

Report of the Japan Federation of Bar Associations on Japan's
Follow-up to the "Concluding Observations on the Combined
Seventh and Eighth Periodic Reports of Japan" by the Committee on
the Elimination of Discrimination against Women

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Japan Federation of Bar Associations

Introduction

Following its consideration of Japan's implementation of the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Committee on the Elimination of Discrimination against Women (the “Committee”) requested in its concluding observations dated March 7, 2016 that Japan provide detailed written information about follow-up paragraphs within two years. The Japan Federation of Bar Associations (the “JFBA”) provides the following information on the current status of discrimination against women in this report that will be helpful for the Committee in reviewing these follow-up paragraphs.

1. Paragraph 13(a) of the concluding observations

13 The Committee reiterates its previous recommendations (CEDAW/C/JPN/CO/5) and (CEDAW/C/JPN/CO/6) and urges the State party to, without delay:

(a) Amend the Civil Code in order to raise the legal minimum age of marriage for women to 18 years to be equal to that of men; and 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.

(1) Legal minimum age of marriage

While the Japanese government (the “Government”) reportedly established its policy to incorporate a provision to unify the marriageable age at “18 and older” for both sexes in a bill to revise the Civil Code for lowering the age of adulthood to 18 from 20,¹ the revision has yet to be made as of October 2017. It is also reported that the Ministry of Justice aimed to submit the Civil Code amendment bill to the 193rd Diet session to achieve the enactment around 2021, but it abandoned its plan to do so.

The UN Committee on the Rights of the Child and the Human Rights Committee as well as the Committee have repeatedly pointed out that the difference in legal age of marriage between men and women impairs gender equality in family life and hampers financial independence of women, but the difference in marriageable age remains as an unresolved issue.

(2) Choice of surnames for married couples

The Grand Bench of the Supreme Court ruled on December 16, 2015, that Article 750 of the Civil Code, which requires married couples to adopt the same surname, is not in violation of

¹ Jiji Press. January 21, 2017.

Articles 13, 14, and 24 of the Constitution, and this provision has not yet been amended as of October 2017.

The Government has increasingly emphasized a measure to use maiden surnames without revising the law pertaining to the choice of surnames for married couples. For example, although using maiden names alongside registered surnames in passports was only allowed in certain cases, such as where their maiden names are commonly known and used when they work overseas, the Government announced the plan to ease this regulation in May 2017 to make the use of maiden names more widespread. The Supreme Court also permitted court officials (judges and clerks) to use their maiden names for judgments, rulings, and other court-related documents on September 1, 2017. This expansion of the use of maiden names is certainly expected to have the effect of mitigating social inconvenience and disadvantage to some extent for those who changed their names upon marriage, most of whom are women, but its permeation is also insufficient. This measure to allow the use of maiden surnames while retaining the provision requiring the change of name upon marriage does not fundamentally eliminate the discrimination pointed out by the Committee.

In connection with this surname issue, a settlement was reached in the Tokyo High Court (Presiding Judge Toru Oodan) on March 16, 2017, in a lawsuit that a female teacher in her 40s filed against an incorporated educational institution which manages the Third Junior & Senior High School of Nihon University in Machida City, Tokyo, where she works. In the lawsuit, the teacher claimed that prohibiting the use of her maiden name at the workplace after marriage violated her personal rights. According to the plaintiff, the school now permits the use of maiden names by all teachers and staff, including the female teacher, at work except for tax and other administrative matters.²

(3) Waiting period for women

The Act for Partial Amendments to the Civil Code was enacted on June 1, 2016, to shorten the remarriage ban period to 100 days from six months from the day the previous marriage was dissolved or cancelled and also to provide an exemption from the provision of the waiting period for a woman who has not conceived a child (is not pregnant) at the time of divorce (promulgated and enforced on June 7, 2016).

However, what the Committee is calling for is not to shorten the waiting period, but to abolish the period itself.

Supplementary provisions were added to review the above act in about three years after the

² The Huffington Post. March 17, 2017.
http://www.huffingtonpost.jp/2017/03/16/nichidai-teacher_n_15417672.html

enforcement as revised and agreed by ruling and opposition parties, but no concrete review has been conducted after the above amendment to date (as of October 2017).

2. Paragraph 21(d) and (e) of the concluding observations

21 The Committee reiterates its previous recommendation (CEDAW/C/JPN/CO/6, para. 30) and urges the State party to:

- (d) Adopt legislation to prohibit and sanction sexist speech and propaganda advocating racial superiority or hatred, including attacks on ethnic and other minority women such as the Ainu, Buraku and Zainichi Korean women as well as migrant women; and
- (e) Regularly monitor and assess the impact, through an independent expert body, of measures taken to eliminate discriminatory gender stereotypes (stereotyped gender roles which are socially and culturally formed) and prejudices against Ainu, Buraku, Zainichi Korean women and migrant women.

(1) Actual conditions of multiple forms of discrimination against minority women in Japan

- (i) As discussed below, the Government has conducted no official research on the actual conditions of minority women such as the Ainu, Buraku, Zainichi Korean, and migrant women to date.
- (ii) However, a group of lawyers conducted a survey in response to the frequent occurrence of harassment against students of Korean schools in Japan prompted by the Democratic People's Republic of Korea's admission to having abducted Japanese citizens at the Japan-North Korea summit meeting held on September 17, 2002. The survey found that while one out of five students had experienced some forms of harassment since the summit meeting (verbal abuse such as “Go to hell, Koreans” by strangers, being spit on, school uniforms of ethnic Korean garments being cut on a train, etc.), as many as one out of three had been subjected to such harassment when the results of the survey are limited to female students of junior high schools.³
- (iii) In addition, migrant women who hold a residential status of “Spouse or Child of Japanese National” granted when a foreign national marries a Japanese citizen tend to be placed under their husband's control due to the necessity of their husband's cooperation to apply for an extension of their visa and the risk of having their residential status revoked if they live separately from their husband for a prolonged period of time. The Government

³ Young Lawyers Meeting to Prevent the Harassment of Korean Children in Japan. Report on the Survey of the Actual Conditions of Harassment against Korean Children in Japan. (June 2003)

announced its policy of not revoking the residential status if a woman lives apart from her husband on the grounds of his domestic violence, but there is no guarantee that domestic violence is handled properly without clear evidence, such as a medical certificate. Foreign women are still forced into an institutionally vulnerable position.

(2) Limitations of trials and the justice system regarding multiple forms of discrimination

(i) On June 19, 2017, the Osaka High Court upheld the trial court's order requiring a former chairman of a group which advocates antiforeignism ("*Zainichi Tokken wo Yurusanai Shimin no Kai*" which literally means "citizens' group that does not permit special rights for Korean residents of Japan") to pay 770,000 yen in compensation to a Zainichi Korean woman because of defamation through hate speech based on gender and ethnic discrimination in litigation filed by the woman seeking 5.5 million yen in compensation. Furthermore, the high court acknowledged that the hate speech carried out by the defendant was "categorized as multiple forms of discrimination based on racism and discrimination against women," furthering the trial court's ruling which recognized the hate speech as racism against the plaintiff. This high court decision is the only decision which acknowledged an illegal act based on multiple forms of discrimination in Japan, and is regarded as a landmark ruling.

(ii) Yet, remedies through judicial procedures are limited as described below.

First, Japanese courts generally award extremely low amounts of compensation for emotional distress. The amount of compensation in this lawsuit was only 770,000 yen (consisting of 70,000 yen for attorneys' fees and 700,000 yen for compensation) against the plaintiff's demand of 5.5 million yen. This amount does not sufficiently compensate for the psychological sufferings of the plaintiff.

Secondly, judicial procedures take a long time, and require much effort from a victim. The above lawsuit, initiated by the plaintiff in August 2014, lasted for about two years to reach the trial court decision and for about three years as to the high court decision.

Moreover, under existing laws, it is possible to pursue civil and criminal liability for hate speech targeting specific individuals involving defamation and insults, but a remedy cannot be pursued when the hate speech is directed towards general groups of people.

(iii) As shown above, remedies through judicial procedures have limitations. It is therefore urgently necessary to introduce prompt and effective procedures for human rights remedies by a national human rights institution independent from the Government which is established pursuant to the Paris Principles.

(3) Limitations of the Hate Speech Elimination Law and the need to establish a basic act for

prohibiting racial discrimination

The report on the survey of the actual conditions of hate speech released by the Government at the end of March 2016⁴ showed that there were 1,152 cases of demonstrations involving hate speech in Japan for the three years and six months from April 2012 to September 2015, equivalent to about 329 cases per year, meaning that hate demonstrations were held at some place almost on a daily basis.

With regard to Paragraph 21(d) of the concluding observations, along with increasing pressure from the public in response to this severe situation, the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (the “Hate Speech Elimination Law”)⁵ was put into effect. It is commendable that the Hate Speech Elimination Law, which is the first special law against racial discrimination in Japan, declares in its preamble that discriminatory speech and behavior are “causing serious rifts in the local community,” and “will not be tolerated.”

However, the Hate Speech Elimination Law leaves much to be desired, and also contains the problems mentioned below.

First, the Hate Speech Elimination Law only covers discriminatory speech and behavior, excluding discriminatory treatment.

Secondly, although the Hate Speech Elimination Law obligates the national and local governments to implement measures to eliminate hate speech, it is no more than a conceptual law which does not even have provisions that prohibit hate speech.

Additionally, since the Hate Speech Elimination Law was established with a focus on severe harassment facing Korean residents in Japan who have been the main target of hate speech in recent years, the scope of the law in the Article 2 definition of hate speech is extremely limited to a group of “those originating from outside Japan” and “their descendants” with “a legitimate residential status.” Consequently, it excludes all minorities who originate from Japan such as the Ainu and Buraku people and foreign nationals without a legitimate status of residence such as asylum seekers. In particular, the incorporation of a legitimate residential status into the definition is a problem because it is apparently contrary to the recommendation to “(e)nsure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status” in Paragraph 7 of the General Recommendation No. 30 on discrimination against non-citizens by the Committee on the

⁴ Public Interest Incorporated Foundation Center for Human Rights Education and Training. Fiscal 2015 Report on the Survey of Actual Conditions of Hate Speech for the research and study project consigned by the Ministry of Justice. (March 2016) <http://www.moj.go.jp/content/001201158.pdf>

⁵ <http://www.moj.go.jp/content/001199550.pdf>

Elimination of Racial Discrimination.

As described above, the establishment of the Hate Speech Elimination Law is welcomed as a step forward against the backdrop that no legislation had ever existed, but its content is still incomplete and contains the problems mentioned above.

Actually, demonstrations accompanying hate speech are repeatedly held, and those videos spread through the Internet, which exacerbates people's discriminatory attitudes. These series of acts continue even after the Hate Speech Elimination Law became effective. Additionally, the Government takes no effective measures against hate speech targeted at ethnic minorities on the Internet, leaving it uncontrolled.

It is now necessary to increase the budget and staff to eliminate of all forms of racial discrimination such as hate speech and then to further promote more effective measures by immediately enacting a basic act which covers discriminatory treatment as well as discriminatory speech and behavior, and widely prohibits discrimination based on ethnic groups, nationality, race and descent without any limitations in the scope of victims by status of residence or origin.

(4) Necessity of continuous monitoring

The Government fails to conduct regular monitoring through an independent expert body which is called for in Paragraph 21(e) of the concluding observations.

The Government released the report on the survey of foreign residents⁶ at the end of March 2017. It conducted this official research on residents of foreign nationals for the first time ever in history to understand human rights issues facing foreign residents. It is worth commending the Government for having finally done this survey.

According to the survey result, 39.3% of foreign nationals who had looked for housing in Japan within the past five years said they were refused entry for being foreign, 41.2 percent said they were refused due to the lack of a guarantor, and 26.8% said they saw properties with “no foreigners” clearly written, so they gave up. Additionally, out of those who experienced having looked for work or actually having worked over the past five years in Japan, 25.0% said they had been refused for being foreign and 19.6% said they had been given a lower salary than a Japanese employee for the same work. The survey results indicate the reality of considerably severe discrimination. These are extremely important survey results which prove a substantial need for the establishment of legislation to completely prohibit any forms

⁶ Public Interest Incorporated Foundation Center for Human Rights Education and Training. Fiscal 2016 Report on the Survey of Foreign Residents for the research and study project consigned by the Ministry of Justice. (June 2017) <http://www.moj.go.jp/content/001226182.pdf>

of racial discrimination, including discriminatory treatment, since the Hate Speech Elimination Law which only covers discriminatory speech and behavior is an inadequate legislation to eliminate racial discrimination in Japan as mentioned above in (3).

However, the Government fails to mention the above survey results at all in its report submitted to the Committee on the Elimination of Racial Discrimination in June 2017. In addition, when asked whether it would continuously conduct this type of survey when exchanging opinions with citizens in March 2017 prior to the UPR (the Universal Periodic Review), the Government merely answered that it would examine the need for continuing the survey and other things, failing to show its willingness to do so.

Yet, continuous research is essential in order to understand the actual circumstances of racial discrimination and to implement effective legislation and measures.

The next survey should cover all minorities in Japan (the Ainu, Buraku, Zainichi Korean and migrant people), not just residents who are foreign nationals in Japan as in the previous survey; collect information by fields such as education, employment, social welfare, and victims of violence; and analyze the information by gender in order to appropriately understand the actual condition of minority women.

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