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Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning Persons Employed in the Public Sector in Japan

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I

2136. In those areas of the economy which are truly essential and in which strikes would disturb critically the normal life of the nation, special measures may be necessary to protect the public interest. The general public demands and expects this. In such cases strikes may be prohibited provided that adequate compensatory means of settlement or redress are established and function in practice in a satisfactory manner. On the other hand, it cannot be accepted that the activities of all public corporations and national and local enterprises are equally essential. In those which are less essential, the public interest does not require that all strikes be equally prohibited.

2137. Similarly, the policy hitherto followed of forbidding, in the public sector, not only strikes, but without distinction acts of dispute, calls for critical comment. Even in areas in which a given utility is so strongly affected with a public interest as to warrant the prohibition of strikes, this is not to say that all other types of concerted action by workers ought to be forbidden. It is this unyielding attitude which has contributed to the remarkably high number of workers in the public sector who have been prosecuted, dismissed, reprimanded or otherwise disciplined.

2138. While the Government has tended to treat all acts of dispute as illegal, the unions have adopted the converse attitude of assuming all such acts to be legal. This conception that all such acts are legal the Commission must utterly reject. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), specifically provides that "In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land". While the Convention adds that "The law of the land shall not be such as to impair, nor shall it be so applied as to impair", the guarantees provided for therein, this qualification does not impair the obligation of respect for legality. In the view of the Commission acts of dispute do not become either legal or illegal because they are acts of dispute. Their legality or illegality depends on their nature.

2139. The future of labour relations in Japan will depend in large measure on the wholehearted acceptance of this principle by Government and trade unions alike. There is no Convention, Recommendation, or other decision of the International Labour Conference defining the extent of the right to strike in public services, but the Governing Body Committee on Freedom of Association has formulated¹ a series of principles on the matter which has won general acceptance. These principles are essentially—

- (a) that it is not appropriate for all publicly owned undertakings to be treated on the same basis in respect of limitations of the right to strike without distinguishing in the relevant legislation between those that are genuinely essential because their interruption may cause serious public hardship and those which are not essential according to this criterion;
- (b) that, where strikes by workers in essential services or occupations are restricted or prohibited, such restriction or prohibition should be accompanied by adequate guarantees to safeguard to the full the interest of the workers thus deprived of an essential means of defending occupational interests;

¹ See 12th Report of the Committee on Freedom of Association, Case No. 60 (Japan), paras. 45-55; 30th Report, Case No. 172 (Argentina), para. 178; 58th Report, Case No. 192 (Argentina), para. 447; 69th Report, Case No. 285 (Peru), para. 63; 74th Report, Case No. 363 (Colombia), para. 220; 76th Report, Case No. 294 (Spain), para. 284; 78th Report, Case No. 364 (Ecuador), para. 79; 79th Report, Case No. 346 (Argentina), para. 26.

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(c) that impartial machinery should be established for this purpose, the decisions of which should be fully and promptly implemented once they have been made. The Commission endorses these principles; they are not yet accepted in Japan.

DIFFERENTIATION BETWEEN PUBLIC ENTERPRISES

2140. Strikes are absolutely prohibited in public corporations, national enterprises and local public enterprises. At present, no distinction is made in Japanese legislation between enterprises the interruption of the activities of which would impose real hardship on the community and those where such interruption would affect the public interest in a lesser degree (e.g. the tobacco monopoly). Only by recognising such a distinction can any progress be made towards bridging the fundamental divergence of view which at present exists between the Government and the General Council of Trade Unions. The Commission recommends that an appropriate line of demarcation should be established.

2141. If the absolute prohibition of strikes were to be relaxed in the case of those public services and enterprises whose interruption would impose a lesser degree of hardship on the community and replaced, as in many industrialised countries, by the requirement that a specified notice of intention to strike should be given and/or by a prohibition of the exercise of the right to strike pending recourse to impartial and effective conciliation and arbitration procedures, it would be essential that there be a radical change of attitude and a far greater sense of social restraint and responsibility on the part of the unions. At present, when strikes are absolutely prohibited, the unions seem to consider resort to strike, for which preparation is to be made long in advance, as an inevitable accompaniment of their demands, especially in the case of their "spring struggles", even when these demands are of a purely economic nature. The unions of Japan would have to understand, as unions in some industrialised countries have learned by bitter experience, that even where strikes are lawful the strike weapon is one to be used sparingly and only in the last resort after all peaceful means of negotiation and established procedures for settlement have been exhausted. Even then it is a weapon which it is unwise to use in the case of any public service unless the claims of the unions are so manifestly justified that the strike will not antagonise the opinion of the public who must obviously suffer some inconvenience or privation as the result of a strike being called at all. In other words, the legal right to strike in public services and enterprises by no means implies that the strike weapon should be used except in rare and unusual cases.

COMPENSATION MEASURES IN CASES WHERE STRIKES ARE PROHIBITED

2142. The Commission has considered with special care how far the prohibition of strikes is accompanied by satisfactory alternative arrangements for settling questions relating to conditions of work or redressing grievances. It is far from satisfied that the present arrangements for this purpose are adequate.

2143. The Commission proposes to consider separately the position in national and local public corporations and enterprises and in the local public service.

2144. The guarantees afforded by the Public Corporation and National Enterprise Labour Relations Commission (in the case of workers employed by public corporations and national enterprises) and the local labour relations commissions under the Trade Union Law (which deal with matters affecting local public enterprise workers

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criticism. The authorities adopted toward collective bargaining in the public sector an attitude amounting to refusing or rendering ineffective or futile the negotiating process, while some of the trade unions in the same sector persistently engaged in political campaigns unrelated to the economic interests of their membership (paragraphs 2123-2126).

(15) The Commission recommends that both the Government and the General Council of Trade Unions of Japan should be guided in future by the terms of the resolution concerning the independence of the trade union movement adopted by the International Labour Conference in 1952; this resolution is designed to afford a basis on which the trade union movement can avoid its economic and social functions being prejudiced by political considerations (paragraph 2132).

(16) The Commission reaffirms that subversion is not a trade union right (paragraph 2132).

(17) The problems confronting the Government and the trade union organisations in the public sector in their mutual relations arise in part from a failure by both parties to distinguish between the Government as government and the Government as employer. A clearer understanding on the part of both sides of this distinction is a necessary element of the establishment of satisfactory labour-management relations in the public sector (paragraph 2133).

(18) The Commission notes that the right to strike continues to be the subject of a fundamental divergence of view in Japan. It believes that both the restoration of the unlimited right to strike and the maintenance of the absolute prohibition to strike are unrealistic and that a reasonable compromise is necessary (paragraphs 2134-2135).

(19) The prohibition without distinction of all acts of dispute as being illegal is highly questionable; the converse attitude of the trade unions that all acts of dispute are legal is equally unacceptable. In the view of the Commission, acts of dispute should not be considered as legal or illegal as such, but according to their nature (paragraphs 2137-2138).

(20) Noting that there is no decision of the International Labour Conference defining the extent of the right to strike in public services, the Commission endorses the principles established by the Governing Body Committee on Freedom of Association—

- (a) that it is not appropriate for all publicly owned undertakings to be treated on the same basis in respect of limitations of the right to strike without distinguishing in the relevant legislation between those that are genuinely essential because their interruption may cause serious public hardship and those which are not essential according to this criterion;
- (b) that, where strikes by workers in essential services or occupations are restricted or prohibited, such restriction or prohibition should be accompanied by adequate guarantees to safeguard to the full the interest of the workers thus deprived of an essential means of defending occupational interests;
- (c) that impartial machinery should be established for this purpose, the decisions of which should be fully and promptly implemented once they have been made (paragraph 2139).

(21) The Commission notes that these principles are not yet accepted in Japan (paragraph 2139).

(22) Only the recognition of a distinction as to the essential or non-essential character of a public service can bridge the divergence existing between the views of the Government and the General Council of Trade Unions. The Commission recommends that an appropriate line of demarcation should be established (paragraph 2140).

(23) If the absolute prohibition of strikes were to be relaxed in cases where interruption of the work would impose a lesser degree of hardship and were replaced by the requirement of a specific notice of the intention to strike and/or by a prohibition of the exercise of the right to strike pending recourse to conciliation and arbitration procedures, it would be essential that there be a radical change of attitude and a far greater sense of social restraint and responsibility on the part of the trade unions. The unions of Japan would have to understand that, even where strikes are lawful, the strike weapon is one to be used sparingly and only in the last resort after all other means of settlement have been exhausted. Even then, the legal right to strike in public services and enterprises by no means implies that the strike weapon should be used except in rare and unusual cases (paragraph 2141).

(24) The Commission is of the opinion that the existing arrangements for settling questions relating to conditions of work or redressing grievances in cases where strikes are prohibited are on the whole far from adequate, and that the present system calls for thorough review (paragraphs 2142-2155).

(25) The Commission is satisfied that the guarantees afforded by the Public Corporation and National Enterprise Labour Relations Commission and the local labour relations commissions are more substantial and appear to have given the workers concerned a greater degree of compensation than the allegations of the complainants suggested; it would appear that in these commissions the requisite degree of impartiality has been present, in relation to those functions which are performed by the public interest members only (paragraph 2144).

(26) The Commission observes that the principle that awards and collective agreements should be fully and promptly implemented is most imperfectly applied; consequently, confidence in the equity and utility of collective bargaining cannot but be undermined (paragraphs 2147-2148).

(27) The Commission notes that, in the case of the local public services, the by-laws which should have served as compensation for the denial of the right to conclude collective agreements did not exist at all or existed only in inadequate or incomplete form. The Commission recommends that urgent consideration should be given to revising the arrangements for the adoption by local public bodies of by-laws relating to terms and conditions of employment (paragraphs 2150 and 2155).

(28) Regarding the personnel and equity commissions the Commission is of the opinion that these do not meet the requisite standard of impartiality. The Commission therefore recommends that it would be desirable to refer to the Advisory Council on the Public Service Personnel System the problem of ensuring that the members chosen possess and are generally recognised to possess the requisite impartiality (paragraphs 2151-2152).

(29) The Commission observes that unions as such have no right to apply to personnel or equity commissions to take action on working conditions. The Commission therefore recommends that trade unions should have the right to submit applications on behalf of their members for action on wages and other working conditions (paragraph 2153).