



KAMU EMEKÇİLERİ SENDİKALARI KONFEDERASYONU
CONFEDERATION OF PUBLIC EMPLOYEES TRADE UNIONS
LA CONFÉDÉRATION DES SYNDICATS DE TRAVAILLEURS



06.10.2023, Ankara

Subject: The urgent referral of the dispute over the interpretation of the C.87 in relation to the right to strike

Dear Director General,

We thank you for your letter to all ILO Member States dated 31 August that was brought to our attention. In this letter you confirmed that you have received the request from the ILO Workers' group of 12 July 2023 for the urgent referral of the dispute over the interpretation of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87) (C.87) in relation to the right to strike to the International Court of Justice (ICJ) for decision, in accordance with article 37(1) of the ILO Constitution. The Workers' group also requested this matter to be put urgently on the agenda of the Governing Body for decision. This request has in the meantime received support from 36 Governments from different regions, recognising the importance of legal certainty on this issue for all constituents.

We also express our appreciation for the background report that was prepared by your Office to inform the decision during the Special Meeting of the Governing Body on 10 November 2023 and welcome your invitation to all Governments and employers' and workers' organisations concerned to send in comments.

Indeed, the right to strike is of the utmost importance for workers in Türkiye and the inability of the ILO to supervise this right, because of the dispute, in our national context has seriously affected labour relations in our country.

As emphasized in the decisions of the European Court of Human Rights and ILO supervisory bodies, trade union rights consist of three basic elements: the right to organize, collective bargaining, collective action, and strike. Limiting the right to strike for public officials in specific sectors is possible. However, the absolute prohibition of the right to organize stipulated for any category of employees is contrary to ILO conventions and international norms, especially the ILO Convention No. 87 Freedom of Association and Protection of the Right to Organise Convention.

ILO Convention 87 recognized and secured the right of trade unions without any discrimination between employees. This distinction can be made neither because public officials are defined by law as "civil servants," "servants," or "contracted personnel," nor in terms of the location of public officials in the managerial hierarchy or the nature or level of responsibilities they assume.

Despite all these facts, it violates a fundamental right to keep the scope of the prohibition of union membership so broad by citing the "status law" as a justification.

On the other hand, the principle of "no discrimination" in terms of union rights among employees is a principle that should be interpreted from a narrow perspective. The Convention No. 87 considers, for example, armed forces and the police officers as an exception. According to the Convention, it is up to

national legislation to determine only "to what extent" the safeguards provided for in the Convention will be recognized and applied to members of the armed forces and the police. It is contrary to the contract to eliminate this measure for some by discriminating between the public officials regarding trade union rights; in other words, to reduce it to zero, that is, to prohibit the right completely.

However, with the existing Law No. 4688 and the newly issued Presidential Decree in Turkey, the limitations allowed by the contracts as an "exception" have been greatly exceeded, and the framework of the prohibitions has been kept extremely wide by distinguishing between public employees.

However, even attempting to strike is prohibited in the Civil Servants Law No. 657, which is the fundamental element of the legislation for public workers in Türkiye. It should be noted that the Turkish legislation continues to ban a general strike to respond to disputes arising while the collective bargaining negotiations are taking place. And this provision to ban the strike does not comply with ILO norms. There is no doubt that the provisions of Law No. 4688, which adopts the mandatory arbitration system, and Law No. 657, which explicitly prohibits the strike of public officials, cover a huge group of employees. In fact, in the complex structure of the public personnel regime, public employees other than workers are employed in very different statuses, all of which fall within the scope of this prohibition.

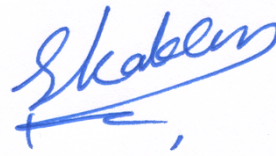
In light of these facts, the recognition and regulation of the right to strike, which is one of the human rights, under international conventions and principles, and the amendment of the provisions of the Civil Servants Law No. 657 and the Turkish Penal Code are under the international legal obligations undertaken by our country. The actions to be taken under this obligation are regulated by Article 90 of the Constitution. In addition, the paragraph added to Article 53 of the Constitution does not form an obstacle to the recognition and regulation of the right of public officials to strike by law. Therefore, with a realistic approach, a statute should be made by international law that legally guarantees the right of public officials to strike.

We, therefore, wholeheartedly support the request for a referral from our Workers' representatives in the Governing Body and call for an urgent decision by the Governing Body to ensure an immediate referral of the dispute to the ICJ. In addition, since we firmly believe that the right to strike is an essential part of freedom of association and already elaborated by the ILO supervisory bodies, there will be no added value in a protocol complementing the convention to qualify the right to strike. On the contrary, any such attempt would generate a conflict with C.87 already guaranteeing the right to strike as a fundamental principle and right at work. This would further exacerbate the dispute rather than solve it. We are convinced that legal certainty through an advisory opinion of the ICJ that is binding on the ILO is urgently required.

Yours sincerely,



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Co-President



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Co-President