

<Individual Report(Japan)>

**13. Employment: in relation to paragraph 33 and 34 of the 2003 Concluding Comments  
Re: Employment Discrimination and Balancing between the Job and Family Responsibility**

Equality Action 21

**1) The cause of the wage gap between men and women is that women's work is not valued and female non-regular workers have increased.**

The Japanese government says that the wage gap between men and women is greatly influenced by gaps in job classification (position) and length of service and there is a tendency that the wage gap is reducing over the long term. However, the gaps in job classification and length of service are not the main causes of the wage gap. The range in reduction of the wage gap is small and recently it tends to be stagnant.

Regarding the difference between men and women in the average length of service, it is shorter in case of women than men by 4.5 years that is the same as five years ago. However, with the rapid increase of non-regular workers, the average length of service of both men and women has become shorter since 2003, and it is stagnant now. Regarding the wage gap between men and women due to length of service, the average wage of women was 77.4 % of men in case of one to two years, 71.3% in case of 10 to 14 years and 66.7 % in case of 20 to 24 years (2007). The longer the length of service becomes, the bigger the wage gap becomes. Even over the long term (from 1996 to 2007), the wage gap due to the length of service has become smaller only by 3 % in case of one to two years, 3.9 % in case of 10 to 14 years and 1.6 % in case of 20 to 24 years.

As to the ratio of managerial position, in case of men working for more than ten years, the longer they work for the company, the higher their job classifications and wages become. On the other hand, in case of women, even if the length of service becomes longer, there is not much change in job classifications and wages. There is not much increase in the ratio of women among workers engaging in positions higher than chief clerk. It was 6.1% in 2003 and 8.5% in 2008.

**2) The feminization of poverty has continued to grow.**

With the rapid increase of non-regular workers, the number of female non-regular workers increased to 12 million (54% of female workers) and male non-regular workers to 5.6 million (19% of male workers) in 2008, and it has resulted in the increase of poverty. The number of workers in the private sector with yearly income below 2 million yen, that is called the poverty line, exceeded 10 million. Forty-four percent of women working in the private sector earned below 2 million yen a year. Compared to five years before, the number of female workers with yearly income below 2 million yen increased by 1 million and male workers by 0.7 million. Women tend to suffer from poverty more than men.

### **3) The wage gap due to the employment categories has been expanding even among non-regular workers.**

The employment management categories are expanding not only among regular workers but also among non-regular workers. There is a tendency that women are allocated to the employment category of short-hour and assistant work with hourly wage, and men to the employment category of long-hour and the same work as regular workers with monthly wage. In addition to that, workers who can be transferred to regular workers tend to be male, because men can accept overtime work and company transfer. There is an anxiety that such employment categories will lead women, among non-regular workers, to workers at the bottom of society.

As to dispatch work, male-female occupational segregation and the gender wage gap are big. Women are concentrated to dispatch work through registration. When the law was enacted, dispatch work was applied to professional service. In reality, however, dispatched workers through registration for such work as handling of business machines and filing have increased as the substitute for female regular workers who engage in clerical work. At present, dispatch work is fundamentally liberalized and the biggest number of dispatch work is clerical work targeted for women. The employment period of registration dispatch has become much shorter and the wage has rapidly decreased. It is becoming unstable.

### **4) Women are excluded from the labour market due to pregnancy, childbirth and childcare.**

Women's average length of service has not been increasing. One of the main factors is that women are excluded from the labour market due to childbirth and childcare. Little opportunity for women to reenter employment except as non-regular workers is one of the causes of the wage disparity. Most of non-regular workers are with fixed-term contracts and the requirements for them to take child-care leave are severe. The percentage of workers with fixed-term contracts who took child-care leave is very small. The feature of the labour force participation rate of Japanese women by age group is that the M-shaped curve has not changed yet and its bottom is women in their thirties engaging in childbirth and childcare.

### **5) Revision of laws needed to eliminate discrimination on employment**

#### **① Article 4 of Labour Standards Act**

The Japanese government ratified the ILO Convention No.100 (Equal Remuneration for Work of Equal Value) on the ground of Article 4 of the Labour Standards Act. However, the government should stipulate explicitly in the law that it includes the concept on gender-neutral values of job, a job evaluation system and indirect discrimination.

#### **② Equal Employment Opportunity Law**

The Equal Employment Opportunity Law revised again and enforced in 2007 prohibited indirect discrimination. However, the ordinance of the Ministry of Health, Labour and Welfare under the law covers only three types of indirect discrimination. The ordinance should not limit

types of indirect discrimination.

In addition to that, the prohibition of discrimination is applied only to discrimination within the same employment management category. The employment management categories in the Guidelines should be deleted.

③ Part-Time Work Law

The revised Part-Time Work Law enforced in 2008 prohibited discriminatory treatment of part-time workers who meet three requirements. The law stipulates, whether conversion of work position, company transfer and overtime work are applicable or not is a reasonable factor for the different treatment. However, it is indirect discrimination and such requirement should be deleted in the law.

④ Child Care and Family Care Leave Law

According to the 2004 revision of the Child Care and Family Care Leave Law, the childcare leave has been admitted also to workers under fixed-term contracts. However, the hurdle of requirements for taking child-care leave, including “A person likely to be kept employed after the day on which his/her dependent child reaches one year of age”, is high, and, as a result, many workers under fixed-term contracts have been excluded from the target for workers who can take child-care leave. Such requirements different from regular workers should be removed.

<References>

① **Article 4, Labour Standards Act** (Principle of Equal Wages for Men and Women)

An employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman.

② **Article No.7, Ordinance of MHLW (Ministry of Health, Labour and Welfare) under the Equal Employment Opportunity Law** (Indirect Discrimination)

1) Measures which concern the recruitment and employment of workers and which apply a criterion concerning the worker’s height, weight or physical strength;

2) Measures which concern the recruitment and employment of a ‘main career track employee’ under the employment management differentiated by career tracking and which apply a criterion concerning the worker’s availability for reassignment that results in the relocation of the worker’s residence; and

3) Measures which concern the promotion of workers and which apply a criterion concerning the worker’s experience of having been reassigned to a workplace other than the workplace where the worker had formerly worked.

③ **Article 8, Part-Time Work Law** (Prohibition of Discriminatory Treatment of Part-Time Workers Equivalent to Ordinary Workers)

(1) With regard to a Part-Time Worker for whom the description of his/her work and the level of

responsibilities associated with said work are equal to those of ordinary workers employed at the referenced place of business and who has concluded a labor contract without a definite period with a business operator, and whose Job Description and assignment are likely to be changed within the same range as the Job Description and assignment of said ordinary workers, in light of the practices at said place of business and other circumstances, throughout the entire period until the termination of the employment relationship with said business operator, the business operator shall not engage in discriminatory treatment in terms of the decision of wages, the implementation of education and training, the utilization of welfare facilities and other treatments for workers by reason of being a Part-Time Worker.

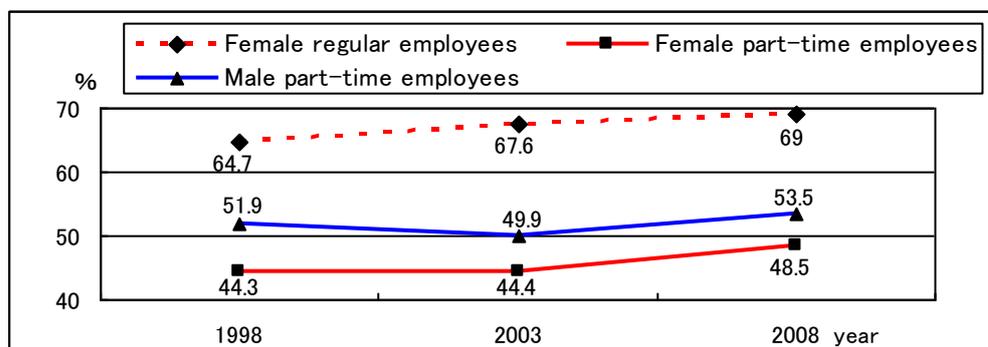
(2) The labor contract without a definite period set forth in the preceding paragraph shall include such a labor contract with a definite period that is repeatedly renewed and is therefore reasonably deemed to be a labor contract without a definite period under socially accepted conventions.

④ **Article 5 of Chapter 2 (Child Care Leave), Child Care and Family Care Leave Law**  
(Application for Child Care Leave)

(1) A worker may take Child Care Leave upon application to his/her employer with regard to the child he or she takes care of is less than one year of age; provided, however, that persons employed for a fixed period of time shall only be able to file such application in cases where he or she falls under both of the following items.

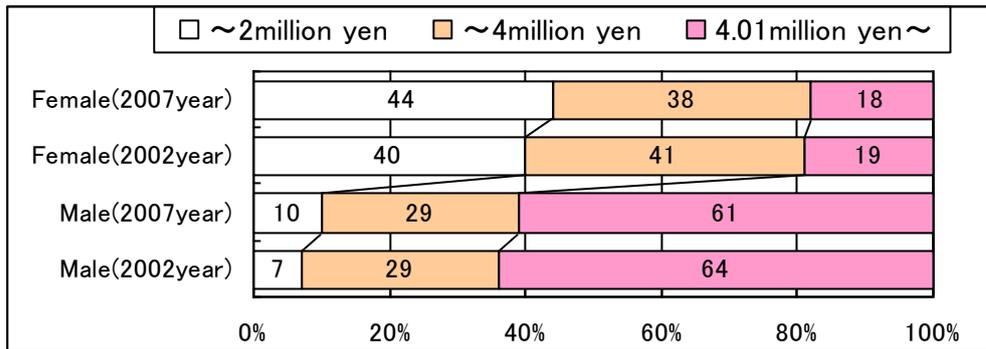
- (i) A person employed by said employer for a continued period of at least one year;
- (ii) A person likely to be kept employed after the day on which his/her dependent child reaches one year of age (excluding a person whose labor contract will expire and clearly not be renewed during the subsequent year from the Date of One Year of Age).

[Figure 1] Hourly Wage Differentials based on Male Regular Employees (men=100)



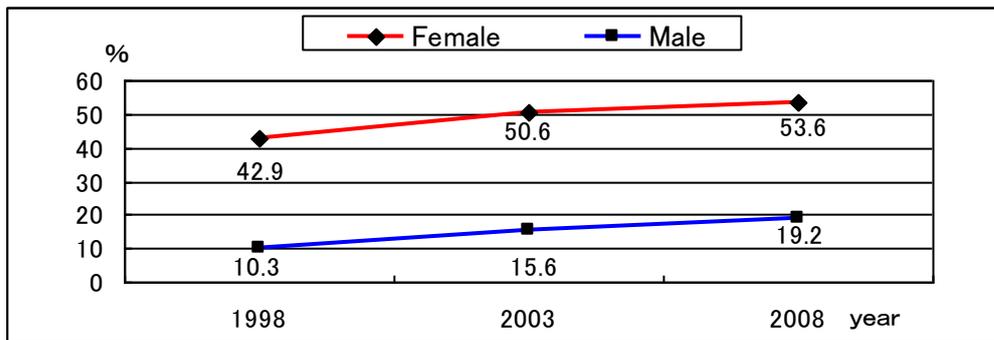
(Source) Ministry of Health, Labor and Welfare, *Basic Statistical Survey on Wage Structure*

[Figure 2] Distribution of Annual Income by Sex



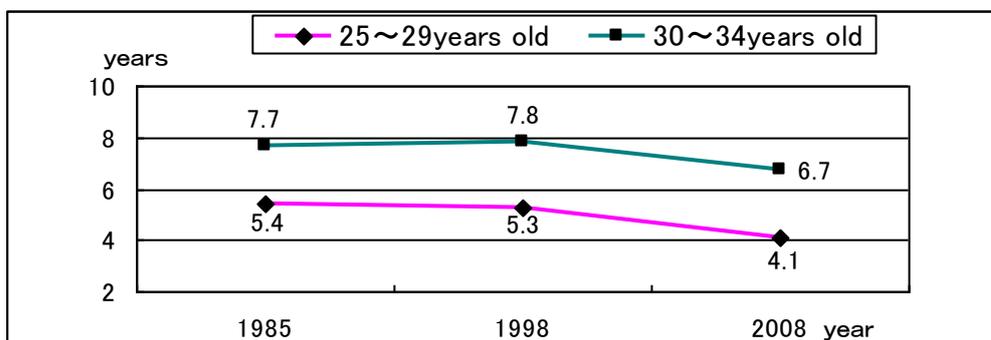
(Source) National Tax Agency, *Basic Statistical Survey on Current Situation of Private Companies Salaries*

[Figure 3] Non-regular Employment Ratio by Sex



(Source) Ministry of Internal Affairs and Communications, *Labor Force Survey*

[Figure 4] Female Average Length of Service by Age Group



(Source) Ministry of Health, Labor and Welfare, *Basic Statistical Survey on Wage Structure*

< **Individual Report (Japan)** >

**13. Employment: Gender wage discrimination (regarding Articles 2 and 11 of CEDAW and No. 21 of List of Issues)**

The ratification of the Optional Protocol to CEDAW by the government of Japan is my last hope.

Mitsue Nozaki

Plaintiff of a case of gender-based wage discrimination in Showa Shell Sekiyu

**Introduction**

On January 22, 2009, the Supreme Court rejected my appeal against the High Court's decision regarding gender wage discrimination by Showa Shell Sekiyu, making the High Court decision final. Consequently, I lost all means of seeking legal remedy in Japan.

Showa Shell Sekiyu was established in 1985 in a merger between Shell Oil, a multinational oil company, and Showa Sekiyu, a Japanese oil company. I worked for Showa Shell Sekiyu for 40 years before the merger, and my lawsuit against the company began in March, 1994.

The lawsuit took a long time. This gender wage gaps, which was a violation of Article 4 of the Labor Standards Law stipulating equal wages between women and men, should have been promptly rectified. The company, however, denied any discrimination against women in their wage system and continually refused to submit documents showing their gender-based wage scheme. This is the reason, in part, that the court case continued to drag on for 13 years when the High Court decision was finally made.

The Lower Court's judgment was a landmark victory, which fully recognized my claim. However, the subsequent decision by the High Court was discriminatory and unacceptable at any measure. Considering all of the sacrifices made and time spent in the deliberation, as well as my age and energy, there was no other option for me but to appeal to the Supreme Court.

**Discrimination based on the idea that it is acceptable to place women at a lower rank when they are working at a position that has been traditionally carried out by Women**

After I joined the company, I obtained specialized skills required for Japanese-language typing and worked as a typist for 20 years. During that time, I also voluntarily learned the skills needed for English-language typing and international telex operations, and continued to work for 10

years using these skills. In the court case, I compared my position and wage with a male coworker who was seven years my junior and had the same educational background as me. He was an international telex operator from the day of his entry until his retirement.

The High Court found the difference in rank between my male coworker and me as justifiable. According to the judgment, as Japanese-language typing is a “special job” and in practice is ranked below that of general office administrative work. Although I had also worked as an international telex operator, the court found the difference in rank between my male counterpart and me was warranted. That is, the decision considered that Japanese-language typing was “women’s work,” and thus its low rank is appropriate.

There is no rational explanation behind the argument that Japanese-language typing should be classified as a “special job” because the jobs of telex operator and typist are not significantly different. The idea itself is a sign of gender-based discriminatory. Japanese-language typewriters have been replaced with personal computers and are no longer used, but I still remember when they were widely used. Even in my own lawsuit at the Lower Court proceedings, the trial documents were made using Japanese-language typewriters from notes in shorthand and later sent to me. Even into the early 1990s Japanese-language typewriters were used to make official documents.

Proficiency on the Japanese typewriter necessitates a great deal of skill and writing ability. It was a machine that copied the mechanisms of the English typewriters first imported in the 1920s from Europe, but in terms of operation, it is totally different. Compared to English typewriters, which operated with only the 26 letters of the alphabet, the Japanese typewriter required nearly 8,000 interchangeable characters, which the operator had to memorize and rearrange throughout usage. It is very difficult to use a Japanese typewriter and it cannot even be compared to an English typewriter in terms of complexity. The High Court decision failed to examine the complexity and nature of this work and simply stated that it was not as valuable as that of my male coworker’s.

#### **The Japanese Government's response to the ratification of CEDAW**

The government of Japan ratified the ILO Convention 100 (Equal Remuneration) in 1967. At that time, the government pointed out that since the essence of the Convention was included in the Labor Standards Law, there was no need to establish additional legislation.

CEDAW, which was adopted by the UN in 1979, stipulates the right for equal remuneration for work of equal value. When Japan ratified this Convention in 1985, it explained their stance that every appropriate measure would be taken in order to ensure that women and men have the right to equal remuneration for work of equal value.

Consequently, the government of Japan is required to conduct gender-neutral job evaluations in order to comply with these international instruments.

### **The Next Step**

The High Court judgment includes other decisions that are intolerable, but we must move forward. There is now no place that I can file my complaint inside Japan. I can only hope that the government of Japan will ratify the Optional Protocol to CEDAW that will create a venue for me to pursue justice. I place my last glimmer of hope in the ratification of the Optional Protocol to CEDAW.

If it is ratified, I will take immediate action to recover my honor, which I feel was violated. I was discriminated against on the basis of my gender. If my actions can encourage and empower other women in Japan who are also fighting against gender-based discrimination, I would feel honored. Women in Japan are forced to remain as second-class citizens in the work place due to gender discrimination. I hope to be able to leave a wonderful gift for the women who follow in my struggle.

I sincerely and respectfully urge the members of the Commission on the Status of Women to put strong pressure on the government of Japan to ratify the Optional Protocol to CEDAW.

< **Individual Report** (Japan) >

**13 Employment : Gender wage discrimination**

Plaintiffs of a case of gender-based wage discrimination in Kanematsu Corporation

**Summary**

\* The widening of the wage gap between men and women due to the gender-based track system proves that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is still not functioning effectively. The Japanese government has yet to realize and make tangible the CEDAW Committee recommendations.

\* The Japanese judiciary, which should bear the role of providing remedies to women who have been discriminated, ignores the principles of elimination of all discrimination under CEDAW and the of elimination of discrimination in pay, based on the principle of equal pay for work of equal value. The court decisions themselves violate CEDAW.

\* The only way, in which the women in Japan can free themselves of the current situation of discrimination, is the ratification of the CEDAW Optional Protocol.

**Explanation**

1. At the time of the previous examination of the Japanese government report under CEDAW, the lower court had decided that the wage gap under the career-track based system, which reinforced and widened the difference in treatment between men and women, was not illegal. Since the examination, the strenuous efforts of working women, using the CEDAW Committee recommendations, among others, had some success. In the case filed by six women working for Kanematsu Corp., a general trading company, the Tokyo Appeals Court decided that the wage gap under the gender-based track system may violate Article 4 of the Labor Standards Act, and ordered payment of approximately 70% of the wages paid to male employees. Yet the judgment had significant problems. First, it continued to adhere to the previous district court judgments' views (which probably reflected the Supreme Court's views), and did not fulfill the provisions of CEDAW calling for elimination of all forms of discrimination against women. Secondly, the judgment did not go far enough to satisfy CEDAW's requirements for elimination of wage discrimination based on the principle of equal pay for work of equal value.

2. The gender-based track system and the judicial decisions in Japan hold the following problems.

The Japanese courts have consistently held that the track-based system violated Article 14 of the Constitution (stipulating the principle of equality of the sexes, as well as the prohibition of discrimination in economic, social and political relationships on grounds of being woman), but was not illegal discrimination (!) The basis of their decision was as follows.

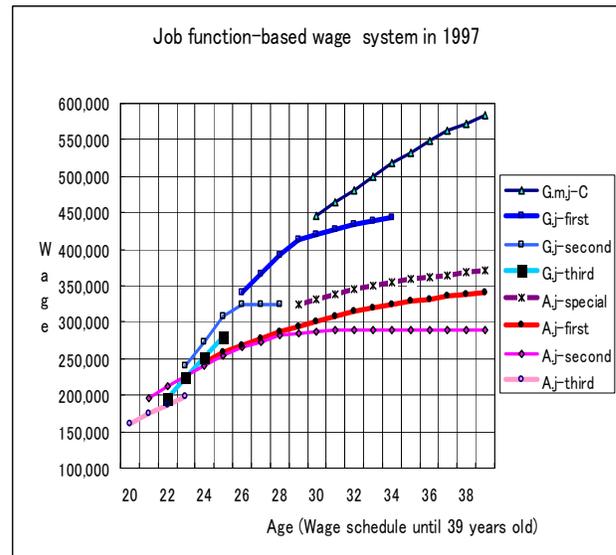
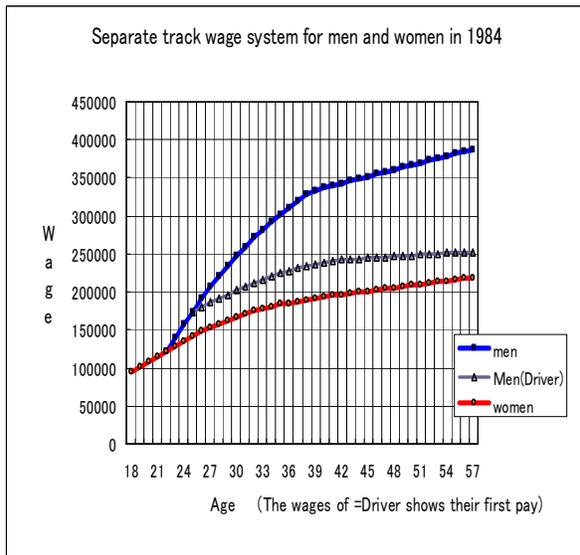
(1) The Constitution cannot be applied directly to the relationship between the company and employee. Domestic legislation prohibiting discrimination is necessary for the judiciary to order the elimination of discrimination.

(2) Since there are no laws specifically prohibiting discrimination in recruitment, hiring, assignment and promotion, the judiciary must look to Article 900 of the Civil Code stipulating public order.

(3) Many Japanese companies have introduced separate recruitment, hiring, assignment and promotion systems for men and women, and it was reasonable to exclude women from the personnel rotation system based on the traditional Japanese assumption that employees will be working for most of their working lives in the same company.

The court in the first instance in the Kanematsu case had decided that since the Equal Employment Opportunity Law (EEOL) merely required companies to make an effort in eliminating discrimination, hiring and assignment based on career tracks would be against the Constitution but not illegal. But the Appeals Court admitted that although the EEOL merely placed a duty to make an effort on companies, it did require elimination of discrimination. Therefore, the court's judgment in holding illegal the discrimination since the EEOL was a huge progress. But the court still held that the legal effect of the gender-based track system prior to the enactment of the EEOL, namely before 1985, was not illegal, and this remains a significant obstacle in providing remedies to the women. Due to this reasoning, there is nothing the women, who were hired before 1985 in the gender-based tracks, can do about the lower pay due to working in the tracks until retirement. Moreover, as the EEOL excludes differences between men and women in different tracks or forms of employment from the prohibition of discrimination based on sex, as long as the employers establish different tracks, the women must continue to work without

any remedies for the discrimination. In Kanematsu Corp., the system has been changed, but the gender discrimination remained unchanged in substance. The wages of female employees are kept lower, and the wage gap between men and women continue to widen.

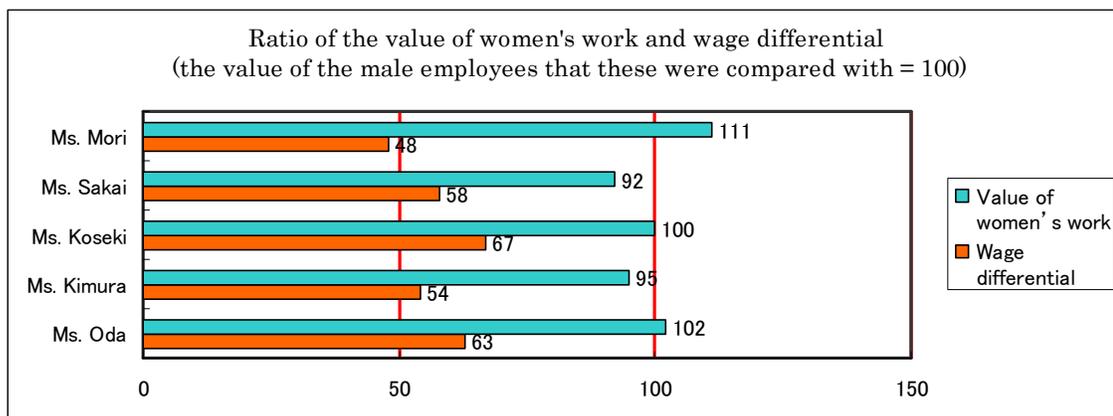


The above judgment by the Japanese courts, holding even statistical discrimination lawful, is a violation of Articles 1, 2 (b), (d), (e) and (f) of CEDAW.

3. The career track based employment management became a problem, because of the unlawful wage gap between men and women using the tracks. The courts have avoided application of Article 4 of the Labor Standards Act, by holding that the gap was an issue of recruitment, hiring, assignment and promotion, and due to difference in the form of contracts. However, the distinctions between the different tracks were, (1) whether the work was routine, assistant work or core work involving decision-making, (2) whether the work involves domestic or overseas transfers, or (3) whether the employee was seen as future management. The criteria themselves were discriminatory. Regarding (1), to distinguish work as assistant or core itself was tantamount to separating men and women. The criteria (2) is indirect discrimination, and cannot provide reasonable grounds for the wage gap. As for (3), it does not even need to be discussed. Regarding (1), even if the employers can show apparent difference in the work, Article 11 para. 1 (d) of CEDAW requires

State Parties to take all appropriate measures to eliminate discrimination against women in the field of employment, in order to ensure, on the basis of equality of men and women, the same rights to equal remuneration (including benefits) and to equal treatment in respect of work of equal value. According to this provision, in cases, in which the legality of the difference or treatment is in question, the work should be examined on the basis of gender-neutral and objective job evaluation. To decide that Article 4 of the Labor Standards Act on pay does not apply due to difference in work is against the Convention Article.

The Tokyo Appeals Court in the above mentioned Kanematsu case recognized the application of Article 4 of the Labor Standards Act, but did not show any specific criteria for correcting wage differences as gender discrimination through “evaluation of work value.” The plaintiffs of the case requested experts to conduct an evaluation of their and their male counterparts’ work, based on internationally recognized job evaluation criteria and procedures. As a result, the plaintiffs proved that the work of one of them had a higher value than that of her male counterpart, and the value of work of the remaining plaintiffs were also no less than that of their counterparts.



The judgment, however, ordered only 70% of the male colleagues’ wages to be paid even for the plaintiffs, whose wage differences were held to be illegal. Two plaintiffs’ claims were dismissed, as their work was not found to be equivalent to that of their male counterparts. This, we believe, shows clearly that the courts lack the appropriate understanding of and perspectives for implementing the “principle of equal pay for work of equal value” called for by CEDAW Article 11 para. 1 (d).

4. The requirement for transfers or mobility was included as one of the criteria for indirect discrimination under the EEOL, and the Tokyo Appeals Court in the Kanematsu case held that creating wage differences based on the transfer criteria as in the above (2) was unreasonable. We believe, that this decision, taking into consideration the situation regarding transfers in general trading companies must be established in future decisions, and that it fulfills the scope of elimination of discrimination under Article 2 of CEDAW.

5. The progress of the Kanematsu case is being followed with greatest attention by workers hoping for equality between men and women in employment in Japan. The reason is because not only did the plaintiff employees appeal, as the Appeals Court decision insufficiently reflected the content and objectives of CEDAW, but the employer also appealed. The company objected to the Appeals Court's holding the discrimination, which was considered legal by past District Court decisions, partially illegal. Whether the Supreme Court decision will be based on the provisions of CEDAW is a matter of great interest as an indication of the direction of the rights of female workers.

In the Showa Shell case filed by Ms. Nozaki, with whom we have fought together in the Supreme Court, the lower court had dismissed the unlawfulness of the ratings and difference in wages that occurred before 1985, holding that the plaintiff's work as a typist in Japanese was routine work. Ms. Nozaki had appealed against this decision, yet the Supreme Court decided to dismiss her appeal. This shows the position of the Supreme Court ignoring the protection of the principle of equal pay for work of equal value set forth in CEDAW, and is unacceptable.

We are determined to make efforts so that the Supreme Court will hold wage discrimination against women illegal, based on CEDAW. To declare such discrimination legal is in violation of CEDAW, but we also need to draw attention to the fact that there is no procedure for remedies, namely, Japan has not yet ratified the CEDAW Optional Protocol, allows the Japanese courts to remain unchanged. The ratification of the Optional Protocol is essential in promoting employment equality in Japan.

## **Related Articles**

## Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

## Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

## Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;