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International Labour Organization

Mr. Gilbert F. Hounbo, Director-General

Zagreb, 5 October 2023

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 Croatia and the inability of the ILO to supervise this right, as a consequence of the dispute, in our national context can potentially seriously affect labour relations in our country, especially given the current legislative stipulations as well as the case-law, and its too restrictive understanding of the right to strike, which are posing obstacles to the right to strike in practice. Namely, although in Croatia the right to strike is guaranteed by the Constitution and regulated by the Labour Act, which accords the exclusive right to call for a strike to trade unions, at the same time the Labour Act stipulates justified reasons for strike: protection and promotion of economic and social interests of their members; and due to non-payment of wages, parts of wages, i.e., wage compensations, if they are not paid until the due date. The case-law places strike according to this provision (protection of economic and social interests) solely in the context of amendment, conclusion and renewal of collective agreements, meaning that it is not possible to go on strike for the changes of other acts which regulate rights and interests of workers.

The Labour Act further stipulates that in the event of a dispute regarding the conclusion, amendments to or renewal of a collective agreement, the right to call for a strike and to enforce it is held by trade unions which, in accordance with a special regulation, have been determined to be representative for collective bargaining and the conclusion of a collective agreement and who have negotiated on concluding a collective agreement.

The law vaguely defines the justified reasons for a strike, and due to the case-law that has often interpreted that a strike can be organized and carried out exclusively due to a dispute over the amendment, renewal or conclusion of a collective agreement, and only if the union has more than 50% of the membership of the number of members of representative unions, trade unions are hesitant to organize strikes in the fight for the rights of their members.

The above should be considered taking into account the fact that the Labor Act stipulates that an employee's employment contract can be canceled if he/she organized or participated in a strike that was not organized in accordance with the law, the collective agreement and the rules of the trade union, or if during the strike he/she commits some other serious violation of obligations from the employment relationship. So, if the court declared the strike illegal, then the employer could give the worker who participated in such a strike a justified dismissal (which happened in practice). The above-mentioned situation is a big obstacle for the determination of the workers-union members to participate in the strike. Given that the purpose of a union is to fight for the rights and interests of its members through collective bargaining, and that the only way to put pressure on the employer is to strike, in the event that a strike is impossible or excessively limited, the purpose of the existence of the union is truly called into question. The excessive degree of (vague) regulation of strike, such as the case of the Labor Act, leads to a weakening of the union's "weapon" in the fight for the rights and interests of their members, and thus endangering the freedom of association guaranteed by the Convention no. 87. Namely, what is the point of association without the possibility of realizing one's rights and interests.

The Labour Act also does not recognize the right to strike for higher-level trade union organizations (trade union confederations). This is problematic since the Act on Representativeness of Employer Organizations and Trade Union Organizations recognizes the right of a representative higher-level trade union organization to be a party to the general collective agreement, but it has no right to undertake industrial action as a means of putting pressure to a higher-level employers' organization. A special problem is the fact that in the Republic of Croatia there is no legal framework for organizing and undertaking a general 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,

Mladen Novosel,
UATUC President

Krešimir Sever,
NHS President