

KGEU Newsletter #4

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The Government Actions to Destroy the Korean Government Employees' Union as the "Public Officials Trade Union Act" Comes into Effect[1]

The Korean Government has launched a concerted campaign, with the coming into effect of the "Act on the Establishment and Operation, etc. of Public Officials' Trade Unions" (hereafter, "Public Officials Trade Union Act"), to destroy the existing trade union of government employees in the civil service. The introduction of the new law, which is purportedly aimed at guaranteeing trade union rights of civil service government employees, is being used as the pretext for the Government's attempt to deny the existence of the Korean Government Employees Union (hereafter, KGEU), which has a membership of 140,000. The Government is refusing to engage in any kind of dialogue with the KGEU; rather, it is intent on destroying it.

The attitude and response of the Korean Government towards trade unions of public officials are proving to be no different to that it had demonstrated in 2002, when it mobilised massive police force to disrupt the inauguration assembly of the KGEU, arresting 178 delegates attending the founding conference.

The "Joint Announcement" of the Ministers of Justice, Government Administration and Home Affairs, and Labour, declaring "strict measures on illegal activities by organisations of public officials"

On February 8, 2006, the Ministers of three government ministries - Ministry of Justice, Ministry of Government Administration and Home Affairs, and the Ministry of Labour - held a joint press conference to issue an "Announcement concerning illegal activities of organisations of public officials". The joint announcement contained a declaration of the Government's intent to take strict measures on illegal activities by illegal organisations of public officials, such as, the so-called Korean Government Employees Union".

The Government made clear that the joint announcement was undertaken to "make clear that the Government is committed to bring about voluntary withdrawal of membership from illegal organisations and to respond sternly to all illegal activities". The joint announcement revealed the main forms of action that the Government is planning to take:

1) disallow any collective bargaining and conclusion of collective bargaining agreement with illegal

organisations engaged in trade union activities without submitting notice of establishment as a trade union pursuant to the new law; disallow release from work to serve as full-time officers of the union, disallow check-off arrangement, provision of office space, and any other facilities to illegal organisation;

2) force the leaders and public officials who are members of illegal organisations to voluntarily withdraw membership from the illegal organisations; take legal sanctions against any illegal collective activities; but extend active assistance if the currently illegal organisation is intending to transform themselves into legal trade unions;

3) undertake administrative and financial sanctions against local governments which fail to comply with the Government's directive and engage in collective bargaining or conclude collective bargaining agreement with an illegal organisation, or engage in any other actions which overlook or facilitate illegal activities by the illegal organisations; sanctions may take the form of reduction in the allocation of special revenue, exclusion from various state projects, etc.

The Government's Joint Announcement outlines its basic position in conjunction with the coming into effect, on January 28, 2006, of the Public Officials Trade Union Act. The announcement came soon after the election of the new leadership of KGEU, conducted on January 25, 26 and February 2 and 3 by the vote of all the members of the union and the referendum on the affiliation to the Korean Confederation of Trade Unions. The Government's announcement reflects its basic attitude to the KGEU. In the announcement, it stated, "the so-called Korean Government Employees Union has elected a person who has been de-commissioned or dismissed as a result of the illegal collective action on November 15, 2004, and thus cannot be qualified to represent a public officials trade union as its president; it has also publicly stated that it would refuse to comply with the law and remain an illegal organisation and continue to conduct intense campaigns, causing deep insecurity among the people."

The Government mentioned that "some public officials have formed labour organisation and have conducted activities even before the coming into effect of the law. This was deemed to be a part of preparatory activities for the establishment of a trade union. As such, the Government had respected to a certain degree these collective activities". However, the February 8 Joint Announcement made clear that the Government is determined to reject the government employees who had been de-commissioned or dismissed as a result of the KGEU's strike in November 2004, the KGEU declaration on freedom of political activities in March 2004, the "collective use of annual leave" in November 2002, the founding of the KGEU in March 2002, and for the activities of the Korean Association of Government Employees' Work Councils (KAGEWC), the predecessor organisation of the KGEU as ineligible to be representatives of a public officials trade union. The Government is intent on denying that the above listed "events" had taken place in the course of efforts to secure the basic rights of freedom of association and bringing about changes in law to firmly establish these rights.

The attitude of the Government was made clear in the way it had responded to the elections for the new leadership of the KGEU and the referendum on affiliation to the KCTU. The Government refuses to recognise an organisation - KGEU - which has been in existence for five years with a total membership of 140,000. Moreover, it has been intent on interfering in its activities and preventing its continued existence.

The "Directive to Promote the Transformation of Illegal Organisations into Legal Trade Unions (Voluntary Withdrawal of Membership)"

The "Directive to Promote the Transformation of Illegal Organisations into Legal Trade Unions

(Voluntary Withdrawal of Membership), adopted by the Ministry of Government Administration and Home Affairs, and transmitted all government ministries, agencies, and Provinces and Metropolitan Cities, on March 22, 2006, is a clear case of “unfair labour practice” and campaign of repression against the KGEU, not to mention serious human rights violation. (The directive is attached to this letter)

The Directive clearly denotes the KGEU as an illegal organisation. The Government logic is simple: the establishment and operation of a public officials trade union is only possible in pursuant to the Public Officials Trade Union Act - therefore, the KGEU is an illegal organisation that has failed to submit notice of establishment pursuant to this law. The notice of establishment, however, is a matter that should be determined independently by a trade union; it is not a matter that the Government or an employer may order or instruct. The Ministry of Government Administration and Home Affairs, however, dictates that no dialogue and collective bargaining will be permitted for illegal organisation that engages in activities without having submitted a notice of establishment”. It instructs all the Government offices “to force transformation into a legal trade union and to issue orders to voluntarily withdraw membership”. The system of giving notice of establishment is intended to extend rights and protection to a trade union provided by the law. Therefore, it is not the case that a trade union cannot engage in activities for not having given notice of establishment. Furthermore, it is illegitimate to force a dissolution of an organisation and to pressure its members to withdraw membership. The Korean Government Employees Union currently objects to the various problems inherent in the Public Officials Trade Union Act. In refusing to submit notice of establishment pursuant to this flawed law, it may not be able to enjoy the protection that may be extended from this law, but, this does not make it an illegal trade union - if legal status was to be sought, the KGEU could be characterised as a trade union outside the scope of the law.

The Ministry of Government Administration and Home Affairs is in position of an employer in industrial relations pertaining to government employees. Its refusal to engage in dialogue, determination of the KGEU as an illegal organisation and efforts to bring about its dissolution, and pressuring the members to withdraw membership is a clear case of hostile action towards an independently formed trade union. It is an act to destroy the trade union. The Ministry also makes clear that it intends to mobilise “all the related Ministries and offices and the public prosecutors office and the police in close cooperation” to push ahead with a “government-wide effort to bring about transformation into legal trade unions and voluntary withdrawal of membership”. The actions outlined by the Ministry contradicts the Government’s rhetoric of commitment to build sound industrial relations.

The efforts to bring about “transformation into legal trade union”, “voluntary withdrawal of membership”, and disciplinary sanctions are clear cases of unfair labour practice. The Article 17(2) and 17(3) of the Public Officials Trade Union Act[2] draws on the Article 7(2) of the Trade Union and Labor Relations Adjustment Act, which states

[Article 7(1)] Trade unions which are not established by this Act shall not make an application for adjustment of industrial disputes and for remedy for unfair labor practices to the Labor Relations Commission.

[Article 7(2)] The provisions of paragraph (1) shall not be construed as excluding the protection of workers under subparagraphs 1, 2, 5, of Article 81.

Article 81 of the Trade Union and Labor Relations Adjustment Act states:

Employers shall not commit an act which falls within any of the following subparagraphs (hereafter referred to as “unfair labor practices”):

1. dismissal of or discrimination against a worker on the grounds that the worker has joined, or intended to join a trade union or to establish a trade union, or has performed a justifiable act for the operation of a trade union.
2. employment of a worker on the condition that the worker should not join or should withdraw from a trade union, or should join a particular trade union. [Remaining parts abridged]
5. dismissal of or discrimination against a work on the grounds that the worker has taken part in justifiable collective activities, or has reported the violation of the provisions of this Article by the employer to the Labor Relations Commission, or has testified about such violations or has presented evidences to administrative authorities.

Even if the KGEU has opted to remain outside the law, forgoing the protection (to claim remedy for unfair labour practice) in case of the unfair refusal by the employer to engage in collective bargaining (Article 81.3)[3] because of its objection to the extreme restrictions contained in the law concerning collective bargaining and the efficacy of collective bargaining agreement, the “Directive to Promote the Transformation of Illegal Organisations into Legal Trade Unions (Voluntary Withdrawal of Membership)”, which also contains threat of punitive sanctions, is a clear case of unfair labour practice as stipulated by the subparagraphs 1, 2, and 5 of the Article of the Trade Union and Labor Relations Adjustment Act.

Furthermore, the effort to force a trade union to submit a notice of establishment, or to force “voluntary withdrawal of membership” or “transformation into a legal trade union” by a resolution of a general assembly or delegates conference or to force the resignation of the elected leaders are all unfair labour practices as stipulated in the subparagraph 4 of the Article 81[4] of the Trade Union and Labor Relations Adjustment Act.

The Directive issued by the Ministry of Government Administration and Home Affairs directs that “The heads of central administrative agencies and offices at all levels and the heads of local governments shall, immediately upon the receipt of this Directive, press the member staff and the Workplace Associations which in reality engage in activities as illegal organisations to transform themselves into legal trade unions at the earliest date as possible, and issue work order to voluntarily withdraw membership from illegal organisations in the form of official letter”. At the same time, it directs that the “work order” should “indicate clearly and in detail the disciplinary measures and disadvantages to be enforced in case of failure to comply with the order”.

The Directive outlines detailed measures aimed at destroying the union. It calls for a “prohibition of check-off arrangement for membership due” and threatens sanctions against public officials in supervisory positions who fail to comply fully with the Directive for negligence. It spells out “heavy disciplinary penalties against leaders (exclusion from appointment)”, “forceful measures such as closure of the offices of illegal organisations”, “nullification of all existing agreements and prohibition of all consultation and assistance”, “removal of the name plaque” and instructs to “secure, if necessary, the cooperation of police”.

The Directive directs all government offices to establish “man-to-man persuasion team”, and “the high ranking official charged with responsibility” to undertake “individual (joint) contact with the target member of the leadership, visit of the family, telephone calls, to persuade the person in question and his/her family members.” They are instructed to “make clear strongly that there will be disciplinary action for failure to comply with order and other disadvantageous measures, such as punitive fines for illegal use of the term ‘trade union’ (in the case of the organisation and its elected representatives)”.

The proposed “individual contacts”, “home visits”, and “telephone calls” to persuade the person in question and his/her family members are cases of serious human rights violation. The establishment of “persuasion teams” to conduct individual contacts to press for withdrawal of membership is an abuse of the state power for the purposes of infringement of freedom of conscience that lies at the heart of human dignity. The idea of visiting family members to force withdrawal of membership from a trade union is no different from threats against family used widely in the past by military regimes in their anti-union drive.

The State or local government should not collect personal information for the purposes of trade union repression, human rights violation, and other illegitimate purposes. They cannot make use of the already collective information for the purposes of trade union repression, human rights violation and other illegitimate purposes. But, the Directive directs all local government authorities to collect and submit the list of the elected leaders of the KGEU branches, including those members who had been de-commissioned or dismissed, in blatant violation of human rights.

The Directive threatens that the names of the government agencies and local governments with “poor performance” shall be “made public through media release” and will be penalised in the “annual agency evaluation and other administrative and financial penalties will be applied”.

The Government indicates in the Directive that it shall, in April, undertake a “comprehensive inspection of industrial relations in the public officials sector” in all “central government ministries and local governments where illegal organisations have been established”. It will be “conducted jointly by local government departments and audit departments under the coordination of the Public Officials Organisation Supervision Team of the Ministry of Government Administration and Home Affairs” with “police cooperation if necessary”.

The Government also intends to hold a “public officials sector industrial relations counter-measure conference” to discuss “governmental level measures for administrative and financial penalty for agencies and offices which have failed to comply with the Government’s Directive”. It intends to “hold consultation with the Office for Government Policy Coordination on penalty measures to be undertaken at each ministry.”

The Government make clear in the Directive its intention to mobilise the whole of its resources in its union-busting drive.

The Progress in Implementation of the Directive

The Ministry of Government Administration and Home Affairs took action to implement the Directive. It sent out an official letter to seeking cooperation of all government offices and organisations and the local governments in establishing and carrying out an “education plan” to “press for the transformation of illegal public officials organisations into legal trade union and to bring about voluntary withdrawal of membership.

The first such “education” was conducted for public officials in all local governments and Education Office responsible for dealing with matters related to public officials organisation. This involved explaining the Directive to some 532 public officials. The second session involved a circuit education coordinated by the Ministry of Government Administration and Home Affairs. In this official letter, the Ministry planned to hold education session at 5 Ministries and 2 Agencies and 14 Province and Metropolitan City governments, involving all of 15,519 public officials, to be completed by the end of March. The aim of the education was the same: to “press for the transformation of illegal organisations into legal trade unions and voluntary withdrawal of membership by individual public officials who were members.”

The Province and Metropolitan City governments, then, proceeded to hold explanation sessions and circuit education coordinated by the Ministry of Government Administration and Home Affairs, in accordance with the Directive and Education Plan of the Ministry, for all the municipal governments and agencies under their jurisdiction.

The Province and Metropolitan City governments directed all the municipal governments and subsidiary organisations to “prohibit the check-off arrangement for the membership dues of illegal public officials organisations and illegal use of the term trade union”.

The Directive of the Ministry of Government Administration and Home Affairs, sent to all government ministries and Province and Metropolitan Cities, then were sent further down the line of the government structure, to all municipal governments and lower level organisations. The Seoul Metropolitan City directed the Ku (municipality, county) Office and organisations under its jurisdiction to the “plan to press illegal public officials organisations to transform into legal trade unions and bring about voluntary withdrawal of membership by the public officials who were members of illegal public officials organisations in an effort to establish a sound and exemplary public officials industrial relations, uphold law and order, and to establish discipline in the public officialdom.” It instructed them to actively carry out the Directive.

The municipal governments, thus instructed, began to carry out the Directive towards all public officials. The Directive was relayed to all lower level administrative offices at the eup, myeon, and dong levels, and all local branches of government agencies and service centres.

Wonju City authorities urged all public officials to submit “Withdrawal of Membership Application Form” calling on the “public officials who are members of an organisation engaged in illegal activities to take steps to voluntarily withdraw membership and to cooperate so as to avoid any disadvantageous sanctions that would arise from the failure to do so.” The “Withdrawal of Membership Application Form” prepared by the Wonju City authorities include a statement that the public official submitting the form “have paid membership due and relief fund contribution to the so-called Korean Government Employees Union (Wonju City Branch)” and now withdraw membership “as the Act on the Establishment and Operation etc. of Public Officials’ Trade Unions has come into effect from January 28, 2006 and a work order requiring voluntary withdrawal has been issued on March 27, 2006” and he/she will “abide by the laws concerning public officials in the future.” The form requires members of KGEU to fill in the name, position, and assigned office, and the signature.

Wonju City authorities had issued a “Work Order Requiring Public Officials Who Are Members of Illegal Organisations to Voluntarily Withdraw Membership” on the same day. It calls on the head of departments to collect the withdrawal form and produce a record of all the persons who have submitted the withdrawal form, to be presented as a report.

Wonju City authorities had, on February 3, 2006, directed public officials to submit a “Pledge by Public Officials who are not eligible to be members of a public officials trade union under the Public Officials Trade Union Act”. Public officials who were required to sign the pledge were public officials with rank higher than Grade 5 and Grade 6 public officials with departmental responsibilities at the various departments and service centres and eup, myeon, and dong offices, and Grade 7 public officials who are ineligible to join a trade union according to the Public Officials Trade Union Act.

The Province of Gyeonggi-do issued an “Order to Withdraw from Illegal Public Officials Organisation or to Transform into Legal Trade Union” to one “NAM Yoon-soo, (so-called) president, Gyeonggi-do Chapter, Gyeonggi Regional Branch, Korean Government Employees Union”. The order also contained a threat: “Failure to comply with this order shall be subject to stern measures pursuant to the relevant laws.”

County of Cheongyang-kun of South Choongcheong Province issued an "Order requiring members of the Cheongyang-kun Chapter of the (so-called) Korean Government Employees Union to Voluntarily Withdraw Membership" by April 30, 2006 to 355 members of the KGEU members. It also contained a reminder that "the failure to comply with the order of 'voluntary withdrawal of membership' within the required date shall be subject to sanctions with regard to the status, such as, disciplinary measures pursuant to the Article 48 (Duty of Diligence) and Article 49 (Duty to Comply with Orders) of the Local Public Officials Act.

The Agricultural Research & Extension Service of North Gyeongsang-do Province issued an official letter, not to the KGEU's branch at the centre, but the president and all the members of the Workplace Association" ordering "voluntary withdrawal from the illegal public officials organisation". Similarly, the Buk-ku municipality(district) of Daegu Metropolitan City issued a "Work Order on Transformation into Legal Trade Union" to the president of Buk-ku Public Officials Workplace Association(or Government Employees' Work Council). In this order, the municipal authorities state "there has not been any progress despite the call on the "Workplace Association" established in our municipality to bring to end illegal trade union activities and transform into legal trade union". Consequently, it spells out measures it plans to take if "transformation into a legal trade union does not take place by April 30, 2006". The measures include: prohibition of check-off service for the membership dues to the Workplace Association at the time of payment of wage for the month of April; closure of the office of illegal organisation; nullification of all existing agreement and end to all assistance; prohibition of all dialogue and negotiations with the illegal organisation. It also warned that "stern measures pursuant to law and principles in response to the refusal to undertake transformation into legal trade union (voluntary withdrawal of membership) and illegal collective action" shall be taken.

Similar developments are taking place in Wando-kun of South Chulla Province. In this county, a legal trade union was formed with the full support of the County Mayor and the county authorities. Wando-kun also conducted education on the Directive to press transformation of illegal organisation into legal trade union and voluntary withdrawal of membership, as directed by the Ministry of Government Administration and Home Affairs. The kun authorities mobilise heads of departments and heads of eup and myeon offices to pressures members of unions to withdraw membership and affiliation to newly created legal trade union. They were provided with membership applications to fill in, and those members who had refused to fill in the application forms were met individually by higher ranking officers and were threatened with dire consequences for their continued refusal to join the new body. Many of the members of existing union, who were faced with threats and pressure, had submitted withdrawal of membership to the KGEU. This process led to the formation of a Wando-kun Public Officials Trade Union on the basis of direct pressure from the kun mayor to join the new union (March 31, 2006). Kun authorities sent out official letters to the heads of departments and other officers requesting cooperation for the holding of the inauguration general assembly. Details of the anti-union activities of the Wando-kun authorities are spelled out in the attached report prepared by the KGEU Wando-kun Chapter.

The Ministry of Government Administration and Home Affairs has begun to inspect the progress of the implementation of the Directive as planned. The Ministry is working to a plan which calls for "inspection of the reports submitted to the Ministry by April 14" and second round of inspection involving "on field verification in late April". The Ministry had instructed all government offices to produce and submit a report on "Check list on the progress of transformation of illegal organisations into legal trade unions". It plans to conduct on-field verification on the basis of an inspection of the submitted reports, after identifying those offices which have failed to submit reports, those which have poor performance record, and other which are deemed to need on-field verification". The Ministry plans to hold a Government-wide "conference on counter-measures for public officials

industrial relations”.

Ulsan Metropolitan City has produced a report on “Findings from Examination of the State of Transformation of Illegal Organisations into Legal Trade Unions”, believed to be for the purpose of submission to the Ministry of Government Administration and Home Affairs. While the report contains some exaggeration to embellish the local government’s performance, it does shed a light on the pressures felt by trade unions due to the Ministry’s Directive and the actions and threats of the local government authorities. The authorities seem to be aware of “confidential” plans of groups within some chapters of the KGEU which are considering transformation into legal trade union. The report shows clearly the various efforts undertaken by the authorities to undermine the KGEU, multifaceted pressures to force withdrawal of membership and to bring about a transformation into legal trade union.

The Government’s own documents show clearly how it is going about publicly and covertly to pressure more than 140,000 members of the KGEU to withdraw membership and to join “legal trade union”. The KGEU is being branded as illegal organisation as it does not seek to submit notice of establishment pursuant to the new Public Officials Trade Union Act, and its members are subject to various threats and inhuman monitoring.

The actions of the Korean Government can be seen as an effort to give legitimacy to the new Public Officials Trade Unions Act which has been subject to much criticism within and without Korea, as it fails to reflect the views of the government employees and their organisations. The intention is to demonstrate that there are “legal” trade unions which accept to operate within the parameters of the new law. In doing so, it hopes to sweep away all the criticism that has pointed out the shortcomings and problems in the new law. The actions of the Government since the coming into effect of the Public Officials Trade Union Act, however, have demonstrated that the it is not so committed to the principle of guaranteeing trade union rights of government employees in the civil service, which is the purported purpose of the new law, but, is, instead, intent on destroying the Korean Government Employees Unions, which has been established as an independent and democratic trade union, with a membership of more than 140,000. The “sound and exemplary public officials industrial relations” - referred to in the Directive — that the government seeks is being established by repression and attacks on the KGEU. The recent actions of the Korean Government again bring to spot light its attitude that trade union rights of public officials should be limited, restricted, and kept in control for the purposes of “upholding law and order” and “establishing discipline in the public officialdom” as the Government repeats in all its orders and in the Directive.

[1] This is excerpt from the complaint of the KGEU and the KCTU against the Korean Government, which is to be lodged to the ILO. The PSI will associate itself with this complaint.

[2] Public Official Trade Union Act, Article 17 (Relations with Other Laws)

(2) Matters, not prescribed in this Act, concerning trade unions and labor relations adjustment for public officials, except those prescribed in paragraph (3), shall be subject to the conditions prescribed by the Trade Union and Labor Relations Adjustment Act. [Remaining parts abridged]

(3) The provisions of the proviso of subparagraph 4 D of Article 2, Article 24, Article 29, Articles 36 through 46, Articles 51 through 57, Article 60 (1) and (5), Articles 62 through 65, Article 66 (2), Articles 69 through 80, the proviso of subparagraph 2 of Article 81, Articles 88 through 92, and Article 96 (1) 3 of the Trade Union and Labor Relations Adjustment Act and Article 5 (1) and (2) of the Addenda of the Trade Union and Labor Relations Adjustment Act amended by Act No. 5310 shall not apply to trade unions under this Act.

[3] [Trade Union and Labor Relations Adjustment Act, Article 81.3] Refusal or delay of conclusion of a collective agreement or of collective bargaining, without justifiable reasons, with the representative of a trade union or a person who has been authorized by a trade union;

[4] [Trade Union and Labor Relations Adjustment Act, Article 81.4] domination of or interference with the formation or operation of a trade union by workers [remaining parts abridged]