



**INTERNATIONAL
LAWYERS ASSISTING
WORKERS NETWORK**

September 18 2023

Won Hee-ryong, Minister
Ministry of Land, Infrastructure and Transport
Government Complex-Sejong
Sejong City 30103
Republic of Korea

Lee Jeong-sik, Minister
Ministry of Employment and Labour
Government Complex Sejong
Sejong City 30117
Republic of Korea

Re: Legality of Industrial Action of KPTU & KRWU

Honorable Ministers

On behalf of the International Lawyers Assisting Workers (ILAW) Network, which represents nearly 1,100 worker rights lawyers in over 90 countries, including in the Republic of Korea (ROK), we reject the Ministry of Land, Infrastructure and Transport's (MOLIT) assertion that the planned joint industrial action by the Korean Public Service and Transport Workers' Union (KPTU) and the Korean Railway Workers Union (KRWU) is illegal because its aim is to oppose government policies on restructuring and/or privatization of public services. The International Labor Organization (ILO) has on many occasions, including in previous cases concerning the ROK, spoken to the legitimacy of such strikes. We are particularly concerned in light of the government's long and well documented history of declaring legitimate strikes illegal, and subsequently imposing devastating fines on trade unions and imprisonment for union leaders.

The ILAW Network therefore calls on the government to respect fully the fundamental rights to freedom of association and to collectively bargain, including to strike on matters of direct concern to workers, and on the Korea Railroad Corporation (KORAIL) to bargain in good faith with the union – including on potential privatization.

On August 30, 2023, a majority of KRWU members voted to support strike action in response to the KORAIL management's rejection of the union's proposals on pay and its failure to respect past agreements and improve the shift system. KORAIL has also refused to integrate high-speed rail operations in favor of more competition, which the union views as a move towards privatization. The union has called for a first round of strike action starting September 14. Despite

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rail services not being an essential service under international labor law, the union has explained it would respect national rules on the maintenance of essential services. As such, 9,300 members will remain on the job to maintain service levels.

While under Korean law it may be possible to declare a strike illegal if it includes demands related to ‘government policy’, the ILO has previously determined that this restriction is not in line with international law. The Committee on Freedom of Association (CFA) has held, “The occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.”¹

We also understand that national labor law treats rail service as essential and has thus required 9,300 members of KPTU-KRWU to remain in service in order to maintain service levels. We also understand that the government plans to bring in replacement workers from the military and reinforcements to maintain 70% of the metropolitan rail service during the strike. ILO CFA has previously rebuked the government of Korea for imposing an excessively high minimum service requirement which rendered strikes ineffective.² As such, a minimum service requirement should not even be imposed unless, “given the particular situation of the railway services of a country, a total and prolonged stoppage could lead to a situation of acute national emergency endangering the well-being of the population”³ Further, the government must not mobilize replacement workers, including those from the military. As the unions’ strike is legal, the use of replacement workers is of course not lawfully permitted. As the ILO has explained, “If a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights.”⁴

Finally, the ILO has also previously called on the government to desist from charging workers involved in industrial action under section 314 of the Penal Code (‘obstruction of business’). The application of this criminal charge to lawful strike clearly violates the right to freedom of association.⁵

In sum, we call on the government to respect fully the fundamental rights to freedom of association and to collectively bargain, including to strike on matters of direct concern to workers. Rather, the government and management must enter dialogue with the KRWU to

¹ See CFA, Compilation of Decisions, para 758. See also, CFA Case No 2602, Report 355 (Korea)

² See Case 1865 (Korea) Report No. 363 (March 2012), para. 45, 103, 119.

³ See, e.g., CFA Case No. 1923 (Croatia), 7 February 1997, para. 221.

⁴ CFA, Compilation of Decisions, para 919. See also, CFA Case No 2602, Report 355 (Korea)

⁵ See CFA Cases 1865, 2602, 2829, and 3237 (Korea).



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discuss the issues related to privatization. Further, the government should refrain from the use of replacement workers, including those from the military, imposing fines or filing 'obstruction of business' charges against union members. KORAIL should also not take any disciplinary measures, including suspension or dismissal, for participation in this lawful strike.

Sincerely,

Jeffrey Vogt
Chair, ILAW Network