



## Governing Body

310th Session, Geneva, March 2011

GB.310/PFA/14/2

Programme, Financial and Administrative Committee

**PFA**

**FOR DECISION**

FOURTEENTH ITEM ON THE AGENDA

## Matters relating to the Administrative Tribunal of the ILO

### Statute of the Tribunal

#### Overview

**Issue covered**

Explicit recognition by the Statute of the Tribunal of the locus standi of staff unions and associations.

**Policy implications**

Amendment of the rules governing receivability before the Tribunal; impact on the international organizations that have recognized its jurisdiction; coherence with the rules in force in the United Nations disputes settlement system.

**Legal implications**

Possible amendment of the Statute of the Tribunal.

**Financial implications**

None.

**Decision required**

Paragraph 8.

**References to other Governing Body documents and ILO instruments**

GB.285/PFA/16/2; GB.286/PFA/17/2; GB.288/PFA/20/2; GB.289/PFA/20/2; GB.292/PFA/20/2;  
GB.294/PFA/18/1; GB.301/PFA/18/1; GB.304/PFA/16/2; GB.306/PFA/19/1; GB.307/PFA/12/1;  
GB.306/9(Add. & Corr.); GB.307/9/2(Rev.).



1. The question of the locus standi of staff unions and associations before the Administrative Tribunal of the International Labour Organization has been considered by the Governing Body on a number of occasions since 2002.<sup>1</sup> At its 292nd Session (March 2005), the Governing Body examined a draft amendment to the Statute of the Tribunal which allowed any representative staff association to challenge decisions directly affecting its statutory and regulatory rights before the Tribunal on condition that the organization being called to account had previously accepted that means of redress. No consensus was achieved in favour of adopting that amendment, either at that session or at subsequent sessions.
2. At its 306th Session (November 2009), the Governing Body, taking into account recent developments concerning the reform of the United Nations (UN) Administration of Justice System and, more specifically, the decision by the UN General Assembly to revert at its 65th Session (2010) to the issue of the possibility of staff associations filing applications before the Dispute Tribunal,<sup>2</sup> decided to postpone consideration of that subject to its 307th Session (March 2010).<sup>3</sup> At that time, no new developments had occurred regarding the point for decision, and the Governing Body therefore decided once again to place the item on the agenda of its present session.<sup>4</sup>
3. On several occasions, the last being in June 2009, the Office has consulted the international organizations which have recognized the Tribunal's jurisdiction. Those organizations have expressed differing views and, in any case, have stated that, in the interests of ensuring coherence within the United Nations system, they do not wish the Governing Body to take a decision until it has examined the results of the work carried out by the UN General Assembly.
4. The 65th Session of the UN General Assembly concluded in December 2010, without the question of the locus standi of staff associations being addressed within the framework of the examination of the UN disputes settlement system.
5. The attention of the Governing Body should be drawn to the existing legal framework, which, since 2002, has been developed and shaped by the Tribunal's jurisprudence (now well established). According to that jurisprudence, the rights derived from freedom of association and, more generally, all the collective rights and duties of officials, can be protected by an action brought before the Tribunal, either by a staff member acting in an individual capacity or by a member of the governing body of a staff association. The Tribunal considers, on the one hand, that any official can file an application with a view to enforcing the rights derived from the principle of freedom of association and, on the other, that any member of a staff association governing body is entitled to initiate proceedings – and therefore to bring a case before the Tribunal – in defence of collective interests.

<sup>1</sup> GB.285/PFA/16/2, Nov. 2002; GB.286/PFA/17/2, Mar. 2003; GB.288/PFA/20/2, Nov. 2003; GB.289/PFA/20/2, Mar. 2004; GB.292/PFA/20/2, Mar. 2005; GB.294/PFA/18/1, Nov. 2005; GB.301/PFA/18/1, Mar. 2008; GB.304/PFA/16/2, Mar. 2009; GB.306/PFA/19/1, Nov. 2009; GB.307/PFA/12/1, Mar. 2010.

<sup>2</sup> A/RES/63/253, para. 15.

<sup>3</sup> GB.306/9(Add. & Corr.), para. 31.

<sup>4</sup> GB.307/9/2(Rev.), para. 37.

6. The Tribunal's jurisprudence has also allowed for observations to be presented by staff associations in the case of disputes pending before it. In accordance with articles 11<sup>5</sup> and 13(3),<sup>6</sup> of its Rules, the Tribunal can also request the comments of a staff association within the framework of a disputes procedure.
7. Given the very open nature of the Tribunal's jurisprudence on that point and the fact that the international organizations which have recognized the Tribunal's jurisdiction have expressed a wish to act in a manner consistent with the guidelines established by the UN General Assembly, it would appear to be desirable to maintain the status quo until the General Assembly has announced its conclusions.
8. ***In the light of the above, the Committee may wish to recommend that the Governing Body request to be kept informed in good time of any conclusions reached by the United Nations General Assembly regarding this issue or any other relevant developments.***

Geneva, 13 January 2011

*Point for decision:* Paragraph 8

<sup>5</sup> 1. The Tribunal may, on its own motion or on the application of either party, order such measures of investigation as it deems fit, including the appearance of the parties before it, the hearing of expert and other witnesses, the consultation of any competent international authority, and expert inquiry.

2. Any measure of investigation may be by letters rogatory if the Tribunal or, between sessions, the President so orders.

<sup>6</sup> The Tribunal or, between sessions, the President may instruct the Registrar to give notice of a complaint to any third party if it appears that such third party may want to make submissions.