

Mr. Gilbert F. HOUNGBO
ILO Director-General
International Labour Office (ILO)
Route de Morillons 4
1211 Geneva 22

Lisbon, 6 October 2023

404

Re: Right to strike in relation to the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (C. 87).

Dear Director-General,

On behalf of CIP - Confederation of Portuguese Business, the most representative Portuguese employers' organization, I am writing concerning the Worker's Group request on the interpretation of the right to strike, in relation to the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (C. 87), to the International Court of Justice (ICJ) for decision.

CIP is expressing support to the positions expressed by the Employers Group of the Governing Body on this matter.

Moreover, Portugal ratified the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (C. 144) on 9 January 1981, that requires Member States to ensure "*effective consultations*" between representatives of the governments, employers and workers on matters concerning the ILO. Given the importance of the right to strike issue in relation to C. 87, that Portugal also ratified on 14 October 1977, as well as the wide implications of the outcome of this interpretation dispute, we are deeply concerned that we weren't consulted on this important matter.

The adoption of C. 87 is clear to the effect that the ILO's tripartite constituents excluded the right to strike at the time of the drafting and approval of C. 87. The ILO's 1948 preparatory report clearly states: "*the proposed convention refers only to freedom of association and not to the right to strike.*"

Furthermore, in the discussions on C. 87 that took place at the International Labour Conference (ILC) of 1947 and 1948, no amendments concerning the right to strike were adopted.

The mandate of the Committee of Experts has remained unchanged since 1947. The experts carry out "*an impartial and technical analysis of the application of the Conventions in law and practice by the member states ... its opinions and recommendations are non-binding and are intended to guide the action of national authorities.*"

When the Committee of Experts identifies differences in the interpretation of the Conventions, communicates them to the Governing Board and the International Labour Conference so that they may take appropriate action.

Therefore, the interpretations of the Committee of Experts cannot and should not be used as a basis for determining at international level the scope and limits of the right to strike, nor should they be used as a basis for evaluating or monitoring its application.

Although the ILO Constitution provides for the International Court of Justice to resolve disputes of interpretation, as was requested by the Worker's Group, this is not the only solution available, nor the most appropriate solution to this dispute of interpretation, for the following reasons:

There are internal solutions within the ILO that have not been exhausted, like the definition of standards by the International Labour Conference (ILC).

There are risks and uncertainties involved in the outcome of the ICJ's advisory opinion.

Any outcome could damage the reputation and credibility of the ILO in resolving an internal issue and would have an impact on the mandate of the Committee of Experts to provide interpretation on instruments other than C. 87.

To ensure legal certainty, that is, legal clarity based on broad acceptance, the solution should remain in the hands of the relevant actors in ILO standards, in particular the tripartite components of the ILO. Only a tripartite solution based on Social Dialogue to address the issue of the right to strike would ensure that:

All ILO constituents could actively participate in the process.

Solutions would be based on a consensus, or at least a large majority; and

The results adopted would be universally relevant and accepted.

In conclusion, CIP considers that the adequate solution to resolve the interpretation dispute on the right to strike, in relation to the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (C. 87), is a tripartite social dialogue-based solution through standard setting.

Yours faithfully



Armindo Monteiro
President