

Medellín, September 30 of 2011

Doctor
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Respected Doctor:

Since there is no doubt about the fundamental nature of freedom of association, as she was well defined both by the 1991 Colombian Constitution in Article 39, as the Declaration of Fundamental Principles and Rights of the International Labour Organization (ILO) (1998), the Constitutional Court that, in Case C-401, 2005 considered that all the international rules so provide, set the constitutional law strictly. Finally, in the framework of the Agreement between the President of the United States, Barak Obama and Colombia, Juan Manuel Santos, on trade promotion between the two countries stipulated:

"Commitment of the United States and Colombia to adapt and maintain the five fundamental rights promoted by the ILO for the workers, and to undergo a legal process if either side fails to meet that commitment.

These fundamental rights are:

- Freedom of association - the right to form and join unions.
- Right to collective bargaining. (we underline)
- Elimination of all forms of forced or compulsory labor.
- The effective abolition of child labor.
- Elimination of discrimination in employment and occupation on grounds of sex, race or other ".

Later, the presidents said in their agreement:

"Commitment to the effective implementation of fundamental rights of workers, as well as wage laws, hours, safety and health."

They add to underline the seriousness of the Agreement:

"Commitment to establish procedures that allow members of either of the two governments to discuss their concerns about labor violations directly. Concerns should be reviewed and considered." (We have underlined).

When the so-called "operators" of the legal rule known to Articles 53 and 93 of our constitutional order, would violate not only the content but of fundamental human rights international treaties providing for their precedence over any provision of law. Such is the case of Legislative Act 01 of 2005, the application of international conventions and treaties unknown, a fact recognized by the ILO concerning the validity of this act told the Colombian state the following in Case 2434 (Colombia), distinguishing two situations:

1.- As to the collective agreements concluded by July 2005, effective date of the Legislative Act:

"ii) as to the conventions held prior to the entry into force of legislation, whereas the previously negotiated agreements should continue to retain all its effects, including provisions relating to pensions, to its expiration date, although this is after July 31, 2010, requests the Government to take corrective action and to keep informed of developments in this regard;

2.- As for the collective agreements concluded after July 2005, recommended:

"iii) with regard to agreements concluded after the entry into force of the act no. 01, taking into account the outcome of the referendum, (meaning the place in 2003 at the initiative of the then Government, and denied by the people on the issue of pensions, we clarify) the Committee requests the Government, taking into account the particular circumstances of this case, and in order to ensure harmonious industrial relations in the country, again make detailed consultations with stakeholders about retirement and pensions, to find a negotiated solution acceptable to all stakeholders and in accordance with the Conventions on freedom of association and collective bargaining ratified by Colombia "

If it is indisputable that the right of association and collective bargaining is a fundamental right, and recognized by the Presidents of his country and ours, is to understand the commitment to compliance when they say that "The concerns should be reviewed and considered." (We underline).

Legislative Act 01 of 2005 is the fundamental right to collective bargaining of all Colombian workers, violating the constitutional inviolability of the right and ignoring international treaties. This is why they have so important Recommendations of the ILO, and transcribed, and even more the agreement of the President of the United States and Colombia, to be considered as the authentic interpretation of this legislation, as its rules cannot be understood as removing a fundamental and inalienable rights. If not, would be about not only the recommendations of the ILO, but the aforementioned bilateral agreement.

And is that the agreement of both presidents are in the same direction as stipulated in the Vienna Convention, under which a State cannot invoke a rule of law to evade its commitments to other states, as well as sets thereof 27 (Act 32 of 1985)

"Prevalence of International Law.-" A party may not invoke provisions of its internal law as justification for breach of a treaty. "

Those who sign this respectful communication, are holders of the relevant collective bargaining agreements, held in each of the companies where we work, and each of the beneficiaries of such employees are holders of rights enshrined in them from the moment of its signature, and specifically from the time they are deposited in the records of the Ministry of Social Protection, as provided for in section 469 of the Labour Code (LC)

They say that the legislative act was issued by Congress looking to the " common interest or public utility," which is beginning to "give particular interest." But this argument does not hold that fundamental rights are intangible, since it constitutes the floor, the floor axiological universal minimum standard, based on respect for which you can build any sort of rules.

In a word, cannot be said that a state is democratic if it ignores basic human rights of association and collective bargaining.

It is very important that your government knows that the President Santos was elected to the vice of the Lord makes Angelino Garzón, before Colombia's ambassador to the ILO and the new government pledged to boost the conclusion that as a conflict resolution mechanism is provided for in Article 56 of the Charter. This means that Colombian workers are awaiting the fulfillment of that promise.

Therefore, we request your good offices to review Mr. President Obama, both compliance with the ILO recommendations to the Colombian state, as the agreement concluded with the president of Colombia, before signing the Free Trade Agreement with our country.

Attentively

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