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# Legal Structure of, and Issues with, Japan's Regional Minimum Wage System: Comparative Study of the UK and French Systems, Including the Social Security Systems

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In the 2007 revisions to the Minimum Wages Act, it provides that compatibility with public assistance systems should be taken into consideration when setting regional minimum wage standards in Japan. The problem then arises of how to realize the right to life, an element separate from the interests of the negotiating parties. This paper implements a comparison with the systems of the UK and France, considering the two issues of the methods used for setting minimum wages, and their relationship to social security systems. The Japanese method of decision-making by council operates based on the logic of collective bargaining, and is not suitable to consider the right to life. Ideas on how to solve this include the revision of the nature of representatives of the interests of each side, the creation of a structure that allows external influence on the council system, the adoption of objective standards, etc. In Japan, social security systems for minimum standard of living are mostly unavailable to the long-term unemployed and the “working poor,” leading to excessive expectations of the minimum wage system, which is the only safety net available. Reconsidering the social security system in regard to working-age households is urgently required in order to explore the true role of the minimum wage system.

## **I. Introduction**

### **1. Two Types of Minimum Wage System**

An employment contract is a contract that will provide employer labor for consideration. For this reason, the amount of wage given in return for the provision of labor is an important element of any employment contract. Based on the principle of freedom of contract, which is a major principle within the doctrines of modern civil law, this amount of wage must be decided through agreement between the parties to the contract, i.e. the worker and the person requiring their work (employer).

Many workers, however, find themselves in a position of need, since they are not able to live if they do not have an employment contract. Workers are not able to wait until they can find a contract partner who will meet all the conditions they hope for, since they have to support their own lives in the meantime. On the other hand, the people requiring labor are not usually in such an acute state of need, and can afford to exchange one worker for another if he or she does not agree to the conditions offered. From this point of view, the worker and the person requiring the labor are in significantly different positions in regard to their abilities to negotiate a contract.

For this reason, the principle of freedom of contract in regard to wages has historical-

ly been corrected in two major directions. Firstly, in order to compensate for the weakness of individual workers in negotiations, labor relations developed into a collective bargaining, which makes possible group solidarity and the resulting negotiation advantages. Secondly, labor regulation laws were introduced, through which the State gives a measure of legal force to minimum standards for terms and conditions of employment. Within the history of labor law, the first minimum wage system appeared in 1894 in New Zealand, and a look at the various minimum wage systems that exist around the world today shows that there are two main types—minimum wage systems that seek a general extension of collective agreements resulting from collective bargaining, and those that are directly regulated using legal or other public authority.

Of the latter type, where freedom of contract is directly corrected by law, the method of decision-making, which is the basis for the legitimacy of legal corrections, is at the core of the system.

## 2. Background to This Paper

Japan's minimum wage system is based on the Minimum Wages Act, enacted in 1959, and is categorized into the latter type of the two described above. At its core is the regional minimum wage system, which has, over many years, set the floor of wages. The Minimum Wages Act gave legally binding authority to the values determined mainly by minimum wages councils, which are tripartite agencies.

With the recent increase in irregular workers (part-time, fixed-term and dispatched workers), there are new and increased expectations in regard to the effectiveness of the legal regulation of minimum wages. The minimum wage has thus come to be seen as a safety net for the “working poor.” In 2007, the Minimum Wages Act underwent a significant revision, as a result of which it was clarified that compatibility with public assistance policies needed to be taken into account *vis-à-vis* the cost of living experienced by workers, which is one of the elements that is considered in the setting of regional minimum wages, on the grounds of the constitutional right to life. The reverse phenomenon of minimum wage and public assistance standards had been pointed out from an earlier stage, but it was traditionally thought that the two systems were based on differing philosophies, and this was the first time that the two systems were clearly linked together, based on the key phrase “right to life.” Despite this, no changes were made to the decision-making methods used in setting minimum wages. For this reason, two issues came to light, namely (i) how to specifically reflect the revisions in the methods for decision-making, and (ii) how to establish a specific correlation between the minimum wage and social security systems.

The increase in irregular working and rates of unemployment among young people, along with the spread of poverty, is a common theme among developed countries. In particular in Europe, policies to promote social participation through employment have been implemented ahead of Japan, under the agenda of turning “exclusion” into “inclusion.” This paper looks at the UK and France, both of which use legally binding minimum wage sys-

tems, but with different objectives and methods. It aims to analyze the Japanese legal minimum wage system, its attributes and current issues, from a comparative perspective.

The following consists firstly of an overview of the Japanese legal minimum wage system, with issues compiled in consideration of its relationship to the social security system, and then an analysis of the UK and French systems, in an attempt to provide some answers for the problems faced in Japan.

## II. Japan's Minimum Wage System

### 1. Framework of the Minimum Wages Act

The basis of the current minimum wage legislation in Japan is the regional minimum wage, in accordance with the Minimum Wages Act. Article 1 of the Minimum Wages Act references not only the protection of workers, but also benefits to both employers and society as a whole, stating its objectives as follows: "This Act aims to guarantee the minimum rate of pay for workers in low-paid jobs, in consideration of the type of business or employment, as well as the region concerned, and to improve labor conditions, thereby stabilizing the livelihood of workers, achieving qualitative improvements in the workforce, and ensuring fair competition among businesses, while at the same time contributing to the healthy development of the national economy."

In fact, during the enactment process for the minimum wage system contained within the Labor Standards Act, the precursor to the Minimum Wages Act (and which was never specifically came into force), it was emphasized that a minimum wage system was a specific realization of the right to life provided in Article 25 of the Japanese Constitution. The Minimum Wages Act differs from the Labor Standards Act, which has the protection of workers as its primary objective, in that it may be interpreted as somewhat circumspect in regard to providing absolute standards for the protection of workers' living standards.

This attitude is also demonstrated in the elements considered when deciding on a minimum wage. Article 9, paragraph 2 of the Minimum Wages Act gives the cost of living for workers in the area in question, wages, and the ability of ordinary businesses to pay wages as the three elements that are considered when setting a regional minimum wage. The minimum wage system is therefore positioned as a system to balance these three elements.

### 2. Methods of Decision-Making

The final decision-making authority for regional minimum wages lies with the government. The method of agreements among businesses, which was adopted when the system was first enacted, was abolished with the ratification of the International Labor Convention (No. 268 and No. 131), and ever since that time, the decisions of minimum wages councils have been respected. In particular, since 1968, a method has been adopted whereby the Central Minimum Wages Council indicates proposed guidelines called *meyasu* for any increase, in order to ensure nationwide coordination. This has effectively had a significant

impact on the deliberations of regional minimum wages councils, with whom the final decision rests. Deliberations on *meyasu* within the Central Minimum Wages Council are conducted in close reference to the growth in workers' wages based on the *Survey into the State of Wage Revision*, with members of labor and management delivering their own points of view as part of the process. The consideration of wage levels within the Central Minimum Wages Council can, in other words, be regarded as playing the role of centrally implemented collective bargaining.

Since, however, the committee members of labor and management on minimum wages councils tend to strongly represent the interests of their parent organizations, it is rare for labor and management to agree on the proposed guidelines. In order to overcome this situation, "committee members representing the public interest" serve in coordinating roles, and implement the important function of presenting the final specific proposal, based on the opinions of both labor and management, and growth or otherwise in wages for the year in question. This has for many years resulted in the unusual situation where, as long as labor and management opposed one another's views, the proposal from "members representing the public interest" had a significant impact on *meyasu*, the proposed guidelines.

Against this background, Article 9, Paragraph 3 of the Minimum Wages Act clarifies, subsequent to the 2007 revisions, that the spirit of Article 25 of the Constitution must be realized, and that in considering workers' cost of living as one of the elements in setting minimum wages, attention should also be paid to compatibility with policies related to public assistance benefits. The decision-making methods, though, remained unchanged. For this reason, the labor-management committee members came to independently assert their opinions with regard to how to interpret Article 9 of the revised Act, or what public assistance benefits to refer to as a target for comparison to minimum wages. This significant gap in opinions between labor and management has resulted in a situation where only the committee members representing the public interest can make suggestions on the comparison with public assistance benefits, as well as on the proposed guidelines for regional minimum wages.

### 3. Structural Relationship between the Minimum Wage System and the Social Security System

Next, it is necessary to refer to the social security system, which is closely linked to the minimum wage system as a safety net.

Firstly, the central tenet of the Japanese unemployment compensation system is the unemployment benefits via a system of employment insurance, as a social security benefit to people who are able to work. Unemployment benefits guarantee a proportion of the wages paid before the recipient lost his or her job, but since they are based on an insurance system, they are paid for a maximum of one year, in line with contributions made. As a result, people who remain long-term unemployed are not able to acquire sufficient social security benefits.

On the other hand, social security systems were traditionally conceived to support those without the ability to work, and are typified by the fact that they operate based on strict complementary requirements and are reasonably required to ensure that illegal benefits receipt is strictly eliminated. As such, it is, in principle, difficult for a person who is able to work to be the target of such systems. Recently, the state has been advocated “back to work” programme for the recipient, but most unemployed and the working poor who are able to work, are not considered to be within the scope of these systems. In this way, one of the assumptions behind the debate on the compatibility of minimum wage standards and social security benefit criteria in Japan is the structural problem that there are extremely limited systems available to guarantee a minimum income for the long-term unemployed whose unemployment insurance eligibility have expired, and for the working poor. This structural problem also impacts the problem of minimum wage and social security benefit standards, as outlined below.

#### 4. Relationship between Minimum Wage and Social Security Benefit Standards

Behind the 2007 revisions to the Minimum Wages Act lies an awareness of the reverse phenomenon in the relationship between minimum wage and public assistance standards. It has been pointed out that living standards may be higher for people who are living on public assistance benefits without working, than for those working full time at minimum wage standard. As mentioned above, social security systems are designed, in principle, to apply only to those incapable of working, and to target those outside the labor market. For this reason, there is almost no crossover between those people within the labor market who are targeted by the minimum wage system, which defines minimum labor standards, and those targeted by social security systems. There may therefore be little meaning in trying to equate minimum wages with social security benefits from the perspective of incentivizing work.<sup>1</sup>

The issue of whether Article 9 Paragraph 3 of the Minimum Wages Act only intends to relieve the reverse phenomenon remains a problem to be solved. In other words, there is a need to reconsider whether the problem of the minimum wage and social security benefit standards should be treated merely as an issue of incentivizing work, or whether the deliberations should aim to secure a more conceptual “fairness.”

In addition, as pointed out above, there is very little supplementary income available from the social security system for the working poor in Japan, and as such, the expectations have risen for the role of minimum wages as a safety net for workers. This means, however, that negative impact on employment resulting from minimum wage levels being set too high may pose a much more serious problem in Japan than in countries where more com-

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<sup>1</sup> Practically speaking, “In cases where the minimum wage standard is below the social security benefit level, there is not only a problem from the perspective of guaranteeing the minimum cost of living, but also from the perspective of providing an incentive to work and from the perspective of moral hazard.” (Kihatsu No. 0701001)

prehensive income guarantees are available to the unemployed. It is, therefore, already impossible to debate the minimum wage standard merely within the framework of the minimum wage system.

Furthermore, in contrast to the social security benefits, “the ability of a business to pay” is one of the elements that is considered when setting regional minimum wages. As stated above, the adopted decision-making methods are quasi-collective bargaining in tripartite minimum wage councils. The focus of these councils up until now has been establishing the scope of recommended wage hikes, an issue well suited to bargaining. The 2007 revisions, however, introduced the concept of guaranteeing a minimum standard of living for workers, and as a result, coping with the issue of such standards became a significant focus. This issue is closely linked to the decision-making structure and the question of how policy considerations should be reflected in the setting of regional minimum wages.

## 5. Issues within Japanese Law

The relationship between the structures and standards used in minimum wage systems and social security systems described in I. 3 and 4 above relate to the fundamental issue of the way that the role of a legally binding minimum wage in Japan should be viewed. Up until now, Japan’s regional minimum wages were set in consideration not only of maintaining a stable living standard for workers, but also of the employers’ ability to pay, and the tripartite minimum wages council was expected to offer a system whereby the interests of all parties could be balanced. In other words, the logic of setting wage levels was that the interested parties would negotiate to reach a decision. The role of regional minimum wages was therefore to achieve a fair wage that both labor and management could agree upon. There was no structure that allowed other policy elements to be reflected, and no awareness that this might be necessary.

The greatest problem caused by the 2007 revisions was the introduction of the principle of guaranteeing the right to life, which meant that despite the fact that the role of the regional minimum wages changed from the realization of a fair wage to that of ensuring a minimum standard of living, the specific methods of decision-making were unchanged. Minimum wages councils operate under a system designed for bargaining, and since they have no other function than to reflect the views of the interested parties, the only way that new elements could be reflected in considerations was through the efforts of external third parties. Furthermore, Japan is a country with a minimal system of social security benefits for working-age individual/households, and as such it is a significant problem that neither the role expected of the minimum wage system nor its limits have been clarified. In particular, it is of concern that there is no clear difference in awareness between dealing with the problem of low wages (Article 9, Paragraph 1 of the Minimum Wages Act refers to “guaranteeing the minimum wage value”), and dealing with the problem of poverty (“ensuring a minimum standard of wholesome and cultured living”).

So how can these issues be dealt with? Let us take a look at the systems in place in

the UK and France.

### III. The United Kingdom

#### 1. History of Minimum Wage Systems in the UK

The UK led the world in terms of industrialization, but in the shadow of this success, many workers were forced to work under terrible conditions. The Trade Boards Act of 1909 aimed to improve working conditions for people working in the “sweated trades.” After the Second World War, under the Wages Councils Act of 1945, the system was reorganized into a system of wages councils, which gave legally binding authority to the minimum wage decisions made by tripartite councils in certain sweated industry, based on the traditional British labor relations concept of “collective laissez-faire,” which were published by the government as wages orders. The system attempted to solve the problem of low wages indirectly, through protecting collective bargaining. The wages council system was called into question as economic development took place, and was eventually abolished by the Conservative Party government in 1993, which advocated economic deregulation. With the transfer of power to the Labor Party, however, and the enactment of the National Minimum Wage Act in 1998, the UK saw the arrival of its first nationally standardized, cross-industry minimum wage system, applicable to all workers.

#### 2. The National Minimum Wage System (NMW)

##### (1) Decision-Making Methods

The NMW system has as its first objective a solution to the problem of low wages, although it also aims to stimulate economic growth and reduce the burden on the social security system.<sup>2</sup> The system characteristically takes into consideration not only the interests of workers, but also of employers and taxpayers. Under this system, the UK's economy as a whole and its economic competitiveness are clearly cited as elements for consideration, and any negative impact from excessive wage regulations on employment are to be avoided.

The final decision regarding minimum wage levels lies with the Secretary of State. In fact, recommendations are made by the independent, tripartite Low Pay Commission, and the government has almost always adopted these recommendations without implementing any changes. These recommendations are issued unanimously, which means that the deliberations of the Low Pay Commission are not merely bargaining. Firstly, the opinions of the interested parties are introduced via a process of official hearings at which the labor and management committee members do not participate as representatives of the interests of their parent organizations, but as independent individuals.<sup>3</sup> In order to reach a collective

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<sup>2</sup> The National Minimum Wage Act 1998 does not define these objectives, but the background to the Act is explained by the Low Pay Commission.

<sup>3</sup> William Brown, The Process of Fixing the British National Minimum Wage, 1997-2007, *British Journal of Industrial Relations* 47: 2 June 2009, pp. 429-443.

stance on minimizing any negative impact on employment while improvements are implemented in regard to the problem of low wages, it is considered important that an objective criteria to which everyone involved can agree be adopted, and to this end, a range of data and surveys are utilized. The Act states, in regard to elements for consideration, that by law the Low Pay Commission “shall have regard to the effect of this Act on the economy of the United Kingdom as a whole and on competitiveness.”<sup>4</sup> To put it another way, the NMW system is based not on bargaining between labor and management, but is rather one aspect of evidence-based policy making, designed to avoid any negative impact on the economy while implementing improvements to the problems caused by low wages. In fact, it is said that the Low Pay Commission takes the impact of their decision on employment as a major element in their considerations.

## (2) The Low Pay Commission

In this way, it is worth noting that the Low Pay Commission does not, in fact, function as an alternative to collective bargaining. Members of the Low Pay Commission do not represent the interests of their parent organizations, but rather, it is emphasized that they are independent individuals. The Commission also differs from trade boards and wages councils in that there are no regulations requiring the same number of representatives from both labor and management. Furthermore, decisions regarding the national minimum wage are based on detailed statistical data, and the basis of decisions reached is scrutinized, with the data on which judgments are based also being published alongside the advice of the Commission. As a result, the Low Pay Commission is able to transcend the differences between labor and management, and present conclusions agreed upon unanimously by all members.

The Low Pay Commission is tripartite in its structure, but despite this, there are three main reasons why it is able to consider the issues in a way that transcends mere bargaining by interested parties. Firstly, the opinions of interested parties are handled via a different route to the Commission’s deliberations. Secondly, the Commission members have a shared awareness of the role of the minimum wage, giving an incentive to reach a unanimous agreement. Thirdly, they provide a clear basis for their judgment regarding the amount of the minimum wage.

## 3. The Relationship between the UK’s Minimum Wage and Social Security Systems

### (1) Structural Relationship

Next, we will look at the relationship between the minimum wage and social security systems. Upon examination, it can be seen that in the UK, the two are basically thought to be unrelated.

The reason why the relationship between the minimum wage system and the social

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<sup>4</sup> National Minimum Wage Act 1998, s 7(5).



security and tax systems are not recognized in the UK lies in the fact that the decision-making bodies are different for the former and the latter. In comparison with the social security and tax systems, in which decisions are made by the government, the minimum wage is an issue of wages, which should, in principle, be decided between labor and management, and it has traditionally been felt that the two were not correlated. However, this was not the only reason; the structural relationship between the minimum wage system and the social security benefits/tax systems also needs to be considered.

Firstly, under the British social security system, people who are considered able to work but who cannot find employment within the labor market are awarded a Jobseeker's Allowance.<sup>5</sup> This requires the conclusion of a Jobseeker's Agreement, which obliges the recipient to proactively look for work. In contrast to this, Income Support, which is a public assistance benefit, is paid to people who are considered unable to work, thereby distinguishing people receiving unemployment support from those on public assistance benefits.<sup>6</sup> In addition to and separate from these two, a graded income supplement system known as the Working Tax Credit is prepared for households who are employed, but whose income falls below a certain level.<sup>7</sup> In comparison with the minimum wage, which is an issue of worker's earnings, the Working Tax Credit system relates to household income, and makes it possible to engage more directly with the issue of poverty. A particular attribute of the Working Tax Credit is that it can also apply to people working at the minimum wage level. This allows the creation of a system under which low wages do not necessarily result in low income (poverty). From this, it is important to understand that in the UK, the minimum wage is not the only safety net available to workers.

## (2) Relationship between Standards

In this way, since it is possible to work at the minimum wage in the UK but also have a minimum standard of living guaranteed if one's household income falls below a certain level, the structure is such that the wage standard is not the only criteria applied in order to establish the standard of living of workers. For this reason, there is no direct relationship between the individual wages of a worker and their household income.

Furthermore, from this structural relationship, the criteria for minimum wages and the social security benefits can be seen as not mutually referencing one another. The reason for this is that the minimum wage level is not thought to have a particularly significant impact on the guarantee of a minimum standard of living for workers. Since minimum wage levels do not relate directly to workers' standards of living, minimum wage legislation is able to commit itself to an entirely independent role.

In fact, there is no legal provision within the UK that minimum wage levels and so-

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<sup>5</sup> Jobseekers Act 1995.

<sup>6</sup> Social Security Contributions and Benefits Act 1992, s 124(1).

<sup>7</sup> Tax Credits Act 2002, s 3(3), Working Tax Credit (Entitlement & Maximum Rate) Regulations 2002.

cial security benefits criteria are required to reference one another. The decisions regarding the National Minimum Wage are made with the objective of improving low wages only to an extent that does not have a negative impact on employment, and the concept of a “living wage” is clearly excluded. There is no awareness of any correlation between this and the social security benefits or tax systems. On the other hand, when deciding on the amount of social security benefits, wages do not tend to be considered as reference criteria; rather, the only issue considered when raising the standard of social security benefits is the price index.

## **IV. France**

### **1. History of Minimum Wage Systems in France**

Next, we will look at basic information regarding French minimum wage systems. The first minimum wage system in France was the *Salaire minimum interprofessionnel garanti* (SMIG), introduced in 1950 across all professions. This was a wage system introduced post-war by the government of the day, as part of the Collective Agreement Act, designed to change over from wage control to the liberalized setting of wages by labor and management, and it featured a legally protected minimum standard. The objective of this system was to support the working conditions of the unqualified workers according to the collective agreement, and thereby to guarantee pay for a minimum standard of living. However, the system attempted to operate on a sliding scale, setting minimum wages in line with the price index, and was criticized in the 1960s for not functioning as such during periods of high economic growth. It was revised in 1970 into the *Salaire minimum interprofessionnel de croissance* (SMIC), or minimum interprofessional growth wage across all professions, which continues to the present.

### **2. Minimum Interprofessional Growth Wage (*Salaire minimum interprofessionnel de croissance*, or SMIC)**

#### **(1) Method of Decision-Making**

The current SMIC system has two objectives: firstly, giving workers at the lowest wage levels the guarantee of purchasing power (*la garantie de leur pouvoir d'achat*), and ensuring their participation in the economic development of the nation (*une participation au développement économique de la nation*)<sup>8</sup>. The former was inherited from the previous system (SMIG), and reflects an absolute view of poverty in its guarantee of minimum standards of living. The secondary objective, added when the system was revised to SMIC, came from an awareness of the issue of the disparity between minimum wage growth and the development of the economy as a whole and the national income. This is based on a relativization of the minimum standard of living of workers subject to the guarantees of the minimum wage system, in other words, the principle of relative poverty. The philosophy of

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<sup>8</sup> Code du Travail, art. L. 3231-2.

a minimum standard of living was understood to be a relative concept, which rises in line with economic development.

In response to this, the decision-making method for minimum wages was also changed.<sup>9</sup> In addition to a sliding scale to the commodities price index (indice des prix à la consommation) originally used in the definition of SMIG, in line with the second objective, a sliding scale of average wages was also introduced. In order to minimize any negative impact on the employment situation, the increase required within SMIC was limited to half the rise in average wages, with any additional increase being at the discretion of the government. The two sliding scales described above automatically define the floor for SMIC, and the government is given discretion only to raise the level above this minimum. This decision-making method guarantees the process of obtaining a verdict (avis motivé) from the tripartite national collective bargaining commission (Commission nationale de la négociation collective), but its contribution is merely a formality, and its influence on government discretion is limited.

## (2) Committee of Experts

More recently, under the Sarközy government, however, there have been revisions to the decision-making structure of the SMIC, and new elements have been added to the decision-making process. This is the contribution of the committee of experts (groupe d'experts) who give opinions in regard to the revision of standards within the SMIC.<sup>10</sup> The committee of experts has the authority to survey across a wide area, and stands independent to government, having been given the role of considering an optimized balance between economic activities, employment for low-paid workers, and the cost of labor to corporations, etc. If the committee of experts considers it appropriate, it can suggest the amount lower than the sum obtained from the application of the sliding scale.

Behind this, there lies the fact that the limits of the SMIC system as a guarantee of minimum living standards, i.e. as a countermeasure to poverty, have been made clear as a result of recent changes to the labor market structure. At present, the following four elements, other than wage levels, are considered significant determinants for poverty: the rate of unemployment, working hours, family status, and social security benefits. In particular, an increase in the number of part-time workers has come to limit the effects of SMIC, which does no more than establish a minimum wage per hour. It is no longer appropriate to consider the minimum wage standard in the same way as households' standard of living, since any increase in the SMIC is diluted in effect when seen from the perspective of a household's living standard. It is therefore no longer thought of as an effective method of guaranteeing minimum living standards.<sup>11</sup>

The poverty that has recently become problematic in France is categorized into two

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<sup>9</sup> Code du Travail, art. L. 3231-4 et L.3231-5.

<sup>10</sup> la loi du 3 decembre 2008, Code du Travail, art. L. 2271-1.

<sup>11</sup> Conseil supérieur de l'emploi, des revenus et des coûts, Le Smic, 2 avril 1999, p.17.

types. The first type is poverty from unemployment, and countermeasures center around support for returning to employment. From this perspective, it is actually more important to decrease negative impact of increasing SMIC on employment. The second category of poverty is that of people who work but who have low incomes: the working poor. This is largely caused by the increase in people working part-time, but for these people, an increase in SMIC may in fact result in them losing their jobs. For this reason, it is now thought that countermeasures for the working poor should not include raising SMIC, but rather, should require some sort of income transfer.

### 3. The Relationship between France's Minimum Wage and Social Security Systems

#### (1) Structural Relationship

As we have seen up to this point, French minimum wage legislation has developed with the objective of guaranteeing a standard of living for workers. It is therefore necessary to have some correlation with the social security system, which shares this objective.

Within the French social security system, if a person capable of working loses his or her job, that person receives return to employment support benefit (*Allocation d'aide au retour à l'emploi*; ARE) or special solidarity benefit (*Allocation de solidarité spécifique*; ASS), provided that they are within the insurance system, which guarantee their incomes.<sup>12</sup> Other people, or those capable of working but who are outside the insurance system, and those incapable of working, have their incomes guaranteed through the "active solidarity income" benefit (*Revenu de solidarité active*; RSA).<sup>13</sup> RSA payments are conditional on proactive job seeking activities being undertaken by those capable of working, and are notable for the fact that they can also be approved for working people on low incomes - in other words, the working poor.

#### (2) Relationship between Standards

The minimum wage system is mutually related to the social security and tax systems. The minimum wage is positioned to exceed the payment of all social security benefits, and functions as a reference criterion for the setting of these benefits. Specifically, social security benefits paid to those considered capable of working are set below the SMIC obtainable through full-time work, in order to promote the return to employment and incentivize work.

In recent years, however, with the increase in irregular employment, it is feared that the function of SMIC in guaranteeing a minimum standard of living has weakened. Since SMIC only defines a minimum wage value per hour, it is now thought that a system is required by which employment can be seen to contribute to appropriately raising household income, and income can be increased through employment for those who cannot obtain sufficient income due to reduced working hours, from the perspective of providing incentives

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<sup>12</sup> Code du Travail, art. L. 5423-1 et s.

<sup>13</sup> Code de l'action Sociale et des Familles, art. L.115-2, L.262-2 et s.

to work.

The system introduced to appropriately reflect the value of labor in income is a tax credit employment benefit (Prime pour l'emploi; PPE), based on the principle of negative tax.<sup>14</sup> This differs from the British Working Tax Credit in that it focuses not on the household, but on the individual incomes of each member of the household. PPE pays a certain proportion of the declared active income as a benefit, and is therefore adopted as a measure not only to support people on low incomes, but also to ensure that the incentive to work is not lost. Specifically, for people on an income between 0.3 and 1 times the SMIC, the benefit will increase in line with increase in active income, while for people on an income between 1 and 1.4 times SMIC, it is gradually reduced, etc., with full-time SMIC used as the standard.

In this way, France ensures a close relationship between the minimum wage system, social security and the tax system, resulting in a structure that guarantees minimum income without damaging the incentive to work. This minimum wage system embodies the value of labor, thereby functioning as a reference standard for social security benefit.

## V. Conclusions

### 1. Attributes of the Minimum Wage Systems of the UK and France

As has been seen here, the minimum wage systems in the UK and France both have different objectives and reference elements to those in Japan. In addition, they differ in their relative positioning in relation to social security and tax systems. These differences demonstrate the different roles envisaged by both countries for a minimum wage fixed by law.

Firstly, in the UK, while the government has the final authority in deciding the minimum wage, it is the independent Low Pay Commission that establishes its actual specific amount. The Low Pay Commission is a tripartite organization, in which each member is independent of his or her parent organization, and which cooperates to establish a fair minimum wage—one that will contribute to solving the problem of low wages while remaining within the scope of avoiding a negative impact on the UK economy. Here, the issue of low wages and the problem of poverty are treated separately, with poverty being dealt with through social security and tax systems. As a result, the minimum wage system in the UK is consistent with the logic of wages as consideration for labor.

Compared to this, in France, the minimum wage has as its primary aim ensuring a standard of living for workers. For this reason, the minimum wage system shares the objective of guaranteeing minimum living standards with the social security and tax systems, and the government designs institutional arrangements for the entirety of these systems. This does not mean that the minimum wage alone is designed to guarantee the minimum standard of living. In France, too, the issue of low wages has come to be thought of as different

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<sup>14</sup> Code générale des impôts, Direction générale des impôts du 12 mai 2009.

from the problem of poverty, and social security and tax systems have been introduced to supplement households' incomes. On that premise, the minimum wage acts to denote the ideal value of labor.

Based on the above, finally, the author would like to present comments on two subjects—decision-making methods regarding the minimum wage, and the minimum wage's relationship to the social security system—as they relate to the future of Japan's regional minimum wages.

## 2. Revision of Decision-Making Methods

As stated originally, as a result of the 2007 revisions, an important issue has arisen in relation to Japan's regional minimum wages, which have conventionally been based on collective bargaining principles, regarding how to incorporate an element that would guarantee a minimum standard of living for workers—an element removed from the interests of labor and management.

Up until now, the Central Minimum Wages Council has considered increases in the average wage as the major reference element in setting guidelines called *meyasu* for regional minimum wages, and priority was given to the process in which labor and management representatives gave their opinions for assessing such increases. Historically, the council system originated as a framework to reflect the opinions of the interested parties, and as such it was a natural process. Now that it has become the only decision-making method for the final safety net for all workers, however, it does not function in the right way to allow for the inclusion and consideration of elements that are indirect from the interests of negotiating parties, such as the right to life. The Minimum Wages Council only represents a few of various parties, but the more this aspect is emphasized, the more inevitably it will lead to an ideological confrontation and stalemate, only on the basis of attributes of those parties, such as whether they are on the employers' side or on the workers' side. The author would like to present three choices for how to overcome this situation.

Firstly, proactive surveys should be carried out to establish the attributes of low-income workers who are the target of minimum wage legislation, and to understand the impact of minimum wages in terms of improvements to their income, and decisions should be made based on the results of these studies. In short, in deliberations on regional minimum wages within minimum wages councils, consideration should be given to the use of alternative decision-making methods that are different from centrally operated collective bargaining, such as those used in the UK. Initially, the situation needs to change in regard to minimum wages council members representing the interests of their parent organizations.

Secondly, where this is difficult, some sort of policy-based approach could be considered from outside the council system. For example, in 2007, the Growth Potential Improvement Strategy Promotion Round Table Committee (based on the Council on Economic and Fiscal Policy) requested an increase in minimum wages, and as a result of the Minister for Health, Labour and Welfare requesting minimum wages councils to consider this during

consultation, there was an unprecedentedly large hike. This is significant as an example of the type of approach described here. It is, however, necessary to consider the legal legitimacy of such external approaches to wages councils. In the future, it is likely that not only the relationships and division of roles among the councils and the external bodies, but also the council system itself will need to be reconsidered.

Thirdly, Japan may have the option of adopting some of the objective criteria used in the French minimum interprofessional growth wage (SMIC), which has since its inception included a guarantee of living standards for workers. At the same time, it should be borne in mind that France has also planned in revisions to review automatic increases. In other words, based on an awareness that wage standards and income standards are increasingly divergent, attempts are being made to limit the role of the minimum wage legislation in ensuring minimum income security, within the scope of avoiding a negative impact on low-paid workers or the economy. The fact that changes to labor market structures have resulted in the minimum wage not functioning as well as a guarantee of minimum income standards is a phenomenon shared with Japan, and requires not merely the adoption of new statistical standards, but rather the introduction of a more sophisticated system.

### 3. Revision of the Relationship to Various Social Security Systems

The 2007 revisions raised the issue of how to achieve compatibility between the minimum wage and social security systems.

In France, the balance of standards within SMIC and social security, which share the objective of guaranteeing a standard of living, is scrutinized as a matter of course. This has in its background the traditional, constitutional right to work, and results from the fact that the value of work has always been prioritized. Based on this philosophy, the introduction of RMI, which also covers working-age households, created a disparity with SMIC from the perspective of "fairness," despite the fact that it was based on the concept of relative poverty. This disparity is maintained currently based on RSA. The increased number of part-time workers, however, has meant that the full-time SMIC standard is no longer necessarily equivalent to the minimum level of household income. For this reason, the tax credit system known as employment benefits (PPE) was introduced, and is expected to make up for reductions to the minimum standard of living guarantee function of SMIC that have taken place in recent years.

As a result, if Japan intends to give more weight to the aspect of guaranteeing a standard of living through its minimum wages in the future, it needs to define the minimum standard of living guarantee as a total package that includes social security benefits for the working poor.

In contrast to this, the UK has maintained the idea that minimum wage and social security systems have different objectives and decision-making bodies, and theoretically have no correlation in their standards. As a result of the UK introducing the Working Tax Credit system, however, there is no direct link between minimum wage standards and minimum

income standards, and it is notable that workers earning minimum wage can have their income supplemented by this system if their income does not reach a certain level. At the same time, because of the existence of the graded income supplement system known as Working Tax Credits, there is no particular need to ensure incentives to work by creating a disparity between the minimum wage and the standard of social security benefit. It must be remembered that the background to the fact that there is little debate in the UK regarding the balance between the minimum wage and the levels of social security benefits lies in the structural relationship whereby the problem of poverty is being dealt with using a completely separate system to that of the minimum wage.

Accordingly, if Japan is to hold onto the logic of wages as the consideration for labor, rather than minimum wages as a guarantee of living standards, there is an urgent need to review the social security benefits available to working-age households. In Japan, there are almost no systems in place to assist the long-term unemployed who have passed the limit of their eligibility for unemployment benefits, or the working poor on low incomes, and too much is expected of minimum wages, the only safety net available to workers. The problem of poverty should really be dealt with through social security or tax systems, but since no such system is available, the issue has become part of the problem of minimum wages.

In the future, in considering the “compatibility with measures related to the public assistance system” mentioned in Article 9, Paragraph 3 of the Minimum Wages Act, it will be vital to reconsider the role of minimum wages in Japan, in the light of the differences between wages and income standards, and with an awareness of the limitations of the role of the minimum wage system. Once the functional limits of the minimum wage system in guaranteeing a standard of living for workers are appropriately appreciated, the need for revisions to the social security system in regard to working-age households will be clear. In particular, there is a need for a system that guarantees a minimum standard of living to the long-term unemployed, while at the same time promoting their return to work. On the other hand, focusing on the aspect that the minimum wage is not merely a guarantee of a standard of living, but also represents fair consideration for labor within society, it may be necessary to consider revisions to the decision-making methods that are currently in place in each region (prefecture), such as the introduction of a national minimum wage dependent on age and/or experience.