

# International Labour Organisation

## Resolution on CAS dispute

### Context

1. For much of its near-100 year history, the ILO supervisory system has carried out the important work of supervising the application of Conventions and Recommendations with the full support of the tripartite constituents. However, the Employers' Group has embarked on a sustained and deliberate attack on the supervisory system by seeking to undermine the authority of the ILO Committee of Experts.

2. This started in 2012 as a challenge to the existence of a right to strike protected by Convention 87, a right that had been recognised to exist in principle by all ILO constituents for decades. However, in 2013 and 2014, the Employers' Group challenged the Committee of Experts' well-reasoned views on a number of other Conventions and again refused to reach consensus conclusions in 19 of the cases supervised by the Committee on Application of Standards.

3. The drafters of the ILO Constitution had foreseen that there would from time to time be disputes over the interpretation of a Convention and therefore provided for the referral of disputes to the International Court of Justice (ICJ) for an advisory opinion under Article 37.1 of the ILO Constitution. The ICJ, in rendering a final and conclusive opinion on the right to strike, would actually allow the constituents to recommence tripartite negotiations in an atmosphere of greater legal certainty.

4. On October 2013, the General Council passed a Resolution making it the policy of the ITUC to support the referral of the question of the existence of the right to strike under Convention 87 to the ICJ if the Employers' Group continued to oppose a resolution to the current dispute. The Employers' Group has continued to do so. That resolution also called on all ITUC affiliates to lobby their governments, particularly those on the ILO Governing Body, to secure their support for the referral of the dispute to the ICJ. The ITUC prepared a comprehensive report on the legal foundations of the right to strike to support that campaign.

5. In March 2014, the Governing Body requested the Office to prepare a paper "setting out the possible modalities, scope and costs of action under articles 37(1) and 37(2) of the ILO Constitution to address a dispute or question that may arise in relation to the interpretation of an ILO Convention." The paper was delivered in November 2014 following consultation with the constituents.

6. In November 2014, the Governing Body debated, for several days, the referral of the question on the right to strike to the ICJ. In addition to the Workers' Group, the government members of the EU, GRULAC and some members of IMEC supported the referral. However, the government members of ASPAG (except China), the Africa Group and some members of IMEC (e.g., the USA, Switzerland, Russia and Japan) firmly opposed immediate referral and insisted instead on further tripartite dialogue. A significant number of these countries are the least supportive of workers' rights but the strongest proponents of tripartite dialogue which they nevertheless rarely practice at home.

7. With a number of other points for action, the first draft resolution from the Office included a point for decision to refer the matter to the ICJ in November 2014. However, the consistent opposition by the Employers' Group and some government representatives to this balanced package led to a final resolution which did not include the ICJ.

Instead, it included only a tripartite meeting on the existence of the right to strike under Convention 87 (and its modalities under national law) in February 2015, with a report to the March 2015 Governing Body.

8. The referral to ICJ remains a possibility for decision at the Governing Body in March 2015, but it is by no means certain. Intense pressure will be required to move in particular government representatives from Asia and Africa in March to support the mandate of the Committee of Experts and their decisions that the right to strike exists in Convention 87, and the referral to the ICJ if the tri- partite discussion of February fails to recognise the right to strike deriving from C87.

### **Recommendation:**

9. The ITUC

- Rejects the repeated efforts by the Employers' Group at the ILO to weaken the long-standing jurisprudence of the ILO supervisory system;
- Holds the Employers' Group fully responsible for initiating and protracting the institutional crisis at the ILO, with the apparent aim of weakening a number of conventions and the ILO supervisory system;
- Regrets that some governments apparently fail to appreciate the crisis in the ILO supervisory system that they are facilitating by not supporting a judicial resolution of the dispute;
- Restates that while workers remain open to tripartite dialogue, it is clear that both the workers and employers have divergent views on this matter and thus we resolve to campaign for Government support for the intervention of the ICJ to resolve the dispute should the tri-partite discussions not recognise the right to strike deriving from C87; and
- Calls on its affiliates and Worker members of the Governing Body to MOBILISE workers to join a global day of action on February 18 that defends the right to strike as a fundamental freedom from workplace oppression and enslavement.

### **Without the right to strike workers are enslaved**

### **Conclusion**

10. The ITUC will circulate the conclusions of this discussion and provide campaign materials to affiliates and Worker members of the ILO Governing Body for use with their governments and Employer organisations.

11. The ITUC will facilitate the global day of action in defence of the right to strike.

12. The ITUC will provide regular updates to affiliates regarding initiatives by affiliates as well as Governments and Employers.