



FIRST ITEM ON THE AGENDA

**Revision of the procedure for the examination of representations submitted under article 24 of the Constitution**

1. At the 273rd (November 1998)<sup>1</sup> and 276th (November 1999)<sup>2</sup> Sessions of the Governing Body, the Committee on Legal Issues and International Labour Standards held a general discussion on the question of a possible revision of the procedure for the examination of representations submitted under article 24 of the Constitution. As a result, it was agreed that it would be more appropriate to consider the matter in the wider context of the debate on the standard-setting policy of the Organization apart from one aspect, which related to the confidentiality of sittings and documents concerning representations, including the question of the publication of the representations pursuant to article 25 of the Constitution. There was general agreement in the Committee that concrete proposals could be made on this aspect.
2. The purpose of the present paper is accordingly to submit proposals for a possible revision of this aspect of the procedure, taking into account the views expressed in the Committee.
3. Article 7, paragraph 3, of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organisation (appended)<sup>3</sup> states: "The meetings of the Governing Body at which questions relating to a representation are considered shall be held in private."
4. Accordingly, the Governing Body must hold a private sitting when considering the reports of its Officers on the receivability of a representation as well as the reports of the tripartite

<sup>1</sup> GB.273/LILS/1, GB.273/8/1.

<sup>2</sup> GB.276/LILS/2, GB.276/10/1.

<sup>3</sup> These are referred to below as the "Standing Orders for representations" so as to distinguish them from the Standing Orders of the Governing Body, which also contain provisions relevant to the questions discussed in this paper.

committees to which the representations have been transmitted for substantive consideration. In addition, the documents submitted to it in this context are to be kept confidential. In this connection, article 14, paragraph 5, of the Standing Orders of the Governing Body provides: "The documents relating to private sittings shall be confidential and shall not be made public." On the other hand, when the Governing Body considers the report of a commission of inquiry established in accordance with article 26 of the Constitution or the reports of the Committee on Freedom of Association – even when they relate to representations under article 24 that have been referred to that Committee – it sits in public. Moreover, the reports of commissions of inquiry and those of the Committee on Freedom of Association are also public.

5. The above provision requiring the Governing Body to sit in private has always been in the Standing Orders for representations (originally as article 1, paragraph 2) together with the requirement that all the steps in the procedure are to remain confidential until such time as the matter has been finally disposed of by the Governing Body (article 1, paragraph 1, prior to the amendment of the Standing Orders in 1980). These provisions were adopted at a time when the size of the Governing Body (24 members) and the means of communication made it possible to keep matters confidential. At the time of the last amendment to the procedure in 1980,<sup>4</sup> it was indeed recognized that the membership of the Governing Body (102 titular and deputy members) and improvements in technology made it increasingly difficult to preserve confidentiality. The Governing Body however felt that if documents relating to a representation were discussed in public or made available to the public, this would undermine the impact of a formal decision under article 25 of the Constitution to publish the representation and any reply made to it by the government in cases where the Governing Body was not satisfied with the response. The Governing Body therefore decided to keep the procedure confidential.
6. However, during recent discussions in the Committee on Legal Issues and International Labour Standards, it has been felt that the rule on confidentiality has become a mere formality that is in addition detrimental to the clarity and consistency of supervisory procedures. Since confidentiality is not a goal in itself, some other appropriate way should, it was agreed, be found to preserve the solemnity of a decision under article 25 of the Constitution.
7. Should the Governing Body decide to align the representation procedure with the other similar procedures and abolish the practice on confidentiality, this could be effected by simply deleting paragraph 3 of article 7 of the Standing Orders for representations; it would still be possible under article 8 of the Standing Orders of the Governing Body to have a private sitting, as these may be held at the request of one Government delegate or of the majority of the Employers' or the Workers' group. The removal of paragraph 3 would not of course affect the private nature of the proceedings of tripartite committees, which would remain confidential in accordance with article 3, paragraph 3, of the Standing Orders for representations, in line with the procedure followed for the proceedings of a commission of inquiry or of the Committee on Freedom of Association, which are also confidential.
8. If a decision is taken to make sittings public, the documents relating to a representation would also become public. It is however to be noted that the publicity of those documents would be subject to the conditions set out in article 14, paragraph 5, of the Standing Orders of the Governing Body, as amended in March 1998:

<sup>4</sup> GB.212/SC/5/2, GB.212/14/21.

[Documents] may be made public unless the Director-General, after consultation with the Officers of the Governing Body, decides to make them available only after the question with which they deal has been discussed by the Governing Body and subject to any relevant directions by the latter.

In practice, this could be understood as meaning that the tripartite committee reports (or the reports of the Officers on the receivability of the representation) would be made public only when they are submitted to the Governing Body, in line with the practice applicable to the publication of reports of the Committee on Freedom of Association.

9. If the Committee therefore agrees that paragraph 3 of article 7 of the Standing Orders for representations could be deleted, the main question would be how to preserve the clear distinction between the publication of the representation and any reply made under article 25 of the Constitution, and the dissemination of information relating to a representation, in particular the reports of tripartite committees, which are perceived as useful material for constituents on the manner on which a Convention is being or should be applied.
10. Since the object of the publication is the representation itself (and the reply, if any, made by the government) but not the reports of the tripartite committees as such, a possible solution would be to give a certain solemnity to a decision under article 25 of the Constitution by addressing it under a specific item on the Governing Body's agenda. The present procedure for the consideration of the reports and recommendations of the tripartite committees would continue in the same way as now. However, if in a particular case the Governing Body considered that recourse should be had to article 25, it would refer the matter for consideration at a future session under a specific item on its agenda.
11. Article 8 of the Standing Orders for representations provides: "If the Governing Body decides to publish the representation and the statement, if any, made in reply to it, it shall decide the form and date of publication. Such publication shall close the procedure under articles 24 and 25 of the Constitution". This provision could be reworded as follows:

If the Governing Body finds the Government's response to a representation, or its lack of response, not to be satisfactory it may decide, at one of its following sessions, to publish the representation and the statement, if any, made in reply to it, in accordance with article 25 of the Constitution. Any such decision shall specify the form and date of publication. Such publication shall close the procedure under articles 24 and 25 of the Constitution.

A provision of this kind would on the one hand ensure the solemnity of the decision and, on the other, give the Member concerned time to rectify the situation.

12. Some minor consequential amendments would also seem necessary in order to preserve the right recognized in article 26, paragraph 5, of the Constitution, and in article 5bis of the Standing Orders of the Governing Body for a government not represented on the Governing Body to send a representative to take part in the discussion on a representation made against that Member. Article 7, paragraph 1, of the Standing Orders for representations, adopted prior to the inclusion of article 5bis in the Standing Orders of the Governing Body, has limited this right of participation to the discussions on receivability and on the tripartite committee's report on the substance of the representation concerned. Under the constitutional provision, as developed in the Standing Orders of the Governing Body, the right of non-members of the Governing Body to take part in its discussions on a representation concerns "any matter arising out of a representation under article 24 of the Constitution". It thus also covers the discussion on the possible publication of the representation under article 25 of the Constitution. In order to avoid duplication and any possible conflict with the relevant provision in the Governing Body Standing Orders, it is

proposed that article 7, paragraph 1, of the Standing Orders for representations be amended as follows:

When the Governing Body considers any matter arising out of a representation under articles 24 or 25 of the Constitution, the government concerned, if not already represented on the Governing Body, shall be invited to send a representative to take part in its proceedings while the matter is under consideration, in accordance with article 5bis of the Standing Orders of the Governing Body.

With this amendment, article 7, paragraph 2, of the Standing Orders for representations (which reads as follows “Such a representative shall have the right to speak under the same conditions as a member of the Governing Body, but shall not have the right to vote”) would become redundant and could accordingly be deleted.

**13. *The Committee may therefore wish to recommend to the Governing Body —***

- (a) concerning the confidentiality of the procedure, to delete paragraph 3 of article 7 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization, bearing in mind the considerations set out in paragraphs 7 and 8 above;***
- (b) concerning the procedure for the application of article 25 of the Constitution, to amend articles 8 and 7 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization in the manner proposed in paragraphs 11 and 12 above, respectively.***

Geneva, 1 February 2000.

*Point for decision:* Paragraph 13.

