



Argentine Republic
National Executive Power 1983–2023
40 YEARS OF DEMOCRACY

Note

No.: NO-2023-81872752-APN-MT

CITY OF BUENOS AIRES

Friday, 14 July 2023

Reference: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87):
Referral to the International Court of Justice – Right to strike

To: Gilbert F. HOUNGBO (International Labour Office (ILO)),

With copy to:

Dear Director-General,

I have the pleasure to write to you, in my capacity as Minister of Labour, Employment and Social Security of the Argentine Republic, in relation to the letter addressed to you by the Workers' group of the ILO concerning a request for a referral to the International Court of Justice for an advisory opinion on the scope of the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike.

In this connection, I wish to express my support for the request made by the Worker Vice-Chairperson of the Governing Body on behalf of the Workers' group of the ILO that an item be placed, as a matter of urgency, on the agenda of the 349th Session of the Governing Body for discussion and decision on a referral to the International Court of Justice (ICJ) of the longstanding dispute over the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike. To facilitate the discussion and decision-making of the Governing Body, the Office was also requested to prepare a comprehensive report containing all the necessary elements to be considered for a referral to the Court, including the questions to be put to the ICJ.

The tripartite constituents have made various attempts to resolve the prolonged interpretation dispute, including through social dialogue. Despite these efforts, no consensus-based outcome has been achieved. In the event that the dispute over the legal interpretation persists, the Organization must have recourse to the constitutional procedure set out in article 37, paragraph 1, of the ILO Constitution and refer the matter to the International Court of Justice. Governments need legal certainty in relation to all of their obligations under Convention No. 87 and to the supervision of its application by the

Committee of Experts on the Application of Conventions and Recommendations. Without legal certainty, this dispute will continue to have a detrimental effect on the supervisory system, on the credibility of the ILO as a standard-setting body within and outside the United Nations system, and on the effective application of international labour standards.

Taking into account the institutional impact of this persistent interpretation dispute and the urgent need to resolve it, the Office is also requested to transmit this letter as soon as possible to all ILO constituents before the Governing Body's discussion.

Lastly, I wish to note that, throughout the prolonged debate on this subject, the Argentine Republic has continuously maintained three clear positions:

- I. In relation to the successive discussions of this matter in which divergent positions have been expressed, and with a view to providing the international community with greater certainty on the scope of Convention No. 87, the Argentine Republic has maintained that it is advisable to refer the matter to the International Court of Justice pursuant to article 37, paragraph 1, of the ILO Constitution for final decision.
- II. Furthermore, when the discussion focused on the need for a special procedure to seize the International Court of Justice, the Argentine Republic stated that that was unnecessary, and that a clear request from a Member State or a group of Employers or Workers of the International Labour Organization was sufficient, as under article 37, paragraph 1, they have the right without any prior formalities, and subject only to the approval of the Governing Body in accordance with the required majority.
- III. Without prejudice to all of the foregoing, in the various scenarios that have been discussed, the Argentine Republic has always maintained that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), contains the right to strike, in accordance with Articles 3 and 10 of this international instrument.

In the light of the above, I would be grateful to receive confirmation that the necessary measures have been taken in response to this letter.

I take this opportunity to renew to you the expression of my highest consideration.

Raquel Cecilia Kismer

Minister

Ministry of Labour, Employment and Social Security

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