The Supervisory Machinery of the International Labour Organisation

HENRIK KARL NIELSEN

I. Introduction

The indivisibility of civil and political rights and economic, social and cultural rights is a fundamental principle in the United Nations human rights system. It is spelled out in the preambles of the two UN Covenants on Human Rights with the wording that

"(...) the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, (...) "

In spite of this indivisibility, significant differences exist in regard to the degree of supervision of the two sets of rights. Thus, no right for individuals to file complaints of the non-observance of the rights set out in the Covenant on Economic, Social and Cultural Rights (hereinafter "CESCR") has been established as is the case with the Optional Protocol of the Covenant on Civil and Political Rights (hereinafter "CCPR"). A more effective supervisory machinery in respect of economic, social and cultural rights exists within the framework of the International Labour Organisation, which is one of the specialised agencies of the United Nations. Since its foundation in 1919, 174 Conventions and 181 Recommendations have been adopted by the International Labour Conference. Several of these instruments contribute to the realisation of the human rights recognised in the two Covenants.

The scope of the present article is to make an analysis of the supervisory machinery of the ILO. Additionally, on the basis of the case-law of the ILO supervisory bodies, some important principles of interpretation applicable to ILO instruments will be dealt with.

II. Structure and standard setting of the ILO

By article 2 of the ILO Constitution three bodies are established:

1. The General Conference or International Labour Conference (hereinafter "the Conference"). The Conference, which meets at least once
every year\textsuperscript{4}, is competent to adopt Conventions and Recommendations\textsuperscript{5} and is thus the legislative of the ILO.

2. The Governing Body, which is the executive of the ILO.

3. The International Labour Office, which is the secretariat of the Organisation.

Since its foundation, the ILO has, as already may be known, been based on the principle of tripartism. Thus Member States are represented at the Conference by two delegates appointed by the government as well as two delegates each representing workers and employers interests\textsuperscript{6}, who are entitled to vote individually.\textsuperscript{7} The Governing Body is composed of 56 persons, 28 of which are governments' representatives, and each 14 representing workers and employers.\textsuperscript{8}

III. The ILO supervisory system

To follow up the effect given to ILO instruments, various supervisory bodies have been set up by the Organisation. These can be divided into two categories: a system of reporting and a system of complaints.

III. A. System of reporting

III. A. 1. Submission to the ILO of reports by the Member States

By ratification of a Convention adopted by the Conference, a Member State is obliged to submit annual reports to the Office on the measures taken to give effect to the Convention.\textsuperscript{9} Though ILO Conventions are binding only upon the Member States, which ratify them the Governing Body may nevertheless request Member States to submit reports on the position of national law in regard to matters dealt with by Conventions which the State has not ratified, as well as matters dealt with by Recommendations.\textsuperscript{10}

Over the years there has been a regular increase in the number of reports, reflecting the growth in the number of Member States of the ILO and in the number of Conventions and ratifications. Consequently, in 1976 the Governing Body approved a new selective system of reporting under which reports may be requested at yearly, two-yearly or four-yearly intervals.\textsuperscript{11} According to this system the first reports on a Convention are requested immediately after its entry into force. Reports are requested at two-yearly intervals for Conventions dealing with:

1. Freedom of association (Nos. 11, 84, 87, 98, 135, 141).
2. Forced labour (Nos. 29, 105).
3. Discrimination (100, 111).
4. Employment policy (122).