

INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

**REQUEST BY THE GOVERNING BODY OF THE INTERNATIONAL LABOUR
ORGANISATION (ILO) ON THE INTERPRETATION OF THE FREEDOM OF
ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE
CONVENTION, 1948 (NO. 87) IN RELATION TO THE RIGHT TO STRIKE**

**WRITTEN STATEMENT BY THE WORLD FEDERATION OF TRADE UNIONS
(WFTU) SUBMITTED ON 16 MAY 2024**



INTRODUCTION

1. For many years the Committee of Experts on the Application of Conventions and Recommendations (hereinafter “CEACR”) of the International Labour Organisation (hereinafter “ILO”), consisting of independent experts responsible for the application of ratified Conventions by Member States, has interpreted the right to strike as a corollary to the right of freedom of association and thus rightfully recognised and protected by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (hereinafter “the Convention” or “C.87”). This position was also adopted by the ILO tripartite constituents: Governments, Employers Group and Workers Group.

2. Convention 87 Article 3 states the following:
 - 1. *Workers' and employers' organisations have the right to draw up their statutes and administrative regulations, to freely elect their representatives, to organize their management and action and to draw up their activity program.***
 - 2. *Public authorities must refrain from any intervention capable of limiting this right or hindering its legal exercise.***

3. Around 1989 the Employers Group of ILO, began to question not only the interpretation of the Convention, but also the CEACR’s authority to interpret Conventions under ILO, especially after CEACR had rendered observations on the issue, giving the view that the right to strike is in fact protected by the Convention. At the International Labour Conference (hereinafter the “Conference”) in 2012, the Employer’s Group objected to the Committee of Experts affirmation that the right to strike derives from C.87 and refused to discuss any cases, unless the Worker’s group agreed to not discuss cases concerning C. 87. The Employers Group then walked out, causing the Committee on the Application of Standards to collapse and, subsequently, to fail adopting conclusions for the first time since its establishment in 1926.

4. For over a decade now the Employers' Group challenges the position, authority, and competence of the CEACR with regard to C.87 and increasingly other Conventions. At the same time, the selective and hypocritical attitude of the Employer's group regarding the competence and the power of the ILO expert committee must be underlined. In several findings of the CEACR that could serve the position of the employers' group, the employers' group not only accepted them but also promoted them, without making any remark on its competence or authority in providing its views on the matters in question. The à la carte acceptance and approval of the validity and jurisdiction of the CEACR reveals the instrumental, ulterior, and self-serving attitude of the Employers Group, and thus, their arguments and allegations cannot be solid.

5. Following the two special sessions that took place on the 11th and 12th November 2023 in the framework of the 349th ILO Governing Body meeting, the Director – General was formally requested, in accordance with article 37 paragraph 1 of the ILO Constitution¹, to refer urgently to the International Court of Justice (hereinafter “ICJ” or “the Court”) to render an advisory opinion² based on Article 65, paragraph 1, of the Statute of the Court, and under Article 103 of the Rules of Court, on the following question:

“Is the right to strike considered to flow from Convention No. 87 as an internationally recognized workers right even though not explicitly provided for, in the Convention?”

6. Upon receipt of the request on 13/11/2023, the Registrar of the Court gave notice to all members of the ILO entitled to appear before the Court pursuant to Article 66(1) of the Statute of the International Court of Justice including the World Federation of Trade Unions (hereafter “WFTU”), to provide their views and information on the question submitted.

¹ Article 37 - Interpretation of Constitution and Conventions - “1. Any question or dispute relating to the interpretation of this Constitution or to any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution, shall be referred for decision to the International Court of Justice.”

² Charter of the United Nations (Statute, Article 65, paragraph 1)

POSITION OF WFTU ON THE MATTER

7. The WFTU published an announcement on the 23rd of October 2023³, condemning the unacceptable questioning of the right to strike. For years this matter had not been put in question in any case presented before the ILO. It had been universally accepted that the right to strike is a fundamental component to the right to organize, and by extension to the Convention 87, and has been brought to the ILO as such by the Employers Group only to put the right to strike at stake and in danger of exclusion from the interpretation of Convention No. 87.

8. It is a known fact that even conventions that are not disputed in terms of their interpretation, are violated every day in countless workplaces, even in countries that had already ratified them and are consequently already obliged to implement it. Simultaneously, violations are also recorded in fields and rights that are covered by the 5 ILO fundamental rights, a fact that underlines the need for effective methods of safeguarding workers' achievements and rights in practice. One of these rights that needed to be safeguarded is the right to strike, and C.87 served this purpose for all these years it has been in effect.

9. Through the ILO bodies and procedures, the Worker's Group aimed to question the right to strike as a constituent to C.87, leading finally to this court procedure. The WFTU and its members shared the view that this matter in question should have been resolved through a non - court procedure.

10. Despite the fact that WFTU has no voting rights within the Governing Body, and therefore was not part of the decision-making procedure, since the latter decided to refer the interpretation of C.87 to ICJ and in recognition that this is a crucial matter for the rights of working people, WFTU submits the following reasoning on its position that the right to strike in fact derives from C.87.

³ <https://www.wftucentral.org/wftu-announcement-on-the-questioning-of-the-right-to-strike-and-the-relevant-debate-on-the-interpretation-of-convention-87/>

EXAMINATION OF THE MATTER IN QUESTION

11. The European Industrial Relations Dictionary defines a trade union as “a legal entity consisting of employees or workers who have a common interest, such as all the assembly workers in a company, or all the workers in a particular industry. A trade union is formed for the purpose of collectively negotiating with an employer (or employers) over wages, working hours, and other terms and conditions of employment. Trade unions often use their organisational strength to advocate for social policies and legislation favourable to their members or to workers in general.”⁴
12. The abovementioned “organisational strength” has many forms of being expressed by workers’ trade unions in order to proceed with negotiating with employers or advocating for social policies and legislation, with strike being proved to be the most efficient form of organizational strength in serving its scope, especially when there are no other means left to use.
13. Additionally, it is not accidental that the Constitution of WFTU, just like several other trade union constitutions, explicitly includes strike as one of the means of action in order to encourage and promote its objectives. More specifically, in part “III. MEANS – point b” of the Constitution it is mentioned:

“To this end, the WFTU, its affiliates, the TUI’s, the Regional Offices and all its structures: [...] b) utilize the rich militant experience of struggles of the working class; organize international action days, demonstrations, mobilizations, marches, strikes and any other form of action”⁵.

⁴ <https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/trade-union>

⁵ https://www.wftucentral.org/?wpfb_dl=241

14. Convention 87, Article 3 grants the right to workers' and employers' organizations to draw up their statutes and administrative regulations, to freely elect their representatives, to organise their management and action and to draw up their activity program. For the workers' organisations, it is clear that a significant part of their action and activity program is the organisation of strikes when the collective bargaining cannot lead to a fruitful result. The right to strike remains, to this day, one of the most effective means for workers to express their demands to the employers.

15. Although not explicitly mentioned in Convention No 87, the right to strike is enshrined in it, as the core of the existence of labour organisations lies in the organisation of workers and in addressing their rightful demands towards the employers. Consequently, the ultimate means of projecting a demand towards employers in a labour - related matter leading to a deadlock between the parties, is the right to strike. The right to associate in a trade union has commonly been understood to include the right to strike (and to bargain collectively) as without rights that derive from it, the right to association in the industrial relations context, would be meaningless.

16. This position is not only in agreement with the interpretation given by the CEACR, but it is also confirmed by the fact that, for decades, the self-evident interpretation that the right to strike is included and guaranteed by the Convention has been accepted by all ILO constituents and had not been questioned. This view is undisputed by the ILO Workers' and several Governments, other UN bodies, regional human rights courts and national High Courts as well as academic opinion around the world.

17. Being part of the labour - forming conditions for over seven decades, WFTU can only study this procedural change in the interpretation of Convention No.87, along with the harsh and all-out attack on workers' wages and other labour and social rights, as an attack on trade union and democratic freedoms that seems to be intensifying.

18. The World Federation of Trade Unions considers that despite and beyond any procedures provided for in the ILO statute and operating rules for the settlement of the dispute, the essence of the issue is not and cannot be exhausted in a legal confrontation and process which always involves risks and obscures the true essence of labour issues and disputes. The class trade union movement condemns the questioning of the right to strike and fights for its legal, institutional, and contractual recognition in all countries of the world.

CONCLUDING REMARKS

19. The outcome of the dispute over the matter in question will have an impact on the exercise of a fundamental right and the smooth functioning of the supervisory system of the ILO. The effective implementation of freedom of association and the right to organise, and the effective ability for workers' organisations to organise their administration and activities and to formulate their programs, cannot be understood or implemented without the consequent unimpeded utilisation of the most decisive and effective trade union form of struggle, namely of the strike.

20. For WFTU it is clear that the non-negotiable right to strike is directly and necessarily linked to the right to organise under a trade union and to the relevant actions and activities of trade unions, enshrined in Convention 87 - Freedom of Association and Protection of the Right to Organize of the ILO.

21. The right to strike is secured and aligns with the letter and spirit of the law in the context of Convention 87 and is in full accordance with the context of its Article 3, fulfilling the objectives and purpose of Article 3 in a reasonable and justified manner.

22. Thus, challenging the right to strike can only be seen as an attack on democratic and trade union freedoms, aimed at silencing workers and limiting their ability to defend interests and put forward their demands. For many years, the right to strike was a testament to the workers' freedom of expression, within the context of their collective action and activities, when collective bargaining with employers ceased to be fruitful or failed to lead to a fair result in labour negotiations.

Respectfully,

Pambis Kyritsis



Secretary – General
World Federation of Trade Unions

Janaka Adikari

A handwritten signature in blue ink, appearing to read 'Janaka Adikari', written on a light-colored background.

Coordinator of the WFTU Special Committee on Democratic Rights and Trade Union
Freedoms