



28 February 2024

Mr. Simon Coveney TD
Minister for Enterprise, Trade and Employment
Department of Enterprise, Trade and Employment
Kildare Street, Dublin 2
D02 TD30

Request for government intervention regarding the ILO Request for ICJ Advisory Opinion on the Right to Strike under Convention 87

Dear Minister Coveney,

On 10 November 2023, the ILO Governing Body adopted a resolution at its 349th bis (special) session to refer the serious and persistent dispute on the interpretation of Convention 87 with respect to the right to strike to the International Court of Justice (ICJ) pursuant to article 37(1) of the ILO Constitution.

The resolution adopted by the Governing Body expressed serious concern about the implications of the dispute on the functioning of the ILO and the credibility of its system of standards.

Since the right to strike dispute erupted in 2012, many governments have expressed support for the supervisory system and respect for the guidance they provide to Member States for the proper application of ratified Conventions in line with their mandate including respect for the longstanding position of the supervisory system on Convention 87 and the right to strike.

In calling for the settlement of this dispute, Governments have consistently expressed the need for legal certainty and coherence in the application and supervision of International Labour Standards in light of the mandate and constitutional objectives of the ILO.

In order to achieve legal certainty regarding the scope of ILO Convention 87 with respect to the right to strike, we urge you to intervene in the proceedings at the ICJ.

What has the ICJ ordered so far?

The court issued an Order dated 16 November 2023, as follows:

- The International Labour Organization and the States parties to the Freedom of Association and Protection of the Right to Organise Convention (No. 87) are considered likely to be able to furnish information on the question submitted to the Court for an advisory opinion”, and that they may therefore submit written contributions to the Court.
- The Court further decided that six organizations that have been granted general consultative status at the International Labour Organization by the Governing Body are also likely to be able to furnish information on the question submitted to it for an

advisory opinion, and it invites those organizations to make written contributions to the Court. The six organizations in question are the International Organisation of Employers, the International Trade Union Confederation, the World Federation of Trade Unions, the International Cooperative Alliance, the Organization of African Trade Union Unity and Business Africa.

- In accordance with Article 66, paragraph 2, of its Statute, the Court fixed 16 May 2024 as the time-limit within which written statements on the question may be presented to the Court, and 16 September 2024 as the time-limit within which States and organizations having presented written statements may submit written comments on the written statements made by other States or organizations, in accordance with Article 66, paragraph 4, of the Statute.

How can the government intervene to ensure legal certainty regarding the long-standing guidance of the ILO supervisory system on the right to strike and Convention 87?

As the Workers Group in the ILO has consistently indicated throughout the debate in the ILO, it expects that the advisory opinion of the ICJ will confirm the 70 years' position of the supervisory system of the ILO that the right to strike is indeed a corollary of C.87, and through this provides for legal certainty and coherence. This is also our position as the Irish Congress of Trade Unions.

Such an outcome will be in line with the understanding and practice of Ireland regarding the scope of C.87 as protecting the right to strike. With that, the ILO supervisory system will then continue to do what it has done until now.

It is only if the ICJ takes a revolutionary turn by not confirming the current law and practice in the supervisory system, that there would be an impact both at the international and national level regarding the interpretation and implementation of C.87 regarding the right to strike in relation to freedom of association.

We would therefore urge you to intervene in the proceedings by providing a submission to the ICJ before 16 May 2024, to pursue the objective of guaranteeing the credibility and functioning of ILO's system of standards and the current longstanding guidance of the supervisory system on Convention 87 and the right to strike.

In that regard, we urge you to take the following into account in your submission;

- The limited scope of the question before the court, that is, "*is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948(No. 87)?*". This only requires a limited and direct intervention. There will therefore be no need to raise matters regarding the scope of the right to strike and its modalities or limitations in law or practice, as this is not foreseen in the question. The preferred answer to the question before the court is "yes", in line with the longstanding guidance and reasoning of the supervisory bodies of the ILO.
- The need to emphasize the importance of the right to strike in the context of the social justice mandate of the ILO and its constitutional principle of freedom of association. Please indicate that, in practice, the right to strike protects workers from abuses by allowing them to say NO to abusive conditions of work.
- In responding to the question, your intervention should, in particular, address the following:

- Instances where your government has expressed at the national or international level its respect/support for and/or compliance with Convention 87 as protecting the right to strike.
- Instances where the WRC, DETE or the Labour Inspectorate and others have relied on the guidance of the ILO supervisory bodies to issue directives/orders/instructions on the right to strike, explicitly or implicitly linked to or on the basis that it is protected under ILO Convention 87.
- Instances where Bills/Laws before the national assembly or parliament relied upon or were linked to the guidance of the ILO supervisory system regarding Convention 87 as protecting the right to strike in promulgating national legislation. References to memoranda accompanying such Bills/Laws will be necessary.
- Instances where national courts and/or labour tribunals (including national labour arbitral bodies) have issued awards, orders or rulings recognizing the inherent link between freedom of association and the right to strike or more specifically recognising the right to strike as inherently linked to and therefore protected by Convention 87.
- Instances where other international obligations of the government beyond the ILO recognise the right to strike as inherently linked to the freedom of association; **or** more specifically, recognise the right to strike as inherently linked to the freedom of association, as defined in ILO Convention No. 87.

In conclusion, it is important that the government expresses, consistent with the positions it has articulated in discussions, debates and submissions to the ILO, its respect for the ILO, its system of standards and the centrality of the opinions and recommendations of its supervisory system in guiding the actions of the government in the application of ratified Conventions. The importance of this system of standards to continue to operate in a stable and predictable manner as it has done over the past 70 years, including on the scope of Convention 87 with respect to the right to strike, should be emphasised.

Yours sincerely



Owen Reidy
General Secretary