REDUNDANCY AND JUDICIAL POWER:
BETWEEN INACTION AND CREATIVE BOLDNESS

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The purpose of this review is to develop an understanding of comparative laws and practices in respect of redundancy law. In this regard the focus will be on international instruments (primarily Recommendation 119 of 1963 and 166 of 1982 and Convention 158 of the International Labour Organisation (ILO) and the European Union's Directive on Collective Redundancies (Council Directive 98/59/ EC of 20 July 1998) and the position in several domestic jurisdictions

The term 'redundancy' appears to be the most common term used to describe dismissals based on the operational requirements of the employer. However, the practice is by no means universal and in some jurisdictions, redundancy is regarded as merely one of many operational reasons that would justify a dismissal. In some jurisdictions, for instance South Africa, the term 'retrenchment' is preferred, at least colloquially, as short hand to all dismissals relating to the operational requirements of the employer. These terms are used interchangeably in this review.

In Austria, the law itself does not use a specific word for the dismissal on economic grounds. However in case of dismissal for operational reasons or other business needs, the court may examine whether dismissal was actually necessary or whether it would have been possible to transfer the worker to another post[1]. If the tribunal decided that the measure was not necessary, the dismissal can be deemed "unfair". In this respect, a comparison can be made with Canadian law. There are no legal provisions governing the economic reasons for dismissal but in Canada, federal legislation and two provincial labor (Quebec and Nova Scotia) laws include an employment protection remedy allowing an employee with a

1 OCDE, Austria, Regulations in force on 1 January 2013, https://www.oecd.org/els/emp/Austria.pdf