

## **Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization**

Adopted by the Governing Body at its 57th Session (8 April 1932), modified at its 82nd Session (5 February 1938), 212th Session (7 March 1980), and 291st Session (18 November 2004).

### ***Introductory note***

1. The Standing Orders concerning the procedure for the examination of representations were adopted by the Governing Body at its 56th Session (January 1932) and amended on some points of form at its 212th Session (February-March 1980).
2. In adopting further amendments at its 291st Session (November 2004), the Governing Body decided to precede the Standing Orders with this introductory note, which summarizes the various stages of the procedure while indicating the options open to the Governing Body at the various stages of the procedure in accordance with the Standing Orders and with the guidance that emerges from the preparatory work of the Standing Orders and the decisions and practice of the Governing Body.
3. The Standing Orders comprise six titles, the first five of which correspond to the main stages of the procedure, namely: (i) receipt by the Director-General; (ii) examination of receivability of the representation; (iii) decision on referral to a committee; (iv) examination of the representation by the committee; and (v) examination by the Governing Body. The sixth title of the Standing Orders concerns the application of the procedure in the specific instance of a representation against a non-member State of the Organization.

### ***General provision***

4. Article 1 of the Standing Orders concerns the receipt of representations by the Director-General of the ILO, who informs the Government against which the representation is made.

### ***Receivability of the representation***

5. Examining receivability means determining whether the prior conditions that have to be satisfied before the Governing Body can proceed to examine the merits of the representation and formulate recommendations have been met.
6. The examination of receivability is, in the first instance, entrusted to the Officers of the Governing Body, to whom the Director-General transmits all the representations that are received. The Officers of the Governing Body make a proposal with respect to receivability, which is communicated to the Governing Body; the Governing Body then decides whether it deems the representation receivable. Although the Standing Orders specify that the Governing Body must not, at this stage, enter into a discussion of the merits of the representation, the conclusions of its Officers regarding receivability may be the subject of discussions.
7. Pursuant to article 7, paragraph 1, of the Standing Orders, the Office invites the Government concerned to send a representative to take part in these deliberations if that Government is not a member of the Governing Body.
8. The conditions of receivability for representations are set out in article 2, paragraph 2, of the Standing Orders. Four of the conditions simply relate to the form of submission (paragraph 2(a), (c), (d) and (e)), while the remaining two conditions may require examination of the representation in greater depth: these relate to the industrial character of the association that is making the representation, on the one hand (paragraph 2(b)), and, on the other hand, the indication of in what respect the State concerned is alleged to have failed to secure the effective observance of the Convention to which the representation relates (paragraph 2(f)).

The representation must emanate from an industrial association of employers or workers (article 2, paragraph 2(b) of the Standing Orders)

9. The following principles may guide the Governing Body in its application of this provision:

– The right to make a representation to the International Labour Office is granted without restriction to any industrial association of employers or workers. No conditions are laid down in the Constitution as regards the size or nationality of that association. The representation may be made by any industrial association whatever may be the number of its members or in whatever country it may be established. The industrial association may be an entirely local organization or a national or international organization.<sup>1</sup>

– The widest possible discretion should be left to the Governing Body in determining the actual character of the industrial association of employers or workers which makes the representation. The criteria to be applied in this connection by the Governing Body should be those which have up to the present guided the general policy of the Organization and not those laid down by the national legislation of States.<sup>2</sup>

– The Governing Body has the duty of examining objectively whether, in fact, the association making the representation is an industrial association of employers or workers, within the meaning of the Constitution and the Standing Orders. It is the duty of the Governing Body to determine in each case, independently of the terminology employed and of the name that may have been imposed upon the association by circumstances or selected by it, whether the association from which the representation emanates is in fact an “industrial association of employers or workers” in the natural meaning of the words. In particular, when considering whether a body is an industrial association, the Governing Body cannot be bound by any national definition of the term “industrial association”.<sup>3</sup>

10. Moreover, the Governing Body might apply *mutatis mutandis* the principles developed by the Committee on Freedom of Association on receivability as regards a complainant organization that is alleging violations of freedom of association. Those principles are formulated as follows:

*At its first meeting in January 1952 (First Report, General observations, paragraph 28), the Committee adopted the principle that it has full freedom to decide whether an organization may be deemed to be an employers’ or workers’ organization within the meaning of the ILO Constitution, and it does not consider itself bound by any national definition of the term.*

*The Committee has not regarded any complaint as being irreceivable simply because the Government in question had dissolved, or proposed to dissolve the organization on behalf of which the complaint was made, or because the person or persons making the complaint had taken refuge abroad.*

*The fact that a trade union has not deposited its by-laws, as may be required by national laws, is not sufficient to make its complaint irreceivable since the principles of freedom of association provide precisely that the workers shall be able, without previous authorisation, to establish organizations of their own choosing.*

*The fact that an organization has not been officially recognized does not justify the rejection of allegations when it is clear from the complaints that this organization has at least a de facto existence.*

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<sup>1</sup> See *Proposed Standing Orders concerning the application of articles 409, 410, 411, §§4 and 5, of the Treaty of Peace*, explanatory note of the International Labour Office submitted to the Standing Orders Committee of the Governing Body at its 56th Session (1932).

<sup>2</sup> *ibid.*

<sup>3</sup> See *representation submitted by Dr. J.M. Curé on behalf of the Labour Party of the Island of Mauritius concerning the application of certain international labour Conventions in the Island*, Report of the Committee of the Governing Body (adopted by the Governing Body at its 79th Session), ILO, *Official Bulletin*, Vol. XXII (1937), pp. 71-72, paras. 6-7.

*In cases in which the Committee is called upon to examine complaints presented by an organization concerning which no precise information is available, the Director-General is authorized to request the organization to furnish information on the size of its membership, its statutes, its national or international affiliations and, in general, any other information calculated, in any examination of the receivability of the complaint, to lead to a better appreciation of the precise nature of the complainant organization.*

*The Committee will only take cognizance of complaints presented by persons who, through fear of reprisals, request that their names or the origin of the complaints should not be disclosed, if the Director-General, after examining the complaint in question, informs the Committee that it contains allegations of some degree of gravity which have not previously been examined by the Committee. The Committee can then decide what action, if any, should be taken with regard to such complaints.<sup>4</sup>*

The representation must indicate in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Convention (article 2, paragraph 2(f), of the Standing Orders)

11. In examining this condition of receivability, particular importance is attached to article 2, paragraph 4, of the Standing Orders, which provides that in reaching a decision concerning receivability on the basis of the report of its Officers, the Governing Body shall not enter into a discussion of the substance of the representation. It is important however that the representation be sufficiently precise for the Officers of the Governing Body to be able to legitimately substantiate their proposal to the Governing Body.

### **Reference to a committee**

12. If the Governing Body deems, on the basis of the report of its Officers, that a representation is receivable, it shall usually set up a tripartite committee to examine the representation (article 3, paragraph 1). However, depending on the content of the representation, the Governing Body has, under certain conditions, other options:

(a) if the representation relates to a Convention dealing with trade union rights, the Governing Body may decide to refer it to the Committee on Freedom of Association for examination in accordance with articles 24 and 25 of the Constitution (article 3, paragraph 2);

(b) if the representation relates to matters and allegations similar to those which have been the subject of a previous representation, the Governing Body may decide to postpone the appointment of the committee to examine the new representation until the Committee of Experts on the Application of Conventions and Recommendations at its following session has been able to examine the follow-up to the recommendations that were adopted by the Governing Body in relation to the previous representation (article 3, paragraph 3).

13. It is the practice for the report of the Officers of the Governing Body concerning the receivability of the recommendation to also include a recommendation concerning reference to a committee. It is for the Governing Body to appoint the members who make up the tripartite committee, taking into account the conditions established in article 3, paragraph 1.

### **Examination of the representation by the committee**

14. Under article 6, the tripartite committee charged with examining a representation must present its conclusions on the issues raised in the representation and formulate its recommendations as to the decisions to be taken by the Governing Body. The committee examines the merits of the allegation made by the author of the representation, that

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<sup>4</sup> See paras. 35-40 of the Procedures of the Fact-Finding and Conciliation Commission and the Committee on Freedom of Association for the examination of complaints alleging violations of freedom of association (*Digest of Decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, Annex I).

the Member concerned has failed to secure effective observance of the Convention or Conventions ratified by the Member and indicated in the representation.

15. The powers of the tripartite committee during its examination of the representation are laid down in article 4. Article 5 concerns the rights of the Government concerned if the committee invites it to make a statement on the subject of the representation.

16. Moreover, the committee may apply, *mutatis mutandis*, two principles developed by the Committee on Freedom of Association:

(a) In establishing the matters on which the representation is based, the committee may consider that, while no formal period of prescription has been fixed for the examination of representations, it may be very difficult – if not impossible – for a Government to reply in detail regarding matters which occurred a long time ago.<sup>5</sup>

(b) In formulating its recommendations as to the decision to be taken by the Governing Body, the committee may take into account the interest that the association making the representation has in taking action with regard to the situation motivating the representation. Such interest exists if the representation emanates from a national association directly interested in the matter, from international workers' or employers' associations having consultative status with the ILO, or from other international workers' or employers' associations when the representation concerns matters directly affecting their affiliated organizations.<sup>6</sup>

### ***Consideration of the representation by the Governing Body***

17. On the basis of the report of the tripartite committee, the Governing Body considers the issues of substance raised by the representation and what follow-up to undertake. Article 7 determines the modalities for the participation of the Government concerned in the deliberations.

18. The Standing Orders recall and determine two options provided for in the Constitution that are open to the Governing Body if it decides that a representation is substantiated, it being understood that the Governing Body remains free to take or not to take these measures:

(a) Under the conditions laid down in article 25 of the Constitution, the Governing Body may publish the representation received and, if applicable, the statement made by the Government concerned; in the event that it so decides, the Governing Body also decides the form and date of publication.

(b) The Governing Body may, at any time, in accordance with article 26, paragraph 4, of the Constitution, adopt, against the Government concerned and with regard to the Convention the effective observance of which is contested, the procedure of complaint provided for in article 26 and the following articles (article 10 of the Standing Orders).

19. Furthermore, the Governing Body may decide to refer issues concerning any follow-up to the recommendations adopted by the Governing Body to be undertaken by the Government concerned to the Committee of Experts on the Application of Conventions and Recommendations. That Committee shall examine the measures taken by the Government to give effect to the provisions of the Conventions to which it is a party and with respect to which recommendations had been adopted by the Governing Body.

### ***Representations against non-members***

20. Article 11 of the Standing Orders stipulates that a representation against a State which is no longer a Member of the Organization may also be examined in accordance with the Standing Orders, in virtue of article 1, paragraph 5, of

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<sup>5</sup> *ibid.*, paragraph 67.

<sup>6</sup> *ibid.*, paragraph 34.

the Constitution, which provides that the withdrawal of a Member of the Organization shall not affect the continued validity of obligations arising under or relating to Conventions that it had ratified.

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## ***General provision***

### **Article 1**

When a representation is made to the International Labour Office under article 24 of the Constitution of the Organisation, the Director-General shall acknowledge its receipt and inform the Government against which the representation is made.

## ***Receivability of the representation***

### **Article 2**

1. The Director-General shall immediately bring the representation before the Officers of the Governing Body.
2. The receivability of a representation is subject to the following conditions:
  - (a) it must be communicated to the International Labour Office in writing;
  - (b) it must emanate from an industrial association of employers or workers;
  - (c) it must make specific reference to article 24 of the Constitution of the Organisation;
  - (d) it must concern a Member of the Organisation;
  - (e) it must refer to a Convention to which the Member against which it is made is a party; and
  - (f) it must indicate in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Convention.
3. The Officers shall report to the Governing Body on the receivability of the representation.
4. In reaching a decision concerning receivability on the basis of the report of its Officers, the Governing Body shall not enter into a discussion of the substance of the representation.

## ***Reference to a committee***

### **Article 3**

1. If the Governing Body decides, on the basis of the report of its Officers, that a representation is receivable, it shall set up a committee for the examination thereof, composed of members of the Governing Body chosen in equal numbers from the Government, Employers' and Workers' groups. No representative or national of the State against which the representation has been made and no person occupying an official position in the association of employers or workers which has made the representation may be a member of this committee.
2. Notwithstanding the provisions of paragraph 1 of this article, if a representation which the Governing Body decides is receivable relates to a Convention dealing with trade union rights, it may be referred to the Committee on Freedom of Association for examination in accordance with articles 24 and 25 of the Constitution.
3. Notwithstanding the provisions of paragraph 1 of this article, if a representation which the Governing Body decides is receivable relates to facts and allegations similar to those which have been the subject of an earlier representation, the appointment of the committee charged with examining the new representation may be postponed pending the examination by the Committee of Experts on the Application of Conventions and Recommendations of the follow-up given to the recommendations previously adopted by the Governing Body.

4. The meetings of the committee appointed by the Governing Body pursuant to paragraph 1 of this article shall be held in private and all the steps in the procedure before the committee shall be confidential.

### ***Examination of the representation by the committee***

#### Article 4

1. During its examination of the representation, the committee may:

(a) request the association which has made the representation to furnish further information within the time fixed by the committee;

(b) communicate the representation to the Government against which it is made without inviting that Government to make any statement in reply;

(c) communicate the representation (including all further information furnished by the association which has made the representation) to the Government against which it is made and invite the latter to make a statement on the subject within the time fixed by the committee;

(d) upon receipt of a statement from the Government concerned, request the latter to furnish further information within the time fixed by the committee;

(e) invite a representative of the association which has made the representation to appear before the committee to furnish further information orally.

2. The committee may prolong any time limit fixed under the provisions of paragraph 1 of the article, in particular at the request of the association or Government concerned.

#### Article 5

1. If the committee invites the Government concerned to make a statement on the subject of the representation or to furnish further information, the Government may:

(a) communicate such statement or information in writing;

(b) request the committee to hear a representative of the Government;

(c) request that a representative of the Director-General visit its country to obtain, through direct contacts with the competent authorities and organizations, information on the subject of the representation, for presentation to the committee.

#### Article 6

When the committee has completed its examination of the representation as regards substance, it shall present a report to the Governing Body in which it shall describe the steps taken by it to examine the representation, present its conclusions on the issues raised therein and formulate its recommendations as to the decisions to be taken by the Governing Body.

## ***Consideration of the representation by the Governing Body***

### Article 7

1. When the Governing Body considers the reports of its Officers on the issue of receivability and of the committee on the issues of substance, 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. Adequate notice of the date on which the matter will be considered shall be given to the Government.
2. 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.
3. The meetings of the Governing Body at which questions relating to a representation are considered shall be held in private.

### Article 8

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.

### Article 9

The International Labour Office shall notify the decisions of the Governing Body to the Government concerned and to the association which made the representation.

### Article 10

When a representation within the meaning of article 24 of the Constitution of the Organization is communicated to the Governing Body, the latter may, at any time in accordance with paragraph 4 of article 26 of the Constitution, adopt, against the Government against which the representation is made and concerning the Convention the effective observance of which is contested, the procedure of complaint provided for in article 26 and the following articles.

## ***Representations against non-members***

### Article 11

In the case of a representation against a State which is no longer a Member of the Organisation, in respect of a Convention to which it remains party, the procedure provided for in these Standing Orders shall apply in virtue of article 1, paragraph 5, of the Constitution.