec. 2a ESEA:

In case of dismissal of a salaried employee having worked continuously in the same enterprise for 12, 15, 18 years, the employer shall pay a sum corresponding to, respectively, 1, 2 or 3 months' salary unless the employee is entitled to old-age pension.

2. Blue-collar workers: no statutory severance pay. Severance pay is regulated by collective agreements.

6. **Finland – 2012*#**

No statutory severance pay or redundancy payment.

7. **France – 2012**

Art. L 1234-9 LC (last amended by Act No 2008-596 of 25 June 2008): right to severance pay after a tenure of at least 1 year without interruption, except in case of serious misconduct.

The calculation modalities are determined by art. R 1234-2 LC:

The statutory minimum is 1/5 of monthly wages per year of service.

For employees with more than 10 years of service, 2/15 of the monthly wages multiplied by the number of years of service beyond 10 years should be added.

Ex:

Tenure of 1 year: $1/5 \times 1 = 0.2$.

Tenure of 20 years: $(1/5 \times 20) + (2/15 \times 10) = 5.33$

8. **Germany – 2012**

1. Individual dismissals based on the worker's conduct or capacity: no severance pay.

2. Economic (individual or collective) dismissals: redundancy payment.

9. **Italy – 2014*@**

No severance pay as such. However, there is an end-of-employment contract indemnity (TFR: *Trattamento di fine rapporto*: sec. 2120 CC) constituted by a certain amount of salary set aside each month to be paid to each employee upon termination of the employment contract.

It is calculated according to the formula of a year's overall salary divided by 13.5, plus 1.5% for each year of service plus compensation for inflation. It is payable whenever an employment contract ends for whatever reason, and is based on length of service with the company.

The TFR payment scheme has been reformed. Since 2007, the employer's contributions for the TFR have been transferred to either a state pension fund or private complementary pension funds.

10. Japan – 2010*#

No statutory severance pay or redundancy payment.

Collective agreements can provide for severance pay in case of dismissals.

11. Korea, Republic of – 2012*#

No statutory severance pay as such or redundancy payment.

12. Luxembourg – 2012

Art. L 124-7 LC: except in case of serious misconduct, a dismissed employee (under a contract of indeterminate duration) is entitled to severance pay (“indemnité de départ”) provided he or she have been continuously employed for at least 5 years with the same employer and is not eligible to an old-age pension.

13. Netherlands – 2012*#

1. No statutory severance pay.
2. No statutory redundancy payment but generally provided in social plans.
3. In case of judicial termination, the Court may award a compensation payment applying a formula contained in the 1996 Recommendations issued by the Association of Dutch Sub district Courts.

14. New Zealand – 2012*#

1. There is no statutory severance pay or redundancy pay scheme in New Zealand.
2. An employee is only entitled to severance pay or redundancy payment if it is so stipulated in the contract of employment or a collective agreement.

15. Norway – 2012*#

1. There are no statutory provisions on severance or redundancy payment. These can be included in collective agreements.
2. In addition, redundancy pay may be negotiated by the employer and the workers’ representatives during the consultation and information process preceding collective redundancies.

16. Singapore – 2013*#

1. Dismissal not based on economic reasons: no statutory severance pay.
 2. Economic dismissal: no statutory redundancy payment.
- The EA only stipulates that employees with less than 3 years of service shall not be entitled to redundancy payment (art. 45 EA).

According to the Tripartite Guidelines on Managing Excess Manpower (as updated in 2009), the quantum of retrenchment payment for employees with 3 years of service is provided in the contract of work or the collective agreement, or subject to negotiation between employee and employer in the absence of such provision.

17. Spain – 2014

1. Dismissal for an objective reason (including individual and collective dismissals for economic reasons): severance pay = 20 days' wages per year of service up to a maximum of 12 month's wages.
2. Disciplinary dismissal: no severance pay.
3. Termination of a fixed-term contract (which is not concluded for training or substitution purposes): 12 days' wages per year of service.

18. Sweden – 2012*#

No statutory severance pay or redundancy pay, but generally provided in collective agreements.

19. Switzerland – 2013@

No general statutory severance pay or redundancy payment scheme.

However, upon termination of the contract by either parties, a worker is at least 50 years old and has 20 or more or more years of service with the same employer is entitled to a long service payment (“indemnité à raison de longs rapports de travail”: art. 339c CO).

As a minimum, this payment should amount to 2 months wages and shall not exceed 8 months: art. 339c (1) & (2) CO. However, it may be reduced in part or canceled if the employee terminates his contract without proper justification, if the employer summarily dismiss him for valid reasons or of if the payment of this amount would result in difficulties for the employer (art. 339c (3) CO).

20. United Kingdom – 2012

1. No statutory severance pay in the event of non-economic dismissals.
2. The Employment Right Act 1996 only provides for a statutory termination payment in the event of redundancies. (Sec. 135, 155 and 162 ERA)

21. United States – 2012*#

1. There is no statutory right to severance pay or redundancy payment in the United States.
2. For an employer whose employees are represented by a union, however, the collective-bargaining agreement between the union and the employer setting forth terms and conditions of employment often contains provisions in regard to severance pay.

Appendix 3: The Guarantee of Severance Payment in Taiwan**1. Priority of Wage Claim**

When an employer has suspended or liquidated its business or has declared bankruptcy, the rights of employees as the creditor shall be regarded equal to the other creditors with mortgage rights, pledges or liens of the top priority, and the employees shall be paid in accordance with the proportion of their creditor

rights; employees shall have top most priority to receive the remaining amounts owed to them:

1. Less than 6 months of wages to be paid to the workers according to the labor contract;
2. Retirement payment that the employer has failed to disburse in accordance with the Labor Standards Act;
3. Severance payment that the employer has failed to disburse in accordance with the Labor Standards Act or the Labor Pension Act.

2. Arrear Wage Payment Fund

Employers are required to contribute a certain amount, no more than 1.5 thousandths of the total insured monthly wage, to the Arrear Wage Payment Fund each month. When the Arrear Wage Payment Fund has accumulated to a certain amount, the rate shall be reduced or the collection shall be suspended.

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