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Republic of Korea (South Korea): Government must respect the right to freedom of association of all migrant workers

The refusal of the government of the Republic of Korea (South Korea) to recognise the legal union status of the Seoul-Gyeonggi-Incheon Migrants Trade Union (MTU) constitutes a denial of the right to freely form and join trade unions, a right protected in South Korean law and in international human rights law.

MTU's legal status

The Seoul-Gyeonggi-Incheon Migrants Trade Union was formed on 24 April 2005 for migrant workers regardless of their legal status. Most of its members are irregular migrant workers. On 3 June 2005, the South Korean Ministry of Labour rejected MTU's notification of union establishment on the basis that irregular migrant workers do not have the same legally protected rights, including the right to freedom of association, guaranteed to other workers under South Korean law. However on 1 February 2007, the Seoul High Court ruled in favour of MTU, stating that the South Korean Constitution and the Trade Union Law protect the right to freedom of association of all those who enter into an employment relationship as workers, including irregular migrants (Seoul High Court decision 2006 NU 6774).

The Ministry of Labour has continued to deny MTU's legal union status and has appealed the ruling to the Supreme Court, where a decision is expected this year. The Ministry of Labour's refusal of MTU's status is discriminatory and infringes on the right of irregular workers to associate in general and to form trade unions in particular.

Domestic and international standards

The Ministry of Labour's position violates domestic law and international conventions to which South Korea is state party. For example, article 6, clause 1 of the South Korean Constitution provides that "treaties duly concluded and promulgated under the Constitution and generally recognized rules of international law shall have the same force and effect of law as domestic laws of the Republic of Korea". South Korea is therefore obligated to protect the rights outlined in international conventions that it has ratified.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), all protect the right of workers to freedom of association irrespective of their immigration status. Although South Korea has made a reservation on article 22 of the ICCPR (freedom of association), the reservation states only that article 22 shall be applied "in conformity with the provisions of the local laws including the Constitution of the Republic of Korea". Since the right to freedom of association protected in the Constitution has been shown to cover irregular migrant workers, this reservation cannot be grounds for exempting them. Article 8 of the ICESCR provides, among other things:

“The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.”

The crackdown on migrant workers’ trade unions violates this provision, and cannot be justified on the basis of the restrictions it allows, as the peaceful defence of the rights of workers cannot be interpreted as a threat to national security or public order.

In its General Recommendation No. 30 (2004), the Committee on the Elimination of Racial Discrimination recommended that states “ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status” and that “all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated” (paras. 7 and 35 respectively).

In addition, International Labour Organization (ILO) Convention No. 87 protects the right to freedom of association for all workers, “without distinction whatsoever” and has been shown to apply to irregular migrant workers through the Committee on Freedom of Association’s recommendations (Case No. 2121 (UGT), 2001 and Case No. 227 AFL-CIO/CTM, 2002). The ILO Constitution recognises that freedom of association is fundamental to labour rights, and grants the Committee on Freedom of Association the mandate to hear complaints against all ILO Member States regardless of whether they have ratified Convention No. 87 given the fundamental character of freedom of association and the right to organise.

Although South Korea has not ratified Convention No. 87, as a member state it is obligated to respect the fundamental rights protected in this and other ILO conventions under the Declaration of Fundamental Principles and Rights at Work adopted in 1998. During South Korea’s recent re-election to the Human Rights Council, it pledged to ratify the four ILO Fundamental Conventions, which includes No. 87.

Targeted crackdown

It appears that the South Korean government has also been targeting MTU leaders for arrest and deportation since the union was formed. MTU’s first president was arrested for being in an irregular or undocumented status soon after the union was founded and detained for over a year. Its second president, vice president and general secretary were all arrested on 27 November 2007 on similar grounds in three separate locations in Seoul. They were later deported on 13 December 2007. On 2 May 2008, MTU’s third president and vice president were arrested again under similar circumstances and deported on 15 May 2008, despite a recommendation for a stay of deportation by the National Human Rights Commission until its investigation of the arrests was completed.

Recommendation

Amnesty International calls upon the South Korean government to immediately remove obstacles to forming and participating in the MTU, in particular by recognising its status as a legal union in South Korea in line with domestic law and international law and standards.

The organization calls on the government to ensure the rights of everyone, regardless of their immigration status, to form trade unions and to join a trade union of their choice.

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