

Response to the Joint Allegation Letter by the UN Special Rapporteurs on Freedom of Opinion and Expression; Freedom of Peaceful Assembly and Association; and the Situation of Human Rights Defenders

1. Overview

Regarding the case inquired in the communication sent on 31 July 2014 to the Korean government from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders, the Korean Government is submitting its observations as follows.

In the communication, the Special Rapporteurs requested the Korean Government's observations on the allegations that the ban imposed on the Korean Teachers and Education Workers' Union (KTU) and possible disciplinary and criminal sanctions against some union members are violating Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), Human Rights Council resolution 24/5 as well as the UN Declaration on Human Rights Defenders.

2. Notification of the KTU's loss of its legal status

2-1. Facts related to the Case

The Ministry of Employment and Labor (MOEL) notified the KTU of its loss of legal status on 24 October 2013 based on the facts that nine dismissed teachers had actually maintained their union member status and the union's bylaws which permit dismissed teachers to join the union were in violation of the Act on the Establishment and Operation of Trade Unions for Teachers (AEOTUT).

Before notifying the KTU that it was no longer legal, the Government ordered the KTU to amend the union's bylaws which permit dismissed teachers to remain union members on 31 March 2010 and 17 September 2012. However, the KTU refused to

amend the provisions that allowed dismissed teachers to keep their status as union members. It appealed to the Seoul Administrative Court against the Government's order on 29 June 2010. Despite the Supreme Court's final ruling that the Government's corrective order was legitimate on 12 January 2012, the KTU did not follow the order and continued to keep its illegal bylaws.

On 23 September 2013, the Government thus issued a corrective order to the KTU to amend the union's bylaws in conformity with Article 2 of the AEOTUT and take action to ensure that no dismissed teachers, who are not entitled to be union members, maintain the union membership. Again, the KTU did not comply with the order and did not report the results of correction that was due until 23 October 2013. As a result, the Government notified that the KTU was no longer a trade union under the law on 24 October 2013. Some of the nine dismissed teachers who have maintained union member status faced statutory dismissal after their conviction in accordance with the related laws, and others lost their appeals against their dismissal, which means that none of them are entitled to hold the union membership.

Following the MOEL's notification that the KTU was illegal, the Ministry of Education (MOE) announced that the KTU's full-time union officials' grounds for leave were no longer valid and requested all metropolitan and provincial offices of education to implement follow-up measures on 25 October 2013.

Challenging the MOEL's notification, the KTU filed a litigation to revoke the notification and requested for an injunction calling for the suspension of decision on 24 October 2013. On 13 November 2013, the court of first instance decided that the execution of the decision should be suspended until the ruling on the revocation case. The court, however, ruled that the MOEL's notification was legitimate and dismissed the KTU's request on 19 June 2014. After the Seoul Administrative Court's dismissal, the MOE notified municipal and provincial education offices of follow-up measures, it has taken such as having the KTU full-time union officials back to their schools, suspending the

provision of the union office, and suspending collective bargaining.

The KTU appealed to the Seoul High Court (court of second instance) on 23 June 2014 and applied for an injunction requesting the suspension of decision on 10 July 2014. On 19 September 2014, the Seoul High Court decided to accept an injunction calling for the suspension of decision until the ruling by the court of second instance. On 22 September 2014, the MOEL appealed against the decision to accept the suspension of decision, and the case is currently pending before the court.

2-2. Legal Grounds

Pursuant to the current AEOTUT, considering the special characteristics of teachers' duties and status as well as national sentiments and the spirit of the Constitution, where for teachers, unlike other workers, only those prescribed by the law enjoy the fundamental labor rights such as right to organize, right to collective bargaining, and right to collective action, and the scope of those entitled to remain as the KTU members is limited to current and dismissed teachers who have sought a remedy with the National Labor Commission and are still waiting for the Commissions' decision.

However, the KTU has been allowing dismissed teachers to join the union under its bylaws in violation of the current law, and dismissed teachers have been found to have remained union members. To correct the violation, the Government issued another corrective order, but the KTU rejected the order, which is why the Government notified that the KTU was no longer regarded as legal under the provisions of laws and regulations as a last resort. In accordance with Article 9(2) of the Enforcement Decree of the TULRAA, when a trade union fails to meet the qualification of a trade union provided in the TULRAA, administrative authorities shall require the trade union to correct it within 30 days, and give notice that the trade union is not regarded as a trade union in

accordance with the TULRAA' if the trade union fails to make the correction.

Meanwhile, if the KTU meets the legal requirements by amending the unlawful bylaws to exclude dismissed teachers from the union and then applies for its registration, the union is allowed to restore its legal status. For your information, 10 teachers' unions established pursuant to the AEOTUT are currently in operation.

3. Possible Disciplinary and Criminal Sanctions against Union Members

Article 7(2) of the Constitution of the Republic of Korea provides for public officials' obligation to be politically impartial; and Article 31(4) of the Constitution stipulates the political impartiality of education. Elementary and middle school students in particular absorb information provided by teachers so fast that their personality and values are very likely to be influenced by their teachers, which is why teachers as public officials are required to maintain political impartiality and prohibited from collective activities according to the court's ruling. (Constitutional Court Decision, 2011HeonBa32).

According to the information received, a total of 391 teachers have been accused of engaging in protests since the sinking of the Sewol Ferry which took place on 16 April 2014. They posted on the Blue House (the office of the President) web site the "Declaration of the Teachers," urging the administration to step down on 13 May 2014 (when 43 were accused) and on 28 May 2014 (when 80 were accused). The teachers also supported a newspaper advertisement denouncing the Government's mismanagement of the ferry sinking on 12 June 2014 (when 161 were accused) and led an "early-leave protest" on 27 June 2014 (when 36 were accused). Furthermore, they held a press conference at the KTU headquarters and announced a "Declaration of the Teachers," calling for the Presidents' resignation on 2 July 2014 (when 71 were

accused).

The teachers were accused of violating the provisions on the prohibition of political activities and collective activities under Article 65(4) and Article 66(1) of the State Public Officials Act as well as Article 27(1)2 and 27(2)3 of the Code of Conduct for Public Officials by directly expressing their collective opposition to the current Government. They thus were subject to Article 234(2) of the Criminal Procedure Act.

The accused teachers may be punished by imprisonment and disqualification pursuant to Article 84 (Punishment for Political Campaigns) of the State Public Officials Act if their violation of Article 65 of the same Act is confirmed in court. The teachers may face imprisonment or a fine in accordance with Article 84(2) (Penal Provisions) when the court confirms their violation of Article 66. The accusations are under prosecutors' investigation or other criminal procedures.

The MOE decided that if the KTU union members who involved in the early-leave strike on 27 June 2014 violated Article 57 (Duty of Obedience), which stipulates that every public official shall obey each order of his/her superior officer with respect to his/her duties, the union members should be subject to the same Act's Article 78 (Causes for Disciplinary Disposition), which provides that a resolution on disciplinary action shall be requested, and a disciplinary disposition shall be taken according to the result of such disciplinary resolution. Accordingly, the MOE requested municipal and provincial offices with which the teachers were affiliated to investigate each case and to implement disciplinary resolution and disposition when their violation was confirmed. As of September 2014, the education offices are investigating the teachers concerned, but whether to take disciplinary measures and what disciplinary measures to take have not been decided.

On 16 July 2014, the National Human Rights Commission of Korea (NHRCK) received the KTU's complaint with an allegation that it was unconstitutional and illegal for the MOE to accuse the union members of engaging in the early-leave strike. As the NHRCK is currently deliberating on the complaint, for now, there is nothing that can be submitted to the Special Rapporteurs as to this complaint.

4. Conclusion

The Korean Government has offered the information requested by the Special Rapporteurs. Furthermore, the Government would like to add that the court has yet to hand down the ruling on whether the MOEL's notification that the KTU is illegal is legitimate, and that investigations are underway by competent authorities, such as education offices and courts, regarding disciplinary and criminal sanctions against union members. The Korean Government hopes that the Special Rapporteurs would take into account all of the facts mentioned above and take a look at all information presented from a fair and objective perspective.



PERMANENT MISSION OF THE REPUBLIC OF KOREA
GENEVA

KGV/306/14

Geneva, 28 October 2014

Dear Special Rapporteurs,

It is my pleasure to convey the enclosed response of the Government of the Republic of Korea to the questions which were raised in your joint communication dated 31 July 2014 concerning the Korean Teachers and Education Workers' Union (KTU).

I hope that the attached response will help provide a clear understanding of the situation. If needed, we are ready to provide further information or clarification.

Please accept the assurances of my highest consideration.

Enclosure : as stated.

A handwritten signature in black ink, appearing to read 'Choi Seokyoung'.

CHOI Seokyoung
Ambassador
Permanent Representative

Mr. David Kaye, Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression

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