State Practice of Asian Countries in International Law

Japan

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HUMAN RIGHTS

HATE SPEECH – ACT ON THE PROMOTION OF EFFORTS TO ELIMINATE UNFAIR DISCRIMINATORY SPEECH AND BEHAVIOR AGAINST PERSONS ORIGINATING FROM OUTSIDE JAPAN WAS ENACTED

Japan's first anti-hate speech law passed the Diet, marking an important step to halt racial discrimination. The Recommendations, as shown below, from the international human rights bodies significantly promoted this movement.

In 2014, the United Nations Committee on the Elimination of Racial Discrimination (CERD) strongly recommended the Japanese government to regulate hate speech by legislation. The Committee was concerned in the increase in racist discrimination demonstrations in Shin Okubo, Tokyo and Tsuruhashi, Osaka, which are targeting Korean residents.

The Committee is concerned about reports of the spread of hate speech, including incitement to imminent violence in the State party by right-wing movements or groups that organize racist demonstrations and rallies against foreigners and minorities, in particular against Koreans. The Committee is also concerned by reports of statements made by public officials and politicians amounting to hate speech and incitement to hatred. The Committee is further concerned by the propagation of hate speech and incitement to racist violence and hatred during rallies and in the media, including the internet. Furthermore, the Committee is concerned that such acts are not always properly investigated and prosecuted by the State party (Article 4). Recalling its general recommendations No. 35 (2013) on combating racist hate speech, the Committee recalls that measures to monitor and combat racist speech should not be used as a pretext to curtail expression of protest. However, the Committee reminds the State party of the importance of safeguarding the rights of vulnerable groups in need of protection against racist hate speech and hate crimes. The Committee recommends, therefore, that the State party take appropriate

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measures to: (a) Firmly address manifestations of hate and racism, as well as incitement to racist violence and hatred during rallies; (b) Take appropriate steps to combat hate speech in the media, including the Internet; (c) Investigate and, where appropriate, prosecute private individuals, as well as organizations, responsible for such acts; (d) Pursue appropriate sanctions against public officials and politicians who disseminate hate speech and incitement to hatred; and (e) Address the root causes of racist hate speech and strengthen measures of teaching, education, culture and information, with a view both to combating prejudices that lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and among racial or ethnic groups.¹

Furthermore, the United Nations Human Rights Committee had made similar recommendations. In its Review related to the human rights situation of the country, it expressed concern to the Japanese government regarding a racist street campaign activity called "Hate Speech" (hatred expression) against Korean residents in Japan and recommended the prohibition of all advertising activities that discriminate residents.

In the "concluding observations," the Committee was concerned that actions to discriminate against foreigners such as hate speech and "Japanese only" display are expanding. The Committee described that "Japanese criminal and civil law do not adequately protect them."

Based on such observations, the Committee recommended that all propaganda that promote racial superiority or hatred inviting discrimination and violence should be banned. It urged the Japanese government to develop rules to punish criminals.

The Committee expressed concern at the widespread racist discourse against members of minority groups, such as Koreans, Chinese or Burakumin, inciting hatred and discrimination against them, and the insufficient protection granted against those acts in the Criminal and Civil Codes. The Committee also expresses concern at the high number of extremist demonstrations authorized, the harassment and violence perpetrated against minorities, including against foreign students, and the open display in private establishments of signs such as those reading "Japanese only" (Articles 2, 19, 20 and 27).

The State should prohibit all propaganda advocating racial superiority or hatred that incites discrimination, hostility or violence, and should prohibit

¹ CERD/C/JPN/CO/7-9, *Concluding observations on the combined seventh to ninth periodic reports of Japan*, 29 August 2014, available at <https://www.mofa.go.jp/files/000060744.pdf>.

demonstrations that are intended to disseminate such propaganda. The State party should also allocate sufficient resources for awareness-raising campaigns against racism and increase its efforts to ensure that judges, prosecutors and police officials are trained to detect hate and racially motivated crimes. The State party should also take all necessary steps to prevent racist attacks and to ensure that the alleged perpetrators are thoroughly investigated, prosecuted and, if convicted, punished with appropriate sanctions.²

In response to the above recommendations from international society, Japan enacted the “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” and brought it into force on 3 June 2016. The Act does not oblige citizens to halt activities which lead to racial superiority or hatred that incites discrimination, hostility or violence, but obliges the government and the local authorities to take necessary measures to deal with the issues. Article 4 provides that “the government shall implement measures concerning efforts to eliminate unjustifiable discriminatory behavior against foreign nationals from outside Japan” and “is responsible for taking necessary advice to the local authorities.” And also “local authorities shall endeavor to take measures in accordance with the actual circumstances of the concerned area, in light of the appropriate role sharing with the government concerning efforts to eliminate unfair discriminatory behavior against foreign nationals from outside Japan.” For this purpose, the government and local authorities have to (1) prepare necessary consultation system to prevent or resolve disputes related thereto (Article 5), (2) conduct educational activities to resolve unjust discriminatory behavior against foreign nationals from outside Japan, and shall do necessary measures for that purpose (Article 6), and (3) conduct activities disseminating public understanding about the necessity of eliminating unjust discriminatory behavior against foreign nationals from outside Japan (Article 7). It is a concern that there is no penalty for violations provided by the Act. However, immediately after the law was enacted, the Kawasaki branch of the Yokohama District Court granted injunction against the planned hate speech demonstration³ and even without any penalty, this is considered a good precedent to implement the Act for the future.

2 CCPR/C/JPNCO/6, *Concluding observations on the sixth periodic report of Japan*, 20 August 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJPN%2fCO%2f6&Lang=en.

3 *Court bans planned anti-Korean hate speech rally in Kawasaki*, THE MAINICHI, 3 June 2016, available at <https://mainichi.jp/english/articles/20160603/p2a/oom/ona/017000c>.

REVISION OF THE CIVIL CODE: SHORTENING THE WOMAN'S REMARRIAGE PROHIBITION PERIOD

On 1 June 2016, the Act revising a part of the Civil Code (Act No. 89 of 1896) was established and enforced on 7 June 2016. According to this revision, the woman's remarriage prohibition period was shortened from six months to 100 days after the date of cancellation of the previous marriage. It also clarifies the case where a woman can remarry even within the remarriage prohibited period.

The remarriage prohibition period is provided in Article 733, paragraph 1 of the Civil Code, which states that "a woman may not remarry unless six months have passed since the day of dissolution or rescission of her previous marriage." This prohibition has raised concerns since it only applied to women. The reason why the remarriage prohibition period was stipulated is to clarify the father of a child born after the dissolution of the marriage. Therefore, Article 733, paragraph 2 provides the exemption from paragraph 1, stating that "in the case where a woman has conceived a child before the cancellation or dissolution of her previous marriage, the provision of the preceding paragraph shall not apply from the day on which she gives birth." This is also prescribed in Article 772 of the Civil Code, which provides as follows:

(1) A child conceived by a wife during marriage shall be presumed to be a child of her husband. (2) A child born after 200 days from the formation of marriage or within 300 days of the day of the dissolution or rescission of marriage shall be presumed to have been conceived during marriage.

Therefore, by establishing a remarriage prohibition period, it becomes easier to clarify whether it is a child of the former husband or the current husband.

In the Supreme Court decision on 16 December 2015 (2013 (o) No. 1079), the Court held that "the part beyond 100 days of the remarriage prohibition period is unconstitutional." Based on this judgment, the Diet legislated amendment to the Civil Code and now it enters into force. On the same day, 16 December 2015, there is another Supreme Court judgment which is also relevant to the rights of women. The Supreme Court denied that the "right not to be forced to change the family name" claimed by the plaintiffs is "not guaranteed by the constitution." The Court held that there is a benefit that you can realize that you are a member of your family and "although it can be presumed that there are many cases where the female side is disadvantaged it is alleviated by the spread of so-called common use." The Court concluded that the provision shown below, which obliged couples to use the same surname is not contrary to the constitution that requires gender equality in marriage legislation. Article 750 provides that a husband and wife shall adopt the surname of the husband or wife in

accordance with that which is decided at the time of marriage. However, such movements have been criticized in the international community.

For example, on 7 March 2016, the CEDAW (Committee on the Elimination of Discrimination against Women) regrets that its previous recommendations regarding existing discriminatory provisions have not been addressed. The Committee is particularly concerned that: (a) The Civil Code still prohibits only women from remarrying within a specified period of time after divorce notwithstanding the decision of the Supreme Court, which shortened the period from 6 months to 100 days; (b) On 16 December 2015, the Supreme Court upheld the constitutionality of Article 750 of the Civil Code that requires married couples to use the same surname, which in practice often compels women to adopt their husbands' surnames.⁴ The Committee reiterated its previous recommendations (CEDAW/C/JPN/CO/5) and (CEDAW/C/JPN/CO/6) and urged the State party to, without delay revise legislation regarding the choice of surnames for married couples in order to enable women to retain their maiden surnames; and abolish any waiting period for women to remarry upon divorce.

4 CEDAW/C/JPN/CO/7–8, *Concluding observations on the combined seventh and eighth periodic reports of Japan*, 7 March 2016, available at http://www.gender.go.jp/international/int_kaigi/int_teppai/pdf/CO7–8_e.pdf.