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ILO Office of the Legal Adviser, International Labour Organization

Referral of the right to strike dispute to the ICJ

Dear Director General,

We thank you for your letter to all ILO Member States dated 31 August that was brought to our attention. In this letter you confirmed that you have received the request from the ILO Workers' group of 12 July 2023 for the urgent referral of the dispute over the interpretation of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87) (C.87) in relation to the right to strike to the International Court of Justice (ICJ) for decision, in accordance with article 37(1) of the ILO Constitution. The Workers' group also requested this matter to be put urgently on the agenda of the Governing Body for decision. This request has in the meantime received support from 36 Governments from different regions, recognising the importance of legal certainty on this issue for all constituents.

We also express our appreciation for the background report that was prepared by your Office to inform the decision during the Special Meeting of the Governing Body on 10 November 2023 and welcome your invitation to all Governments and employers' and workers' organisations concerned to send in comments.

Indeed, the right to strike is of the utmost importance for workers in Czechia and the inability of the ILO to supervise this right, because of the dispute, in our national context is potentially seriously affecting labour relations in our country.

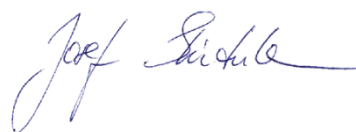
The Convention No. 87 and the recognition of the Right to Strike in it, is a binding international treaty that sets out principles and guidelines for the protection of workers' right to strike. In Czechia, the right to strike is recognized and protected as a fundamental labour right. Czechia is a member of the ILO and is bound by the provisions of this convention. As a result, Czechia is obligated to ensure that its national laws and practices are in line with the convention. In Czechia, the right to strike is recognized and protected by national labour laws.

The right to strike is protected under the Czech Constitution. Article 27 of the Czech Charter of Fundamental Rights and Freedoms states that "Everybody has the right to associate freely with others for the protection of his or her economic and social interests. The right to strike is guaranteed under conditions set by law; this right does not appertain to judges, prosecutors, and members of the armed forces and of security corps."

These laws are influenced by international labour standards, including the provisions of ILO Convention No. 87. The convention serves as a reference point for lawmakers in our country when drafting and amending labour legislation related to the right to strike. Czechia, like many other countries, has established a legal framework for strikes, including requirements for strike notice, protection against retaliation for striking workers, and mechanisms for resolving labour disputes. The convention's principles, such as the protection of workers against anti-union discrimination, help shape and inform the content of these national laws. The right to strike is closely linked to broader workers' rights and the principles of social dialogue. Ensuring that workers have the ability to strike, when necessary, contributes to a more balanced and fair labour environment, fostering cooperation between employers, workers, and governments in Czechia. This strong and indispensable relationship between the convention and the right to strike helps ensure that workers in Czechia have the legal and practical means to exercise their right to strike, when necessary, while maintaining a peaceful and orderly labour environment.

We, therefore, wholeheartedly support the request for a referral from our Workers' representatives in the Governing Body and call for an urgent decision by the Governing Body to ensure an immediate referral of the dispute to the ICJ. In addition, since we firmly believe that the right to strike is an essential part of freedom of association and already elaborated by the ILO supervisory bodies, there will be no added value in a protocol complementing the convention to qualify the right to strike. On the contrary, any such attempt would generate a conflict with C.87 already guaranteeing the right to strike as a fundamental principle and right at work. This would further exacerbate the dispute rather than solve it. We are convinced that legal certainty through an advisory opinion of the ICJ that is binding on the ILO is urgently required.

Yours sincerely,



Josef Středula
ČMKOS President