TUAC trade union advisory committee to the
OECD organisation for economic cooperation and development
■ CSC commission syndicale consultative auprès de
OCDE l'organisation de coopération et de développement économiques

The Future of the OECD Special Monitoring Process on

Labour Law and Industrial Relations Reform in Korea

Note from TUAC to the OECD ELSA Committee

4 May 2005

Overview

The commitment made by the Korean authorities on entry to the OECD in 1996, "to reform existing laws on industrial relations in line with internationally accepted standards, including those concerning basic rights such as freedom of association and collective bargaining", was welcomed by TUAC. The same applies to the process of monitoring progress of labour law and industrial relations reform in Korea, conducted by the ELSA Committee following the mandate from the OECD Council. TUAC has worked closely over the last nine years with its Global Union partners and its Korean affiliates – the FKTU and the KCTU to support efforts to bring the labour law in Korea in line with internationally recognised standards on freedom of association and collective bargaining to allow all workers to form and join trade unions.

Korean industrial relations have undergone a major change over the last decade with the legalisation of the KCTU, educational unions and reforms to the labour code. However, progress towards meeting the commitment to the OECD has stalled since 2000. The continuing repression of government employees and the arrests of trade union activists for seeking to exercise what in other countries would be normal trade union rights, is deeply disturbing.

The Korean government must bring its labour legislation into line with basic ILO standards as recommended in the most recent (November 2004) recommendations of the ILO Governing Body in what is now the longest running ILO Freedom of Association Case (No. 1865).

Until that is done it the OECD must maintain the special monitoring process.

Labour law and industrial relations reform in Korea – the record

In retrospect it is clear the OECD monitoring procedure working hand in hand with the ILO has been an important element in the process of generating peer-group pressure that resulted in progress being made in reforming Korean labour law in line with international standards in the period 1998-1999. This is notably true with regard to the improvement of trade union rights in July 1999 and the legalisation of the KCTU later in the same year.

The same cannot be said regarding the years since the completion of the 2000 OECD Labour Market Review on Korea. At the beginning of his administration's term of office, President Roh pledged to undertake further steps to modernise the system of industrial relations,

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implying that his government would allow the formation of trade unions as preferred by Korean workers. However, until now the Korean government has failed to make significant progress towards honouring President Roh's pledge. Current labour legislation remains the subject of repeated criticism by national and international trade union organizations as well as by the ILO for failing to guarantee basic trade union rights to all workers.

As indicated in the secretariat paper before the ELSA Committee on the "2005 Follow-Up to the monitoring mandate" [DELSA/ELSA (2005)2], the following items were still considered as being in conflict with internationally-recognised labour standards at the time of the 2002 monitoring round:

- The continuing prohibition of multiple unions at enterprise level;
- The denial of civil servants' right to organize;
- The prohibition in principle of employers' payment for full-time trade union officials;
- The broad definition of "essential public services", where strike action is prohibited or severely restricted;
- The prohibition for unemployed or dismissed workers to become or remain trade union members;
- The requirement for notification of third parties to industrial disputes.

Main findings of the 2005 Follow-Up to the monitoring mandate

Regrettably, no significant positive developments can be reported regarding the majority of the reported violations of internationally-recognised labour standards. The issue of **trade union pluralism** at the enterprise level has made no progress. The same applies to the requirement for **notification of third parties** to industrial disputes as well as to the **union status of unemployed** or **dismissed workers**. Moreover, the issue of the **payment of full-time trade union officials by employers** is still unresolved. The government has had over three years to resolve these issues and has not done so.

Furthermore, the **ongoing arrest and imprisonment of trade unionists** as a result of their trade union activities, predominantly on the basis of the provision on 'obstruction of business' as stipulated in the Penal Code (Section 314), remains a matter of serious concern. According to reports by TUAC's Korean affiliates in 2004 more than 185 trade unionists were detained and imprisoned is anything but conducive to the much-needed improvement of the overall industrial relations climate. On the contrary, it reflects the continuation of an authoritarian approach regarding the reform of the industrial relations in Korea. The President of the Korean Government Employees Union (KGEU) KIM Young Gil, remains in prison and is being prosecuted for violation of Public Officials Act. The KGEU General Secretary AHN Byeong Soon was released on April 27 2005 in time for the ELSAC meeting after 44 days of imprisonment. He had been sentenced to 8 months firm imprisonment and 2 year's suspended sentence.

The recent outline of future labour policy directions in Korean casts doubts on the determination on the part of the government to push through a reform agenda which would bring both labour law and industrial relations in Korea in line with the desired international labour standards regarding most of the items surveyed through the OECD's monitoring.

TUAC does not share the OECD secretariat's optimism regarding the **assessment of the Roadmap on industrial relations reform** that was published in 2003. Its provisions do not protect labour rights. Rather their focus is more on the labour market "flexibility" rather than ensuring compliance with core labour standards. The Roadmap sets out measures that would strengthen the ability of management to act, in particular to counteract actions by trade unions. The 'management's right to counteract' is related to three things: it would facilitate lay-offs of workers, it would limit the right to collective action by listing bargaining issues, and it would extend the freedom of management to lockout workers and to replace them during strikes in specified sectors. Moreover, the roadmap would not enable workers and employers to conduct free and voluntary negotiations in respect to the question of payment of wages by employers to full-time union officials as suggested by the ILO Committee on Freedom of Association. It does not therefore represent a serious attempt to resolve the remaining freedom of association issues rather it has had the effect of blocking progress.

Since the completion of the 2002 monitoring review just one of the outstanding issues has been the subject of action – the **trade union status of government employees**. On 31 December 2004 the National Assembly passed a bill which legalises Public Officials Trade Unions as from 1 January 2006. However, the Act does not fully establish the right of government employees to organise. Also the rights to bargain collectively and to conclude collective agreements remain limited. Moreover, the Act does not provide the right to collective action.

The newly enacted law does not indicate that the Korean government has carried out its duty to ensure trade union rights of government employees in compliance with internationally recognised labour standards. The Korean authorities have missed the opportunity to link the implementation of preparing the new Act to a policy fostering a better industrial relations climate. It is disappointing that Korean authorities have failed to provide for a transition period, allowing government employees to prepare their trade union organisation in time for the implementation of the new act. It is deeply disturbing to see the Korean authorities continuing to dismiss and arrest workers because of their trade union activities.

The ongoing violation of basic workers' rights undermine support for the law and prevent the development of trust which is essential to the creation of a stable industrial relations system which can manage conflict and encourage the social consensus necessary to the continuing development of the economy.

Conclusions

Against the background of ongoing violations of basic workers rights in Korea there is no alternative but for the OECD to continue and enhance its special monitoring procedure on labour law reform in Korea until Korean labour legislation is brought into line with internationally accepted standards of freedom of association and collective bargaining.

With regard to the possible options for the future of the monitoring process put before the ELSAC it is evident from the findings of the 2005 follow-up report that, despite the initial

progress made when Korea joined the Organisation and despite current government plans to realise its "Roadmap" for industrial relations reform, the country has still not fulfilled its commitment – a judgement also shared by the ILO's Committee on Freedom-of-Association (see Annexe).

It is important to insist that the Korean government implements the ILO's remaining recommendations and release all trade unionists imprisoned for trade union activities. A decisive instrument to maintain and strengthen the readiness to reform will be to build and maintain peer pressure by the OECD, based on a further monitoring process two years from now. The ELSAC Committee therefore should recommend strongly that the **special monitoring should continue.**

The option to end the special monitoring is not a serious one because it is in striking contrast to the findings of the 2005 follow-up report. The arguments presented for such a position are not convincing. They are primarily about what the ELSA Committee has been doing, but not about the real issue, the Korean government's labour law and industrial relations record since the 2002 monitoring. A recommendation arguing that the special monitoring should be ended would put the credibility of the ELSA Committee at stake; it would be perceived not only by Korean workers but also by a wider trade union and civil society audience as a retrograde step.

Likewise, the option to hand the issue of monitoring labour law and industrial relations reform in Korea over to the ILO is not a credible one. The ILO Committee on Freedom of Association is continuing to try to deal with the longest running case of Korea. However it is not correct to say as the issues paper does that it is also being dealt with by the ILO's Committee of Experts (CEACR) as this is only possible when a country has ratified the relevant conventions (87 and 98) which Korea has not done. In this regard it must be emphasized that the Korean government has repeatedly refused ILO offers for technical assistance to reform its legislation. There is not technically a way in which it can be "handed over". Option "c" therefore amounts to the same as option "b" the ending of monitoring.

Annexe
ILO Recommendation on Korea November 2004

"The Governing Body of the ILO makes the following recommendations and requests the Government:

(i) To confirm that the Public Officials' Trade Union Bill permits the possibility of trade union pluralism and to take the necessary measures in the very near future so as to ensure that all public servants fully enjoy the right to establish and join trade union organisation of their own choosing;

(ii) To take rapid steps for the legalisation of trade union pluralism in full consultation with all social partners concerned, so as to guarantee at all levels the rights of workers to establish and join the organisation of their own choosing;

(iii) To enable workers and employers to conduct free and voluntary negotiations in respect of the question of payment of wages by employers to full-time union officials;

(iv) To amend the list of essential public services in section 71(2) of the Trade Union and Labour Relations Amendment Act (TULRAA) so that the right to strike may be restricted only in essential services in the strict sense of the term;

(v) To repeal the notification requirement (section 40) and the penalties for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes (section 89(1) of the TULRAA);

(vi) To repeal the provisions prohibiting dismissed and unemployed workers from keeping their union membership and making non-union members ineligible to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA);

(vii) To bring section 314 of the Penal Code (obstruction of business) in line with freedom of association principles and to rectify the situation of any workers who may have been penalised under this provision for non-violent industrial action and to provide further details, including any court judgements, on the 28 cases of workers arrested for obstruction of business in 2003, despite the absence of violent acts."