



OPZZ/P/2504/2023

Warszawa, 4 października 2023 r.

Mr. Gilbert F. HOUNGBO
Director-General of the International
Labour Organization

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 Poland and the inability of the ILO to supervise this right, as a consequence of the dispute, in our national context is potentially seriously affecting labour relations in our country.

The International Labor Organization recognizes the right to strike as a legitimate means of defending workers' interests. The right to strike was interpreted from the content of ILO Convention No 87 of 9 July 1948 on Freedom of Association and Protection of the Right to Organise. Its legal basis is Articles 3, 8 and 10 of Convention

No 87. This Convention regulates the sphere of freedom of association and the protection of trade union rights. It constitutes that workers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

The right to strike is one of the trade union freedoms guaranteed by Article 59 of the Constitution of the Republic of Poland. According to Article 59(4) of the Constitution of the Republic of Poland: "The scope of freedom of association in trade unions and employers' organizations and other trade union freedoms may be subject only to such statutory restriction as are permitted by international agreements binding on the Republic of Poland." As the doctrine claims, on the basis of international agreements binding Poland and EU law, it is not possible to clearly define the detailed assumptions of the strike model in domestic law. Nevertheless, international law, as a general rule, gives priority to ILO conventions over other international agreements, since priority is given to provisions which are more favourable to workers and therefore more restrictive of restrictions on trade union freedoms. Polish strike law has been influenced by the opinion of ILO bodies since at least 50s of the twentieth century.

ILO Convention No 87 is reflected in the Polish Trade Unions Act of 23 May 1991. In the section on guarantees of the free trade union activity, it contains wording very similar to Convention No 87 (in particular Article 3(1) of the Convention and Article 9 of the Act, Article 3(2) of the Convention and Article 1(2) of the Act, and Article 5 of the Convention and Article 11 of the Act). International Labour Organisation conventions are also relevant in the context of the case law of the Polish Supreme Court and the Constitutional Court.

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,

Przewodniczący OPZZ

Piotr Ostrowski