

28th term of the CLRC, contrary to the hope expressed by the Committee in its 330th Report. The Committee recalls the rationale of its previous recommendation in this context, i.e. the necessity to afford fair and equal treatment to all representative organizations, with a view to restoring the confidence of all workers in the fairness of the composition of labour relations commissions and other similar councils, that exercise extremely important functions from a labour relations perspective [328th Report, paras. 444-447]. The Committee therefore urges the Government to take these principles into consideration when appointing worker members for the 29th term of the Central Labour Relations Commission (CLRC), to keep it informed of developments in this respect, and to provide it with the decision of the Tokyo District Court as soon as it is issued.

Case No. 2304 (Japan)

207. The Committee last examined this case at its November 2004 meeting [see 335th Report, paras. 972-1019]. On that occasion the Committee made the following recommendations:

- (a) The Committee takes note of the fact that the seven trade union officers and members accused of coercion have been released while their trial is pending at the Tokyo District Court. It requests the Government to keep it informed of the progress of the judicial proceedings and to communicate the final judgement once rendered.
- (b) Noting that the searches and confiscations against the complainant trade union and its members have apparently ceased, the Committee requests the Government to take all necessary measures in order to ensure that any remaining confiscated items which do not have a direct connection to the facts of the case are immediately returned to the complainant and to keep it informed in this respect. It also requests the Government to ensure that the judicial procedures under way do not interfere in the free exercise of trade union activities.
- (c) The Committee considers that the police should abstain from any declaration which might damage the reputation of a trade union as long as the matters in question have not been confirmed by the judicial authorities.

208. In its communication dated 23 February 2005, the complainant, Japan Confederation of Railway Workers' Unions (JRU), submitted additional information on this case. According to the complainant, the Government's reply to the complaint, which was submitted to the Committee for examination at its November 2004 session, involved serious misstatements and false statements which have been brought to the attention of the Tokyo District Public Prosecutor's Office. In particular, the complainant alleged that the Government referred in its response to the prosecution's case as if it were a proven fact, although the incidents were still under investigation and had not been confirmed by the judicial authorities. Furthermore, the Government had given a different description from the one given by the victim and the police in court regarding the time when the investigation of the Urawa Electric Train Depot Incident (coercion case) started. The Government had stated that the investigation had started after the submission of the incident report whereas the Tokyo Metropolitan Police Department had in reality begun an investigation the previous year and the police had "encouraged" the victim to submit the incident report. The complainant further alleged that, after the Government failed to reply to its protests on the above, it decided to file charges against an unidentified government official on 29 November 2004 for violation of article 156 of the Penal Code (forgery, etc. of official documents) and article 158 (uttering etc., of forged official documents). The Tokyo District Public Prosecutor's Office duly received the indictment on 13 December 2004. Finally, the complainant further alleged that the Government explained to the MPs of the Democratic Party of Japan (DPJ) that, after the National Police Agency had written the document, the Health, Labour and Welfare Ministry had modified it and had submitted it to the ILO via the Foreign Ministry, without cabinet approval or a final decision of the ministers in charge.

- 209.** The complainant further stated that the National Police Agency, which was designated by the Government as in charge of the implementation of the Committee's recommendations, had not responded to its request for an immediate implementation of the Committee's recommendations. Although an official of the Health, Labour and Welfare Ministry had indicated to the members of parliament of the Democratic Party of Japan that: "We respect the recommendations and plan to implement what we can now", the officials of the Justice Ministry and the National Police Agency made it clear that they had no intention of returning any more confiscated items, stating that: "We have returned the remaining unneeded confiscated items" and that "We have returned the confiscated items which have no connection to the investigation"; they also said that, regardless of the Committee's recommendations, they were the ones to decide how the confiscated items would be handled; finally, they were not sure whether the Justice Ministry and the National Police Agency were officially informed of the Committee's recommendations. The complainant attached a report by a member of parliament of the House of Representatives on the hearings by concerned government ministries on the Committee's recommendations.
- 210.** According to the complainant, the Tokyo District Public Prosecutor's Office returned 124 items regarding the case of coercion on 19 January 2005 after a claim made on 15 December 2004. The Metropolitan Police Department returned one of the confiscated items regarding the case of violation of the Law on Punishment against Violent and Other Acts on 15 December 2004, after a claim made on 7 December 2004. The unreturned confiscated items regarding the case of coercion are 1,190 out of 1,870 and 136 out of 1,039 for the case of violation of the Law on Punishment against Violent and Other Acts. These unreturned items for the case of coercion include, according to the complainant: a subscribers' list for the union magazine in the JR Urawa Electric Train Depot; an address list of the JTUC-Rengo Urawa district members; an address list of the JREU Omiya District Office officials; a list of union members; the 2002 JRU Executive Committee constituents and role sharing; a list of the first graduates of the JNR Central Railway Technical Training Centre; four copies of the *JREU Regulation and Rule Book*, 2002 edition; and a copy of labour agreements of April 2002. The unreturned items for the case of violation of the Law on Punishment against Violent and Other Acts include: a passbook of ordinary deposit in the Fuji Bank (fund for international exchange); documents of the ninth general shareholders' meeting of Satsuki Planning, Ltd.; an auditor's report for Satsuki Planning, Ltd. of 2002; and a list of officials and staff of Satsuki Planning, Ltd. of 2003.
- 211.** Regarding the proceedings in the case of violation of the Law on Punishment against Violent and Other Acts, the complainant stated that, on 29 January 2004, the JRU launched a legal action for state liability for compensation against unreasonable search and confiscation. The trial was ongoing at the Tokyo District Court. On 26 January 2005 the Public Safety Department of the Metropolitan Police Department sent the file concerning three officials of the JRU to the Tokyo District Prosecutor's Office alleging violation of the Law on Punishment against Violent and Other Acts. The Tokyo District Prosecutor's Office summoned the three officials for interrogation. The prosecutor said it would take about a month to reach a conclusion on whether they would be prosecuted or not.
- 212.** As for the status of the proceedings in the coercion case, the complainant stated that 29 public hearings had been held from 25 February 2003 to 16 February 2005. During this period three judges were replaced (the first associate judge in the 18th hearing on 23 April 2004, the presiding judge in the 22nd hearing on 27 August 2004, and the second associate judge in the 29th hearing on 16 February 2005). The complainant stated that it was unusual to have all the judges in a case replaced during the trial, especially as there were now no judges who had actually examined the alleged victim in the court hearings. The complainant was concerned that this could influence the fairness of the trial.

- 213.** In its communication dated 7 March 2005, the Government indicated with regard to the coercion case that the trial was still in progress and currently the defence counsel was examining the defendants. The trial was progressing with considerable attention to the rights of the persons involved in the case. The seized items in this case were being returned. As indicated during the initial examination of the case, the Metropolitan Police Department had returned 113 seized items to their original possessors and the Tokyo District Public Prosecutor's Office had returned 443 seized items in April 2004. Moreover, in January 2005, after the Committee's recommendations, the Tokyo District Public Prosecutor's Office returned 124 seized items to their original possessors. Thus, out of 1,870 goods and documents seized after a strict judicial examination by a judge, a total of 680 items had already been returned. The Government indicated that it would, as it had in the past, keep returning promptly to their original possessors the seized items that became less important for proving the case, and would keep informing the Committee of the progress of the judicial proceedings. The Government finally indicated that it would transmit its response on the allegations of the complainant in an additional document.
- 214.** In a communication dated 17 May 2005, the Government provided its response with regard to the allegations contained in the complainant's communication dated 23 February 2005. The Government indicated that, in its initial observations on this case, it had obviously not described the facts as confirmed by the judicial authorities but rather the result of the investigation of the Tokyo Metropolitan Police Department. Regarding the time when the investigation of the Urawa Electric Train Depot Incident (coercion case) started, the Government indicated that the police was not restricted in law or in practice from carrying out the necessary investigation on the incident, notably by asking the victim to explain the circumstances of the incident, before the victim's submission of an incident report in writing to the police. In fact, the Government had never mentioned in its observations submitted to the ILO that the investigation had started only after the submission of an incident report to the police. With regard to the allegations concerning the lack of cabinet approval of the observations before they were sent to the Committee, the Government explained that, in Japan, the ministers divided among themselves the administrative affairs and were in charge of their respective share as competent minister based on the Cabinet Law and the National Government Organization Law. The Ministries of Justice, Foreign Affairs, Health, Labour and Welfare and the National Police Agency had drafted and finalized the observations to the ILO, in accordance with their responsibilities and procedures. Therefore, the observations submitted to the ILO on 25 May 2004 were the official observations of the Japanese Government.
- 215.** With regard to the return of the confiscated items, the Government indicated that it had returned and would continue to return the items promptly to their original possessors when they were deemed to be less important for proving a case. With regard to the Urawa Electric Train Depot Incident (coercion case), the Tokyo District Public Prosecutor's Office had returned 332 items to their original possessors on 31 March 2005. Therefore, out of the 1,870 goods and documents seized, a total of 1,013 items had been returned. As for the other seized items, the Tokyo District Public Prosecutor's Office would return them as and when it was found appropriate to do so, in the process of the criminal trial. With regard to the Tokyo Station Incident (case of violation of the Law on Punishment against Violent and Other Acts), the Government indicated that, out of 1,039 seized goods and documents, 1,005 had already been returned to their original possessors. Out of the 34 remaining items, 22 goods and documents had been seized again by the Metropolitan Police Department because of their necessity in the investigation of another case, conducted after strict judicial examination in accordance with the relevant provisions of the Code of Criminal Procedure. The other 12 goods and documents could not be returned, because their original possessors refused the offer of return. Finally, all the 1,251 goods and documents seized in relation to the case of trespassing had been returned to their original possessors.

- 216.** Finally, the Government indicated that the Tokyo District Public Prosecutor's Office had decided on 16 March 2005 to suspend the prosecution of the three suspects for the Tokyo Station Incident (case of violation of the Law on Punishment against Violent and Other Acts). With regard to the legal action launched by the complainant JRU for state liability and compensation, the Government indicated that the case was currently being heard at the Tokyo District Court. As for the replacement of three judges in charge of the coercion case, the Government indicated that, in accordance with the Code of Criminal Procedure, where judges were changed subsequent to the commencement of a public trial, the procedure should be handed over to the new judges in order to continue. In this case as well, the procedure was continued with new judges in accordance with the provisions of the Code of Criminal Procedure.
- 217.** *The Committee notes with interest from the Government's communication of 17 May 2005 that the Tokyo District Public Prosecutor's Office decided on 16 March 2005 to suspend the prosecution of the three suspects for the Tokyo Station Incident (case of violation of the Law on Punishment against Violent and Other Acts). Earlier on in the year, on 26 January 2005, the Tokyo Metropolitan Police Department had sent a file concerning these officials to the Prosecutor's Office, for violation of the Law on Punishment against Violent and Other Acts. The Committee requests the Government to clarify the exact scope of the suspension of the prosecution and in particular, to indicate whether all charges against the three suspects have been dropped.*
- 218.** *With regard to the progress of the proceedings concerning seven trade union officers and members accused of coercion (see recommendation (a) above), the Committee requests the Government to continue to keep it informed of the progress of the judicial proceedings and to communicate the final judgement on this case once rendered.*
- 219.** *With regard to the return of the confiscated items (see recommendation (b) above), the Committee first notes with interest from the Government's communication of 17 May 2005 that all the 1,251 goods and documents seized in relation to the case of trespassing have been returned to their original possessors. The Committee further notes however, that the Tokyo District Public Prosecutor's Office still retains several items and in particular: (i) 857 items linked to the coercion case which will eventually be returned according to the Government, as the proceedings continue and the items become less important for proving the case; and (ii) 34 items in relation to the case of violation of the Law on Punishment against Violent and Other Acts, 22 of which were seized again by the Metropolitan Police Department because of their necessity in the investigation of another case, conducted after strict judicial examination in accordance with the relevant provisions of the Code of Criminal Procedure; the other 12 goods and documents cannot be returned, according to the Government, because their original possessors refuse the offer of return.*
- 220.** *The Committee requests the Government to ensure that all items confiscated in relation to the cases of coercion and violation of the Law on Punishment against Violent and Other Acts be returned in their entirety at the earliest possible moment and to continue to keep it informed of progress made in this respect. The Committee further requests the Government to provide details on the "other case" in relation to which 22 items which had been initially seized in the framework of the investigation of the Tokyo Station incident (case of violation of the Law on Punishment against Violent and Other Acts), had to be confiscated once again.*
- 221.** *The Committee also notes from the Government's report that the proceedings initiated by the complainant JRU for state liability and compensation for unreasonable search and confiscation are currently under way at the Tokyo District Court. The Committee requests the Government to keep it informed of developments in this respect and to communicate the court's judgement once rendered.*