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INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
RIGHT TO STRIKE UNDER ILO CONVENTION NO. 87
(REQUEST FOR ADVISORY OPINION)**

WRITTEN COMMENTS OF THE REPUBLIC OF TUNISIA

September 2024

[Translation by the Registry]

I have the honour to transmit hereby additional written comments of the Tunisian Government concerning the advisory opinion of the International Court of Justice on the right to strike.

It should be recalled from the outset that international labour Convention No. 87 does not explicitly provide for the right to strike, which has created a number of issues relating to both the supervisory function of the Committee of Experts and the mandate of the Conference Committee on the Application of Standards (“CAS”).

Differences of interpretation have given rise to a “major institutional crisis”, and the ILO supervisory bodies have found themselves unable to exercise their supervisory functions.

Account must be taken of the institutional deadlock caused by the interpretation dispute and of the urgent need to end the legal uncertainty generated by varying interpretations of Convention No. 87, particularly in the context of ongoing country case studies.

Tunisia further considers that the current situation calls for the question to be addressed as a matter of urgency, and that the right to strike should be governed by national laws and regulations.

In view of the absence of any reference to the right to strike in Convention No. 87, the time has thus come to establish an international legal framework governing the exercise of that right, and — in so far as Member States respect the right to strike, and in the absence of an explicit text regulating it — to put an end to those interpretations that are likely to further aggravate the situation and pose a threat to the social climate of a number of countries.

Considering that the act of striking derives from the right to organize, it is proposed either that this issue should be discussed at upcoming sessions of the International Labour Conference and a legal instrument drawn up — a recommendation or convention explicitly providing for the right to strike and regulating the procedures associated with it — or that Member States should be free to regulate this issue through national legislation, making provision for the right to strike and establishing the mechanisms for its implementation in accordance with the readiness of each State, and provided that any requirements in this respect are regulated in line with the national realities and practices of each Member State, so that they are more realistic and easier to implement.

It is acknowledged that a strike which fails to respect the legal framework that governs it, as well as the powers and guarantees that may be exercised freely and without restriction while striking, may constitute a threat to the sovereignty and security of Member States, and may also undermine public institutions of the State or be influenced by outside parties, which could threaten social peace and the stability of the country.

As regards Tunisia, it should be noted that the Tunisian Constitution guarantees the right to organize and the right to strike and enshrines fundamental rights and principles whose significance transcends the provisions of international labour Conventions Nos. 87 and 98.

Freedom of association in Tunisia is thus a constitutional freedom. The Constitution also guarantees individual and civil liberties. Article 21 [of the 2014 Constitution] provided: “[a]ll citizens have equal rights and duties. They are equal before the law, without discrimination. The State guarantees citizens individual and collective rights and freedoms.”

Article 22 [of the 2022 Constitution] states that “[t]he State guarantees all citizens individual and collective rights and freedoms. It ensures them the conditions for a life of dignity”. Similarly, Article 23 provides that “[a]ll citizens have equal rights and duties. They are equal before the law, without any discrimination.”

Further, Article 40 of the [2022] Constitution states that “[t]he freedom to establish political parties, trade unions and associations, is guaranteed. In their internal charters and activities, political

parties, trade unions and associations must respect the provisions of the Constitution and the law, ensure financial transparency and reject violence.”

In addition, the right to organize is guaranteed by Article 41 [of the 2022 Constitution], which provides that “[t]he right to organize, including the right to strike, is guaranteed”.

Tunisia has also ratified international labour Conventions No. 87 on freedom of association and protection of the right to organize, No. 98 on the right to organize and collective bargaining, and No. 135 on workers’ representatives. The right to organize has been further strengthened by Tunisia’s ratification, pursuant to Basic Law No. 7 of 1 April 2013, of international labour Conventions No. 144 on tripartite consultation, No. 151 on labour relations (public service) and No. 154 on the development of collective bargaining.

This right is explicitly provided for in the Labour Code, and the same provisions are applied in the two framework agreements for the agricultural and industrial sectors, as well as in sector-specific collective agreements.

Tunisian legislation on trade unions is consistent with the principles contained in international and Arab labour standards (freedom to form, join and leave trade unions; freedom of trade unions to carry out their activities and put their mechanisms in place; provision of the necessary facilities for trade unions to carry out their activities; and protection for trade union representatives).

Similarly, staff representatives — whether members of a company’s advisory committee, workplace representatives or trade union representatives — are given priority for job retention in the event of redundancies or suspensions of work for economic or technical reasons (Article 166*bis* of the Labour Code).

Finally, Tunisian law has generally adopted the principle of freedom of association, protecting it in practice, regarding it as a condition for the existence and independence of trade unions, and granting unions the powers necessary to carry out their missions and protect the interests of their members.

Moreover, it should be noted that the right to strike is considered in a number of legislative texts as a means of defending the interests of trade union members and as one of the fundamental rights at work, and that freedom of association is foremost among these rights and is a condition for social justice.

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