



Αριθμ. πρωτ. 510

Αθήνα 27-9-2023

To

The Minister of Labour and Social Security
Spyridon Adonis Georgiadis

cc

Department of Relations with International Organizations,
Directorate of International Relations,
Ministry of Labour and Social Security

Concerning: Positions of GSEE regarding the ITUC and EU Member States' request on the referral of the interpretation dispute on fundamental C87 and the right to strike to the International Court of Justice to be examined at the ILO Governing Body 349th session - Special meeting of November 10, 2023

Dear Minister,

On November 10, 2023 during the 349th Session of the tripartite Governing Body of the International Labour Organization (ILO), a special meeting will be held with sole item on its agenda the discussion and decision on the requests for urgent referral to the International Court of Justice (ICJ), according to the article 37(1) of the ILO Constitution, of the dispute on the interpretation of the fundamental International Labour Convention 87, as it regards the right to strike.

The referral to the ICJ was requested by official letters submitted on July 14, 2023 by the workers' side, as represented by the ITUC and by, so far, 36 Governments, including the Government of Greece, as a co-signatory country to the July 14, 2023 joint letter of EU Member States and EFTA countries (Iceland and Norway). These official Letters are annexed to the Report¹ of the International Labor Office released on September 18, 2023, which has been prepared, in response to the explicit request of the workers' and Governments request to facilitate the discussion and decision-making of the Governing

¹ Governing Body 349th bis (Special) Session, Geneva, 10 November 2023, 1st item on the agenda, "Action to be taken on the request of the Workers' group and of 36 governments to urgently refer the dispute on the interpretation of Convention No. 87 in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the Constitution"
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_894258.pdf

Body at its November 10, 2023 meeting, given that provides factual information on the historical and legal developments of this long-standing dispute.

Notably, a reference to Greece in this Report, recalls the Commission of Inquiry appointed in 1968 to examine complaints concerning the observance by Greece of Conventions Nos 87 and 98 during of the darkest periods in our recent history when the suppression of trade unions' rights and the right to strike by the military junta, was monitored and assessed through ILO's constitutional processes². The contribution of our country's history to the global community on the content of fundamental trade unions rights, including the right to strike, should be respected and highlighted as a crucial part of the restoration of democracy, which led to the explicit safeguard of the right to strike in the Greek Constitution of 1975 (art 23 §2).

As you may be aware, the ILO's General Director, with his letters of 17.7.2023, 4.8.2023, 10.8.2023, 12.9.2023, 15.9.2023 addressed to you, has submitted you the request to transmit the above-mentioned Report to the national social partners, and apprise them of developments that have arisen related to the request for referral to the ICJ.

These developments are, to a large extent, anticipated, deriving mainly from the employers' side, whose position and tactics on the interpretation of C87 and the right to strike, has seriously stalled the core of the unique statutory tripartite processes of ILO.

GSEE notes that the ILO supervisory system has consistently held for the last 70 years that the right to strike is an intrinsic corollary of the right to freedom of association, protected by Convention 87, and has developed extensive guidance on the modalities of its implementation, thus creating an "international social acquis". This view is undisputed by the ILO Workers' and Government Groups, other UN bodies, regional human rights courts and national high courts as well as academic legal opinion around the world.

GSEE, in line with the ITUC, would like to emphasize that, in conformity with the ILO's constitutional theory and practice, and in the interest of obtaining legal certainty and preserving the integrity and credibility of the Organization's supervisory system, the referral to ICJ, the principal judicial organ of the United Nations, for decision, is crucial. By obtaining a decision from the ICJ on the right to strike, and on the mandate of the experts to provide guidance on it, the ILO will have obtained an authoritative and final pronouncement on the matter – as advisory opinions of the ICJ are deemed binding on the ILO as per the ILO Constitution. As such, the ILO will then be much better positioned to continue with its work, having settled this long-standing challenge to its supervisory system, providing for the much-needed legal certainty to robustly fulfil its mandate of social justice.

In light of the above considerations, GSEE endorses the ITUC request for the referral to the ICJ with special emphasis on the following questions:

- 1. Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948(No. 87)?**
- 2. Was the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO competent to:**

² ILO, Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the complaints concerning the observance by Greece of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
[https://www.ilo.org/public/libdoc/ilo/P/09604/09604\(1971-54-2-special-suppl\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09604/09604(1971-54-2-special-suppl).pdf)

- i) **determine that the right to strike derives from the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and**
- ii) **in examining the application of that Convention, specify certain elements concerning the scope of the right to strike, its limits and the conditions for its legitimate exercise?**

Fully aware that the Governing Body is empowered to request an advisory opinion to the ICJ and mindful of the significance to have recourse to article 37 of the Constitution, we strongly believe that the Governing Body should now take swift action and decide on the referral at its next session in November 10, 2023.

Our positions exposed above, would have been more fittingly presented if the Supreme Labour Council on the application of international labour standards was duly convened as the Labour Ministry competent tripartite body.

As this was not the case, GSEE hereby expresses the strong belief that the requests for the referral of the dispute to the ICJ, submitted by the ITUC, and supported by GSEE, will be supported effectively during the upcoming meeting of ILO Governing Body on November 10, 2023 allowing the adoption of the referral decision, which has already garnered the support of the EU Member and EFTA States, along with other 36 Governments, in total until now.

In this context, we would hereby like to request for our present letter to be annexed to any national report or official national correspondence on that issue.

We remain at your disposal for any further information or clarification and we convey,

Best regards,

Yannis Panagopoulos
President

On behalf of GSEE



Nikos Fotopoulos
General Secretary