The Employment Adjustment and the Labor Law under the prolonged recession

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Introduction-the theme of my report

My dear colleagues!

This is my first visit to Bandung. But Bandung is a very familiar place to me, because of the two reasons. The first reason is that UNPAD is situated here in Bandung. Historically speaking, in 1955, in this city was held an important international congress, which afterwards the world people called "the Bandung Congress". This is the second reason. So I am very glad to give you an academic report about the employment situation and the labour law of Japan.

In this report, I am going to point out three problems; the employment adjustment under the prolonged economic slump since 1991, the employment adjustment dismissal from a legal point of view, and the future of the so-called Japanese-style employment system. But I fear that my poor English may hinder you from understanding those problems.

Part I The Employment Adjustment under the prolonged recession

1) Now the Japanese economy suffers from a serious slump. It is already 40 months since the recession began in May 1991. The White Paper on Economy of 1994 characterizes this recession as the biggest one after the second world war Ⅱ, both in the length of the period and in the depth of the recession. But last week the government announced, "the economy is headed toward recovery but stopped short of official declaring an end to the longest postwar recession".

2) Under this economic slump, storm of "rationalization" is unleashed. In order to maintain their wealth, major corporation has intensified the implementation of rationalization of the workforce. Many companies take various employment adjustment measures such as

(1) overtime restrictions
(2) curbs on or cuts in the recruitment of part-time workers, full-time workers in the middle of term and new graduates
(3) relocation within the company
(4) transfer to related corporations
(5) temporary suspension of work
(6) voluntary retirement
(7) dismissal

According to the Labour Economy Trend Survey released by Ministry of Labor, the ratio of companies which carried out employment adjustment in one form or another during the July-Septem of 1993 is 46 % in the manufacturing sector and the measures of employment adjustment have actually been taken. Moreover, I show you the concrete cases of employment adjustment in some major companies as NTT. NISSAN and NKK .

What is the major targets for the employment adjustment ?

It is said to be comparatively high-paid workers of middle and elder age, especially white color and managerial workers.

A recent investigation concerning the corporate restructuring made it clear: the number of the workers in the major corporation shrank about 140,000 during these six mouths. Concretely showing the figures, NTT has reduced its employees by about 14,000, Toyota by about 2,300 and HITACHI by about 2,200. These facts show us that the major companies which have been the engine of the Japanese economy face a serious slump. In this way, major corporations are pushing ahead with rationalization at home. But at the same time, they are making rapid inroads into foreign countries under the impact of the yen's appreciation. Such a strategy results "an industrial hollowing out or a dismantling of economic industry", which necessarily aggravate the job uncertainty all over the country.

3) Our economy is headed toward recovery. Nevertheless, the employment situation is even now worsening. The unemployment rate in July this year rose to a seven-year high of 3.0 percent, matching the second worst record in the post war period. The number of unemployed came to 1.88 million people. And in the month, the ratio of job offers to job seekers-a key indicator of labor demand-worsened 0.11 points from June to a seasonal adjusted 0.62 point.

Part Ⅱ The Employment Adjustment Dismissal: Statule-laws and Precedents

1) Among many methods of the employment adjustment, the absolute and ultimate one is the employment adjustment dismissal, in other words, the dismissal for economic reasons. Now I refer to the employment adjustment dismissal from a legal point of view.

2) In Japan, unlike most European countries, there is no general

legislation which fundamentally restricts the employer's right to dismiss. So you may imagine bow big the right is. However, the right to dismiss is severely restricted under the following system.

The Civil Code of 1896 permits the employer's right of dismissal. But, by the Constitution of 1947, all people are guaranteed the two fundamental human rights. The first is the right to maintain the minimum standards of wholesome and cultured being (Article 25) and the second is the right to work (Article 27). So, in order to realize these two rights, the employer's right to dismiss is restricted by the Labor Law. The Labor Standards Law of 1947 prohibits dismissals for certain period and requires 30 days' advance notice before dismissal. Besides these, there are also various laws prohibiting discriminatory dismissals.

These are not all that restricts the employer's right to dismiss. Here I must explain you the dismissal theory established by courts.

Relying on the general clause of the Civil Code, some districts courts made decisions regarding objectively unreasonable dismissal or socially unacceptable dismissal as an abuse of the right to dismiss, and they declared such dismissals invalid. This is the theory of abuse of the right to dismiss.

Afterwards, this theory was also applied to the employment adjustment dismissal, under the severe recession triggered by the oil crisis in 1970s. Therefore, any employment adjustment dismissal should be rejected as an abuse of the right to dismiss, unless it meets the following four requirements.

First, a personnel reduction must be based on business slump.

Second, the employer is obligated to take every possible measures to avoid dismissals.

Third, the selection of employees to be dismissed must be made on an objective and reasonable basis.

Fourth, management must explain the necessity of dismissal, its time, scale and method to the labor union and consult with it in good faith.

If, an employer fails to meet any of these four requirements, the dismissal is regarded as an abuse of the right to dismiss. Thus, inferior courts have established the precedent theory which is called the four requirements for recognizing the validity of employment adjustment dismissals.

3) In this way, the employer's right to dismiss is significantly restricted even in times of recession. Surely this precedent theory has played an important role in protecting the dismissed employees. But, to my regret, the theory has a decisive defect. What is the decisive defect ? In our legal system, a precedent is not admitted as a source of law. So, if a dismissed employee wants to be protected by the precedent theory, the employee must bring a civil suit against the employer and that must win the case. It generally requires both money and time for a worker to do so. Thus, the precedent theory can have only a de facto binding force.

Now I tell you that in Japan, there should be enacted such a legislation generally prohibiting dismissals as in some European countries. In other words, our legal system should have a statute-law which prohibits dismissals without just cause and puts on employers the burden of proof as to the existence of just cause for dismissals.

4) In Japan, there is a famous lawyers' group for protecting workers legally, in which about 1,400 advocates participate. Since the beginning of last year, the group opend "employment adjustment hotlines" several times in the main cities, containing Kagoshima. The purpose of the hotlines is to hear the workers' worries about the employment adjustments and to advise them how to confront the employment adjustment measures. The number of the consultations by telephone far exceeded the organizers' expectations and the consultations were mainly related to dismissals or coecions into voluntary

retirement.

This spring, the lawyers' group announced a proposal for enacting the employment contract law. The proposal, consisting of 6 chapters and 53 articles, covers all the phases of the employment relation from recruitment to dismissal.

In this proposal, there are many concrete articles for protecting and advancing workers' rights in company. I explain you some articles. First of all, Article 1 declares the purpose of the employment contract law as following: to confirm the employee's equal standing with the employer, to clarify the rights and duties between the employee and the employer and to assure the workers the wholesome and cultured living worthy of human being. The fourth chapter aims at protecting workers from dismissals. Article 35 paragraph 1 stipulates that an employer should not dismiss employees without just cause. And paragraph 3 of the article clearly includes that precedent theory of the four requirements for recognizing the validity of employment adjustment dismissals set by courts. This proposal also refers to the tentative employment agreement, the relocation within the company and the transfer to the related corporations.

Part Ⅲ Where is the Japanese-style Employment System is going?

As pointed out above, the main targets of the employment adjustment are the comparatively high-paid workers of middle and elder age. So, there happens a debate as to where the Japanese-style employment system is giong.

What is now called the Japanese-style employment system is a product of history. The system has two sides: lifetime employment and seniority-wage. What is the lifetime employment system ? Each enterprise recruits most of its regular employees in April right after graduation from high school or

college. Usually, after a period of probation, workers gain the status of regular employees. Thereafter they are expected to stay in the particular enterprise until they reach the retirement age. Employers are not expected to dismiss regular employees. This is the lifetime employment system.

Then, what is the seniority-wage system?

Regular employees receive annual wage increments which are given automatically with each year of service. Thus, the total income of each employee increases in accordance with the length of time he has worked in the enterprise. This wage system is called the seniority-wage system.

As to the future of the Japanese-style employment system, some people say that the system is finished or is collapsing as a whole. But, the White Paper on Economy of this year analyses as follows : there can he found no trace as to the lifetime employment system is collapsing, because even in this recession, corporations still have the consciousness to maintain the lifetime employment system, while it will be difficult to keep the seniority-wage system as it exists, on account of the changes of the economic conditions which have enabled the wage system. In this way, the White Paper analyses the system separately, not entirely.

Thank you very much for your listening to me!