

Japan’s Hate Speech Laws: Translations of the Osaka City Ordinance and the National Act to Curb Hate Speech in Japan

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I. INTRODUCTION

There have been major legal developments on the problem of hate speech in Japan since 2013. Prior to 2013, hate speech was not considered a serious concern in Japan, while in many democratic countries, it had been one of the top controversies for several decades. In fact, the term “hate speech” was only known to very limited groups of people in Japan: constitutional law scholars, social scientists, journalists, and other civil rights advocates. In other words, it was assumed that hate speech was a social phenomenon unique to countries with racial problems, and that it had nothing to do with one as racially homogeneous as Japan.

The situation has changed as some conservative civic groups in Japan gradually reinvigorated their activities around 2010. One of them is the Zaitokukai, a group regarded as the most notorious and aggressive hate speech group in the country.¹ After its foundation in 2007, the Zaitokukai held demonstrations mainly against ethnic Korean residents and condemned their alleged privileges. Around 2012 and 2013, the Zaitokukai demonstrations became very provocative and even atrocious,²

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¹ Zaitokukai is the abbreviation for *Zainichi Tokken wo Yurusanai Shimin no Kai*, or The Civic Group of No Tolerance for the Privileges of Ethnic Korean Residents in Japan. As the name itself shows, the Zaitokukai has been advocating that the “Zainichi”, or ethnic Korean residents in Japan, are unduly preferred in many instances of the Japanese welfare system, and that they regularly engage in much illegal conduct, which was often, they allege, punished leniently or even overlooked by police.

² Some examples would be helpful for readers outside Japan to understand the kind of words that were actually heard in the demonstrations. Their hate speech included: “You, dirty Chonko (derogatory word referring to the Korean people), I irresistibly hate you”; “I dare kill you”; “Burn the dirty Korean Peninsula down”; “Cleanse the Korean towns.” See Koichi Yasuda, *Shin Hoshuundō to Heito Supīchi* [New Conservative

and eventually got the attention of the Asahi Shinbun, a major Japanese newspaper.³ After the first news article was published, more and more people became aware of the demonstrations by the Zaitokukai that were being held in central Tokyo, Kawasaki, Kyoto, and Osaka (where many ethnic Korean residents lived, worked and developed their own communities). Against this background, the Kyoto district court decided the lawsuit brought against the Zaitokukai in October of 2013, and found the defendant liable for the harm they caused.⁴ With this first judicial ruling on hate speech and with the extensive news coverage on the group's aggressive demonstrations, the term "hate speech" was recognized and became widely used throughout the general public in Japan. The term "hate speech" even placed among the top 10 buzzwords in 2013.⁵

The first civil lawsuit regarding hate speech was brought to court by a private Korean school. Around 2010, the Zaitokukai held aggressive demonstrations three separate times in front of, and around, the Kyoto Chōsen Daiichi Primary School operated by Kyoto Chōsen Gakuen, an educational corporation affiliated with the North Korean government.⁶ The school filed a lawsuit against the Zaitokukai in the Kyoto district court in June 2010, seeking damages based on defamation and forcible obstruction of business caused by their demonstrations as well as injunctive relief.⁷

Movement and Hate Speech], HEITO SPĪCHI NO HŌTEKI KENKYŪ [LEGAL STUDY OF HATE SPEECH] 18 (Kim Sangyun ed., 2014).

³ Hideaki Ishibashi, "Korose" Renko Demo Oukou ["Kill" Repeating, Demonstration Rampant], ASAHI SHINBUN (Japan), Mar. 16, 2013. Some law professors, journalists, and lawyers in Japan have started actively to publish academic articles and books around 2013 to 2014. See, e.g., Yasuko Morooka, HEITO SUPĪCHI TOWA NANIKA [WHAT IS HATE SPEECH?] (Iwanami Shoten Publishers) (2013); Akira Maeda, NAZE, IMA HEITO SUPĪCHI NANOKA [WHY NOW HATE SPEECH MATTERS?] (San'ichi Shobō 2013); Junko Kotani, *Nihon Kokunai ni Okeru Zōohyōgen (Heito Supīchi) no Kisei ni Tsuite no Ichikōsatsu* [An Analysis of Hate Speech Regulation in Japan], 87 J. L. POL. & SOC. 385 (2014); Masayuki Uchino, *Heito Supīchi* [Hate Speech], 403 HŌGAKU KYŌSHITSU [THE LAW CLASS] 60 (2014); *Heito Supīchi Hō wo Meguru Jyōkyō* [The Situation Over Hate Speech Law], 485 HŌ TO MINSHUSHUGI [LAW AND DEMOCRACY] 22 (2014).

⁴ Kyoto Chōsen Gakuen v. Zaitokukai, et al. [Kyoto District Court] Oct. 7, 2013, 2208 HANREI JIHŌ [HANJI] 74 (Japan).

⁵ See U-CAN New Language Buzzword Awards Committee has announced the top ten and the grand prize of this year's New Entry Word Award (Dec. 1, 2015), <http://singo.jiyu.co.jp/old/index.html> (last visited June 29, 2017).

⁶ See Kyoto Chōsen Gakuen v. Zaitokukai, et al, 2208 HANJI, at 77-78 (listing speech uttered in front of the school: "They stole the land from us by raping Japanese women, taking advantage of the absence of men in wartime Kyoto", "This is not a school, but an institution for training spies", "Beat the Koreans out of Japan", "A promise can be made between human beings, but it cannot be made between human beings and Koreans", "Let's get Koreans executed in public health centers (like dogs)", and "Koreans are cockroaches and maggots, go back to the Korean Peninsula.").

⁷ See *id.* at 75.

The Court held that the Zaitokukai was liable for damages and ordered them to pay about 12.2 million JPY to the school in June 2013.⁸ As for injunctive relief, the Court ordered the defendant not to do, and not let others do, the following acts within 200 meters from the school: (i) forcing the teachers, staffs, students, and other persons involved to meet the defendant and demonstrating in a defamatory manner against the school, (ii) distributing any defamatory bills or leaflets, and (iii) picketing or loitering with displays or flags.⁹ The decision was a clear victory for the school and for other victims of the hateful messages that the Zaitokukai had spread all over Japan.

The decision was important in two ways: First, it was the initial judicial ruling on hate speech in Japan. Through this ruling, the court sent a clear message that the Zaitokukai had crossed the line that separates alleged aggressive political *speech* from prohibited discriminatory *acts*,¹⁰ and condemned the group to pay substantial damages to the school.¹¹ The decision was affirmed by the Osaka high court,¹² though with a slightly different reasoning,¹³ and then summarily affirmed by the Supreme Court of Japan as well.¹⁴ Second, some political leaders started discussing a possible scheme to regulate, or to at least curb, hate speech in the wake of the Kyoto district court decision. This led to the enactment of an ordinance in Osaka city, home to many ethnic Korean residents (especially in the Tsuruhashi area).

⁸ See *id.* at 96-103.

⁹ See *id.* at 103-04.

¹⁰ See *id.* at 98-99 (emphasis added).

¹¹ An expert on the issue of hate speech in Japan understood the decision as a manifestation of the court's will to provide the plaintiff the best possible remedies under the current legal framework. See Yuji Nasu, *Wagakuni ni okeru Heito Supīchi no Hō Kisei no Kanousei* [Possibility of Legal Regulation of Hate Speech in Our Nation], 707 HŌGAKU SEMINĀ [SEMINAR ON LEGAL STUDIES] 25 (2013).

¹² *Kyoto Chōsen Gakuen v. Zaitokukai et al.*, 2232 HANREI JIHO 34 (Osaka High Court, July 8, 2014).

¹³ The district court's decision cited some specific articles of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and seemingly applied those articles to the lawsuit at hand between private individuals. See 2208 HANJI, at 96. The Osaka high court based its liability on the "indecent" and "vulgar" nature of the speech, rather than the mandate of the ICERD. See 2232 HANJI, at 38-39.

¹⁴ Supreme Court of Japan, Third Party Bench, Dec. 9, 2014. The decision is not reported, but available at the LEX/DB database service with reference number 25505638.

II. JAPAN'S NEW HATE SPEECH LAWS

The Osaka city ordinance for dealing with hate speech was enacted on January 15th, 2016.¹⁵ This ordinance is very important in the history of the hate speech controversy in Japan because it is the first written law that provides a legal definition of hate speech. As seen in the translation below, the Ordinance defines hate speech as discriminatory speech directed at an ethnic or racial minority. The Ordinance does not, however, protect other vulnerable members of the community, like religious or sexual minorities. Moreover, the Ordinance does not prohibit hate speech or provide punishment for hate speakers. The purpose of this Ordinance is just to name and shame such speakers in the form of a publication signed by the mayor.¹⁶

Nonetheless, the Ordinance had a great impact on the discussion of hate speech regulation, and, for the first time in Japan's history, it greatly encouraged Diet members to enact an act to curb discriminatory speech. Just three months after the enactment of the Osaka Ordinance, the members of the ruling parties in the Diet introduced a bill for the first act on hate speech, and voted the Act into law on May 24th, 2016.¹⁷

The first national hate speech law is more like a general statement that Japan has no tolerance for hate speech – the Act does not add a new category of protected minorities nor prohibit hate speech. It does, however, provide a lengthy definition of the term, which narrows the range of possible victims, and makes the crux of the definition blurred. With respect to the responsibility of the government, the Act simply sets a general principle rather than providing particular details on what the government should do to eliminate hate speech.

¹⁵ The Original text is available here (website in Japanese): <http://www.city.osaka.lg.jp/shimin/cmsfiles/contents/0000339/339043/170601zyourei.pdf> (last visited Dec. 9, 2017).

¹⁶ Recently, the City of Osaka announced that the City found one video uploaded to YouTube was hate speech, requested that Google delete the video, and confirmed that the video was properly deleted. *See Heito Supīchi Dōga wo Sakujo Ōsakashi ga Nintei, Gūguru ni Yōsei* [Hate Speech Video Deleted Based upon the Finding by the City of Osaka, Request Sent to Google], ASAHI SHINBUN, June 3, 2017. A freelance writer reports in a different news source that the City received 26 complaints after July of 2016, and found that three videos constituted hate speech in March of 2017. *See Jiro Hirano, Osakashi ga Heito Supīchi Jōrei de Hatsunintei Tōkō Dōga no Sakujo wo Yōsei* [The First Findings by the City of Osaka According to Hate Speech Ordinance, Requested to Delete the Video], SHŪKAN KINYŌBI NYŪSU [The Weekly Friday News] May 9, 2017. Available at <http://www.kinyobi.co.jp/kinyobinews/2017/05/09/大阪市がヘイトスピーチ条例で初認定%E3%80%80投稿動画/> (website in Japanese) (last visited June 29, 2017).

¹⁷ Ryuichi Kitano, *Heito Taisaku Hō ga Seiritsu* [Hate Speech Law Enacted], ASAHI SHINBUN, May 25, 2016. The law came into effect as of June 3, 2016.

It should be duly noted, however, that Japan now follows the commitment to curb hate speech mainly led by European and other common law countries (except the United States).¹⁸ The preamble succinctly states the problems caused by hate speech groups and declares the government, national or local, responsible for the elimination of hate speech. Unlike an ordinance enacted by a local government, the Act shall be applied over all the jurisdictions. Because of this national act, some other local governments are now willing to introduce new ordinances to deal with the hate speech problems in their jurisdiction.¹⁹ It would be fair to say that Japan has taken rapid and meaningful steps to act against racism.

¹⁸ See, e.g., Michel Rosenfeld, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis*, 24 CARDOZO L. REV. 1523, 1541-58 (2003) (listing Canada, the United Kingdom and Germany as the countries prohibiting hate speech with criminal sanctions, and pointing that international covenants such as ICERD charges the Parties with affirmative duties on tackling with racism.).

¹⁹ The cities of Nagoya and Kobe are considering enacting ordinances to curb hate speech. The city of Kawasaki has recently taken a more drastic measure to curb hate speech. The City has set a new guideline to limit the use of public facilities within the City by a person or group of persons, who is suspected of spreading hate speech. The guideline defines hate speech using the same definition as Article 2 of the National Act, as seen in Chapter IV of this translation. Under the guideline, hate speech includes all of the following: (1) Speech directed at people who are from a country or a region outside Japan, or their descendants who live in Japan legally; (2) speech made with the main purpose of boosting or inducing a sense of discrimination against them; (3) speech is made because of their origin; (4) speech is made to incite exclusion of the group from their local community. The manager of the public facility may limit the use of public facilities only after hearing opinions from the Third Party Committee that shall be established by the request of the manager. The limitation varies from Warning to Conditional Permission, then to Rejection, according to the probability that the applicant(s) would spread hate speech. The manager of the public facility may also withdraw its prior permission based on an opinion from the Third Party Committee that it is clearly evident that the applicant(s) would spread hate speech. Noting that this is the prior restraint of speech, which has been considered constitutionally suspect, the guideline provides that the City may reject or withdraw its permission for the use of public facilities in very limited circumstances. See The Kawasaki City, Honpōgai Shushinsha ni Taisuru Futō na Sabetsuteki Gendō no Kaishō ni Muketa Torikumi no Suishin ni Kansuru Hōritsu ni Motodoku “Ōyake no Shisetsu” Riyōkyōka ni Kansuru Gaidorain [The Guideline for Permission of the Use of “Public Facilities” Based on the Act on Promotion of Activities for Elimination of Unjust Discriminatory Words and Deeds against People from Outside Japan], Nov. 9, 2017. Available at <http://www.city.kawasaki.jp/templates/pubcom/cmsfiles/contents/0000088/88441/gaidorain.pdf> (last visited Dec. 3, 2017). Prefectures of Aichi and Kyoto, and the city of Kyoto are planning to set similar guidelines. See Daisuke Okazaki, *Heito Supīchi: 3 Seireishi ga Jōrei Seitei wo Kentō* [Hate Speech: 3 Government-Designated Cities Consider Enacting Ordinances in the Purpose of Curbing (Hate Speech)], MAINICHI SHINBUN, May 31, 2017.

III. TRANSLATION OF THE OSAKA CITY ORDINANCE

大阪市ヘイトスピーチへの対処に関する条例
ŌSAKASHI HEITOSPĪCHI HENO TAISHO NI KANSURU
JŌREI (The Osaka City Ordinance for Dealing with Hate Speech)

第1条 (目的)

Article 1 [Purpose]

この条例は、ヘイトスピーチが個人の尊厳を害し差別の意識を生じさせるおそれがあることに鑑み、ヘイトスピーチに対処するため本市がとる措置等に関し必要な事項を定めることにより、市民等の人権を擁護するとともにヘイトスピーチの抑止を図ることを目的とする。

The purpose of this Ordinance, in recognition of the fact that hate speech may harm the dignity of an individual and cause a sense of discrimination towards them, is to attempt to curb hate speech as well as to protect the human rights of the Citizens, etc., by establishing necessary particulars concerning measures, etc., taken by the City to deal with hate speech.

第2条 (定義)

Article 2 [Definitions]

1 この条例において「ヘイトスピーチ」とは、次に掲げる要件のいずれにも該当する表現活動をいう。

1. “Hate speech” as used in this Ordinance is an act of expression that falls within all of the following descriptions:

(1) 次のいずれかを目的として行われるものであること
(ウについては、当該目的が明らかに認められるものであること)

(1) The act is done with the purpose of any of the following (for the application of subsection (iii), the specified purpose has to be clearly identifiable):

ア 人種又は民族に係る特定の属性を有する個人又は当該個人の属する集団(以下「特定人等」という。)を社会から排除すること

(i) To exclude any person or group of persons who has or have specific characteristics pertaining to race or ethnic origins (hereinafter referred to as “the Specific Persons”) from society;

イ 特定人等の権利又は自由を制限すること

(ii) To limit the rights or freedoms of the Specific Persons, etc.;

ウ 特定人等に対する憎悪若しくは差別の意識又は暴力をあおること

(iii) To incite hatred, a sense of discrimination, or violence against Specific Persons.

(2) 表現の内容又は表現活動の態様が次のいずれかに該当すること

(2) The content of, or the method of, the expression falls within any of the following:

ア 特定人等を相当程度侮蔑し又は誹謗中傷するものであること

(i) It is to insult or defame the Specific Persons, etc., substantially;

イ 特定人等（当該特定人等が集団であるときは、当該集団に属する個人の相当数）に脅威を感じさせるものであること

(ii) It is to make the Specific Persons, etc., (or a substantial number of the Specific Persons, etc., if directed to them) feel threatened.

(3) 不特定多数の者が表現の内容を知り得る状態に置くような場所又は方法で行われるものであること

(3) The act is done in a place where, or in a way that, many and unspecified persons could know the content of the act.

2 この条例にいう「表現活動」には、次に掲げる活動を含むものとする。

2. For the purpose of this Ordinance, the act of expression shall include the following:

(1) 他の表現活動の内容を記録した印刷物、光ディスク（これに準ずる方法により一定の事項を確実に記録することができる物を含む。）その他の物の販売若しくは頒布又は上映

(1) The selling or distributing, or showing of a printed material, of an optical disk (including a medium that allows the recording of a certain content without fail in an equivalent way), or of the other things containing other acts of expression;

(2) インターネットその他の高度情報通信ネットワークを利用して他の表現活動の内容を記録した文書図画又は画像等を不特定多数の者による閲覧又は視聴ができる状態に置くこと

(2) Exhibiting to many and unspecified persons a document or an image containing other acts of expression by using the internet or another advanced information and telecommunication network;

(3) その他他の表現活動の内容を拡散する活動

(3) Any other way of disseminating the content of other acts of expression.

3 この条例において「市民」とは、本市の区域内に居住する者又は本市の区域内に通勤し若しくは通学する者をいう。

3. “The Citizen” as used in this Ordinance is a person who resides within the City, or who commutes to the City to work or study.

4 この条例において「市民等」とは、市民又は人種若しくは民族に係る特定の属性を有する市民により構成される団体をいう。

4. “The Citizens, etc.” as used in this Ordinance is the Citizen or a group of the Citizens who have specific characteristics pertaining to race or ethnic origins.

第3条（啓発）

Article 3 [Public Awareness]

本市は、ヘイトスピーチが個人の尊厳を害し差別の意識を生じさせるおそれがあることに鑑み、ヘイトスピーチによる人権侵害に関する市民の関心と理解を深めるための啓発を行うものとする。

The City of Osaka, in recognition of the fact that hate speech may harm the dignity of an individual and cause a sense of discrimination against them, is to raise the awareness of the Citizens to increase interest in and understanding of the human rights violations caused by hate speech.

第4条（措置等の基本原則）

Article 4 [Basic Principles of Measures, etc.]

次条及び第6条の規定による措置及び公表は、市民等の人権を擁護することを目的として実施されるものであることに鑑み、国による人権侵犯事件に係る救済制度等による救済措置を補完することを旨としつつ、同救済制度等と連携を図りながら実施されなければならない。

In recognition of the fact that measures and announcements are done to protect the human rights of the Citizens, etc., the measures and announcements provided in the following Article and Article 6 must be implemented and aimed at supplementing remedial measures of the State's remedial systems for human rights violations, in coordination with said system.

第5条（拡散防止の措置及び認識等の公表）

Article 5 [Measures to Prevent Dissemination and Publication of Recognitions, etc.]

1 市長は、次に掲げる表現活動がヘイトスピーチに該当すると認めるときは、事案の内容に即して当該表現活動に係る表現の内容の拡散を防止するために必要な措置をとるとともに、当該表現活動がヘイトスピーチに該当する旨、表現の内容の概要及びその拡散を防止するためにとった措置並びに当該表現活動を行ったものの氏名又は名称を公表するものとする。ただし、当該表現活動を行ったものの氏名又は名称については、これを公表することにより第1条の目的を阻害すると認められるとき、当該表現活動を行ったものの所在が判明しないときその他特別の理由があると認めるときは、公表しないことができる。

1. Upon finding the following acts of expression as hate speech, the mayor shall take necessary measures to prevent dissemination of the content pertaining to said act in accordance with the facts of the case, and shall publish the fact that said act constitutes hate speech, the summary of the content of the expression, the measures taken by the mayor to prevent dissemination of the expression, and the name of the actor. However, the mayor may withhold the name of the actor if the mayor finds that the publication will inhibit the purpose set by Article 1, or if the whereabouts of the actor are unknown, or if the mayor finds otherwise that there is any special reason to do so:

(1) 本市の区域内で行われた表現活動

(1) An act of expression done within the City;

(2) 本市の区域外で行われた表現活動（本市の区域内で行われたかどうか明らかでない表現活動を含む。）で次のいずれかに該当するもの

(2) An act of expression done outside of the City (including cases where it is not clear whether the act was done within the City) that falls within any of the following descriptions;

ア 表現の内容が市民等に関するものであると明らかに認められる表現活動

(i) An act of expression where the content of the expression is clearly understood as relating to the Citizens, etc.;

イ アに掲げる表現活動以外の表現活動で本市の区域内で行われたヘイトスピーチの内容を本市の区域内に拡散するもの

(ii) An act of expression other than the one provided in (i) that disseminates the content of hate speech having occurred within the City to an area within the City.

2 前項の規定による措置及び公表は、表現活動が自らに関するヘイトスピーチに該当すると思料する特定人等である市民等の申出により又は職権で行うものとする。

2. The measures and publications provided in the preceding paragraph shall be done upon petition by the Citizens, etc., who consider an act of expression to constitute hate speech relevant to themselves, or by the City's own authority.

3 市長は、第1項の規定による公表をしようとするときは、あらかじめ、当該公表に係るヘイトスピーチを行ったものに公表の内容及び理由を通知するとともに、相当の期間を定めて、意見を述べるとともに有利な証拠を提出する機会を与えなければならない。ただし、当該公表に係るヘイトスピーチを行ったものの所在が判明しないとき又は当該公表の内容が次条第3項の規定に基づき第7条の規定による大阪市ヘイトスピーチ審査会（以下「審査会」という。）の意見を聴く対象とした公表の内容と同一であり、かつ、審査会において当該公表の内容が妥当であるとの意見が述べられたときは、この限りでない。

3. When the mayor tries to publish pursuant to paragraph 1, the mayor must inform the hate speaker of the content of the publication and the reason it constitutes hate speech as well as give a reasonable period of time to the speaker and give an opportunity to state the speaker's opinion and to present evidence favorable to the speaker in advance of said publication; provided, however, that this does not apply when whereabouts of the hate speaker are unknown, or when the content of the publication is identical to the one designated for hearing according to paragraph 3 of the following Article by the Osaka hate speech review board established under Article 7 (hereinafter referred to as the "Review Board"), and when they have stated an opinion in the Review Board that the content of the publication was appropriate.

4 前項本文の意見は、市長が口頭であることを認めるときを除き、書面により述べなければならない。

4. The opinion referred to in the preceding paragraph must be given as a written statement except in cases where the mayor determines it can be given orally.

5 市長は、第 1 項の規定による公表に当たっては、当該ヘイトスピーチの内容が拡散することのないよう十分に留意しなければならない。

5. In the publication pursuant to paragraph 1, the mayor must pay due regard to prevent dissemination of the hate speech.

6 第 1 項の規定による公表は、インターネットを利用する方法その他市規則で定める方法により行うものとする。

6. The publication pursuant to paragraph 1 shall be done via the internet or in other ways prescribed by the City regulations.

第 6 条（審査会の意見聴取）

Article 6 [The Hearings of the Review Board]

1 市長は、前条第 2 項の申出があったとき又は同条第 1 項各号に掲げる表現活動がヘイトスピーチに該当するおそれがあると認めるときは、次に掲げる事項について、あらかじめ審査会の意見を聴かななければならない。ただし、同条第 2 項の申出があった場合において、当該申出に係る表現活動が同条第 1 項各号のいずれにも該当しないと明らかに認められるときは、この限りでない。

1. The mayor must hear the opinion of the Review Board on the following in advance when the mayor receives a petition pursuant to paragraph 2 in the preceding Article, or finds that an act of expression that falls within any item of paragraph 1 in the same Article could be suspected to be hate speech; provided, however, that this does not apply when the mayor clearly recognizes the act concerning said petition doesn't fall within any item of paragraph 1 in the same Article, in the case where the petition under paragraph 2 of the same Article is filed:

(1) 当該表現活動が前条第 1 項各号のいずれかに該当するものであること

(1) Said act of expression falls within any item of paragraph 1 of the preceding Article;

(2) 当該表現活動がヘイトスピーチに該当するものであること

(2) Said act of expression constitutes hate speech.

2 市長は、前項ただし書の規定により審査会の意見を聴かなかつたときは、速やかにその旨を審査会に報告しなければならない。この場合において、審査会は市長に対し、当該報告に係る事項について意見を述べることができる。

2. When the mayor did not hear the opinion of the Review Board pursuant to the provisions of the proviso to the preceding paragraph, the mayor must report to the Review Board not having heard the opinion. This being the case, the Review Board may state its opinion on particulars concerning said report to the mayor.

3 市長は、前 2 項の規定に基づく審査会の意見が述べられた場合において、前条第 1 項の規定による措置及び公表をしようとするときは、当該措置及び公表の内容について、あらかじめ審査会の意見を聴かなければならない。ただし、同項の規定による措置については、緊急を要するときその他第 1 条の目的を達成するため特に必要があると認めるときは、審査会の意見を聴かないでとることができる。

3. When the mayor tries to publish the measures pursuant to paragraph 1 of the preceding Article after the Review Board states its opinion according to the provision of the preceding 2 paragraphs, the mayor must hear the opinion of the Review Board on said measures and the content of publication by the Review Board. However, the mayor may take measures that are provided in the preceding 2 paragraphs without hearing the Review Board where the mayor finds that such omission is urgently needed or otherwise specially required to achieve the purpose of Article 1.

4 市長は、前項ただし書の規定により審査会の意見を聴かないで前条第 1 項の規定による措置をとったときは、速やかにその旨を審査会に報告しなければならない。この場合において、審査会は市長に対し、当該報告に係る事項について意見を述べることができる。

4. When the mayor did not hear the opinion from the Review Board pursuant to the provisions of the proviso to the preceding paragraph, and took measures pursuant to paragraph 1 of the preceding Article, the mayor must report to the Review Board having done so. This being the case, the Review Board may state its opinion on particulars concerning said report to the mayor.

5 市長は、前項の規定に基づく審査会の意見が述べられたときは、前条第 1 項の規定による公表において、当該意見の内容を公表するものとする。

5. When the Review Board stated opinions pursuant to the preceding paragraph, the mayor shall publish the opinion of the Review Board in the publication pursuant to paragraph 1 of the preceding Article.

第7条（審査会の設置）

Article 7 [Establishment of the Review Board]

1 前条第1項から第4項までの規定によりその権限に属するものとされた事項について、諮問に応じて調査審議をし、又は報告に対して意見を述べさせるため、市長の附属機関として審査会を置く。

1. The Osaka Hate Speech Review Board shall be established as an organ affiliated with the mayor in order to investigate and deliberate on the matters that come under its authority pursuant to paragraph 1 through paragraph 4 of the preceding Article in response to consultation with the mayor, or to have it state opinions on the report by the mayor.

2 審査会は、前項に定めるもののほか、この条例の施行に関する重要な事項について、市長の諮問に応じて調査審議をするとともに、市長に意見を述べることができる。

2. The Review Board may state its opinion in response to consultations with the mayor on the matter concerning enforcement of this Ordinance in addition to the matters pursuant to the preceding paragraph, as well as investigate and deliberate on said matters.

第8条（審査会の組織）

Article 8 [Organization of the Review Board]

1 審査会は、委員5人以内で組織する。

1. The Review Board shall be comprised of no more than 5 members.

2 審査会の委員は、市長が、学識経験者その他適当と認める者のうちから市会の同意を得て委嘱する。

2. With the consent of the City council, the mayor shall commission a person to be a member of the Review Board from among persons who are recognized as academic experts or otherwise qualified to be members of the Review Board.

3 審査会の委員の任期は、2年とする。ただし、補欠の委員の任期は、前任者の残任期間とする。

3. The term of a member shall be two years. However, the term of a member filling a vacancy shall be for the duration of the remaining term of the predecessor.

4 委員は、1回に限り再任されることができる。

4. A member may be reappointed only once.

5 審査会の委員は、職務上知り得た秘密を漏らしてはならない。その職を退いた後も同様とする。

5. A member of the Review Board shall not disclose any secret obtained in the course of duties. The same shall apply even after he or she resigns.

6 審査会の委員は、在任中、政党その他の政治的団体の役員となり、又は積極的に政治運動をしてはならない。

6. During their term of office, members of the Review Board shall not be officers or members of political parties or of other political organizations, or actively participate in political activities.

7 市長は、審査会の委員が前2項の規定に違反したときは、当該委員を解嘱することができる。

7. When a member of the Review Board violates the provision of the preceding 2 paragraphs, the mayor may discharge the member from the Review Board.

第9条（審査会の調査審議手続）

Article 9 [The Proceedings of Investigation and Deliberation by the Review Board]

1 審査会は、必要があると認めるときは、市長又は調査審議の対象となっている表現活動に係る第5条第2項の規定による申出をした市民等（以下「申出人」という。）に意見書又は資料の提出を求めること、適当と認める者にその知っている事実を述べさせることその他必要な調査をすることができる。

1. The Review Board may request that the mayor or the Citizens, etc., who petitioned on the matter of an act of expression that is subject to investigation and deliberation pursuant to paragraph 2 of Article 5 (hereinafter referred to as the petitioner), to submit a written opinion or a document, may have a person who is found to be appropriate state a fact that the person knows, and may conduct other necessary investigation, if the Review Board finds it to be necessary.

2 審査会は、調査審議の対象となっている表現活動に係る申出人又は当該表現活動を行ったもの（以下これらを「関係人」という。）に対し、相当の期間を定めて、書面により意見を述べるとともに有利な証拠を提出する機会を与えなければならない。ただし、関係人の所在が判明しないときは、当該関係人については、この限りでない。

2. The Review Board shall, setting a reasonable period of time, give the petitioner concerned with an act of expression that is subject to investigation and deliberation or a person who did the said act (hereinafter referred to as “the concerned parties”), an opportunity to present favorable evidence as well as to submit a written opinion; provided, however, that this does not apply to the concerned parties when whereabouts of the said concerned parties is not known.

3 前項に定めるもののほか、審査会は、関係人から申立てがあったときは、相当の期間を定めて、当該関係人に口頭で意見を述べる機会を与えなければならない。ただし、審査会が、その必要がないと認めるときは、この限りでない。

3. In addition to the matters pursuant to the preceding paragraph, the Review Board shall, setting a reasonable period of time, give the concerned parties an opportunity to state an opinion orally when the said concerned parties request to do so; provided, however, that this does not apply when the Review Board finds it to be unnecessary.

4 前項本文の場合においては、関係人は、審査会の許可を得て、補佐人とともに出頭することができる。

4. In the case where the text of the preceding paragraph applies, the concerned parties may report to them with a counselor, with the permission by the Review Board.

5 審査会は、必要があると認めるときは、その指名する委員に次に掲げる事項を行わせることができる。

5. The Review Board may select a member among them and direct the designated member to do the following, if the Review Board finds it to be necessary:

(1) 第1項の規定による調査

(1) Conduct an investigation pursuant to paragraph 1;

(2) 第3項本文の規定による関係人の意見の陳述を聴くこと

(2) Hear a statement of an opinion from the concerned parties provided in the text of paragraph 3;

(3) 第6条第2項の規定による報告を受けること

(3) Receive a report as provided in paragraph 2 of Article 6.

6 審査会の行う調査審議の手続は、公開しない。ただし、第 7 条第 2 項に規定する事項に関する調査審議の手続については、特段の支障がない限り、公開して行うものとする。

6. The proceedings of investigation and deliberation by the Review Board shall not be opened to the public. However, the proceedings of investigation and deliberation as to the matters provided in paragraph 2 of Article 7 shall be opened as long as there is no particular obstacle.

第 10 条（審査会に関する規定の委任）

Article 10 [Delegation of Matters Concerning the Review Board]

前 3 条に定めるもののほか、審査会の組織及び運営並びに調査審議の手続に関し必要な事項は、市規則で定める。

In addition to the matters provided in the prior 3 Articles, necessary particulars as to the organization and operation of the Review Board and the proceedings of investigation and deliberation shall be set by the City regulations.

第 11 条（適用上の注意）

Article 11 [Notice for Its Application]

この条例の適用に当たっては、表現の自由その他の日本国憲法の保障する国民の自由と権利を不当に侵害しないように留意しなければならない。

In the application of this Ordinance, due regard must be paid to prevent unjust infringement on the freedom of speech and other freedoms and rights of the Japanese people that are guaranteed by the Constitution of Japan.

第 12 条（施行の細目）

Article 12 [Details of Enforcement]

この条例の施行に関し必要な事項は、市規則で定める。

Necessary particulars to enforce this Ordinance shall be set by the City regulations.

附 則

Supplementary Provisions

1 この条例は、公布の日から施行する。ただし、第 4 条から第 6 条まで及び次項の規定の施行期日は、市長が定める。

1. This Ordinance shall come into effect as of the date of its promulgation; provided, however, that the mayor shall set the effective date of provisions of Article 4 through Article 6 and the following section.

2 第4条から第6条までの規定は、これらの規定の施行後に行われた表現活動について適用する。

2. The provisions of Article 4 through Article 6 shall be applied to an act of expression that occurs after these provisions come into effect.

3 市長は、国においてヘイトスピーチに関する法制度の整備が行われた場合には、当該制度の内容及びこの条例の施行の状況を勘案し、必要があると認めるときは、この条例の規定について検討を加え、その結果に基づいて必要な措置を講ずるものとする。

3. When the State establishes a legal system concerning hate speech, the mayor is to implement necessary measures based on a review of the provisions of this Ordinance, taking into consideration the content of said system and the status of enforcement of this Ordinance.

IV. TRANSLATION OF THE NATIONAL ACT

本邦外出身者に対する不当な差別的言動の解消に向けた取組
の推進に関する法律

(平成二十八年六月三日法律第六十八号)

**HONPŌGAI SHUSSHINSHA NI TAISURU FUTŌ NA
SABETSUTEKI GENDŌ NO KAISHŌ NI MUKETA TORIKUMI
NO SUISHIN NI KANSURU HŌRITSU**

*(Act on Promotion of Activities for Elimination of Unjust
Discriminatory Words and Deeds against People from Outside Japan, Act
No. 68 of June 3, 2016)*

前文

第一章 総則（第一条—第四条）

第二章 基本的施策（第五条—第七条）

附則

Preamble

Chapter I General Provisions (Article 1 to 4)

Chapter II Basic Measures (Article 5 to 7)

Supplementary Provisions

我が国においては、近年、本邦の域外にある国又は地域の出身であることを理由として、適法に居住するその出身者又はその子孫を、我が国の地域社会から排除することを煽動する不当な差別的

言動が行われ、その出身者又はその子孫が多大な苦痛を強いられるとともに、当該地域社会に深刻な亀裂を生じさせている。

In recent years, there have been unjust discriminatory words and deeds inciting exclusion of people who are from a country or a region outside Japan or their descendants who live in Japan legally from a local community in Japan because of their origin, which has persecuted them and has resulted in serious cleavage in the local community.

もとより、このような不当な差別的言動はあってはならず、こうした事態をこのまま看過することは、国際社会において我が国の占める地位に照らしても、ふさわしいものではない。

Naturally, unjust discriminatory words and deeds as such shall not be acceptable, and it is not appropriate to leave this situation as it is, considering the place that Japan occupies in international society.

ここに、このような不当な差別的言動は許されないことを宣言するとともに、更なる人権教育と人権啓発などを通じて、国民に周知を図り、その理解と協力を得つつ、不当な差別的言動の解消に向けた取組を推進すべく、この法律を制定する。

This Act is hereby established in order to declare that unjust discriminatory words and deeds as such shall not be permissible, and to promote activities for their elimination through further human rights education and public awareness activities and others, thereby informing the People of the policy, while obtaining understanding of and cooperation by the People.

第一章 総則

Chapter I. General Provisions

第一条 (目的)

Article 1 [Purpose]

この法律は、本邦外出身者に対する不当な差別的言動の解消が喫緊の課題であることに鑑み、その解消に向けた取組について、基本理念を定め、及び国等の責務を明らかにするとともに、基本的施策を定め、これを推進することを目的とする。

The purpose of this Act, in recognition of the fact that it is an urgent issue to eliminate unjust discriminatory words and deeds against people from outside Japan, is to establish the basic principles of the activities for its elimination, and to promote and establish the basic measures as well as to provide for the responsibility of the State, etc.

第二条 (定義)

Article 2 [Definition]

この法律において「本邦外出身者に対する不当な差別的言動」とは、専ら本邦の域外にある国若しくは地域の出身である者又はその子孫であって適法に居住するもの（以下この条において「本邦外出身者」という。）に対する差別的意識を助長し又は誘発する目的で公然とその生命、身体、自由、名誉若しくは財産に危害を加える旨を告知し又は本邦外出身者を著しく侮蔑するなど、本邦の域外にある国又は地域の出身であることを理由として、本邦外出身者を地域社会から排除することを煽動する不当な差別的言動をいう。

The term “unjust discriminatory words and deeds against people from outside Japan” as used in this Act means unjust words and deeds used to incite exclusion of people who are from a country or a region outside Japan or their descendants who live in Japan legally (hereinafter referred to as People from Outside Japan) from their local community because of their origin by intimidating them in public through a threat to their life, body, liberty, reputation, or property, or by severely insulting them, with the main purpose of boosting or inducing a sense of discrimination against them.

第三条（基本理念）

Article 3 [Basic Principles]

国民は、本邦外出身者に対する不当な差別的言動の解消の必要性に対する理解を深めるとともに、本邦外出身者に対する不当な差別的言動のない社会の実現に寄与するよう努めなければならない。

The People must endeavor to gain a deeper understanding of the necessity of the elimination of unjust discriminatory words and deeds against People from Outside Japan and to contribute toward the realization of a society without such words and deeds.

第四条（国及び地方公共団体の責務）

Article 4 [Responsibility of the State and Local Governments]

1 国は、本邦外出身者に対する不当な差別的言動の解消に向けた取組に関する施策を実施するとともに、地方公共団体が実施する本邦外出身者に対する不当な差別的言動の解消に向けた取組に関する施策を推進するために必要な助言その他の措置を講ずる責務を有する。

1. The State has the responsibility to implement measures concerning activities for elimination of unjust discriminatory words and deeds against People from Outside Japan, and the responsibility to give local governments advice and to take other measures required for promotion of the elimination.

2 地方公共団体は、本邦外出身者に対する不当な差別的言動の解消に向けた取組に関し、国との適切な役割分担を踏まえて、当該地域の実情に応じた施策を講ずるよう努めるものとする。

2. Local governments are to endeavor to take measures, in line with the condition of the region, for activities to eliminate unjust discriminatory words and deeds against People from Outside Japan, based on an appropriate sharing of roles with the national government.

第二章 基本的施策

Chapter II. Basic Measures

第五条（相談体制の整備）

Article 5 [Development of Counseling System]

1 国は、本邦外出身者に対する不当な差別的言動に関する相談に的確に応ずるとともに、これに関する紛争の防止又は解決を図ることができるよう、必要な体制を整備するものとする。

1. The State is to develop the necessary counseling system in order to resolve or prevent disputes concerning unjust discriminatory words and deeds against People from Outside Japan, and is to properly respond to consultations concerning the said words and deeds.

2 地方公共団体は、国との適切な役割分担を踏まえて、当該地域の実情に応じ、本邦外出身者に対する不当な差別的言動に関する相談に的確に応ずるとともに、これに関する紛争の防止又は解決を図ることができるよう、必要な体制を整備するよう努めるものとする。

2. Local governments are to endeavor to properly respond to consultations concerning unjust discriminatory words and deeds against People from Outside Japan, in line with the condition of the region, and are to develop the necessary system in order to resolve or prevent disputes concerning said words and deeds, based on an appropriate sharing of roles with the national government.

第六条（教育の充実等）

Article 6 [Enrichment of Education, etc.]

1 国は、本邦外出身者に対する不当な差別的言動を解消するための教育活動を実施するとともに、そのために必要な取組を行うものとする。

1. The State is to implement educational activities for the purpose of eliminating unjust discriminatory words and deeds against People from Outside Japan, and is to take necessary measures for said activities.

2 地方公共団体は、国との適切な役割分担を踏まえて、当該地域の実情に応じ、本邦外出身者に対する不当な差別的言動を解消するための教育活動を実施するとともに、そのために必要な取組を行うよう努めるものとする。

2. Local governments are to endeavor to implement educational activities for the purpose of eliminating unjust discriminatory words and deeds against People from Outside Japan, in line with the condition of the region, and are to develop the necessary measures for said activities, based on an appropriate sharing of roles with the national government.

第七条（啓発活動等）

Article 7 [Public Awareness Activities, etc.]

1 国は、本邦外出身者に対する不当な差別的言動の解消の必要性について、国民に周知し、その理解を深めることを目的とする広報その他の啓発活動を実施するとともに、そのために必要な取組を行うものとする。

1. The State is to inform the People of the necessity of eliminating unjust discriminatory words and deeds against People from Outside Japan, to implement publicity and other public awareness activities for the purpose of increasing understanding of the necessity, and to take necessary measures to do so.

2 地方公共団体は、国との適切な役割分担を踏まえて、当該地域の実情に応じ、本邦外出身者に対する不当な差別的言動の解消の必要性について、住民に周知し、その理解を深めることを目的とする広報その他の啓発活動を実施するとともに、そのために必要な取組を行うよう努めるものとする。

2. Local governments are to endeavor to inform their residents of the necessity of eliminating unjust discriminatory words and deeds against People from Outside Japan, in line with the condition of the region; are to implement publicity and public awareness activities for the purpose of increasing understanding of the necessity; and are to take necessary measures to do so, based on an appropriate sharing of roles with the national government.

附 則

Supplementary Provisions

（施行期日）

[Effective Date]

1 この法律は、公布の日から施行する。

1. This Act shall come into effect as of the date of its promulgation.

(不当な差別的言動に係る取組についての検討)

[Review on Activities concerning Unjust and Discriminatory Words and Deeds]

2 不当な差別的言動に係る取組については、この法律の施行後における本邦外出身者に対する不当な差別的言動の実態等を勘案し、必要に応じ、検討が加えられるものとする。

2. The measures concerning unjust discriminatory words and deeds are to be reviewed as necessary by taking into account the status and other conditions of unjust discriminatory words and deeds against People from Outside Japan after the promulgation of this Act.

V. CURRENT CHALLENGES TO THE ORDINANCE

During the publication process of this translation, a major update on the Osaka City Ordinance for Dealing with Hate Speech occurred. On September 17, 2017, a group of citizens brought a constitutional challenge to the Ordinance. In the suit, the plaintiff alleges that the definition of hate speech in the ordinance is unconstitutionally broad and vague, and could allow legitimate political speech criticizing the North Korean government to be restricted. Moreover, the plaintiff argues that the publication of the hate speaker's name as provided in Paragraph 1 of Article 5 of the Osaka City Ordinance is functionally equivalent to a penalty stigmatizing a speaker and resulting in a chilling effect upon the speaker, and that this provision is unconstitutional because it is pre-empted by the National Act which does not provide any punishment, but merely an affirmative duty upon the national and local governments.²⁰

This is a *Jūmin Soshō*, or Local Citizen's Suit, which is similar to a taxpayer's suit in United States law. In this type of suit, a plaintiff need not show injury in fact, nor seek damages. The plaintiff can simply seek declaratory judgment that the government spent their money according to an unconstitutional ordinance or statute.

²⁰ See "Aimai de Shiiteki Kaishaku no Osore", *Ōsakashi Heito Jōrei ha Iken to Teiso* ["Danger of Vagueness and Arbitrary Interpretation", Filing a Lawsuit Alleging the Ordinance Is Unconstitutional], SANKEI SHINBUN (West Edition), Sept. 19, 2017. Available at <http://www.sankei.com/west/news/170919/wst1709190072-n1.html> (website in Japanese) (last visited Nov. 7, 2017).