



Przewodniczący Komisji Krajowej

Piotr Duda

Gdańsk, 5 October 2023

Mr Gilbert F. Houngbo
Director General
International Labor Organization
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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) 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.

Bringing the issue of the protection of the right to strike by ILC Convention No. 87 to the International Court of Justice lies at the heart of NSZZ "Solidarność"'s concerns. The history of how NSZZ "Solidarność" was founded is a textbook example of how the right to strike is related to, or rather how the right to strike conditions the possibility of exercising the right to act as a trade union and defend the interests and rights of its members, which are protected by ILO Convention No. 87.

The difficult history of the formation, banning and re-registration of the "Solidarity" Trade Union is well known to the International Labor Organization (Case No. 1097). The ILO is also well aware of cases of repression and conviction of trade unionists for participating in a strike.

Let me remind you that NSZZ "Solidarność" was established as a result of the post-strike agreements in 1980. In that year, a wave of workers' protests swept through Poland, culminating in August on the Polish Baltic Coast. It was then that the Inter-Enterprise Strike Committee was formed, representing more than 700 workplaces. On August 17, 1980, the Committee announced its historic list of 21 demands. Noteworthy is the fact that the first two demands concerned the recognition of free trade unions independent of the party and employers, which stemmed from Convention No. 87 on trade union freedoms ratified by the People's Republic of Poland, and the guarantee of the right to strike and security for strikers and supporters. The strikers were aware that without guaranteeing the right to strike, the right to organize in trade unions and their functioning guaranteed by Convention No. 87 would be just a shell, without substance.

The result of the August events was the creation and legalization of the Independent Self-Governing Trade Union "Solidarność", independent of the communist authorities. The "Solidarity" Trade Union was registered on November 10, 1980 by the Provincial Court in Warsaw. The authorities at the time were not ready for free trade unions. On December 13, 1981, martial law was declared in Poland and on December 14, 1980, the Martial Law Decree came into force (Journal of Laws 1981, No. 29, item 154). Its contents distinctly indicate that the right to trade union action is inextricably linked to the right

to strike. Article 14 of the Martial Law Decree suspended the right to strikes and industrial action. Participation in a strike constituted a grave violation by an employee of their basic labor duties, and organizing or leading a strike or industrial action could be considered as causing serious disruption to the functioning of the national economy and was punishable by imprisonment for up to five years (Article 46).

At the same time Article 15 of the same Decree introduced the possibility of suspending the functioning of a trade union. Continued activity in a suspended organization was punishable by imprisonment of up to 3 years. The communist authorities were aware that without the right to strike, trade unions would not be able to effectively defend and represent the interests of their members. The ban on strikes was enough to weaken the trade unions, so there was no need to outlaw them.

It is no secret that non-democratic governments are using the same methods as the communist Polish government in the '80s and attack the right to strike in order to stop the activities of trade unions. And yet it is the strikes that in many cases mobilize for democratic freedoms. We witness this now, for example, in Belarus. Thus, as shows the example of Poland and the history of the "Solidarity" Trade Union (Case No. 1097), the exercise of freedom of association and the right to collective bargaining by workers and employers can be crucial to freedom and democracy for all.

Monitoring compliance with ILO standards involves not only examining the content of national laws for their compliance with the provisions of ILO conventions, but also monitoring the application of those laws in practice. And it is the everyday work of trade unions that clearly shows that the right to strike is an indispensable tool that enables trade unions to exert economic pressure on employers to defend the interests of their members. It is also this practice which indicates that without the protection of the right to strike, there is no practical possibility of fully exercising the right to trade union operation.

Moreover, in the opinion of NSZZ "Solidarność", the inclusion of the right to strike within the scope of ILO Convention 87 is beneficial not only for workers but also for employers. The Committee of Experts has developed rules on when and to what extent and under what conditions the right to strike can be enforced and in what cases it cannot. It also provides a guarantee to employers that in the event of a strike it will be held under specific rules, known well in advance.

Given the importance of the issue, a final resolution of the relationship between the right to strike and the right to trade union action under ILO Convention No. 87 cannot be postponed.

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,

A handwritten signature in blue ink, reading "Piotr Duda". The signature is fluid and cursive, with a large initial 'P' and 'D'.

President