

International Labour Organization

United Nations Educational, Scientific and  
Cultural Organization

**Joint ILO/UNESCO Committee of Experts on  
the Application of the Recommendations  
concerning Teaching Personnel**

**Geneva, September 2005**

**Interim report on allegations received from  
teachers' organizations on non-observance  
of the Recommendations 1966 and 1997  
concerning teachers**



ILO – Geneva



UNESCO – Paris

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## Further consideration of the allegation received from the All Japan Teachers and Staff Union (ZENKYO)

### Background

1. Details of this allegation are set out in the report of the Joint Committee at its Eighth Session in 2003.<sup>1</sup>
2. In that report, the Joint Committee noted the existence of a conflict between the All Japan Teachers and Staff Union (ZENKYO) and the Ministry of Education, Culture, Sports, Science and Technology (hereafter, “the Ministry”) as to a substantial volume of factual detail that it was not in a position to resolve.
3. However, the Joint Committee identified two core issues that had arisen between the parties. These focused on new systems that had been developed in Japan. The first was designed to deal with teachers perceived to be incompetent. The second set out to reward teachers who had demonstrated excellence in their work, through special promotions and by direct financial benefits.
4. In its report, the Joint Committee observed that, on any view, the systems in question had been developed without an appropriate process of consultation between ZENKYO and the Ministry and/or actual employing authorities, as contemplated by the Recommendation concerning the Status of Teachers.
5. As to the issue of **teacher competence**, the Joint Committee noted the essential elements of the proposed new system and expressed the view that it fell short of meeting the standards propounded by the Recommendation, including clauses 45, 46, 50 and 64, in various respects referred to in the report. It was unable to accept the proposition of the Government that what was involved was simply a matter of local administration and management, falling outside the ambit of operation of the Recommendation. For reasons expressed by it, the Joint Committee recommended a reconsideration of the system, with a view to aligning its provisions with the Recommendation.
6. The Joint Committee was further of the view that the system of **merit assessment** had clearly not been evolved in accordance with clauses 64 and 124 of the Recommendation, notwithstanding the contention of the Government that this matter was also one of administration and management to which the Recommendation had no application. It particularly drew attention to the lack of an adequate process of prior consultation, the subjective evaluations involved, the lack of transparency and openness in the process and an absence of specific rights of review and appeal.
7. Against that background, the Joint Committee recommended that the Government and ZENKYO enter into dialogue to address the relevant issues in a constructive manner.

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<sup>1</sup> Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel, Report, Eighth Session, Paris, 15-19 September 2003 (Annex 2, A, “Allegation received from the All Japan Teachers and Staff Union (ZENKYO)”, CEART/8/2003/11).

## Further developments

8. Since its 2003 report, the Joint Committee has received further communications from both ZENKYO (May 2004 and January 2005) and the Ministry on behalf of the Government of Japan (March 2005).
9. It appears from those communications that at national level, on 31 March 2004, a meeting took place between the Ministry and representatives of ZENKYO, at which there was an exchange of opinions concerning the two specific issues of teacher competence and teacher evaluation. However, whilst the parties are to be commended for taking this first important initiative, it is not suggested that it has led to any substantial change in the relevant systems. These are said to be now widespread in their operation across all prefectures.
10. At the prefectural level, ZENKYO officials from national and local levels have reportedly engaged through a process of social dialogue with the superintendents of boards of education in various prefectures concerning the above-mentioned findings and recommendations of the Joint Committee, and the continued operation of the systems in question. ZENKYO reports that, in a small number of prefectures, steps have been taken to reduce or eliminate definitions of “incompetence” deemed to be arbitrary, or to render the process more transparent and accessible to teachers’ observations, but that in others, arbitrary actions continue. Indeed, there is wide variation across prefectures in the definition of incompetence and application of the evaluation systems, raising questions of equal treatment, and for this reason, the Ministry should take steps to enable all prefectures to effectively apply the Joint Committee’s recommendations. Moreover, with one exception, steps taken by various prefectures to assess prospects for and put into effect a merit rating system have proceeded without recourse to the input of teachers in contradiction to the relevant clause (124) of the Recommendation and the recommendations of the Joint Committee.
11. The Ministry drew the attention of the Joint Committee to the outcome of a lawsuit brought by a teacher deemed to have been of insufficient competence, based on what was claimed to be a lack of due process required by the Recommendation. The claim was dismissed on the legal footing that a direction for remedial training does not cause a change in the status or salary of the person affected and was not seen to be an illegal procedure. The summary of the ultimate decision, as supplied to the Joint Committee, states:

Furthermore, although teachers might be dissatisfied with the lack of opportunity to make an objection against evaluation of the quality or ability, the system for making an objection against evaluation should be designed depending on the nature of the matters concerned. In this case, the order of training is not immediately deemed to be an illegal procedure.

12. The Ministry argues that:

The outcome of this lawsuit shows that the judicial authorities of Japan have recognised that the personnel management system for teachers of insufficient ability developed by the Tokyo Metropolitan BOE has been implemented in an appropriate manner according to due process, and this also proves the appropriateness of the Japanese personnel management system for teachers of insufficient ability, which has been reported to ILO by MEXT.

## Findings

13. The Joint Committee proceeds on the basis that the above translations of the relevant texts accurately reflect, in English idiom, the substance of the original text. With respect, it
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cannot accept the construction sought to be placed by the Ministry on the decision of the Supreme Court. That decision simply acknowledges that the Recommendation does not operate to confer binding legal rights directly on parties to a contract of employment and that, since a requirement to undergo training as a portion of work duties does not bring about any alteration of legal right under the relevant contract of service, it is thus not an illegal procedure. The decision goes no further than that.

14. It is plain that the decision of the Court actually recognises the need for (or at least the desirability of) evolving proper systems for teachers to be informed of and to appeal against evaluations made – in accordance with paragraphs 50 and 64 of the Recommendation – aspects previously identified by the Joint Committee.
15. The Joint Committee points out that, in reality, the stance of the Government continues to remain that the systems referred to are matters of local administration and management, falling outside the ambit of operation of the Recommendation. The Joint Committee cannot accept that contention, for reasons already expressed in its earlier report. The provisions of the Recommendation previously identified by the Joint Committee are quite explicit and unequivocal.
16. Moreover, the Joint Committee respectfully stresses that its earlier assessments of the situation are not directed to narrow issues of legal right, but to the desirability of observance of recognised international standards relating to teachers and the importance of effective social dialogue in the evolution of educational systems.
17. The Joint Committee notes that the latest Government response does not deal with the assertion of ZENKYO that the substantive issues relating to the establishment and implementation of a merit rating system remain largely unresolved.
18. The Joint Committee emphasises that the Recommendation envisages that the parties will approach processes of consultation in a spirit of cooperation. Within a decentralised system such as that in Japan, those processes need to take place in a level at which the relevant administrative procedures and methods are actually established and implemented. The involvement of the Ministry in providing guidance on means by which appropriate procedures and methods could be adopted and applied in a consistent manner for all teachers would no doubt facilitate the process. Whilst, as has been pointed out in paragraph 10 above, some modest progress in resolving issues at a prefectural level appears to have been achieved, it is clear that much more remains to be done. The Joint Committee observes that, although the Recommendation does not set out to remove the ultimate issues between the parties from management authority, nevertheless, it does contemplate that, teachers organisations should be involved in establishing the relevant administrative processes and also the methods for addressing the results of evaluations made in accordance with provisions of the Recommendation (notably, paragraphs 49 and 124). To date, that does not appear to have occurred other than on a quite limited basis.

## **Recommendations**

19. The Joint Committee recommends that the Governing Body of the ILO and the Executive Board of UNESCO:
    - (a) take note of the situation described above;
    - (b) communicate the above findings to the Government of Japan and to ZENKYO, urging the parties to build upon the dialogue already established by entering into ongoing discussions in good faith, at national level and particularly at the prefectural
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level, aimed at addressing and attempting to resolve the issues identified in the report of the Eighth Session of the Joint Committee in a mutually acceptable manner; and

- (c) request that the Government and ZENKYO keep the Joint Committee informed of developments with regard to these problems, such information to be reviewed in due course, in accordance with approved procedures.