

October 2, 2023

Mr. Nozomi Tomita,
Senior Assistant Minister for International Affairs
Minister's Secretariat
Ministry of Health, Labour and Welfare

Comment on actions to be taken with regard to Convention No.87
in accordance with article 37(1) of the ILO Constitution

At the request of the Director-General of the ILO in his letter dated August 31, 2023, and based on the background report from the Secretariat, we have reviewed the content of the comments of the Government of Japan. We submit our comments as attached.

Shigeya Suzuki
Director, Labor Legislation Bureau
Keidanren (Japan Business Federation)

<Comments>

By carefully examining the background report, Keidanren, the Japanese employers' organisation, understands the desire of the Workers' group and the Governments to resolve the long-standing dispute on the interpretation of the Freedom of Association and Protection of the Rights to Organise Convention, 1948 (No.87) in relation to the right to strike. However, at this stage, we are not in favor of referring questions to the International Court of Justice (hereafter referred to as "ICJ") for an advisory opinion in accordance with article 37(1) of the Constitution, for two reasons.

First, the procedural framework was not adopted with regard to Article 37(1) of the Constitution at the 347th session of the Governing Body in March 2023. As the Government of Japan has pointed out, the procedural framework should be discussed at the special session following the 379th session of the Governing Body. It is not appropriate to ask the ICJ for an advisory opinion without agreement by the Governing Body on the procedure. In order to avoid future abuse of the procedure with regard to Article 37 (1) of the Constitution, the rules of procedure for referral to the ICJ, including the requirements for referral, should be clearly established before a decision is taken to refer the case to the International Court of Justice.

Second, in particular, Convention No. 87, which is the subject of the current dispute, is one of the Fundamental principles and rights and affects all Member States. Therefore, we fully support the request of the Employer Group for a special meeting of the Governing Body for the urgent inclusion of a standard setting item on the right to strike on the agenda of 112th session of the International Labour Conference. This approach is in line with the transparency, representation and tripartite dialogue that are essential for the effective functioning of the ILO and will find solutions to long-standing disputes in discussions within the ILO.

If the matter is still to be referred to the ICJ, the International Labour Conference should approve the referral to the Court as well as the question(s) of interpretation, based on an in-depth analysis by the Board.

Furthermore, with regard to the Draft Governing Body resolution presented by the ILO Office, the questions (a) and (b) of paragraph 1.2 would, as the IOE has long pointed out, result in an expansion of the powers of the Committee of Experts for the Application of Recommendations to Conventions, which could lead to legal uncertainty and, in turn, hinder the ratification of the Convention. As the Government of Japan has argued, it should be deleted from this draft resolution.