

General

In its 1994 General Survey on freedom of association and collective bargaining, the Committee had emphasized the importance it attaches to the maintaining of the employment relationship, which constitutes a normal legal consequence of the right to strike. In a general direct request of 1995, the Committee had therefore requested governments to indicate in their next reports the conditions under which workers who participate in a strike in accordance with freedom of association principles can be reinstated at the end of a labour dispute. The Committee had also requested governments to indicate the nature and extent of legal protections afforded to workers in this respect, including existing proceedings, and to communicate all relevant court decisions.

The Committee noted with interest that a large number of governments replied to that request by providing information on the maintaining of the employment relationship where the right to strike is exercised, or on the legal proceedings available to workers in this respect. The Committee noted that several governments indicated that the right to strike is a constitutional or a legal one, of an individual or collective nature depending on the country, and that participation in a legal strike does not bring the employment relationship to an end but merely suspends the work contract, and thus the rights and obligations of the parties during the strike. Therefore, those workers who have exercised their constitutional or legal right to strike are reinstated in their job at the end of the collective labour dispute. Other governments indicated that the work contract is broken off during strikes but emphasized that striking workers do enjoy immunities which protect them where they use their freedom to strike in accordance with the law. These immunities generally oblige employers, at the end of the dispute and provided that the conditions laid down in the law have been complied with, to reinstate striking workers whose work contract was broken off, and/or to keep workers who participated in a legal strike exempt from civil or criminal liability.

The Committee requests once again those governments which have ratified the Convention to indicate in their next reports whether further developments or legislative amendments concerning the maintaining of the employment relationship in case of participation in a legal strike have taken place since the last general direct request on this subject, and to communicate relevant court decisions, if any. In addition, it requests all the governments which had not provided a reply to the previous general direct request to indicate, in their next reports, the conditions under which the maintenance of the employment relationship is guaranteed for workers who have participated in a strike which is in conformity with the principles of freedom of association.