

Additional Report

Concerning the Issues of
Non-recognition of the Right to Public Assistance of Non-citizens,
including Permanent Residents (Nationality Clause) and
Hate Speech in relation to Article 4-(a) and (b) of the ICERD

NGO Network for the Elimination of Racial Discrimination Japan (ERD Net)

for the Consideration of the Seventh-Ninth Periodic Report of Japan (CERD/C/JPN/7-9)
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Submitted by:

NGO Network for the Elimination of Racial Discrimination Japan (ERD Net)
The International Movement Against All Forms of Discrimination and Racism (IMADR)
6F 1-7-1, Irifune, Chuo-ku, Tokyo 104-0042, Japan erd@imadr.org

Non-recognition of the right to public assistance of non-citizens, including permanent residents (nationality clause)

A Chinese woman with permanent resident status, whose application for public assistance was refused, filed an objection. But the local government dismissed the objection on the grounds that the right to public assistance of foreign residents was not recognized. The woman then started an action for rescission of the refusal, arguing that public assistance had been applied *mutatis mutandis* to foreign residents by ministerial circular notice, and therefore should be applied to foreign residents as a right.

On July 18, 2014, the Supreme Court issued its judgment on the case. The Court reversed the Fukuoka Appeals Court judgment, which upheld the woman's arguments, and dismissed her claims. The Court stated that the Public Assistance Act limited its scope of application to "nationals," and non-citizens were not included. It also held that there were no grounds in the laws to apply or apply *mutatis mutandis* to non-citizens, and that the provision of public assistance to non-citizens were conducted as an administrative measure.

Until the ratification of the International Covenants (1979) and the Convention on the Status of Refugees (1982), renting of public housing, benefits related to childcare or joining the national pension and health insurance system were subject to the "nationality clause" or nationality requirement, and were not recognized as rights of foreign residents. The Japanese government amended the laws to provide for equality between citizens and non-citizens as part of the revision of domestic laws at the time of ratification of the above treaties.

Yet no amendments were made for the Public Assistance Act. The government stated at the 94th session of the Diet in 1981 that it provided similar treatment for non-citizens and citizens through administrative and budget measures, and that no legal measures were required, as public assistance was a unilateral provision of benefits. It also explained that the Convention on the Status of Refugees required the same treatment for refugees as Japanese nationals, which it interpreted as requiring only same treatment in substance regardless of the form in which it was provided. (May 27, 1981, Joint foreign, legal, social and labor committee, House of Representatives)

The latest Supreme Court judgment held that it did not recognize public assistance as a right of non-citizens, because no amendments to the laws were made. The obvious discrimination based on nationality in the Public Assistance Act providing what is often called the last safety net should be eliminated without delay.

**Additional Information to the ERD Net Report
on the Issue of Hate Speech in relation to Article 4-(a) and (b) of the ICERD**

Regarding the Police Protection of Racist Groups and Control on Anti-racist Groups

Problems:

In Japan where no law to prohibit racial discrimination or to regulate hate speech exists, discriminatory demonstration and street propaganda is staged with the protection under the name of “freedom of expression.” A permission to use the public road is granted to demonstrators who are closely safeguarded while demonstrating by many police officers as several times as demonstrators. Meanwhile, the police seem quite reluctant to arrest racists participating in the discriminatory demonstration and street propaganda for their acts which could be applied to the charges of intimidation, forcible obstruction of business or assault under the existing legislation.

On the other hand, the police have strictly regulated those who protested against the racist demonstration as violators of “freedom of expression,” and arrested, searched or prosecuted them in response to complaints filed by racist demonstrators.

Since April 2014, the Osaka Prefectural Police have unfairly arrested many people from the anti-racist groups and intensified its oppression on them all at once. It has given the impression that the anti-racist groups are also violent and antisocial, thus strengthening the skeptic social trend towards such a view that “the both are the same.” This attitude of the police encourages the racist groups who have recently found it difficult to act smoothly due to the protest actions.

In the present Japan where discriminatory demonstrations and street propaganda against a group of unspecified number of people belonging to a specific community such as resident Koreans are not prohibited and the state just lets them go free without using any applicable legal provisions, there is no remedy available but going out to the street to take protest actions against them. In addition to the failure of the state to implement Article 2-1(d) of the ICERD, reading “Each State Party shall prohibit and bring to an end,” the police take no action, and rather focus on controlling and repressing the anti-racist groups. By doing so, the police help to make the racist groups more confident and involve itself in their discriminatory acts. This constitutes violation of Article 2-1(b) of the ICERD, reading “Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations” and Article 2-1(d).

Cases:

1. Stricter control on the anti-racist groups at the site of demonstrations

The police’s control on the anti-racist groups on the site of demonstrations varies from region to region. Among others, the Osaka Prefectural Police take stricter action against them. Following shows some instances that the Osaka Police has been involved.

In Osaka, the first mass action to counter the discriminatory demonstration took place in Tsuruhashi, where a big Korean town is located, on February 24, 2013. At that time, the Osaka Prefectural Police restricted the anti-racist groups to hold up placards even on the sidewalk. On April 27 of the same year, in Umeda (center of Osaka city), the police was also very strict against the anti-racist groups. When they held placards, the police stopped it. When someone voiced a protest message through a loudspeaker, or even in real voice, the police immediately surrounded him/her to stop it and drove him/her from the site. Also, the police did not allow them to stop and halt on the sidewalk for the reason of “obstructing passerby.”

On 26 May 2013 when the racist groups staged the discriminatory demonstration in Sennichimae, downtown Osaka, core members of the anti-racist groups were surrounded by the police and removed from the site for nothing but quietly standing there. For certain members, the police even threatened by saying, “We will arrest you today.”

Since then, the Osaka police have continually taken the oppressive restriction on the counter activities. Now, this is also the case in Kyoto and Hyogo, the neighboring prefectures of Osaka.

2. Enhancement of the police repression on the protest actions at the national level:

For the year of 2013 when discriminatory demonstrations and street propaganda rapidly expanded nationwide, the police arrested five people from the racist groups and seven from the anti-racist groups in relation to the demonstration/street propaganda and the counter actions.

From January 2014 to July 2014, the police has arrested two from the racist groups and 12 from the anti-racist groups. Below is the cases of arrest, detention and prosecution in relation to the racist demonstrations/street propaganda taken place since January 2014:

a) January in Tokyo - one protester was arrested:

On January 18, a college student who joined the protest actions against the discriminatory demonstration in Tokyo was arrested on the spot for the charge of colliding the demonstrator by a bicycle and injured him. Later, his charge was dropped.

b) April in Osaka – one protester was arrested:

On April 15, the Osaka prefectural police arrested a resident Korean who was the former representative of one of anti-racist groups based in Osaka for the charge of fraud in relation to his receipt of public assistance, and placed him in custody for nearly three months. While in custody, the police arrested him again for the charge of threatening one of members of the racist groups on twitter. For the fraud case, he has been prosecuted and the case is pending.

His fraudulent receipt of public assistance was true, and he was given the administrative guidance in 2011. Welfare payment to him was stopped in the following year. Furthermore, he has paid back the entire amount of benefits he had received. Nevertheless he was arrested. In general, fraudulent receipt of public assistance hardly becomes a criminal case. Especially, when refund is

made in a full amount, arrest and prosecution rarely happens. Furthermore, most of questions he was asked during the voluntary investigation prior to his arrest related to his counter activities against the racist demonstration. Despite the fact that the accusation against him had no relation to his activities as representative of the anti-racist group, the Osaka prefectural police dared to give his personal information to the media who then widely covered his arrest with his personal information as “a former representative of the anti-racist group.” Also, the racist group called “Zaitokukai”¹ took advantage of his arrest and disseminated false information alleging, “Resident Koreans have privileges to receive public assistance without going through screening. They receive it more easily than Japanese.” Considering these circumstances, it is fair to judge that his arrest was virtually for hurting the counter activities and helping the racist activities.

In addition, the charge of intimidation imposed on him involved the man, the ex-vice-chairperson of Zaitokukai, who was one of perpetrators of the attack on Kyoto Korean Primary School² as well as the perpetrator of the Suihei-sha Museum Discriminatory Street Propaganda case³. Furthermore, he was staged the discriminatory street propaganda in Tsuruhashi, a Korean town, in February 2013 urging bloodshed on Koreans. Knowing that the perpetrator was going to do the same demonstration in the same place, he naturally voiced his protest as a resident Korean, and it was misused in the favor of the police as “intimidation charge.”

Meanwhile, on twitter, those people who protest against the racist activities, especially resident Koreans, are attacked, intimidated or slandered by a lot of discriminatory messages and information disseminated by racist groups on the daily basis. However, senders are hardly arrested and prosecuted. This indicates a manipulation of the legislation by the authorities. Racist groups sensationalize his arrest and prosecution on the internet as good ammunition for attack on the anti-racist groups.

c) May in Kawasaki - one racist was arrested

On May 21, one of members of the racist groups was arrested, prosecuted and convicted for slashing a passer with an imitation sword who was reading a flyer of the anti-racist groups in the Kawasaki railway station.

d) May in Saitama –one racist and one protester were arrested:

On May 25, in Nishi-Kawaguchi where many Chinese live, the racist groups staged a discriminatory demonstration and confronted the anti-racist groups in the nearby railway station. Each one from the both sides was arrested on suspicion of assault. Later the case was dismissed.

e) July in Tokyo – one protester was arrested:

¹ refer to ERD Net Report on the Issue of Hate Speech in relation to Article 4-(a) and (b) of the ICERD

² The perpetrator was convicted with the one and a half year's sentence for the forcible obstruction of business, and currently under the probation.

³ The case was settled with the payment of 1.5 million yen for damage at the civil court.

On July 6, a college student was arrested during the protest actions against the racist demonstration in Waseda, Tokyo. The racist group alleged that the bullhorn the student carried bumped the other bullhorn that one of racist group members carried. For this allegation, the police arrested the student on the spot. As of July 22, he has still been detained.

f) July in Osaka – Eight protesters were arrested by the Osaka Prefectural Police:

On July 16, the Osaka prefectural police arrested eight members of “Otokogumi (men’s brigade), one of leading groups of the protestors, for the violation of the Act concerning Punishment of Physical Violence and Others. Eight people included the leader and sub-leader of the group.⁴

As of now, three have been released whereas the rest of five have still been in custody. They are alleged to have surrounded one of racist members, denounced him, took away his eyeglasses, and urged him not to join in the racist demonstration anymore. It took place in October 2013. In reality, the police were just there, and the “Otokogumi” members shot a video on the ground and uploaded it on their website. Then, the police received the complaint from the racist group in May 2014, and all of sudden, they arrested them in July without any prior voluntary questioning. It was nine months after the occurrence. The Osaka prefectural police sent 100 police officers to different ten locations in other regions including Kanto and Chubu regions to conduct search and arrest. What they have done could be very petty offences subtly touching upon the existing law. Also, the police invited the media people to the sites when they were going to arrest them, and let the media sensationally broadcast the scenery as well as the video picture of the alleged incident happened in 2013.

Besides the case, the leader and sub-leader of “Otokogumi” were convicted with a suspended prison term of ten months in February 2014 in relation to the scuffle they have had with a racist group member in November 2013. Even if the present allegations on them as previously mentioned could be reasons for the arrest and prosecution, these should have been handled at once together with the November incident. If they are prosecuted and convicted for these allegations, the suspension of their sentence will be cancelled and they have to serve for more than ten months prison term.

On 8 July 2014, the racist groups completely lost the case at the appeal court – the Kyoto Korean School Attack case⁵

As a result of the lost lawsuit, it is more likely that the racist groups will have to pay an amount of about 15 million yen including interest in a short period of time. This financially drives them into corner. Also, they are socially being driven into corner. While the high court judgment was

⁴<http://www.japantimes.co.jp/news/2014/07/16/national/social-issues/activists-held-assault-right-winger/#.U8kHILGuSfl>

⁵ The Asahi Shimbun, 8, July, 2014:

http://ajw.asahi.com/article/behind_news/social_affairs/AJ201407080045

widely covered by the media with criticism on them, the Osaka city mayor announced his decision to seek for possible measures against hate speech through setting up a third party body within Osaka city or other means.⁶

On July 20, the big anti-racism march was organized downtown Osaka, and more than 1,500 people joined the march.

Under these circumstances, the Osaka prefectural police dared to arrest the above eight people, and let the media expose them as if they were criminals. The racist groups are very excited about their arrest and announcing the termination of “Otokogumi.”

Proposed recommendations:

1. The Committee reiterates its recommendation as per the para 13 of CERD/ C/JPN/CO/3-6 that the state party acknowledge its obligations to interpret and implement the existing legislation to comply with the Convention, and ensure the effective application of provisions of the current law against acts of racial discrimination.
2. The Committee recommends that the state party ensure that no excessive control and repression on counter activities against acts of racial discrimination is used, so that it will not support any act of racial discrimination.

⁶ The Kyodo News 10, July, 2014

<http://www.globalpost.com/dispatch/news/kyodo-news-international/140711/mayor-hashimoto-says-mulling-steps-stamp-out-hate-speech>