



General Assembly

Distr.: General
22 February 2010

English only

Human Rights Council

Thirteenth session

Agenda item 3

**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Japanese Workers' Committee for Human Rights (JWCHR), a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The Supreme Court defies the concern and recommendations expressed by the Human Rights Committee

We report again that Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by the Japanese Government in 1979, has not yet been implemented in Japan.

A priest Yosei Arakawa who was arrested on the suspicion of distributing leaflets on reports of local assembly and resident questionnaires into mailboxes, detained for 23 days and took the house search, and indicted, was found innocent at the first trial. But he was, on the contrary, convicted at the higher court and then, on 30 November 2009, the Supreme Court dismissed his final appeal.

We appeal to the Council that the police, the prosecution and the court in Japan do not respect the Covenant and the Constitution of Japan, and violate civil freedom of speech and expression.

The judgment of the Supreme Court pronounced that freedom of speech and expression guaranteed by Article 21 of the Constitution should be respected particularly as an important right in democratic society, and distributing such leaflets containing political opinions of a political party could be admitted as the exercise of freedom of expression. But, on the other hand, the judgment stressed that Article 21-1 of the Constitution does not unconditionally guarantee freedom of expression and, granting necessary and reasonable restrictions for the public welfare, no one is allowed to unfairly violate other persons' rights, even if expressing his opinion in public.

This decision is the same as the one that three defendants in Tachikawa were found guilty when they distributed leaflets at a housing complex of Self-Defense Forces.

To suppress the freedom of expression, the most important right, by the concept of public welfare, which was mentioned as being vague and open-ended by the Human Rights Committee, obviously violates Article 19. The judgment said it violates the right of management and the calm environment of private living, but did not mention any concrete examples about how it violated the right of other persons.

The counsel for the defense submitted the grounds of the appeal to the Supreme Court, referring to the Concluding Observations of the Human Rights Committee: "The arrest and indictment for this distributing-leaflets case on the charge of trespassing are rigorously criticized in the international society. Therefore, responding to such situation with the conviction sentenced by the judicial authorities reflects something unusual in the international community." "There are several means for judges to receive the professional training about the Covenant, but a plain and influential means for the Supreme Court is to show its attitude respecting the aims of the Covenant when it pronounces a judgment. The judgment of the Supreme Court has not only a significant influence on the society, but also has an enormous influence on judges of the lower courts." And the counsel called on the respect for the Covenant and its implementation domestically to it.

But the Supreme Court did not even mention the Covenant and the concern and recommendations of the Concluding Observations, and did not take it into account either.

The Human Rights Committee, after reviewing the fifth Japan's periodic report in October 2008, adopted the Concluding Observations. Its main concern and recommendations are as follows: "The Committee is concerned about unreasonable restrictions placed on freedom of expression and on the right to take part in the conduct of public affairs. It is also concerned about reports that political activities and public employees have been arrested and indicted under laws on trespassing or under the National Civil Service Law for

distributing leaflets with content critical of the Government to private mailboxes (art.19 and 25).” ”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 and 25 of the Covenant.” And the Supreme Court also defied Article 98 of the Constitution, which says that “the treaties concluded by Japan and established laws of nations shall be faithfully observed.”

Successive distributing-leaflets cases are convicted of trespassing, the violation of the National Public Service Law and that of the Public Offices Election Law respectively at every three trials. As a result, we report to the Council that it is withering the acts of communication of speech and expression through all kinds of leaflets, including political leaflets, and also bringing about a serious difficulty with the right to know for residents.
