

**GOVERNING BODY
CONSEIL D'ADMINISTRATION
CONSEJO DE ADMINISTRACION**

Geneva,
June 1984

Third item on the agenda

REPORT OF THE COMMISSION INSTITUTED UNDER ARTICLE 26 OF THE CONSTITUTION
OF THE INTERNATIONAL LABOUR ORGANISATION TO EXAMINE THE COMPLAINT
ON THE OBSERVANCE BY POLAND OF THE FREEDOM OF ASSOCIATION AND
PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (NO. 87)
AND THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949
(NO. 98) PRESENTED BY DELEGATES AT THE 68th SESSION OF THE
INTERNATIONAL LABOUR CONFERENCE

1. Appended is the report of the above-mentioned Commission of Inquiry, which was appointed following the filing of a complaint by Workers' delegates to the 68th (1982) Session of the Conference.

2. The report has been communicated to the Government of Poland.

3. Under article 29, paragraph 2, of the Constitution, the Government must inform within three months the Director-General whether or not it accepts the recommendations contained in the report of the Commission and, if not, whether it proposes to refer the complaint to the International Court of Justice.

4. The Governing Body is invited to take note of the report of the Commission.

Geneva, 25 June 1984.

POINT FOR DECISION:

Paragraph 4.

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of law and order when trade unionists commit crimes or offences covered by national law. The Convention, thus, does not create any immunity for the members of a trade union or their leaders and, in Article 8, it even provides that workers and their organisations, like other persons, shall respect the law of the land, although the law of the land, as has been pointed out above, shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. On the other hand, these rules do imply both that the public authorities cannot deprive trade unionists of their freedom for reasons related to their membership or their legitimate trade union activity or in order to put an end to such membership or activity and that, when trade unionists are accused of political or criminal offences that the government considers to be unrelated to their trade union activities, the persons in question shall have the benefit of normal judicial proceedings initiated at the earliest possible moment.

514. Since the arrest or conviction of trade unionists does not in itself constitute a violation of the Convention, the real grounds on which these measures were based must be sought and it is only if these measures were actually directed against trade union activities as such that there has been an infringement of the guarantees provided for by Convention No. 87. Furthermore, since the persons concerned are entitled to a presumption of innocence, it is incumbent on the government to show that the measures taken by it were not occasioned by the trade union activities of these persons.

515. If the statements of the Government on the grounds for the internments are considered, it will be seen that the Government confined itself to a general assertion that the measures were taken because of political activities and not because of trade union activities. No concrete evidence has been produced in support of this assertion. The Commission, however, is bound to note that the persons interned included the great majority of the national leaders and a large number of regional leaders of the organisation Solidarity. In the opinion of the Commission, it is difficult to conceive that so great a number of trade union leaders had undertaken activities likely to endanger the security or the defence of the State, whereas, as the Commission has already observed, shortly before the proclamation of martial law, the Congress of the organisation had adopted a programme that was essentially of a trade union nature. It will further be observed that the immense majority of the trade unionists interned were not subjected to any subsequent judicial investigation. These various elements may justify the belief that one of the aims of the Government, in depriving the majority of the leaders of Solidarity of their freedom, was to suppress or prevent the activities and development of the trade union movement embodied by this organisation and that it therefore acted in violation of Article 3 of Convention No. 87.

516. As the Commission has already stated, the grounds for the sentences pronounced by the courts were the organisation of strikes and participation in the strikes or the distribution of publications of the dissolved organisation Solidarity. The question that arises in these cases is thus to determine whether such activities can be considered to be of a trade union nature.

517. Convention No. 87 provides no specific guarantee concerning strikes. The supervisory bodies of the ILO, however, have always taken the view - which is shared by the Commission - that the right to strike constitutes one of the essential means that should be available to trade union organisations for, in accordance with Article 10 of the Convention, furthering and defending the interests of their members. An absolute prohibition of strikes thus constitutes, in the view of the Commission, a serious restriction on the right of trade unions to organise their activities (Article 3 of the Convention) and, moreover, is in conflict with Article 8, paragraph 2, under which "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for [by the Convention]".

518. As to the printing and the distribution of publications, the Commission must point out that the right to the free expression of thought is of special importance as an integral part of the freedom to which trade union organisations are entitled. As

in the Convention, provided that, as the wording seems to indicate, this provision is interpreted as concerning the general constitutional and political order of the country and not trade union activity itself. The attention of the Government is therefore called to the importance which the practical application of this provision will have for the purpose of assessing its conformity with Convention No. 87.

Right of trade unions to organise
their activities - right to strike

552. The Act, in section 36(1), recognises the right of trade unions to organise strikes, but fixes a number of conditions for the exercise of this right and prohibits it in certain sectors of activity.

553. The Commission must examine these provisions to determine whether they impose restrictions which call in question the right to strike and, consequently, the right of trade unions to organise their activities (Article 3 of Convention No. 87) for furthering and defending the interests of their members (Article 10 of the same Convention). It has observed that some of these provisions could constitute serious restrictions.

554. It is necessary to refer, firstly, to the conditions for the calling of a strike laid down by section 38(1) which requires that the decision shall be approved by the majority of the workers concerned and not merely by the majority of those voting. The Commission considers that a majority of this kind may be difficult to reach, particularly in large undertakings, and jeopardise the possibility of the workers concerned to call a strike. Section 38(1) also requires the prior agreement of the higher body of the trade union, that is to say, apparently, the federation to which the organisation is affiliated. The Commission considers that such a requirement, laid down by legislation, imposes an undue restriction on the right of trade unions to organise their activities.

555. Secondly, the Commission observes that section 40 of the Act establishes a very long list of essential services in which strikes are prohibited. It feels bound to refer in this regard to the views expressed by ILO supervisory bodies that the prohibition of strikes should be confined to essential services in the strict sense, that is, those whose interruption would endanger the life, personal safety or health of the whole or part of the population.

556. The Commission must also point out the severity of the penalties laid down for the organisers of strikes, going as far as imprisonment for one year for infringement of the provisions on the right to strike (section 47 of the Act).

557. The Commission considers that the provisions concerning procedures of negotiation, conciliation and arbitration that must be exhausted before a strike can be called do not require special comment, since the final arbitration award is not of a binding nature, either party being entitled to declare, before the start of the procedure, that the award will not bind it (section 35(5)) of the Act.

Right to establish federations
and confederations

558. As the Commission has already pointed out,³⁹ trade unions have the right, under section 20 of the Act, to establish inter-union associations and organisations. This provision gives effect to Article 5 of Convention No. 87, under which workers' organisations have the right to establish federations and confederations. However, if full effect is to be given to this Article, section 20 of the Act will have to be so applied that trade unions can form associations not only by branch of activity but also by region.

³⁹ See above, para. 547.