Working Women's Network

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TO: Secretary, Committee on Economic, Social and Cultural Rights for the 50th Session: Japan

The Report by Working Women's Network

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Report by WWN to the examination of the third periodic report of Japan

Article 2 paragraph 2: Non-discrimination — 1

◆The Equal Employment Opportunity Law and other major issues

The Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment (Equal Employment Opportunity Law) prohibits discrimination of workers on grounds of gender, as the Government replies, but there are two problems.

1) There is no explicit definition of "discrimination."

For example, regarding remuneration, because there is no definition of discrimination in the law, female workers and workers in non-regular employment continue to work for low pay.

2) The track-based system was introduced using the provision on "employment management category" in the Guideline under the Equal Employment Opportunity Law. This led to indirect discrimination.

The Guideline under the Equal Employment Opportunity Law provided for "employment management categories" which were used by large companies including financial and trading companies, to introduce the "integrated" tracks, which led to management positions, and "general" tracks, which did not.

Only 5.6% of employees in the "integrated" tracks were women, and the "general" tracks were comprised overwhelmingly of women. The Guideline stipulates that discrimination is prohibited within a single employment category. This means that discrimination is permitted when the employment categories differ. (See chart below.)

The result was indirect discrimination, by which many women were placed in low paying jobs with no promotion.

According to the Guideline, an "employment management category" is a category of workers distinguishable by the kind of jobs (including the integrated, or general jobs), forms of employment (including regular employees, part-time workers), or form of work conditions.

Regarding indirect discrimination, a Member of CEDAW commented at the

examination of the report of Japan in 2003, that it was a problem that the Guideline under the Equal Employment Opportunity Law permitted different employment management categories, and that the concentration of women in areas of low pay and few promotion opportunities would be considered indirect discrimination in other industrialized countries. She asked whether the limitation of comparison within employment management categories did not amount to indirect discrimination.

★ Comparison of the EEOL and the Guideline

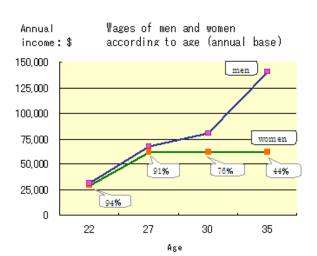
EEOL	Guideline	
(Article 5) prohibition of discriminatory	(related to Article 5) prohibition of exclusion of	
treatment in recruitment and hiring on grounds	either men or women from recruitment and	
of sex	hiring, in a single employment management	
	category	
(Article 6) prohibition of discriminatory	(related to Article 6) prohibition of exclusion of	
treatment in assignment, promotion, demotion,	either men or women from promotion to	
training, etc. on grounds of sex	positions of certain levels <u>in a single</u>	
	employment management category	

★ Survey of companies using the track-based employment management system according to the Ministry of Health, Labor and Welfare

year	Number of companies using the track-based system	Percentage of women in the "integrated" tracks
2000	215	2.2%
2003	236	3.1%
2004	180	5.1%
2011	129	5.6%

3

★ A case of a major trading company: women comprise 3% of employees in the "integrated" tracks. Women's pay stop rising when she is 35, and their annual earnings is 44% of a 27 year old male employee. (2007)



WWN's proposals for recommendation

- 1. A definition of discrimination according to Article 1 of CEDAW should be explicitly included in the Equal Employment Opportunity Law.
- 2. Employment category under the EEO Guidelines should be abolished.
- 3. The following case should be added to the list of indirect discrimination stipulated in the Guideline, and ultimately, there should be an explicit prohibition of indirect discrimination.
- * the track-based personnel system

Reasons – creating a "general" track that is comprised overwhelmingly of women, under the term of employment management category or job category, and allowing difference in pay, promotion and training is indirectly discriminatory.

Article 2 paragraph 2: Non-discrimination—2

- ◆ The effectiveness of Article 14 of the Constitution
- —re the Sumitomo case—

In August 1995, 2 women working for Sumitomo Electric Industries filed suit against their employers for discrimination in pay and promotion, compared with their male counterparts, who had the same educational background, and who had worked for the same number of years.

All of the male employees who had started to work at the same time as the 2 women, who had the same educational backgrounds, and who were engaged in the same work, were promoted to management positions after 17 years in employment. The women remained in the non-management positions, and the pay difference amounted to a maximum of 240,000 yen per month.

The judgment issued in 2000 found that there was discrimination that was against the objectives of Article 14 of the Constitution, which prohibited discrimination based on gender and other grounds. Yet it dismissed the suit, holding that the pay and promotion gap did not violate the public welfare or the public order and good morals provision of the Civil Code, based on the social understanding of the time the plaintiffs were hired.

Further in a case of discrimination against women against the Chugoku Electric Power Co., Ltd, the District Court issued a judgment in May 2011, finding discrimination against women in promotion. But it quoted from the results of a questionnaire conducted in 1997, in which 75% of the women responded that they

did not want to be promoted to management positions, because it was difficult to balance work and family, among other reasons, and dismissed the case, tolerating discrimination based on what women thought 14 years ago. The case is being appealed.

WWN's proposals for recommendation

We propose a recommendation for implementation of gender education for the judiciary, so that equality between men and women according to Article 2 paragraph 2 of the Covenant will be realized.

Article 3: Equal rights for men and women

On Question 5: The reason why the proportion of women in management positions in the workplace does not increase

The Government states in its Replies that, "the percentage of women among all persons in a 'commanding position' has been gradually increasing" but in reality, the situation has not progressed much. WWN has conducted a survey to prepare a report for the follow-up procedures for CEDAW, on women working in regular employment (under full-time indefinite contracts) as well as private companies regarding promotion of women in decision-making positions. The results are as follows.

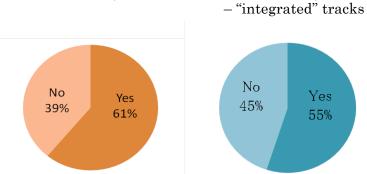
- (1) Results of the interview with women working in regular employment (140 women)
- a) 61 % of women working in companies that did not have a track-based personnel management system responded that they wanted to be promoted to management positions. 55% of women working in companies that have track-based systems, and were in the "integrated" tracks that led to management positions, as well as 23% of women in such companies working in the "general" tracks that did not lead to management positions responded positively to promotion. This shows that women in companies that did not have a track-based system had a clear vision about the path to management, as they had role models, and for other reasons. On the other hand, 77% of those in the "general" tracks responded that they did not want to be promoted, showing that for them, the path to management positions was closed, even when they wanted to be promoted. It is clear that the track-based system obstructs the path to promotion.

Q: Do you want to be promoted to management positions?

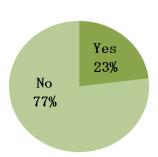
Companies with

track-based systems

Companies without track-based systems



Companies with track-based systems – "general" tracks



b) For women, in companies both without and with track-based systems, "long working hours" and "balancing work and home life" topped the list of their concerns and uncertainties regarding promotion to management positions. On the other hand, women in the "general" tracks raised "lack of training and experience" and "lack of confidence in capacity" as reasons for not wanting to be promoted. This shows that women in "general" tracks are excluded from building their capacities for the career.

◆Concerns, uncertainties about being promoted to management positions

★Women working in companies with no track-based system		
1	Long working hours, difficult personal relationships	32%
2	Balancing work and home life	27%
3	Women are not expected to accomplish much	19%

◆ Concerns, uncertainties about being promoted to management positions

★Women working integrated track jobs		
1	Long working hours	60%
2	Balancing work and home life	50%
3	Lack of confidence in physical stamina	30%

◆ Reasons for not wanting to be promoted to management positions

Women working in general track jobs (first three)		
1	Lack of training and experience	50%
2	Balancing work and home life	40%
3	Lack of confidence in capacity	30%

(2) The men's views in a street interview (145 people)

27% of the men responded that they did not want to be promoted to management positions. The major reason, that 42% of them raised was, that the responsibilities would be heavier. Half of the women responded that balancing work and home life would be difficult.

(3) Interview with companies, including those that have signed on to the UN Global Compact (32 companies)

The corporate policies regarding promotion of women have changed in the last 5 to 10 years. The major feature behind this is the strong leadership from the top management.

What became clear in the survey

- 1) The path to management positions is open tot women working in companies without track-based systems, and women who comprise just 5.6% in the "integrated" tracks in companies with track-based systems. The track-based system is an obstacle in promotion of women.
- 2) The number of workers in non-regular employment has increased to 18 million (2012). 70% of them are women, and they work for low pay with no prospects for promotion or pay raise. This is also indirect discrimination.

WWN's proposal for recommendation

- 1) The track-based system should be abolished to promote more women to decision-making positions.
- 2) The number of women in non-regular employment would enable them to shine like diamonds.
- 3) In order to show the results of the promotion of women to decision-making positions in the workplace, the inclusion of the number of men and women in management positions, in the executive positions and pay should be required in the annual security report.
- 4) The Government plans to increase the proportion of women in management positions in private companies to 10% by 2015, but the target should be 30% by 2020 for all areas including private companies.

Article 3: Equal rights for men and women

Question 5 part 2: The issue of gender wage gap

◆ Women earn 58% of men's wages (WWN survey)

According to the Government replies, the gender wage gap was 100:70.6 in 2011. However, these figures do not include part-time workers, who comprise approximately 30% of the workforce. WWN used the Basic Survey on Wage Structure (national) (Ministry of Health, Labor and Welfare) for 2011 published on February 22, 2013 to calculate the comparison of wages, as shown below. The result was an average wage of 294,683 yen/month for men, and 170,971 yen/month for women, or a ratio of 100:58.

Calculation ((the number of general (full-time) workers x wages of general (full-time) workers) + (the number of part-time workers x hourly pay for part-time workers x working hours per day of part-time workers x working days per month of part-time workers)) / the total number of workers = wages /month

Men =((25.76 million x 328,300) + (4.31 million x 1,092 x 5.4 x 15.9)) /30.07 million = 294,683 (100)

Women ((12.84 million x 231,900) + (9.53 million x 988 x 5.2 x 17.3)) / 22.37 million = 170,971 (58)

2. Scope of calculations

The figures in the Government replies cover general workers (workers in regular employment excluding part-time workers), which is only a part of the workforce. Part-time workers (13.84 million) comprise 26% of the workforce, and 70% of them are women (9.53 million).

3. The hourly pay for part-time workers is 988 yen per hour for women and 1,092 yen per hour for men. Even in this category, women are paid less than men, and these figures are not included in the figures given in the Government replies.

Reference: According to the Labor Force Survey published by the Ministry of Internal Affairs and Communications in February 2013, the number of workers in regular employment was an average of 33.40 million in the year, 120,000 less than the previous year. Meanwhile, non-regular workforce, including part-time and

'dispatch' workers, was at 18.13 million which was an increase of 20,000 from the previous year. Among the non-regular workforce, 5.66 million were male, which was 50,000 less than the previous year, while 12.47 million were women, an increase of 60,000. The gender wage gap is likely to continue to grow.

WWN's proposal for recommendation

In calculating the gender wage gap, all workers including part-time workers and other non-regular workers should be covered in the calculations.

On Article 6 – The restriction to the right to work, which includes the right of everyone to the opportunity to gain his/her living by work which he/she freely chooses or accepts.

◆Prada Japan dismisses a female senior manager for reporting sexual harassment to the Headquarters in Milan

After graduating from a university in New York, Ms. Rina Bovrisse worked for almost 20 years in the fashion industry, in Paris and New York, mostly at Chanel. She then built her career at the U.S. Headquarters of Prada in New York, and started to work for Prada Japan in April 2009. She was the General Manager overseeing 2 sections, and was directly under the Italian President. Her work included heading the Retail Operation Department, overseeing the operation of 42 shops in Japan, Guam, and Saipan, as well as over 500 staff, and the Customer Service Department, which entailed overseeing retail customer service for Prada and Miu Miu. However, inside Prada Japan, there were daily incidents of sexual and other harassments directed against her and other female employees by the President and the Personnel Manager. She was surprised and reported the incidents to the Headquarters in Milan, calling for a more safe and healthy workplace for women. In Autumn 2009, she received notice of her dismissal. After attempting to solve her case through the labor tribunal, she brought her case to court in March 2010.

Court dismisses case

On October 26, 2012, however, the Tokyo District Court dismissed her case, on both claims submitted by Ms. Bovrisse: the recognition of her status, arguing that her demotion and dismissal were void, and her claims for mental and emotional

damages caused by the harassment by the Personnel Manager. The main reasoning of the Judge Reiko Morioka was that the plaintiff had provided information regarding the three points* below to the Japan Times, a newspaper, which was reported in the paper. This was considered an act injuring the trust and honor of the company, a grounds for dismissal in the company regulations.

* (1) The President had instructed the dismissals of 15 shop managers and assistant shop managers for being too old, too fat, ugly and not having the Prada-look, and that the Personnel Manager had demoted or transferred them for other reasons without mentioning their appearance. (2) The shop staff were often forced to buy handbags with their own money, and the employment security of those who refused was threatened. (3) Ms. Rina Bovrisse heard from the Personnel Manager that the President had said he wanted her to change her hairstyle, to lose weight, and that he was too ashamed to let visitors from Italy see her because she was ugly.

Regarding sexual harassment, the court admitted that the Personnel Manager had asked her to change her hairstyle and to lose weight, but not that she was ugly. According to the court, comments about her physical shape was not directly related to the plaintiff's work, and it could not be denied that in general the representative of the company is lacking in consideration for the plaintiff if he had made such comments. It held that, in considering that President Sesia's actions had started after the plaintiff began coming to work wearing Chanel products, mental damages that should be atoned by monetary compensation could not be found.

Comments from Ms. Mieko Takenobu, journalist, Professor, Wako University Recent court decisions tend to hold company regulations as being paramount and employees who did not follow the company's orders being at fault. The courts are increasingly ignoring the rights of workers.

WWN's views

Ms. Bovrisse brought her case to court because she was suddenly dismissed after reporting the incidents to the Headquarters to improve the conditions at the workplace. The judgment ignores this fact and upheld the company's decision to fire her for leaking information to the media. There were other human right s violations, such as by Judge Morioka, who had called the plaintiff to her room six months before the verdict and forcefully recommended her to agree to a settlement.

This case shows that there are few gender-sensitive-judges who can understand human rights issues including sexual and other harassment cases. The case took 3 years, and the economic and emotional burden on the plaintiff, who was a single mother, was huge. Prada is now suing Ms. Bovrisse for 72 million yen damages for protesting gender discrimination in the company.

Prada should withdraw its suit.

WWN's proposals for recommendation

- 1. The government should comply with Article 6 of the ICESCR, discuss speeding the judicial process, and educate the judiciary on the right to work as well as sexual and other harassment.
- 2. There should be explicit provisions for penalties on sexual harassment in the Equal Employment Opportunity Law.

Article 6: Right to Work

◆The non-renewal of contract by "Hello Work"

The government stated in its replies that employment security and fair treatment had been ensured for fixed-term contract workers. The following is a case in which the right to work, which includes the right of everyone to the opportunity to gain his/her living by work which he/she freely chooses or accepts under Article 6 paragraph 1 was violated. "Hello Work", which is a state organ, and which is in the position to promote employment stability, employed its staff on renewable one-year contracts, even though the work is permanent. It also engaged in arbitrary non-renewal of the contracts.

Ms. Reiko Tokito worked as an employment consultant at "Hello Work" in Osaka Prefecture from April 1, 2002 to March 31, 2011. She was hired on a one-year contract, which was formalistically renewed 9 times. Apart from providing consultation, she also spoke as lecturer in various seminars and was considered a very capable employee. Her senior officers also spoke to her of expectations that she would continue working. She also responded by acquiring qualifications while working to improve her abilities.

In 2009, however, there was an incident of sexual harassment in her workplace. The victim of the incident consulted Ms. Tokito, who provided support. That was when

the attitude of her senior officers changed. The offender of the sexual harassment case was sanctioned in 2010, but Ms. Tokito began to be harassed by her senior officers, and her contract was not renewed at the end of March 2011. In 2012, she brought her case to court against the state, which had violated her rights to continued employment, for compensation.

Article 7: right of everyone to the enjoyment of just and favorable conditions of work

- a) (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
- c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence

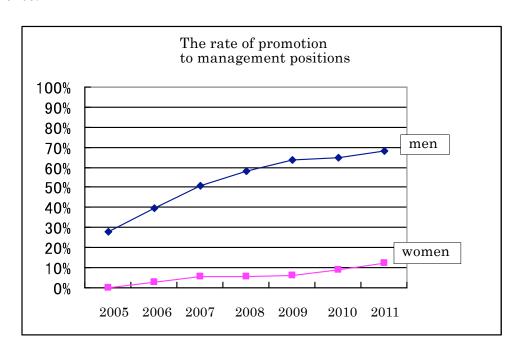
◆ The wage discrimination case against Chugoku Electric Power Co.

The plaintiff, Ms. Nagasako, has been working for the Chugoku Electric Power Co., Ltd since 1981. Her work was always swift, accurate and customer-oriented, and she had outperformed her senior officers in introducing customers to related companies. She was also active in making proposals to improve operations, including those on intellectual property rights, one of which resulted in a patent application. She was active in improving the environment, and contributed to the development of the abilities of the younger staff.

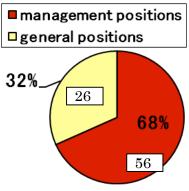
The company adopted a qualification system, and although she was doing the same work as her male counterparts, she was graded lower because she was a woman, and in May 2008, she filed her case in court for discrimination. On March 17, the Hiroshima District Court dismissed her case, and it is now pending at the Appeals Court.

The rate of promotion to management (from 2005 to 2011) among men and women, who joined the company in the same year as the plaintiff, and who had the same educational background, is shown below. And as the graph (2) shows, the number of men and women in management positions is 56 (68%) and 4 (12%) in year 2011, respectively, indicating the clear difference between men and women in promotion. Although the plaintiff has outperformed almost everyone else, she has not been promoted, and has remained in the same rank for 13 years. Now a male colleague,

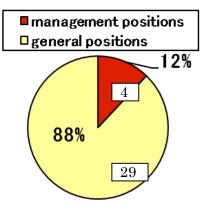
12 years her junior, has overtaken her in promotion. This difference in the treatment of men and women cannot be explained by anything else but gender difference.



The proportion of men in management positions, who joined the company in the same year and has the same educational background as the plaintiff (2011)



Men Total 82 The proportion of women in management positions, who joined the company in the same year and has the same educational background as the plaintiff (2011)



Women Total 33

The judgment at the district court acknowledged that there was difference in the speed with which men and women were promoted, and the number of years they

spent in a particular rank. But it referred to the result of a questionnaire conducted by the company in 1997 on its female employees. It dismissed the claim for discrimination, holding that because there were many female employees in the company who thought that they would work only until they were married or had children, and that women should remain at home, such ideas would influence their motivation to work, therefore it was possible that there would be women, whose assessment would be lower than men. This justification of discrimination using the responses of women 14 years ago is problematic.

It is said that promotion is decided by the results of the personnel assessment in the qualification system. However, many of the points that are assessed, although they may not directly be based on gender, may lead to disadvantages for women. Such assessment points are indirectly discriminatory.

However, under the current Equal Employment Opportunity Law, indirect discrimination is prohibited only in limited cases, and to argue such discrimination, which is not prohibited by the Law, the court has to declare the measure illegal.

WWN's proposals for recommendation

- (1) The principles of equal pay for work of equal value, and of equal pay for equal work should be explicitly included in the law.
- (2) In order to prevent the indirect discrimination by the points of assessment that leads to women being disadvantaged, the provisions on indirect discrimination in the Equal Employment Opportunity Law should be amended according to the standards set by CEDAW.
- (3) Gender education must be implemented for the judiciary.

Article 7: The indirectly discriminatory track-based system

◆ The track-based employment management case against Towa Kogyo

Ms. Keiko Homma started working for Towa Kogyo KK in 1987 as a clerical worker. She requested and was granted transfer to the design section as designing staff in 1990. She was the only woman among the 7 designing staff. She asked for the same pay as the other designing staff (male), but her pay was not reviewed. Instead she received a technical work allowance. In June 1999, the company proposed introducing the track-based personnel system. The notice issued by the employer

explained that the terms, "male employees" and "female employees" would be replaced by the new "integrated jobs" leading to promotion and the clerical "general jobs." The employees were automatically placed in these tracks accordingly. Further, in 2002, a notice was issued that the "general jobs" would apply to current employees, and Ms. Homma was placed in the "general job" position, for reasons of her being a woman, even though she had been doing the same design work as the other male designing staff, who were all placed in the "integrated jobs." The employers no longer paid her the technical work allowance, and the pay difference between her and her male counterparts was 61,500 yen per month. Ms. Homma asked to be transferred to an "integrated job" position as she was doing design work, but the request was refused. She has brought her case to court in 2011, claiming equal pay for work of equal value.

- ◆WWN's Proposals regarding Article 7 a) 1)
- 1. The need for the incorporation of the principle of equal pay for work of equal value (ILO CEACR Comment of 2013 attached)

From :Information System on International Labour Standards
http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO::P13100_COMMENT_ID:3076050

◆ Observation (CEACR) - adopted 2012, published 102nd ILC session(2013)

Equal Remuneration Convention, 1951 (No. 100) - Japan (Ratification: 1967)

Work of equal value. Legislation. The Committee had previously noted that section 4 of the Labour Standards Law did not reflect fully the principle of the Convention. The Committee recalls that section 4 provides that "an employer shall not engage in discriminatory treatment of a woman, as compared to a man with respect to wages, by reason of the worker being a woman", and it asked the Government to take steps to amend the legislation to provide for the principle of equal remuneration for men and women for work of equal value. The Committee notes that the Governing Body tripartite committee concluded that the EEOL, while addressing aspects that might affect wage determination, did not directly deal with equal remuneration between men and women for work of equal value. With respect to section 4 of the Labour Standards Law, the tripartite committee concluded that it did not on its face encompass the concept of "work of equal value "(paragraph 47), and that it did not appear that section 4 was being applied in practice to different job categories, types of jobs, and between employment management

categories (paragraph 52). With respect to the interpretation by the courts of the Labour Standards Law, it was found that section 4 had been applied to different tasks and occupations in only a limited number of cases, namely two district court decisions (paragraph 50). The Committee also notes that the JTUC-RENGO calls for the inclusion of a clause prohibiting wage discrimination based on sex in the EEOL, and for "sex " to be added as a ground of discrimination in section 3 of the Labour Standards Law, which prohibits discrimination in wages, working hours and other working conditions by reason of nationality, faith or social status.

The Committee draws the Government's attention to its General Survey on the Fundamental Conventions, 2012, noting that only prohibiting sex-based wage discrimination generally will not normally be sufficient to give effect to the Convention, because such a prohibition does not capture the concept of "work of equal value" (see General Survey, 2012, paragraph 676). In the General Survey, the Committee also called on countries that retain legal provisions that are narrower than the principle laid down in the Convention, in that they do not give expression to the concept of "work of equal value", to amend their legislation, noting that more narrowly expressed provisions hinder progress in eradicating gender-based pay discrimination (see General Survey, 2012 paragraph 679). The Committee also recalls the high and persistent gender pay gap in Japan, which, based on the most recent information provided by the Government, is 29.4 per cent. The Committee considers that an important component in addressing such a significant gender pay gap will be the development of a clear legislative framework specifically providing for equal remuneration for men and women for work of equal value and for accessible procedures and remedies. The Committee urges the Government to take concrete measures to ensure that there is a legislative framework clearly establishing the right to equal remuneration for men and women for work of equal value and accessible procedures and remedies. The Committee asks the Government to provide detailed information on the measures taken and progress achieved in this regard.

2. The establishment of a gender-neutral job evaluation system is needed.

Recently, the government published a job evaluation system for part-time workers, but it has not been taken up seriously in the workplaces.

The ILO Committee noted that "according to the manual, the comparison permitted is limited to the same jobs or "substantially the same" jobs. This is more restrictive than the principle of the Convention, and the only factor compared is "level of responsibility" which could disadvantage part-time

workers."

The graph below shows the result of a gender-neutral job evaluation that was conducted by a team of experts and workers, which contributed to a great extent in a case regarding wage discrimination at Kanematsu Corp., a trading company. 6 women working for Kanematsu brought their case of wage discrimination to the Tokyo District Court in August 1995. The Supreme Court dismissed the appeals in October 2009, 14 years later, and the judgment at the Appeals Court in their favor became final. The track-based system, in which a 55 year old woman cannot earn more than a 27 year old man, was held to be a violation of Article 4 of the Labor Standards Act. The fact that this case took this long, and also that others, such as the cases against the 3 Sumitomo manufacturers, as well as another trading company, Okaya Koki, took more than 10 years to be solved, is because the principle of equal pay for work of equal value is not incorporated into law, and there are no established gender-neutral job evaluation systems. The government should promptly respond to these issues.

