

THE JAPANESE WORKERS' COMMITTEE FOR HUMAN RIGHTS

NGO in Special Consultative Status with ECOSOC

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Mr. Frank William La Rue Lewy
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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Dear Mr. Frank William La Rue Lewy,

We appeal for the crisis of freedom of opinion and expression in Japan

When Ms. Navanethem Pillay, UN High Commissioner for Human Rights, visited Japan in May, we were able to have opportunity to meet and talk with her, as well as with Ms. Jung-rin Kim, Human Rights Officer, for a long time. At that time, Ms. Kim kindly gave us the instruction of how to make use of the Special Procedures. Accordingly we would like to sincerely ask you, Mr. F.W. La Rue Lewy as Special Rapporteur of the right to freedom of opinion and expression, to research into the actual situation in Japan and express your observations.

The article 19-2 of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone shall have the right to freedom of expression

Before the Second World War, Japan has committed, under the suppression and the dark politics of the Public Order Maintenance Law, many crimes such as aggression, colonialism and the Pacific War.

Japan was defeated in 1945. And not to repeat the same fault, based on the deep regret, Japan was determined to establish a new Constitution and was supposed to aim for the State based on peace and democracy.

On freedom of expression and opinion which is an important pillar of fundamental human rights, the article 21 of the Constitution of Japan notes that “freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed”. This article is completely compatible with the

article 19 of the ICCPR. And, as the article 98 of the Constitution says that “the treaties concluded by Japan and established laws of nations shall be faithfully observed”, the Government of Japan that ratified the ICCPR in 1979 owes obedience to it.

During 65 years after the War, intense struggles related to freedom of expression and opinion have been extended: the School Textbook Examination Procedure, which aims to match with the ruling party’s policy, is in fact the same as the censorship of the Prewar days; at entrance or graduation ceremonies of middle and high schools, the enforcement of letting school teachers and the staff stand forward “Hinomaru”(national flag) and letting them sing “Kimigayo”(national anthem) is the violation against freedom of opinion, thought and conscience, and also against the Convention on the Rights of the Child, including the Right to know of the Child.

Consequently, scholars, intellectuals, publishing workers and teachers have been struggling with these issues.

Since, in particular, the nationwide struggle against the Japanese-US security treaty occurred 50 years ago, the Japanese authority has been putting pressure on democratic movements, such as distributing leaflets on the street or putting up posters on the wall, by means of the arrest and the indictment. Such suppression was legally based on the application of the Public Offices Election Law, trespassing, the National Public Service Law and others.

On the other hands, prompt counterattacks and appeals to the court have been persistently developed. As a result, after nineteen eighties, the suppression on the basis of the Public Offices Election Law has significantly decreased and that of the National Public Service Law has not happened for 30 years.

The suppression on distributing leaflets and freedom of expression is increasing since the beginning of the 21st century

- 1) In April 2003, Mr. Tadaaki OISHI, 68, city council member of the Japan Communist Party in Bungo-Takada city, Oita prefecture, was arrested and indicted for the alleged violation of the Public Offices Election Law as he distributed the political activities news to his support association. And in January 2008, he was convicted of a 50,000 yen fine by the Supreme Court.
- 2) In February 2004, some members of a civic group in Tachikawa city, Tokyo, were arrested by allegedly having distributed leaflets of anti-Iraq war in the housing for the Self Defense Force, and found guilty by the Supreme Court in April 2008.
- 3) In March 2004, Mr. Katsuhisa FUJITA, 69, ex-teacher of Tokyo Metropolitan Itabashi High School, who explained the problem of the enforcement of “Kimigayo”(national anthem) to their guardians before the opening of its graduation ceremony, was indicted for forcibly obstructing official duties, and convicted of a 200,000 yen fine by the Tokyo High Court in May 2008. The appeal is before the Supreme Court now.
- 4) In March 2004, Mr. Akio HORIKOSHI, 56, Social Insurance Agency employee, was arrested by the alleged violation of the National Public Service Law as he distributed the newspaper “Akahata”, the Japan Communist Party newspaper, to his neighbors on holiday. He was convicted at the first trial, but in March 2010, found innocent at the Tokyo High Court. But the appeal submitted by the prosecution is on trial of the Supreme Court now.
- 5) In December 2004, Mr. Yosei ARAKAWA, 63, priest, was arrested by alleged trespassing when he distributed the Tokyo Metropolitan Council reports of the Japan Communist Party at the communal

area of an apartment house in Katsushika, Tokyo. He was found not guilty at the first trial, but convicted at the second trial. In November 2009, the Supreme Court dismissed his appeal and his guilt was finally established.

- 6) In September 2005, Mr. Shinichi UJIBASHI, 62, the then employee of the Ministry of Welfare and Labor, was arrested by trespassing as he distributed the “Akahata” to collective mailboxes of an apartment on holiday, and indicted for the violation of the National Public Service Law. He was convicted at the first trial, and the Tokyo High Court maintained the judgment of the first trial in May 2010. Therefore he appealed to the Supreme Court.

The concern and recommendations expressed significantly by the Human Rights Committee

For such suppression against freedom of expression and opinion, we not only have extended struggles nationwide, but also have appealed to the UN Human Rights bodies for the unfair situation.

In October 2008, the Human Rights Committee reviewed the 5th Japanese government periodic report, and then expressed its concern and recommendations as follows.

“The State party should repeal any unreasonable restrictions on freedom of expression and on the right to take part in the conduct of public affairs from its legislation to prevent the police, prosecutors and courts from unduly restricting political campaigning and other activities protected under articles 19 (freedom of expression) and 25 (freedom of political activities) of the Covenant.”

It is clear that “its legislation” mentioned above indicates the Public Offices Election Law and the National Public Service Law from this context. This recommendation has a significant impact on democratic movements in Japan.

The judgment of the Tokyo High Court for the Horikoshi case mentioned above in the column (4) ruled that the conviction handed down by the first trial had been against the article 21 of the Constitution, adding the following exceptional remarks that “it is undeniable that, in Japan, the prohibition on political activities for national public officers is extended into a wide range, compared with other countries, especially with European developed ones.” And the judgment also pointed out that, in the progress of the globalization among various fields, this problem has to be considered from the viewpoint of the “global standard.”

We evaluate that this judgment was favorably applied by the recommendations of the ICCPR. And we also highly evaluate and welcome the general comment No.34 (CCPR/C/GC/34/CRP.4) of the Human Rights Committee made public on 22 October 2010.

Criticisms and comments from around the world

OISHI was found guilty at the first trial of the Oishi case mentioned in the column (1), although Ms. Elizabeth Evatt, ex-member of the United Nations Human Rights Committee, testified that the Public Offices Election Law in Japan did not conform to the ICCPR. The Fukuoka High Court dismissed the Evatt testimony of her personal views, not of the official views of the Human Rights Committee, and so did the Supreme Court.

In October 2008, the Human Rights Committee expressed its official views. But the judgment of the Tokyo High Court on the Ujibashi case in the column (6) emphasized that, mentioning the

Committee's concern on this case, the right to interpret the Covenant had to be followed by the court in Japan and the above concern had no legal restriction at all. The judgments of the court in Japan do not stand by the protection of freedom of expression and opinion, except the Tokyo High Court's judgment on the Horikoshi case in the column (4).

At the Fujita case of Itabashi High School in the column (3), Belgian Prof. Dirk Voorhoof submitted a following legal comment to the Supreme Court in April 2010: the article 10 of the European Convention on Human Rights (ECHR), as well as the ICCPR, guarantees the right to freedom of opinion without interference by public authority as one of the fundamental principles.

While such criticisms and comments are being indicated internationally, it is very doubtful whether Japan's judiciary will rule for protecting freedom of opinion and expression.

The Japanese government has not yet ratified the individual communications.

The government, although being criticized by many Human Rights bodies, has not ratified the First Optional Protocol to the ICCPR (individual communications), which has been already ratified by the 113 States Parties. Therefore, those who do not consent to final judgments in Japan cannot appeal to the International organizations.

Yosei ARAKAWA, the column (5) case, expressed his anger against the unfair judgment of the Supreme Court and said that he strongly wanted to appeal through the individual communications if there existed. The Japanese Workers' Committee for Human Rights (JWCHR), on behalf of ARAKAWA, submitted the written statement (A/HRC/13/NGO/41) to the Human Rights Committee in February 2010.

In Japan, the regime change, from the Liberal Democratic Party to the Democratic Party, was carried out in last autumn and Ms. Keiko CHIBA was appointed Minister of Justice. Since her assumption, she pledged to implement the individual communications, the establishment of the national human rights institution and electronically videotaped interrogations. But she left the Ministry without implementing any matter. Mr. Yoshito SENGOKU current Minister of Justice has not expressed his views on these issues and all of them have not yet been implemented.

Sincerely yours,

Tsuguhide SUZUKI (Chairman)

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