

INTERNATIONAL LABOUR OFFICE

**Governing Body**

309th Session, Geneva, November 2010

**GB.309/8**

*Case No. 2304 (Japan)*

**58.** The Committee last examined this case, which concerns the arrest and detention of trade union officers and members, massive searches of trade union offices and residences of trade union leaders, and the confiscation of trade union property, at its November 2008 meeting. On that occasion, the Committee, noting that the seven defendants in the Urawa Train Depot case had appealed their conviction for the crime of coercion to the Tokyo High Court, trusted that the Tokyo High Court would bear in mind the principles of freedom of association in reviewing the case and requested the Government to keep it informed of developments in this respect.

Further noting that, in spite of the appeal pending, six of the seven defendants had been dismissed by the JR East Company on grounds that convicted workers disturb worksite order and harm the company's credibility, the Committee requested the Government to take the necessary measures for these dismissals to be reviewed once the Tokyo High Court's decision had been rendered.

The Committee also noted that: (1) on 29 November 2007, the Tokyo High Court dismissed the appeal of the complainant Japan Confederation of Railway Workers' Unions (JRU) in its state liability for compensation suit, and the Supreme Court dismissed the JRU's appeal of the Tokyo High Court's judgement on 5 June 2008;

and (2) the Tokyo High Court's dismissed the appeal of the Japan Railway Welfare Association (JRWA) in its state liability for compensation suit on 14 February 2008, and the JRWA's appeal of the Tokyo High Court decision was pending before the Supreme Court. The Committee requested the Government to provide a copy of the Supreme Court's decision in the suit brought by the JRU, and to provide a copy of the Supreme Court's decision on the JRWA's appeal as soon as it was handed down [see 351st Report, paras 107–120].

**59.** In its communication of 8 September 2009, the complainant states, in respect of the Urawa Train Depot case, that on 5 June 2009 the Tokyo High Court upheld the lower court's decision and rejected the defendants' appeal; the seven defendants appealed to the Supreme Court on the same day.

The complainant further states that the Tokyo High Court affirmed the reasoning of the lower court, which considered legitimate union activities to be a crime. Furthermore, although the Tokyo High Court recognized that one of the seven defendants was not responsible for two of the 11 criminal acts which the lower court had found him guilty, it

nevertheless upheld the conviction and sentencing made by the lower court on the grounds that the said defendant's partial lack of responsibility would not affect the overall ruling. In respect of the six defendants who had been dismissed by the JR East Company in August 2007, the complainant states that they had filed an application for provisional disposition for payment of wages and habitation in the company-owned apartment houses. On 13 February 2009, the Tokyo District Court rejected their claim for the second time in a row.

Furthermore, in the civil trial to demand continuation of their employment by the JR East Company, two rounds of preliminary discussions have been carried out since the appeal court's decision was delivered. Finally, the complainant states that the Government continues to initiate prosecutions against its members as part of a campaign of harassment and repression.

Most recently, a JRU member was sentenced to six months in prison, with a two-year suspension of the sentence, for stealing 31 sheets of paper belonging to the JR East Company. In a communication dated 22 September 2010, the complainant indicates that the final appeal of this case to the Supreme Court was dismissed on 7 July, thus finalizing the six months prison sentence, suspended for two years. His suit seeking annulment of his punitive dismissal is pending before the Supreme Court.

**60.** In a communication dated 13 October 2010, the Government provides the following additional information in relation to the progress of the lawsuits procedure:

(a) As to the so-called "Urawa Electric Train Depot Incident (case of coercion)", the Judge of Tokyo High Court dismissed the defence's appeal on 5 June 2009 and the defence appealed to the Supreme Court where it is currently being heard.

(b) Regarding the legal action for state liability for compensation launched by East Japan Railway Workers' Union (JREU) in 2005, the judge of Tokyo District Court dismissed the compensation claims against the Government and the Tokyo Metropolitan Government (TMG) on 30 November 2009. The JREU has filed Koso appeal on 15 December 2009 and the ruling is expected to be delivered on 30 November 2010.

(c) As to the so-called "Gamagori Station Incident (case of theft)", a judge of the Tokyo District Court handed down a suspended sentence of six months imprisonment to the accused on 21 April 2009, and the defence appealed the judgment to the Tokyo High Court. On 5 October 2009, judges of the Tokyo High Court dismissed the defence's appeal, and the defence appealed to the Supreme Court. On 7 July 2010, judges of the Supreme Court dismissed the defence's appeal, and the decision has already become final.

(d) Regarding the legal action for state liability for compensation, which the Japan Railway Welfare Association (JRWA) launched against the Government and the TMG in 2003, the Supreme Court dismissed the plaintiffs' appeal and the decision has already become final.

(e) Regarding the legal action for state liability for compensation launched by the JRU in 2005, the judge of Tokyo District Court dismissed the compensation claims against the Government and recognized part of the plaintiffs' claims against the TMG on 9 June 2009. The JRU filed Koso appeal on 22 June 2009. The ruling will be delivered on 28 October 2010.

(f) Regarding the legal action for state liability for compensation launched by the JRU in 2007, the judge of Tokyo District Court dismissed the compensation claims on 19 June 2009. The JRU has filed Koso appeal on 1 July 2009 and the judge of Tokyo High Court dismissed

the compensation claims on 10 March 2010. The JRU appealed to the Supreme Court where it is currently being heard in the court.

(g) Regarding the legal action for state liability for compensation launched by Akira Matsuzaki, the judge of Tokyo District Court dismissed the compensation claims against the GOJ and the TMG on 24 June 2009. Matsuzaki has filed Koso appeal on 7 July 2009 and the Judge of Tokyo District Court dismissed the compensation claims on 24 February 2010. Matsuzaki appealed to the Supreme Court where it is currently being heard in the court.

**61.** With reference to the return of the seized items, the Government indicates that the case is currently being heard in the Supreme Court. The prosecutor will return the seized items, as and when it is found appropriate to do so, in the process of the criminal trial. The Government also attaches a copy of the judgments in Japanese, as requested by the Committee.

**62.** *The Committee takes due note of the information provided by the Government and the complainant. With respect to the Urawa Train Depot case, the Committee notes that on 5 June 2009, the Tokyo High Court upheld the lower court's decision and rejected the defendants' appeal; the seven defendants appealed to the Supreme Court on the same day. The Committee, recalling the importance it attaches to the principle of freedom of speech within the framework of the exercise of legitimate trade union activity, once again expresses the expectation that the principles of freedom of association will be borne in mind in reviewing this case. It requests the Government to provide a copy of the Supreme Court's decision as soon as it is handed down.*

**63.** *The Committee notes that on 13 February 2009 the Tokyo District Court rejected the claim for payment of wages and habitation in company-owned houses of the six defendants dismissed by the JR East Company in August 2007. Noting further that according to the complainants, in the six defendants' civil trial to demand continuation of their employment by the JR East Company, two rounds of preliminary discussions have been carried out since the appeal court decision was delivered, the Committee requests the Government to keep it informed of developments in this regard and to provide it with information concerning the decision expected shortly from the courts. As regards the dismissal by the Supreme Court of the appeal made by Mr Kato against his conviction for having stolen 31 sheets of paper, the Committee expresses its concern at the apparent severity of this judgment and requests the Government to transmit its observations in respect of this matter and to reply to the remaining allegations in the complainant's communication of 22 September 2010.*