



## EIGHTH ITEM ON THE AGENDA

**Reports of the Committee on  
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on Freedom of Association***Contents*

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- (a) *The Committee requests the Government to take the necessary measures to amend the legislation so as to guarantee that public officials' organizations have the right to organize or to adopt a specific law for this purpose, as prescribed by Act No. 12/1992.*
- (b) *The Committee requests the Government to conduct an investigation into the notary's alleged refusal to issue a certificate containing the by-laws of the trade union and, should the allegations prove to be substantiated, to take measures to ensure that public notaries duly issue notarial certificates, in keeping with the requirements provided for by the law.*
- (c) *The Committee also requests the Government to take measures for the expeditious recognition of the Teachers' Trade Union Association (ASD) and the Agricultural Workers' Organization (OTC) and to keep it informed in this regard.*

CASES NOS. 2177 AND 2183

INTERIM REPORT

### **Complaints against the Government of Japan presented by**

#### *Case No. 2177*

- **the Japanese Trade Union Confederation (JTUC-RENGO)**
- **the RENGO Public Sector Liaison Council (RENGO-PSLC)**
- **Public Services International (PSI)**
- **the International Transport Workers' Federation (ITF)**
- **the International Federation of Building and Wood Workers (IFBWW)**
- **Education International (EI)**
- **the International Federation of Employees in Public Services (INFEDOP) and**
- **Union Network International (UNI)**

#### *Case No. 2183*

- **the National Confederation of Trade Unions (ZENROREN) and**
- **the Japan Federation of Prefectural and Municipal Workers' Unions (JICHIROREN)**

*Allegations: The complainants allege that the upcoming reform of the public service legislation, developed without proper consultation of workers' organizations, further aggravates the existing public service legislation and maintains the restrictions on the basic trade union rights of public employees, without adequate compensation*

**925.** The Committee examined these cases at its November 2002 and June 2003 meetings, where it presented interim reports, approved by the Governing Body at its 285th and 287th Sessions [see 329th Report, paras. 567-652; 331st Report, paras. 516-558].

- 926.** The Japanese Trade Union Confederation (JTUC-RENGO) (Case No. 2177), submitted additional information in communications dated 6 September 2004, 5 January and 5 September 2005, and 6 and 19 January 2006.
- 927.** The National Confederation of Trade Unions (ZENROREN) (Case No. 2183), submitted additional information in communications dated 17 February 2004, and 14 January, 1 and 13 December 2005.
- 928.** The Government submitted its observations in communications dated 3 June and 14 October 2004, 18 May and 22 September 2005, and 4 and 24 January 2006.
- 929.** Japan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

## **A. Previous examination of the cases**

**930.** At its June 2003 meeting, the Committee made the following recommendations:

- (a) The Committee strongly requests once again the Government to reconsider its stated intention to maintain the current restrictions on the fundamental rights of public employees.
- (b) The Committee strongly requests once again the parties to make efforts with a view to achieving rapidly a consensus on the reform of the public service and on legislative amendments that are in conformity with the freedom of association principles embodied in Conventions Nos. 87 and 98, ratified by Japan, and to keep it informed in this respect. Consultations should notably address the following issues:
  - (i) granting the right to organize to fire-fighters and prison staff;
  - (ii) ensuring that public employees at local level may establish organizations of their own choosing, without being subject to excessive fragmentation as a result of the operation of the registration system;
  - (iii) allowing public employees' organizations to set themselves the term of office of full-time union officers;
  - (iv) ensuring that public employees have the rights to bargain collectively and to conclude collective agreements, and that those employees whose such rights can be legitimately curtailed enjoy adequate compensatory procedures, all of which should be in full conformity with freedom of association principles;
  - (v) ensuring that public employees are given the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately such right are not subject to heavy civil or criminal penalties;
- (c) The Committee requests the Government to engage in meaningful dialogue with the trade unions concerning the scope of bargaining matters in the public service.
- (d) The Committee requests the Government to indicate whether public employees who have resorted to strike action in the past have been subjected to sanctions other than prison, e.g. fines.
- (e) The Committee requests the Government to provide it with the text of any legislation amending the public service labour relations system.
- (f) The Committee requests the Government to provide it with the final judgement in the Ouda-cho case once it is rendered.
- (g) The Committee requests the Government to provide its comments on the allegations concerning the differential treatment of unfair labour practices in the case of Ariake-cho.

- (h) The Committee requests the Government and the complainants to provide information on the consequences of the reorganization on the collective bargaining rights of workers transferred to independent administrative institutions (IAIs) and their trade unions.
- (i) The Committee requests the Government to keep it informed of developments on all the above issues.
- (j) The Committee reminds the Government that it may avail itself of the technical assistance of the Office, if it so desires.

## **B. Additional information from the complainants**

### ***Additional information from JTUC-RENGO (Case No. 2177)***

**931.** In its communication of 6 September 2004 JTUC-RENGO states that in November 2003 it established along with RENGO-PSLC, a “study group on the public service system reform”, with the mandate to consider an appropriate system reform proposal. Following discussions at 14 meetings, the Study group issued an “interim report” on 23 June 2004. Following repeated demands from JTUC-RENGO and two recommendations by the ILO Committee on Freedom of Association, a table for union-government consultation for “full, frank and meaningful” consultations at the ministerial level was established, under which a working party for negotiation was also set up with director-level participants. Three meetings were held: one at ministerial level and two at director level.

**932.** Following recommendations of the study group, interim report, JTUC-RENGO and RENGO-PSLC made the following concrete proposals to the consultation table mentioned above. No concrete or meaningful reply was received from the Government:

- (a) The Government should officially state that it would grant fundamental trade union rights to public servants and implement concrete measures to reform the public service system in line with the international labour standards adopted by the ILO, including, among others, abolishment of restriction on terms of office of full-time union officers, and granting the right to organize to firefighters and prison staff.
- (b) Under the current National Personnel Authority (NPA) system, a union-government consultation system should be instituted to ensure the participation of public servants and their organizations to the decision-making process.

**933.** In its communication of 5 January 2005 JTUC-RENGO stated that the complainant unions have been conducting negotiations with the Government and ruling parties in various forums, but no conclusions have been agreed. In a last effort, RENGO resorted to propose, inter alia, “the minimum demands” on 3 September 2004:

- (1) As for the reform of the labour-management relations in the public sector, the Government should adopt concrete measures to bring the public service system closer to the international labour standards based on the Committee on Freedom of Association recommendations. At the same time, the Government should clearly state its intention to grant fundamental trade union rights to public service employees, and present proposals.
- (2) In order to reform the personnel management system into one focusing on individuals’ competence and achievement by introducing a new evaluation system, and to make it work, it is indispensable to establish a labour-management consultation system for said evaluation system. Meanwhile, until the granting of fundamental trade

union rights, the NPA system should be improved so as to ensure the participation of workers' organizations.

**934.** Negotiations continued after the ruling Liberal Democratic Party (LDP) proposed countermeasures on 12 November 2004, which were unacceptable to RENGO. The unions, therefore, issued their final statement on 18 November 2004, stating:

- (1) RENGO and RENGO-PSLC recognize that the drastic reform of the public service system is a pressing and urgent issue, which requires the establishment of a coherent new labour-management system, in accordance with international labour standards.
- (2) The short-term position of RENGO and RENGO-PSLC is as stated in the "minimum demands" issued on 3 September 2004. The measures proposed by the ruling LDP do not sufficiently respond to RENGO's demands, and are, thus unacceptable.
- (3) The reform of the public service system, which is the basic component of the national and local autonomous bodies, requires appropriate and adequate procedures and substance. RENGO and RENGO-PSLC strongly oppose a unilateral proposition of bills to revise related legislations to the Diet by the Government and/or the ruling parties.
- (4) RENGO and RENGO-PSLC strongly request the Government and the ruling parties, in order to implement a reform based on the national consensus: to correct the initial procedural violation; to close down the Reform Promotion Division for Civil Service System of the Administrative Reform Promotion Office of the Cabinet Secretariat; and to exercise their firm leadership to establish a new framework.
- (5) RENGO and RENGO-PSLC appreciate that negotiations with officials in charge have been serious and sincere; they express their regret that no agreement has yet been reached, and hope that meaningful sincere negotiations will continue for promotion of the reform.

**935.** At a Cabinet meeting held on 24 December 2004, the Government decided on a "future policy for administrative reform" which stated "the Government will consider the proposition of bills at a future date following materializing of system designing and coordination between parties concerned". According to RENGO, the decision of the Government on 24 December meant that it was shelving the General Principles for Civil Service System Reform adopted by Cabinet on 25 December 2001. The Government abandoned the "reform" itself, including possibilities to improve it in line with the recommendations of the Committee on Freedom of Association, and made clear, once again, that the current restrictions on the fundamental trade union rights of public servants, as indicated in the 331st Report issued in June 2003 would be maintained (right to organize of firefighters and prison staff; registration system; term of office of full-time union officers; right of public employees to bargain collectively and to conclude collective agreements; right to strike and penalties). RENGO and RENGO-PSLC recognized it as a certain success that the Japanese trade union movement has held back, with support and assistance from the international trade union movement as well as the Committee on Freedom of Association, the Government's original intention to aggravate the situation in the public service system, which is, even in its current form, in violation of ILO Conventions.

**936.** In its communication of 5 September 2005, JTUC-RENGO indicated that on 25 May, its President met with the Prime Minister to discuss the issues. RENGO requested the Prime Minister to provide civil service workers with fundamental trade union rights in accordance with ILO Conventions Nos. 87 and 98, and to push through reforms of the public service system. The Minister of Health, Labour and Welfare expressed the

Government's position, as follows: "the government will continue to secure the framework of government-trade union consultation to address reforms of the public service system". However, there were no government-union consultations. The Government continued to contravene ILO Conventions Nos. 87 and 98, and was trying to go ahead with changes in the public service system, lowering wages and other working conditions.

- 937.** In its communication of 6 January 2006, RENGO states that on 14 November 2005, the Government (Council on Economic and Fiscal Policy) formulated a "Basic Policy for reforms of overall employment costs for civil servants" ("Basic Policy"). That Policy advocates: (a) reducing the authorized number of national government employees by 5 per cent or more over the next five years; (b) halving the ratio of overall employment costs for national government employees to GDP over the next decade; and (c) likewise, calling on local governments to reduce the authorized number of local government employees by 4.6 per cent or more over the same period.
- 938.** On 16 December 2005, talks were held between the Prime Minister and JTUC-RENGO president, who called on the Prime Minister: (a) not to make the planned reduction in the authorized number of, and employment costs for civil servants, an end in itself; (b) not to lightly undercut the quality and level of public services; (c) to assure civil servants of their basic labour rights in compliance with ILO Recommendations and to create a democratic and transparent public servant system accordingly and, to this end, have the Government present a well-defined course toward granting basic labour rights to civil servants; and (d) regarding the aforementioned issues in (a), (b) and (c), to instruct the Government to enter into governmental labour consultations and effective individual talks and consultations with trade unions concerned. The Prime Minister replied: "The problems of the public servant system are an important political agenda for the Government, and we wish to adequately discuss them with labour. Specifically, RENGO should talk to Deputy Cabinet Secretary." In response to this suggestion, JTUC-RENGO and its Public Sector Liaison Council (RENGO-PSLC) approached the Government to set up a working-level government-labour consultation panel in order to ensure that substantive talks were held between the two on a continuous basis.
- 939.** At a Cabinet meeting on 24 December 2005, the Government set the "Essential Policy for administrative reform" (the "Essential Policy"), where the Government stated that it would carry out reforms on the basis of the Basic Policy formulated on 14 November and that: (a) "with regard to reforms of the public servant system from the viewpoint of the thorough implementation of personnel management based on a merit system and fair management of re-employment, the Government will carry out frank dialogue and adjustment with the parties concerned, based on the progress of reforms of overall employment costs, and thus will put these reforms into shape as early as possible"; and (b) "the Cabinet secretariat will conduct a broad review of the public servant system, including the basis labour rights of civil servants and the National Personnel Authority (NPA) system, the way of setting salaries for civil servants, treatment based on a merit system and performance evaluations and the career system. In doing so, it will take into account public awareness and progress in reforms of the existing salary system".
- 940.** According to RENGO, the Essential Policy represents a major switch from the "General principles for civil service system reform" (Cabinet decision of December 2001), which aimed to keep reforms within the existing framework of the public servants system, which places restraints on the basic labour rights of civil servants. The Government plans to introduce, during the 2006 ordinary session of the Diet, an "Administrative Reform Promotion Bill" based on the aforementioned Essential Policy, which will become the basic law for administrative reforms. However, with regard to the reforms of the public servant system, the arguments have focused exclusively on cutting the overall employment

costs of civil servants whilst retaining the existing public servant system, and the Government has yet to propose a policy that would grant them basic labour rights.

- 941.** According to RENGO, the Government's adoption of the Essential Policy at the Cabinet meeting on 24 December indicates that it has withdrawn the "General principles for civil servants system reform" (the Cabinet decision in December 2001), which advocated the retention of restrictions on basic labour rights for civil servants. However, it is still unclear whether the Government will grant basic labour rights to civil servants. While JTUC-RENGO and its Public Sector Liaison Council (RENGO-PSLC) see the latest policy turnaround by the Japanese Government as a change for the better, they intend to further intensify their lobbying efforts to have it completely and promptly implement the ILO Recommendations, which have been issued twice already.
- 942.** Under this new situation, characterized by the policy turnaround by the Japanese Government, JTUC-RENGO and its Public Sector Liaison Council (RENGO-PSLC) strongly ask the Government to initiate effective government-labour talks based on the ILO recommendations as quickly as possible and in good faith. For this reason, they request that the Committee on Freedom of Association strongly recommend that the Japanese Government convene effective government-labour talks on this matter at an early date and to carefully monitor possible developments from the expected government-labour talks.
- 943.** In its communication of 19 January 2006, JTUC-RENGO states that a high-level consultation took place on 16 January 2006, where it was reconfirmed that the Government would amend its policy and consider the possibility of granting basic labour rights in the public service; the two parties therefore recognized the necessity to improve the labour-management relationship in the public service in line with socio-economic changes. In addition, and although there are differences between the parties' positions on the issue of the total expenditure for public service personnel, the Government stated that it would secure employment for public service workers; the Minister of Regulatory Reform will be in charge of reshuffling the public service, and the Government would hold adequate consultations with RENGO-PSLC for practical negotiations, including at preparatory level. A further meeting has been tentatively set for March 2006. The trade union side emphasized the need to carry out urgently a drastic reform of the public service personnel system, with a view to improving the labour-management relationship through granting basic labour rights to public servants. It also proposed to establish as soon as possible a "place for consideration" ("kento noba"); the Government agreed that such a "place for consideration" was necessary but stated its appropriate form needed careful examination, taking into account such factors as deliberations in the National Diet. It was ultimately agreed that the two parties would further consult on this issue.

***Additional information from ZENROREN  
(Case No. 2183)***

- 944.** In its communication of 17 February 2004, ZENROREN stated that it had made repeated requests to the Government for negotiations with the Minister in Charge on 15 April and 29 May 2003, but no concrete reply was received; negotiations had been refused not only with the Minister in Charge but also with the secretary-general of the Office for Promotion of Administrative Reform. The Minister in Charge and the personnel of the office were changed after the general election in November 2003. ZENROREN renewed their demand for negotiations but no progress has been made due to the lack of Government response. Further, there have been frequent consultations and negotiations between RENGO and the Chief Cabinet Secretary and the Minister in Charge. The Government's refusal to negotiate with ZENROREN is unfair and unjust. It totally neglects the recommendations made twice by the Committee and constitutes discrimination among trade unions.

- 945.** In its communication of 14 January 2005, ZENROREN provided its view of the decisions made by the Government at the Cabinet meeting on 24 December 2004. ZENROREN expresses its serious concern at these decisions, since they made it clear that the Government was now going to conduct the reform of the public personnel system within the limits of the existing laws, which in turn meant that the Government would suspend the work for establishing a new legal framework. These decisions actually aimed at setting aside the revived debate in favour of guaranteeing basic labour rights to public employees and maintaining the current restrictions on these rights into the future. In addition, when making these decisions, the Government failed to consult or negotiate with ZENROREN, one of the parties directly concerned by these decisions.
- 946.** On 9 June 2004 the Government resumed the work for amending the existing laws related to the public personnel management, following the recommendations of the consultative body on administrative reform set up by the ruling parties to focus the planned reform on the introduction of “ability-based personnel grading system” and on “finding appropriate jobs for public workers after their retirement”. In that context, on 7 August 2004, ZENROREN submitted “immediate concrete demands of public workers for basic labour guarantees” to the Government. These demands consisted of requesting the Government to implement a reform that would be in line with the two ILO “interim reports and recommendations”. However, the Government did not respond to ZENROREN’s request; it never agreed officially to consult or negotiate with ZENROREN on the concrete labour demands before making decisions at the end of 2004. Against ZENROREN’s complaints, the then Minister of Health, Labour and Welfare, when he visited the ILO in April 2003, stated that he would commit himself to hold “consultations and negotiations in good faith with the concerned workers’ unions” (in view of concretizing the ILO’s “interim reports and recommendations”), and, Government representatives have made similar statements at the International Labour Conference every year since 2001.
- 947.** The Government has adopted an extremely negative attitude towards the acceptance of the Committee’s recommendations. ZENROREN considers that once the Government has made an international commitment to consult and negotiate with the concerned parties in good faith, it should keep that commitment by taking concrete actions. Nevertheless, there has not been any consultation or negotiation on the basis of the “interim reports and recommendations” at least between the Government and ZENROREN. During the last period, ZENROREN has been the one that has unilaterally pressed for a public personnel reform in line with the ILO “interim reports and recommendations”.
- 948.** When taking the decisions concerning the public personnel reform at the end of 2004, the Government did not say anything about how it would deal with the ILO “interim reports and recommendations” and did not give any consideration about the demand of public workers for revising the restrictions currently placed on their basic labour rights. It instead declared that it would experiment with an “ability-based personnel grading under the present system”. ZENROREN cannot accept the testing of such a grading system if that means shelving the democratization of the public personnel system that should be achieved by the reform. ZENROREN strongly fears that the recent governmental decisions concerning the reform will put off to a distant future the task of making the Japanese public personnel system in conformity with principles of freedom of association, as recommended by the ILO.
- 949.** In recent years, the Government has intensified its moves to disengage from the areas placed under its executive authority by transforming a number of governmental agencies into independent administrative institutions and contracting out certain public services and administrative matters to private companies. This process has already caused abusive dismissals of public workers and degradation of working conditions imposed on employees. The Japanese Government repeatedly claims that such disengagement, while



reducing the areas under governmental responsibility, will contribute to extend freedom of association to more workers. This, however, is one of many phenomena resulting from a process that is driving an increasing number of workers out of the public personnel system, exposing them to suffering and pain caused by job insecurity and poorer working conditions. ZENROREN believes that what is most needed now is to increase pressure both internationally and within Japan to force the Government to seriously work on the public personnel reform, assigning itself the major objective of improving the current system to fit the principle of freedom of association. Once again, ZENROREN strongly urges the ILO to take resolute actions towards the Japanese Government, including by sending a fact-finding mission to Japan.

**950.** Cutbacks in the employment of public servants and a review of their wage and other working conditions have become important points of contention. The ruling coalition had shown no intention to reform the one-sided labour-management relations that constrain the fundamental trade union rights of civil service workers. Worse, the Secretary-General of the LDP had made remarks in the Diet that were hostile toward public service unions and rejected labour-management relations in the public sector.

**951.** In its communication of 1 December 2005, ZENROREN states that its affiliate, the Japan Federation of Prefectural and Municipal Workers' Unions (JICHIOREN) and the National Network of Firefighters (FFN) are pursuing their efforts to obtain the right to organize for firefighters. Some changes have taken place in the standards of organization and management of the fire defence personnel committees on 1 August 2005. The Tohbi Council of Firefighters, in Okayama prefecture, on 5 September 2005, filed a lawsuit in Okayama District Court against the local fire defence authority for the suppression of volunteer activities of fire personnel. The problems resulting from the partial revision of the organization and management of the fire defence personnel committees are as follows:

- The revision allows the fire defence committees to meet when necessary, in addition to their regular meetings. The fire defence authority once a year circulates a notice among the personnel calling for opinions they wish to be taken up by the fire defence personnel committee meeting. However, the authority fails to remind the personnel that they may submit their opinions to the authority any time without waiting for the notice.
- The fire defence authority has now the obligation to inform the personnel about the result of examination of their opinions by the committee. This in turn means that some fire defence authorities have not informed the personnel of the result of the examination of the opinions submitted by the personnel.
- The revision has established the post of “coordinator of opinions”. Before the revision, the personnel submitted their opinions directly to the secretariat of the fire defence personnel committee, but now, they have to present their opinions to the “coordinator”. However, the fire defence authority has not explained to the personnel about the true significance of such “coordination”. If the coordinator is a managerial employee, some employees could feel uncomfortable to submit their opinions.
- A coordinator of opinion, while being the one to actually collect the opinions of the personnel, cannot attend the fire defence committee meetings. It was demanded that the “coordinator” be allowed to participate in the committee meeting to present the opinions of the personnel.
- The creation of the post of “coordinator” is a means to “prolong the life of the fire defence personnel committees” so as to avoid giving the guarantee of the right to organize to the firefighters. The so-called “coordination” only makes the management

of the committees more complicated and represents no advantage for the fire defence personnel.

**952.** As regards the lawsuit filed by the Tohbi Council of Fire Defence Personnel:

- After the establishment of the Council, some ten members petitioned the director of fire defence headquarters for a package of proposals: five items for providing better emergency services to the population and three items for improving the treatment of the fire defence personnel. The director told them that he would neither discuss with them nor would he give any reply to their demands. Since this incident, the Council has repeatedly requested the director to meet with its representatives, but the director has refused to meet them saying that he “does not consider them as his employees”.
- The Council proposed various positive measures to be taken by the fire defence headquarters for resolving immediate problems concerning the safety of the population as well as fire defence personnel including an increase in staff to enable the firefighting service to cope with major natural disasters, early introduction of high-standard ambulances at every fire station, selection of emergency life-saving agents, pay raise, etc., but these proposals were not accepted by the fire defence authority, which decided that they were not “appropriate to be implemented”.
- The Council publishes a monthly newsletter and distributes it to all the firefighters to raise their awareness about the workers’ rights, treatment of fire defence personnel, law violations, unfair labour practices, etc.
- The Council, on 6 November 2002, submitted to the Okayama prefectural public personnel committee a list of demands for correcting unfair practices including obstructions made to the personnel in taking annual paid leave, non-payment of overtime work allowances and restrictions on taking sick leave. The Okayama prefecture public personnel committee, on 20 August 2003, issued a decision approving a part of overtime work allowances demanded by the Council.
- The Tohbi fire defence authority has promoted the employees who are critical to the volunteer organization and intentionally excluded those who are members of the Council. Because of this, the employees are keeping distance with the Council members. The head of the life-saving troop has tried to isolate the Council members by saying that he “cannot conduct training with the Council members”.

**953.** As the Tohbi fire defence headquarters did not correct the discriminatory practices mentioned above, the Tohbi Council of Firefighters, on 5 September 2005, filed a suit in Okayama District Court emphasizing that the lawsuit is about the denial of the right to organize for the fire defence personnel. JICHIROREN believes that ensuring good working conditions to firefighters is essential for effectively protecting the lives and properties of citizens from disasters. Unfortunately, the officers and the administrative managers of the Tohbi fire defence headquarters do not share this view and have done everything to suppress the voice of the firefighters calling for the improvement of their working conditions. The conflict between the managers and the employees in the Tohbi fire defence headquarters is not an isolated case in the Japanese fire defence workplaces. The attitude of the officers and the administrative managers of the Tohbi fire defence headquarters and the actions they have taken regarding the issue are linked with the refusal by the Japanese Government to accord the right to organize to the firefighters. In other words, the basically narrow and closed attitude of the fire defence managers who are reluctant to take up and implement constructive opinions presented by the firefighters in the workplaces is similar in nature to the intent of the Japanese Government to prevent the extension of union organizing in the fire defence service.

- 954.** In their communication of 13 December 2005, ZENROREN and JICHIROREN state that the Government has failed to follow the ILO recommendations and that the industrial consultations that are indispensable for the re-establishment of the fundamental rights of public personnel are in a deadlock. In addition, the Government is implementing another reform with the aim to impose major changes in working conditions that will be detrimental to public employees without hearing the opinions of workers concerned and without consulting with them.
- 955.** The Government decided at a Cabinet meeting held in December 2004 the “Guidelines for Future Administrative Reform” and the “New Guidelines for Local Administrative Reform” that would considerably affect the working conditions of public employees, including reduction in the number and total personnel cost of public personnel, privatization and contracting out of state and public services and introduction of a performance-based personnel evaluation and remuneration systems. In addition, the Government, in June 2005, adopted the “2005 Orientation regarding Economic and Financial Management” (hereafter referred to as “05 Basic Orientation”) for the elaboration of the national budget for fiscal year 2006. One of its major axes is “cuts in the total personnel cost” which was concretized in November 2005 by the “Guidelines for Total Personnel Cost Reform” (hereafter referred to as “Guidelines”). The “Guidelines” that will have serious effects on the employment and working conditions of public workers include: (1) 50 per cent reduction in the total labour cost of state employees in terms of GDP ratio within ten years; (2) 5 per cent reduction in the number of state employees within five years; and (3) to set numerical goal for reduction of the number of local public employees with the aim to contribute to the reduction of total personnel cost.
- 956.** According to ZENROREN, what is even more serious is that these governmental decisions unilaterally introduce disadvantageous changes in wages and working conditions of public servants while shelving the question of the guarantee of fundamental labour rights of public personnel. These decisions were taken with the participation of many representatives of the Japan Keidanren, made up of large Japanese enterprises, while keeping out from the decision-making process the representatives of public employees who “have their basic rights restricted” and without any negotiations or consultations with public workers’ unions. This constitutes a serious violation of the right to association of the public employees and a proof that the Government had no intention to follow the ILO recommendations.
- 957.** The Government has repeatedly “requested” the NPA to issue recommendations that match with the governmental “Orientation”. The NPA, in August 2005, faithfully followed the governmental “request” and made a recommendation to “drastically revise the wage system for the public employees”. The 2005 NPA recommendations include: (1) 4.8 per cent across-the-board wage cut for the state employees’ wages from the fiscal year 2006; (2) the wage cut will be accompanied with the creation of a “local residence allowance” that varies from 0 per cent to 18 per cent of the salary; (3) the most drastic revision of wage system in the last 50 years, consisting of a revision of wage structure by introducing “evaluation-based wage rise system” to allow for the principle of ability- and performance-based remuneration. Through this “drastic revision of wage system”, the State can reduce 180 billion yen and local governments 600 billion yen in their total labour cost. The lifetime earnings of state employees who do not receive “local residence allowance” and of a majority of local public employees whose wages are linked with the NPA wage recommendations will be reduced by as much as 12.9 million yen per person (according to an NPA estimate). The “drastic revision of wage system” is based on a series of decisions taken by the Government: the orientation of cutting state expenditures decided by the Cabinet meeting in June 2002 (“02 Basic Orientation”) that called for “efforts of the NPA and local personnel committees of local public organizations to quickly revise mechanisms

of wage system in accordance with local realities” and the introduction of an ability- and merit-based wage system based on the “Principles of Civil Service Reform”.

- 958.** The opinions of employees’ representatives or of unions have never been taken into consideration in the elaboration of these policies. Before issuing the recommendations, the NPA met with the unions of state employees, but the basic framework of its planned recommendations were not changed. In addition, despite a strong opposition of all public unions, it recommended a “drastic revision of wage system” that imposed significantly disadvantageous changes in working conditions. The meeting between the NPA and unions does not constitute “negotiation or consultation” supposed by the ILO as stated in the 278th interim report of the Committee on Freedom of Association, but a mere hearing of their opinions. The NPA issued recommendations that were entirely in line with the intention of the Government under a system that can by no means compensate for the restrictions placed on the basic labour rights. This act itself violates the freedom of association of public employees.
- 959.** The wage levels of local public employees in Japan are governed by the principle of the Local Public Personnel Law (article 24-3): “their wages must be determined taking into account the cost of living, the wages of state employees and of employees of other public organizations as well as the wages of the private sector operators”. At the same time, local personnel committees, as a compensatory mechanism for the restricted basic labour rights that is independent from the NPA which is a state organ, are set up in some local bodies (47 prefectures, 14 specially designated large cities, one special district and two cities) and make “recommendations”. The “principle of local autonomy” means that wage levels as well as working conditions of local public personnel agreed upon between local authorities and local public employees’ unions through collective negotiations are to be made into an ordinance through a voting in the local assembly. In recent years however, the Japanese Government has been intervening in and strongly interfering with the determination of wages of local public employees that in principle is independent from the State by virtue of “local autonomy”. Through these interventions and interferences that have been made using the financial advantage the State has on the municipalities, the Government has repeatedly demanded the local governments to conform to the NPA recommendations and not to exceed wage levels of state employees or even to fix lower wage levels, by convoking the responsible managers for wages of major municipalities and local personnel committees. As a result, 57 per cent of local autonomous bodies have lowered the wage levels of their employees disregarding the recommendations of local personnel committees or the NPA recommendations on the pretext of local public financial crisis. The local personnel committees have their function distorted by the State and the wage levels of local public employees continue to decline in comparison with those of state employees.
- 960.** Regarding wage determination of local public personnel, the Government this year demanded the local personnel committees to “conform to” the 2005 NPA recommendation for a “drastic revision of wage system” for state employees and press the municipalities to conform to the state standards. These actions constitute a threat to the “principle of local autonomy” and intervention into the collective bargaining of local public workers. Moreover, even before the local personnel committees had issued the recommendations to the employers, and before the local authorities had negotiated or consulted with unions, the Government decided at a Cabinet meeting “partial modification” of the law on local autonomy (28 September 2005) and pushed through the Diet a bill for amending the law on wages of local public service employees. The “partial amendment” of the law on local autonomy modifies a clause that defines the “allowances” paid to local public employees and abrogates the “adjustment allowance” on the premise of 4.8 per cent across-the-board cut in public personnel wage and introduction of “local residence allowance” to be created. It is thus aimed at forcing the municipalities to “conform to” the NPA recommendations. It has in fact imposed a significant wage cut on prefectural and municipal workers and near

20 per cent wage discrepancy among them through the creation of “local residence allowance”.

- 961.** The Government decided to amend the local autonomy law through a Cabinet meeting even before the recommendation of the local personnel committees that are set in place to compensate for the restriction of basic labour rights. It imposed disadvantageous changes in working conditions of local public personnel by significantly lowering wage levels. In addition, it rushed the amendment bill through Parliament before negotiating or consulting with concerned unions. This forced revision of the local autonomy law disregards the existence of the local personnel committees that are compensatory mechanisms for the denial of the basic labour rights. Above all, it constitutes a blunt violation of the basic labour rights namely the right to organize and the right to collective bargaining of local public employees.
- 962.** The complainants consider that the “drastic revision of wage structure” and “reduction of the total personnel cost” decided by the Government while maintaining the “restrictions on the fundamental labour rights” constitute a serious violation concerning the basic labour rights of public employees. First, although these decisions impose considerable disadvantageous changes in the working conditions of local public personnel, the employees concerned have been given no right and no opportunity to participate in the process of decision-making. They are also denied the opportunity to participate in the decision-making in the NPA or in local personnel committees. Second, the recommendations of both the NPA and local personnel committees as compensatory measures for the restrictions placed on the basic rights do not reflect the opinions of workers but faithfully follow the “demands of the Government as the employer”. Evidently, they cannot be considered as compensatory measures for the “restricted basic labour rights”. Third, the Government has repeatedly intervened in and interfered with local personnel committees that are local governments’ bodies that are independent from the State and are set in place to compensate for the basic labour rights restriction, in order to press them to conform to the NPA recommendations that concern state employees, constitute a twofold violation of the fundamental labour rights of local public personnel. Fourth, a unilateral revision of the local autonomy law before the recommendations of local personnel committees and before the industrial negotiation of local public employees also constitutes a violation of the basic rights of local public personnel.
- 963.** For the complainants, the claim set forth by the Government to maintain the restrictions on the basic labour rights of public personnel on the basis that “the public employees, while their basic labour rights are restricted, have adequate compensatory measures ensured, including the recommendations of the NPA” is not valid. In the new context where the Government is trying to implement disadvantageous changes in various working conditions of public personnel in line with the policy of “reducing the total public personnel cost” while shelving the indispensable guarantee of their basic labour rights and without open negotiation and consultation with the concerned unions, it has become even more urgent that the Government comply with the ILO recommendations by changing national laws.

### **C. The Government’s replies**

- 964.** In its communications of 3 June and 14 October 2004, the Government stated that it had been continuing negotiations and consultations in good faith with labour representatives. RENGO and officials at the director-general level met on 26 February, 11 and 26 March, and 9 April 2004. In addition, on 13 May 2004, the Minister in Charge of Administrative Reform, along with other ministers, met with RENGO to exchange views. Both sides agreed on the value of continued discussions and that other meetings should be held in the

near future to discuss how to make progress on the issue. Both sides were to discuss the situation at the 2004 International Labour Conference.

- 965.** Other meetings were held on 15 June and 16 July 2004. JTUC-RENGO and government officials exchanged views on various issues concerning the civil service reform and confirmed that they should continue to consult at various levels. At the meeting of 16 July, JTUC-RENGO explained its “interim report” prepared by the “study group on the public service system reform” and the members exchanged frank views concerning labour-management relations in the public sector. Since 5 August 2004, the Government had shown materials for discussion to the parties concerned, including the employees’ organizations, to prepare a bill on the civil service reform. Several rounds of exchanges of views between the Government and the employees’ organizations have been held at different levels, and the Government was considering concrete ways to implement civil service reform, while consulting with the parties concerned.
- 966.** In its communication of 18 May 2005, the Government stated that it has been continually exchanging views at various levels with the parties concerned including employees’ organizations. JTUC-RENGO decided to discuss the issue of fundamental labour rights not only with the Government but also with the ruling party as well. Consequently, extensive discussions and efforts for coordination took place between them, but they have not resulted in a final agreement.
- 967.** Since coordination with the parties concerned, including employees’ organizations, did not advance sufficiently, the Government decided that it would not submit the bills for civil service reform to the Diet and adopted the “Future policy for the reform” (the “Future policy”) in December 2004, which stated that the Government would consider submission of those bills to the Diet while making further efforts of coordination with the parties concerned. The Government, in the process of making this policy decision in December, had exchanged opinions with the director-general of employees’ organizations and a meeting was also held between the Minister of State for Administrative Reform and representatives of Komu-rokyo (Public Sector Liaison Council). Upon the request of Komu-rokyo to maintain a framework of “government-labour meeting” between the ministers concerned and the labour representatives, the Minister of State for Administrative Reform indicated that maintenance of such a framework was desirable and therefore he would consult other ministers concerned.
- 968.** As regards the revision of the Fire Defence Personnel Committee system, the Government explains that in Japan, where the right to organize of fire defence personnel is restricted, the Government and the All-Japan Prefectural Municipal Workers’ Union (JICHIRO), which represents the local government personnel employees’ organizations, agreed on the introduction of the Fire Defence Personnel Committee system in 1995. At the 82nd Session of the International Labour Conference, the Committee on the Application of Standards welcomed the agreement with satisfaction. The Fire Defence Personnel Committee system came into force after the revision of the Fire Defence Organization Law in 1996. The system guarantees the participation of the fire defence personnel in the process to decide their working conditions, complies with the spirit of protecting their rights, and at the same time can be supported by national consensus. In October 2004, eight years since the establishment of the system, an agreement was made during a regular meeting between the Minister of Internal Affairs and Communications and the Commissioner of JICHIRO, on having meetings between the Government and trade union to exchange their views on the effort and practice of the Fire Defence Personnel Committee. A committee was set up and held five meetings from November 2004 to March 2005: its members are the director of the local Public Personnel Division, the director of the Fire Defence Division of the Fire and Disaster Management Agency from the Ministry, the director of the Wages/Conditions Department and the director of the

Organizational Management Department from JICHIRO. In that committee, the Fire and Disaster Management Agency reported the results of a survey on: the number of discussion sessions held by fire defence headquarters; the number of opinions submitted by personnel; the substance of the discussion at the committee, etc. JICHIRO reported the problems raised by personnel. Also, directors and personnel of three fire defence headquarters exposed the actual practice of the Fire Defence Personnel Committee.

**969.** According to the Government, JICHIRO made three requests for improvement before the Committee:

- (1) In the fire defence headquarters, the Fire Defence Personnel Committee should be held every year, at an appropriate time.
- (2) All the personnel should be informed of the significance and effects of the committee system and the contents of discussions of the committee.
- (3) The committee should be administered democratically with personnel's opinion discussed more appropriately.

**970.** As a result of consultations, the following points were agreed between the Ministry and JICHIRO:

- (1) Committee sessions shall be held in the first half of the fiscal year (from April to September) in time for budget making. Holding the session in the first half of the fiscal year and notifying the fire chief of the result of the discussions earlier will help him submit budget requests. This could give more chances for implementation of the personnel's opinions.
- (2) The committee shall inform each personnel who submitted opinions of the result of the discussion and its reason. The committee shall also notify all the personnel of the summary of the discussion, the results reported to the fire chief and the fire chief's decision. Notifying the personnel of the result of the discussion, etc. could make the system fairer and more transparent. This could encourage personnel to submit their opinions with more comprehension and reliance on the committee system.
- (3) A "liaison facilitator" system shall be introduced to the Fire Defence Personnel Committee system. In the new system, four "liaison facilitators" shall be ordinarily named from fire defence personnel on the basis of recommendations by the personnel. A liaison facilitator can make a supplementary explanation on the opinions and make comments on the operation of the committee (e.g. improvement of the way to solicit opinions). The committee shall in advance notify the personnel who submitted opinions and liaison facilitators of whether their opinions will be discussed by the committee. The liaison facilitator system, where liaison facilitators, as representatives of personnel, submit personnel's opinions together with their supplementary explanation on the opinions and comments, on the operation of the committee, could help the committee system be administered more effectively and democratically by taking the personnel's views into account.

**971.** According to the Government, JICHIRO and JTUC-RENGO highly appreciated the contents of the agreement as "practical and constructive". The liaison facilitator system, which gives fire defence personnel the opportunity to have their representative make comments to the committee on behalf of fire defence personnel to make the committee system more effective and democratic, is a quite remarkable mechanism in the light of further improvement of the committee system. The Government considers that this reform is in accordance with the "Guidelines on social dialogue in public emergency services (PES) in a changing environment" adopted by the ILO in 2003, which says "it should be

the overall aim of PES employers and workers to institute effective social dialogue mechanisms to ensure that PES are well run, efficient, accountable and provide quality service". Based on the above agreement, the Government revised the "Order of the organization and operation of the Fire Defence Personnel Committee" in May 2005. The revised Order is to come into force in August 2005. All the fire defence headquarters will implement the reform with their best efforts. The Government is determined to make every effort to implement the reform successfully so that the new Fire Defence Personnel Committee system is utilized effectively for further improvement of the working conditions of fire defence personnel.

- 972.** In its communication of 22 September 2005, the Government mentioned that it adopted in December 2004 a "Future Policy for Administrative Reform" stating that it would make further efforts to discuss the matter with the parties concerned and consider submitting bills for Civil Service reform. During a meeting in May 2005 between the Prime Minister, other Ministers and JTUC-RENGO, the Government also acknowledged that it was necessary to continue meetings to discuss the reform. During the recent months, circumstances did not lend themselves to conducting talks on the reform of public service, since public debate centred on the privatization of postal services; with a final conclusion expected on that issue at the special session of the Diet summoned in September 2005, the Government felt that conditions would improve to resume discussion of other important political issues.
- 973.** In its communication of 4 January 2006, the Government stated that it has been continually exchanging views at various levels with the parties concerned, regarding the civil service reform, including employees' organizations. In May 2004, a "Government-labour meeting" was held between the Minister of State for Administrative Reform together with other related ministers and labour representatives; views were exchanged on various issues concerning the civil service reform and it was agreed that it would be meaningful to hold further meetings and continue discussions. Thereafter, working level meetings took place and frank exchanges of views were conducted concerning the issues including fundamental labour rights. Further, following a decision of JTUC-RENGO, discussion and coordination on the issue of fundamental labour rights took place at a political level between not only the Government, but also the ruling party and JTUC-RENGO. Unfortunately, they did not reach a final agreement. Since coordination with the parties concerned including employees' organizations did not advance sufficiently, the Government concluded at the time that it would defer submitting the bills for civil service reform to the Diet and the Cabinet approved "Future Policy for the Administrative Reform" at its meeting in December 2004. The Cabinet decision stated that the Government would consider submitting those bills to the Diet while making further efforts of coordination with the parties concerned, and also that the reforms, the trial implementation of personnel appraisal, etc. which could be implemented within the framework of current legislation should be tried to be put into practice at an earlier stage for a steady promotion of reform. When the Government made this policy decision, a meeting was held between the Minister of State for Administrative Reform and the representatives of Public Sector Liaison Council (Komu-rokyo). Having been requested by the Komu-rokyo to maintain the framework of having the "Government-labour meeting" between the Minister of State for Administrative Reform together with other related ministers and labour representatives, the Minister of State for Administrative Reform stated in the meeting that it was desirable to maintain such a framework, and that he would consult with other related ministers on this issue. Further, the Government recognized that it was necessary to continue meeting with JTUC-RENGO on this subject in a meeting between representatives of JTUC-RENGO and the Prime Minister and other ministers in May 2005 and, in another meeting on 16 December 2005, the Government expressed its intention to communicate with the labour side on the civil service reform.



- 974.** Regarding the reform of remuneration system for public service employees, the NPA, a neutral third-party organization, has been established as a compensatory measure for the restriction of the fundamental labour rights for national public service employees in the regular service. In making recommendations on remuneration, etc., to the Diet and the Cabinet, it hears employees' organizations' opinions or requests through meetings and reflects these in its recommendations, etc. In 2005, the NPA held 212 official meetings with employees' organizations to hear their opinions and exchange views with them on various matters including the reform of the remuneration structure for national public service employees from January through 15 August when the NPA recommendation was submitted to the Diet and the Cabinet. The recommendation included, in addition to a revision of remuneration levels, a proposal for a thorough reform of the whole remuneration system including the salaries and allowances. Main components of the proposed reform are: (a) to revise the regional apportionment in order that local private sector wage levels be reflected in the remuneration of national public service employees; (b) to control the seniority-based remuneration increase and the change of the salary system to a new one corresponding to duties and responsibilities; and (c) to reflect each employee's performance in his/her remuneration. Receiving the recommendations, the Government has revised the remunerations of national public service employees in the regular service, hearing the opinions of employees' organizations. Also for 2005, the Government examined, hearing the opinions of the employees' organizations, an Amendment Bill of the Law concerning the Remuneration of Regular Service Employees and submitted it to the Diet to revise the remunerations exactly as recommended by the NPA, which was subsequently approved by the Diet. As for the local public service employees, a reform of the remuneration system for the employees in each local government is determined by the ordinance approved by each local assembly in accordance with a recommendation of the personnel committee of each local government, taking into consideration the reform of remuneration system for the national public service employees. The Government regards it as very important that it provides the local governments with information and advice concerning the reform of the remuneration system for the national public service employees. The Government had extensive discussion with the employees' organizations concerned in advance of the submission of the amendment bill of the Local Autonomy Law to the latest session of the Diet. This amendment was to revise one of the available options of the remuneration system for the local public service employees, and was necessary, together with the amendment of the Law concerning the Remuneration of Regular Service Employees, for execution of the new system.
- 975.** As regards the trial implementation of a personnel appraisal system in accordance with the "Future Policy for Administrative Reform", the Government exchanged views sufficiently with employees' organizations, and decided to start it in January 2006. The trial is applied to some employees in the headquarters of ministries. The Government intends to exchange views continuously with employees' organizations on the review of the trial, etc.
- 976.** As regards the major directions for administrative reform, considering that both the central and local governments are facing enormous deficit, it was regarded as urgent policy issues to make the government smaller and more efficient by promoting a reform of balanced expenditure and revenue. Therefore, the Government adopted "the Major Directions on the Administrative Reform" at a Cabinet meeting on 24 December 2005, which determined reform measures to be taken immediately (Action Plan for a global reform) with a view to making concrete proposals as early as possible and examining the major issues of the civil service system from a wider perspective.
- 977.** While elaborating the "Major Directions on the Administrative Reform", the Government examined both the contents and the process of the reform policy, bearing in mind the

numerous exchanges of views on civil service reform in recent years between the Government and the labour representatives, as follows:

- First, in making the Directions, the Minister of State for Administrative Reform held a meeting with the president of the JTUC-RENGO and asked for their cooperation to achieve the reform; several meetings were held with labour representatives at various levels, including at ministerial level. Further, in promoting the reform of total personnel costs in the public sector, the Government designated the Minister of State for Administrative Reform as Government focal point, when exchanging views with labour representatives.
- Second, with regard to civil service reform, the Directions state that considering the national feeling and the progress in reforming the remuneration system for public service employees, “the Government will examine the civil service system from a wide spectrum of views, including the fundamental labour rights of public service employees, the NPA system, the remuneration system and the personnel system of public service employees, such as ability and performance-based treatment and career system, with the Cabinet secretariat as the centre of the discussion”. This means that the Government has expressed that it will pursue a policy to re-examine the public service employees system in general, including what the fundamental labour rights for public service employees should be, in the context of promoting the important issues of administrative reform, with a view to securing trust in the administration, as well as to making the government budget healthier. In order to build up an ability and performance-based personnel management and more appropriate control of the employment of the retired employees, the Government has also decided to “have a frank exchange of views with the parties concerned, to coordinate their interests” and “to make an effort to make concrete proposals as early as possible”.
- Third, the Government, attaching importance on the employment issue associated with the reform, will consider establishing a long-term strategy for recruitment in the public sector and preparing a safety net for retired public servants. The Government will make efforts to achieve a fruitful civil service reform through “frank exchanges of views” based on the Major Directions. The Government would greatly appreciate it if the ILO would duly understand the sincere approach of the Government and the domestic developments in Japan, and will continue to provide the ILO with relevant information in this regard.

**978.** As regards the granting of fundamental labour rights to employees after the transformation of their employers into Independent Administrative Institutions and after the Privatization of the Postal Administration [331st Report, para. 558(h)], the Government states that it is restructuring some of its administrative units into independent administrative institutions (IAIs), which are organizationally independent from the Government with an aim to improve the quality of service. The IAIs are classified into two types, “specified IAIs” and “non-specified IAIs”, according to the nature of business, such as whether the discontinuation of their business is likely to affect the stability of national life, society or economy. The employees of specified IAIs are fully granted the right to organize, as well as the right to bargain collectively (including the right to conclude collective agreements). Employees of non-specified IAIs are guaranteed the right to strike, as well as the right to organize and the right to bargain collectively (including the right to conclude collective agreements) just like employees in private companies. Employees of national universities are, just like employees of non-specified IAIs, fully guaranteed the fundamental labour rights including the right to strike since those universities were incorporated. So far, following the transformation to IAIs, 122,000 employees have changed their labour law status to IAIs (71,000 employees to specified IAIs, and 51,000 employees to non-specified IAIs), and 118,000 employees of national universities have changed their status. This means that almost 30 per cent of national public service employees in regular service, who

comprised 818,000 people in March 2001 just before the introduction of the IAIs, have now been given the right to conclude collective agreements.

- 979.** Moreover, Japan Post, a public corporation established in April 2003 whose workers are national public service employees, is scheduled to be privatized in October 2007; its 262,000 employees (as of 2005) will become non-public service employees. They will be fully guaranteed fundamental labour rights, including the right to strike. It means that approximately 60 per cent of national public service employees that existed in March 2001 have been granted the right to conclude collective agreements, or full fundamental labour rights. The Government submits that these actions taken are in conformity with the recommendations of the Committee on Freedom of Association [Case No. 1348, 243rd Report, para. 289].
- 980.** Although the complainant mentioned that the employees' organizations were forced to restructure their organizations to "employees' organizations" for the national public service employees in the non-operation sector and "trade unions" for the employees of IAIs, and that their freedom of association is violated, it is possible for both organizations to form a confederation and it is left with the relevant employees' organizations to decide what kind of organizational structure they choose after the transformation to IAIs.
- 981.** As regards the right to organize of fire defence personnel [331st Report, para. 558(b)(i)], the Government refers to its additional information of May 2005. It should be noted that both the All-Japan Prefectural Municipal Workers' Union (JICHIRO) and the JTUC-RENGO expressed to the ILO that they highly appreciated the contents of the improvement in the Fire Defence Personnel Committee System as "effective and meaningful". In October 2005, the representative of JICHIRO also made a similar comment to the Minister of Internal Affairs and Communications. The revision of the order of the Fire and Disaster Management Agency for the improvement came into effect on 1 August 2005, and the Fire and Disaster Management Agency is striving to achieve a smooth introduction of the new system through providing information on occasions such as briefing sessions targeted for fire defence headquarters all over the country. According to the survey done by the Fire and Disaster Management Agency in December 2005, liaison facilitators would be appointed at 96 per cent of fire defence headquarters nationwide by March 2006. The Government considers that this shows that the new system will be enforced smoothly, and that the improvement will lead to more effective utilization of the system and improvement of working conditions of fire defence personnel.
- 982.** Regarding the employees of penal institutions, the Government refers to its additional information submitted to the ILO in March 2003.
- 983.** With respect to the registration system of employees' organizations [331st Report, para. 558(b)(ii)], the Government states that local public service employees can set up an employees' organization of their own choosing without obtaining authorizations in advance or taking other similar procedures; they are only required to register the organization. The registration system of employees' organizations is a system to officially certify that employees' organizations are independent and democratic bodies fulfilling the requirements of the Local Public Service Law, and does not impose any restriction on the establishment of employees' organizations. Moreover, whether employees' organizations are registered does not cause any substantial difference for the organizations in the acquisition of corporate status and the capacity to negotiate, thus, it does not invite any essential discrimination between the two. The Committee of Experts of the ILO has itself admitted that the system in Japan is in conformity with the context and spirit of the ILO Convention (1983 and 1994 observations, etc.).

- 984.** As regards the system of leaves of absence for full-time union officers for employees' organizations [331st Report, para. 558(b)(iii)], the Government explains that an employees' organization can elect the employees or persons other than the employees as officers of their organizations without the intervention by the employers. It can freely decide the officer's term of office. Those workers that engage exclusively in affairs of employees' organizations as officers of such organizations do not need to work as a public sector employee, but they retain the status as such. It thus merely gives employees' organizations additional conveniences. Even without the approval of the authorities for admitting leaves of absence to an employee, nothing prevents him/her from taking up the position of a union officer, and the system of leave of absence for full-time union officers in Japan does not limit the terms of officers of employees' organizations. The Government submits that the ILO itself admitted that the system of leaves of absence for full-time union officers in Japan would cause no problem [54th Report of the Committee on Freedom of Association, Dreyer report, August 1965].
- 985.** Regarding the promotion of rights to bargain collectively of public service employees [331st Report, para. 558(b)(iv)], the Government states that the fundamental labour rights of the public service employees of Japan are indeed subject to some restrictions, due to the special character of their status and the public nature of the functions performed by them, in order to ensure the common public interests. On the other hand, public service employees benefit from the NPA Recommendation System and other compensatory measures, which have been functioning effectively. The organizations established by national and local public service employees in the regular service have the right to bargain collectively with relevant authorities on their working conditions. In the course of collective bargaining, employees' organizations lodge complaints about their working conditions against relevant authorities and request them to take appropriate measures, and the relevant authorities are to discuss sincerely their requests with those employees' organizations. Both parties are expected to sincerely implement the matters agreed upon.
- 986.** As regards the right to strike by public service employees [331st Report, para. 558(b)(v)], the Government states that the fundamental labour rights of the public service employees of Japan are indeed subject to some restrictions, due to the special character of their status and the public nature of the functions performed by them, in order to ensure the common public interest. However, the public service employees have rights to live as workers and benefit from the NPA Recommendation System and other compensatory measures. The Supreme Court has maintained throughout its judgements that the prohibition of acts of dispute by public service employees is constitutional, holding that "the provisions of laws prohibiting acts of dispute by public service employees are not unconstitutional because, while the provisions of article 28 of the Constitution guaranteeing the fundamental labour rights shall also apply to public service employees, the right cannot be an exception to restrictions imposed from the standpoint of ensuring the common public interests of the people, and also because appropriate measures have been implemented to compensate for the restrictions on their fundamental labour rights". Public service employees in Japan are prohibited by laws from staging a strike, and therefore, it is inevitable that proper disciplinary actions are applied in accordance with the law, to those who participated in a strike in violation of such prohibition. In applying disciplinary actions, the respective authority concerned has taken such matters into consideration as the length, scale, manner, situation of employees involved and other relevant matters of strike, and has appropriately made judgement on whether to take disciplinary actions or not, or which disciplinary sanctions to take. Also, the persons who conspire, instigate or incite other public service employees to strike or make such an attempt are the key persons of the illegal act. In addition, their act to cause other public service employees to undertake illegal act is in itself of high illegality, and therefore penal sanctions, including a penalty of imprisonment (imprisonment not exceeding three years or fines not exceeding ¥100,000), may be

imposed upon them under the National Public Service Law or the Local Public Service Law. Thus, only the key persons of illegal acts are penalized.

**987.** As regards the court decision on the case at Oouda-cho [331st Report, para. 558(f)], the Government indicates that the Equity Commission of Oouda-cho appealed to the Supreme Court on 24 May 2004 where the case is still pending. The Government will inform the Committee of the final settlement of this case once it is rendered.

**988.** As regards remedial measures with the employees' organizations (the case at Ariake-cho) [331st Report, para. 558(g)], the Government states that the working conditions of local public service employees are determined at local assemblies by the representative of the residents of local governments through a democratic procedure. The Government considers that the statement by the complainant that "(T)he change of the working conditions is forced one-sidedly" is groundless. It should be noted that, despite the fact that there was a conflict between employees and employers on this issue at the beginning of 1996, no problems have occurred since then, and a good labour-employer relationship has been kept until now.

**989.** In its communication of 24 January 2006, the Government confirms the decisions made at the Cabinet meeting in December 2005, and explains that, at the meeting with JTUC-RENGO on 16 January 2006, it conveyed its key principles of reform, as well as its basic approach to exchanging views with the labour side. At that meeting, the Minister of State for Administrative Reform, the Minister of Internal Affairs and Communications and the Minister of Health, Labour and Welfare on the one hand and labour representatives on the other exchanged views on a wide range of themes, including the basic ideas and issues to be discussed on civil service reform and total personnel cost reform. They agreed on the following points.

- (a) The labour-employer relationship in the public sector needs to be changed according to changes in the social and economic situation.
- (b) The Government and JTUC-RENGO confirmed their willingness to continue exchanges of views and coordinate their interests on civil service reform. They also agreed to exchange views before the ILO Committee on Freedom of Association and the International Labour Conference, and would hold a meeting in March 2006.
- (c) Consideration of issues from a wide spectrum is needed, including a possibility of granting fundamental labour rights to public service employees.
- (d) In promoting total personnel cost reform, which is the most pressing issue, the Government and JTUC-RENGO will consult on the way to implement rearrangement of public service employees, recognizing the importance of employment security.

**990.** The Government and JTUC-RENGO also agreed to coordinate at working level the modalities of future meetings, including schedule. The Government's approach is based on the idea that frank exchanges of views and coordination are necessary, as referred to in the Major Directions. It will do its utmost to make the discussion meaningful and achieve a fruitful civil service reform, and requests the ILO to understand the sincerity of its efforts in this matter.

#### **D. The Committee's conclusions**

**991.** *The Committee recalls that these cases, initially filed in March 2002, concern the current reform of the public service in Japan.*

992. *The Committee notes that there have been a number of meetings and discussions at various levels, both administrative and political, over the last few months. The Committee notes in particular the contents of the meeting of 24 December 2005 which, following consultations and discussions with JTUC-RENGO, resulted in the issuing of the “Essential Policy for Administrative Reform”.*
993. *The Committee further notes with interest that a high-level consultation took place on 16 January 2006, where, according to the complainant organization, it was confirmed that the Government had withdrawn the general principles for civil servants system reform of 2001, which advocated maintaining the restrictions on basic labour rights for civil servants, and would now consider the possibility of granting these rights in the public service. From the information provided by both the Government and the complainant the two parties therefore recognized the necessity to improve the labour-management relationship in the public service in line with socio-economic changes. The Committee also notes that the two parties agreed that: the Government and JTUC-RENGO would continue to exchange views and coordinate their interests on civil service reform; consideration of issues from a wide spectrum is needed, including a possibility of granting fundamental labour rights to public service employees; in promoting total personnel cost reform, which is the most pressing issue, the Government and JTUC-RENGO will consult on the way to implement rearrangement of public service employees, recognizing the importance of employment security; a further meeting will be held in March 2006. According to JTUC-RENGO, the trade union side proposed to establish a “place for consideration” (“kento noba”) and that further consultations will take place on this matter. Noting that, according to JTUC-RENGO, this new policy represents a significant departure from the general principles decided in December 2001, the Committee welcomes these developments and strongly encourages the parties soon to make further steps in that positive direction.*
994. *The Committee notes however that some important policy matters are still to be decided, notably the fundamental issue of the basic labour rights of public servants. The Committee trusts that the current talks will result in clear steps being taken to ensure that public servants may freely exercise these basic rights. In addition, whilst noting the indications given by the Government concerning firefighters and employees of penal institutions, the Committee observes that these workers are still deprived of the right to organize. Noting that discussions are currently taking place on the reform of public service, the Committee recommends that the Government takes this opportunity to ensure that firefighters and employees of penal institutions enjoy the right to organize. The Committee also welcomes with interest the reform of the fire defence personnel system. It requests the parties to keep it informed of the results of such discussions.*
995. *Noting further that the Government plans to introduce during the 2006 regular session of the Diet an Administrative Reform Promotion Bill, based on the Essential Policy of December 2005, the Committee requests the Government to ensure that that bill is in conformity with freedom of association principles as expressed in its earlier recommendations, whose main aspects are recalled in the recommendations below. The Committee reminds the Government that it may avail itself of ILO technical assistance in this respect and invites it to provide it with a copy of the bill once it is drafted.*
996. *The Committee takes note of the Government’s observations concerning the transformation of public entities into Independent Administrative Institutions (IAIs), and the forthcoming privatization of Japan Post. Whilst it can examine allegations concerning restructuring processes, whether or not they imply redundancies or the transfer of services from the public to the private sector only in so far as they might have given rise to acts of discrimination and interference against trade unions and their members [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996,*

para. 935] the Committee recalls that it is important that governments consult with trade union organizations to discuss the consequences of restructuring programmes on the employment and working conditions of employees, and staff reduction processes. Trusting that these principles will be respected, the Committee requests the Government and the complainants to continue to keep it informed of the consequences of the reorganization on the collective bargaining rights of workers transferred to IAs.

**997.** *The Committee notes the information provided as regards the Oouda-cho case and requests the Government to keep it informed of the final decision once it is issued.*

**998.** *The Committee takes note of the information provided as regards the Ariake-cho case and that, according to the Government, good labour-employer relations have been maintained in this context. The Committee will not pursue this aspect of the case unless the complainant provides further information.*

### **The Committee's recommendations**

**999.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) Noting with interest the establishment of dialogue between the parties, the Committee strongly encourages the parties to pursue their ongoing efforts with a view to achieving rapidly a consensus on the reform of the public service and on legislative amendments that are in conformity with the freedom of association principles embodied in Conventions Nos. 87 and 98, ratified by Japan. Consultations should notably address the following issues:*
  - (i) granting basic labour rights to public servants;*
  - (ii) granting the right to organize to firefighters and prison staff;*
  - (iii) ensuring that public employees not engaged in the administration of the State have the right to bargain collectively and to conclude collective agreements, and that those employees whose such rights can be legitimately curtailed enjoy adequate compensatory procedures;*
  - (iv) ensuring that those public employees who are not exercising authority in the name of the State can enjoy the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately this right are not subject to heavy civil or criminal penalties;*
  - (v) the scope of bargaining matters in the public service.*
- (b) The Committee requests the Government to provide it with the text of the Administrative Reform Promotion Bill, once it is drafted.*
- (c) The Committee requests the Government to provide it with the final judgment in the Oouda-cho case once it is rendered.*
- (d) The Committee requests the Government and the complainants to continue to keep it informed on the consequences of the reorganization on the*

*collective bargaining rights of workers transferred to independent administrative institutions (IAIs).*

- (e) The Committee requests the Government to keep it informed of developments on all the above issues.*
- (f) The Committee reminds the Government that it may avail itself of the technical assistance of the Office, if it so desires.*

CASE NO. 2416

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Morocco  
presented by  
the Moroccan Labour Union (UMT)**

*Allegations: The complainant alleges that the local authorities in the town of Bouznika used force to intervene following a protest strike held by a local trade union protesting against the suspension of its general secretary, without prior notice and in violation of existing procedure, shortly after the union had been established. Armed with a pistol, the town governor led the police intervention, which resulted in several people being injured and the arrest of nine union officials*

- 1000.** The complaint is contained in communications from the Moroccan Labour Union (UMT) dated 20 April and 23 May 2005.
- 1001.** The Government sent its observations in communications dated 24 June and 20 July 2005.
- 1002.** Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as the Workers' Representatives Convention, 1971 (No. 135). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

**A. The complainant's allegations**

- 1003.** In its communications of 20 April and 23 May 2005, the Moroccan Labour Union (UMT) explains that its complaint concerns a collective labour dispute at Valeo (a car parts manufacturer in Ben Slimane province), located in the town of Bouznika. The complainant alleges failure to recognize the UMT's primary organization at the enterprise and the discriminatory dismissal of the general secretary of the trade union committee, which resulted in a general show of solidarity from all the workers at the factory, and led to brutal police intervention and to the arrest of nine members of the factory's trade union committee.