



# ILO Committee on Freedom of Association

## Overview and procedure for Employers



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voice for business



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## COMMITTEE ON FREEDOM OF ASSOCIATION

### What is the ILO Committee on Freedom of Association?

The Committee on Freedom of Association (CFA) is “a tripartite body set up in 1951 by the Governing Body (GB) of the International Labour Organisation (ILO). The CFA examines alleged infringements of the principles of freedom of association and the effective recognition of the right to collective bargaining enshrined in the ILO Constitution (Preamble), the Declaration of Philadelphia and as expressed by 1970 ILO Resolution”<sup>1</sup>.

The CFA is composed of nine regular members and nine deputies from the Government, Workers’ and Employers’ groups in the Governing Body, and one independent chairperson. It meets three times per year and examines around 30 cases per session.

Since the ILO Constitution provides the legal basis for the CFA to examine complaints related to freedom of association and the effective recognition of the right to collective bargaining, all ILO Members States may be subject to this procedure, whether or not they have ratified any ILO Convention or the Conventions related to freedom of association and collective bargaining.

The CFA is not a judicial entity and its views do not constitute case law and have no legal basis to represent an interpretation of the Conventions. CFA conclusions and recommendations are merely non-binding guidance to governments.

### How does the CFA work?

The allegations are presented in the form of complaints. Workers’ and employers’ organisations can lodge complaints against governments, even if the alleged infringement may have occurred in a private company.

#### A. Subcommittee

A subcommittee composed of one chairperson and three spokespersons from Government, Worker’s and Employers’ groups tracks the pending complaints, and establishes the agenda and the prioritization of the cases. It meets prior to each CFA session.

#### B. Admissibility criteria

The criteria for a complaint to be admitted before the CFA are quite simple:

- The complaint needs to be related to the principles of “freedom of association and the effective recognition of the right to collective bargaining”;
- The complaint must be presented by a trade union or an employers’ organisation;
- The allegations must not be politically motivated; and
- The allegations must not be too vague for proper examination.

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<sup>1</sup> Introduction to the Compilation of Decisions of the Committee on Freedom of Association, Sixth Edition, 2018 (official text agreed on a tripartite basis), available at [here](#).

The submission of evidence is not a criterion of admissibility, but it often occurs that insufficient proper evidence will delay the entire process and complainants may be requested to submit further information.

### **C. Procedure and possible follow-up actions**

The procedure takes between six months to a few years.

Once the complaint has been admitted as a new case (with subsequent approval from the GB), the Government is invited to clarify the facts and to provide its observations.

During the examination of the cases, CFA members do the following:

- Invite the government to take the necessary measures to solve the problems related to the principles of “freedom of association and the effective recognition of the right to collective bargaining” (“interim report”)
- Invite the Government to provide further information (“report in which the Government is requested further information” or “follow-up report”)
- Declare the case closed (“definitive report”).

For each case examined, the CFA submits a report to the GB containing conclusions and recommendations for government’s action. All CFA decisions need to be endorsed by the ILO GB.

If the government does not respond to the allegations or to these recommendations, the CFA may propose a meeting to better understand or try to facilitate the solution of the problem. A “direct contacts” mission can also be organised to address the situation directly with the government officials and the social partners through a process of dialogue.

For interim and follow-up reports, the case will be further examined at a later stage as needed before the case can be closed.

In cases where the country has ratified the relevant ILO Conventions, legislative aspects of the case may be referred to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR will then follow the normal track of regular reporting within the ILO Supervisory System.

### **D. Role of Employers’ CFA members**

The six employers’ representatives in the CFA, lead by a spokesperson, play a very important role ensuring that the conclusions and recommendations are well-balanced and do not pose any major risk on the business sector.

### **E. Prioritization of cases and automatic closure**

Due to the high number of complaints each year, the CFA Subcommittee gives priority to serious and urgent cases and jointly examines complaints alleging the same violation into a single case.

If for 18 months from the last examination of the case there has not been exchanges of information either from the Government or the complainant, the case will be automatically closed. However, this internal rule does not apply to serious and urgent cases.

### **F. Annual report**

Recently the CFA has been preparing a report with statistical information on the pending cases, the cases examined, and the closed cases throughout the year.

The last Annual report (for 2018) can be found [here](#).

## **G. Compilation of decisions of the CFA and online database**

The ILO Office, based on a resolution of the ILC on trade union rights and their relation to civil liberties in 1970, publishes approximately a Compilation of CFA decisions every ten years. The latest version was published in 2018. Its name was changed from “Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO” into “Compilation of decisions of the CFA” to better reflect the actual content of the publication and to avoid misunderstanding created by the former title. Indeed, the Compilation is not a Digest of CFA case law and does not contain the list of freedom of association principles. The 1624 paragraphs included in the Compilation to date are simply references from past cases: they are not and should not be considered as the principles of freedom of association.

The ILO Office puts together the Compilation without the involvement of the social partners. The paragraphs contained in the Compilation are not always verbatim from conclusions and recommendations.

Thanks to the pressure of the Employers’ Group, prior to last publication of the Compilation, the title and the introductory text were revised and agreed on a tripartite manner. The introduction is of the utmost importance because it reflects the mandate of the CFA.<sup>2</sup>

The compilation also exists in the form of an [online database](#) for easy use and access. Cases can be searched by case number, country, content of information and words. The link from the compilation paragraph allows to access the entire case to verify the verbatim content, and to understand the entire context of the case (year, country, political, social and economic situation).

## **H. Treatment of cases involving the private sector**

In 2018, 50% of cases involved the private sector, while 29% related to the public sector and 21% related to both sectors. This means that complaints made against governments are mostly related to and have potentially an impact on the private sector.

If companies are involved in the facts, the Government is invited to collect the views of the most representative employers’ organisation in the country and share with them the case. This is the only way to include the views of the business sector in the discussion of a case and to consider them for the elaboration of conclusions and recommendations.

## **Why is the CFA procedure relevant to Employers?**

CFA conclusions and recommendations are highly regarded and can have a direct influence on national legislation, policy and judicial rulings applicable to the business community. This is particularly important for Employers as there is an increase of complaints filed by the Workers’ organisations with intention of attacking and discrediting public and private companies.

The CFA procedure is highly relevant to Employers because it provides an avenue for Employers’ organisations to challenge governments’ hostile attitudes or laws that undermine their freedom of association or their rights as representative organisations.

It is therefore important for Employers to be well-informed of this procedure, the relevant CFA recommendations, as well as any subsequent GB decision related to case.

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<sup>2</sup> See Paragraph 1 of the introduction, corresponding to paragraph 1 of this factsheet.

## **What can employers do when a case is submitted to the CFA?**

The agenda of cases to be examined by the CFA is made available between its sessions. This means that the agenda of CFA cases is agreed in March for the June, in June for the November session, and in November for March.

Employers' organisations can assist the CFA procedure by promptly providing any relevant and up to date information and their observations on the case concerned to the IOE before the upcoming CFA sessions in March or November. For example, any information and comments on the facts about the allegations, historical background of the labour situations in the country and any relevant legislative and policy reforms. Furthermore, Employers should follow closely the actions of their governments in ensuring that the CFA recommendations and decisions are followed.

### **For more information and answers**

Please contact the IOE Senior Advisor, Alessandra Assenza, [assenza@ioe-emp.com](mailto:assenza@ioe-emp.com).