



General Assembly

Distr.: General
9 May 2023

English only

Human Rights Council

Fifty-second session

27 February–31 March 2023

Agenda item 3

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

Joint written statement* submitted by Japan Society for History Textbook, International Career Support Association, non-governmental organizations 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.

[6 February 2023]

* Issued as received, in the language of submission only.



Infringement on Freedom Of Speech, Expression and Thought in Japan

1. Summary

- 1) The judicial decision that declared the act of “liking” tweets “an infringement on self-esteem” is an infringement on the “right to hold opinions without interference” and the “right to freedom of expression” guaranteed by ICCPR Article 19.
- 2) This decision mentions the “influence of being a Diet member who has 110,000 followers” as one of the reasons for the decision of the court. This is violation of ICCPR Article 2 “undertake to respect and to ensure the rights recognized in the present Covenant, without distinction of any kind” and Article 26 “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. (Omitted) guarantee to all persons equal and effective protection against discrimination on any ground.”
- 3) Any person whose rights or freedoms are violated by an unfair judicial decision as mentioned above can have a “remedy” guaranteed by Article 2.

2. Background of the problem and the present situation

On October 20, 2022, a judicial decision was given that declared the act of “liking” 25 tweets “an infringement on self-esteem” by Tokyo High Court, which ordered that 550,000 yen be paid in compensation.

The reasons for the decision were that the act was recognized as “an insult beyond the limits of tolerance under normal social conventions” and “coming from an intention to hurt (the plaintiff’s) self-esteem,” and the defendant “was an incumbent Diet member” and “had influence incomparable with that of ordinary people in that she had 110,000 followers.” However, these reasons for the decision can only be said to be the chief judge’s subjective judgment.

- 1) “an insult beyond the limits of tolerance under normal social conventions”

In the first place, no law exists to provide for the limitation to “liking,” the upper limit of the number of likes and the attribute of the liker, for example. Regarding an “insult,” there are no clear criteria to indicate what constitutes an insult. Recognizing what has no clear regulations or criteria as “an insult” “beyond the limits” is only a subjective judgment made by the chief judge.

- 2) “coming from an intention to hurt self-esteem”

The reason that the insult “came from an intention to hurt self-esteem” is also obscure.

First, what is “self-esteem”? It may be only that the plaintiff was obsessed with an unwarranted idea that she was “insulted” and felt “her self-esteem hurt.”

The chief judge says that he decided the act “came from an intention” because he took the defendant’s remarks made in the past (in online shows, blog, etc.) seriously but the judgment itself that those remarks are “malicious slanders” or “ridicules” is extremely subjective. Whether or not any remark is a “malicious slander” or a “ridicule” cannot be proven objectively or numerically. It can be said to be a subjective judgment made by the chief judge who accepted the plaintiff’s claim without questioning.

In addition, the chief judge’s afterthought assertion that remarks made in the past based on the freedom of expression and speech are “malicious slanders” and “ridicules” is only the chief judge’s subjective judgment.

It is very dangerous for a chief judge, or the head of the judicature who is supposed to be absolutely just and fair, to make a judicial decision based on subjective judgment only from

the plaintiff's viewpoint. It threatens the freedom of speech and expression and the freedom to hold opinions without interference.

3) "incumbent Diet member"

Using being an "incumbent Diet member" as a reason for the decision is occupational discrimination.

4) "had influence incomparable with that of ordinary people in that she had 110,000 followers"

Deciding that "having 110,000 followers" is nothing but having "influence" should be simplistic. How much influence is exerted by having "110,000 followers" is unclear and it is weak as a reason for the judicial decision.

What "influence" actually means is also unclear. It can be regarded as manipulation to imprint an impression that "liking" may lead the followers to riot.

5) Defamation of the defendant

Filing an action against a "liker" of tweets, not the ones who made the tweets that were "liked," and besides, targeting only the defendant, instead of all people who "liked" the tweets, to file an action is defamation of the defendant. It is predictable that there will be a media spectacle because the defendant is a Diet member. Criticizing the defendant while exposing her to public attention can be said to be an act intended for damaging the defendant's reputation.

3. Conclusion

As described above, the judicial decision that declared "liking" tweets an unlawful act is based on the chief judge's subjective judgment and is an act that constitutes infringement on the freedom of speech, freedom of thought, occupational discrimination and also defamation of the defendant. Therefore, we demand the Human Rights Council that it give the following advisory opinions to the Government of Japan and the Supreme Court.

(1) Thoroughly recognize the unfairness of the decision declaring "liking" tweets an unlawful act and the reason for the decision.

(2) Take measures for rehabilitation of the reputation and remedy of the defendant whose "liking" tweets was declared an unlawful act and ordered to pay compensation

(3) Establish clear provisions on "liking" tweets

International Research Institute of Controversial Histories (iRICH), NGO(s) without consultative status, also share the views expressed in this statement.