



Human Rights Now

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[STATEMENT] The Refusal to Appoint Members of the Science Council of Japan is an Unacceptable Violation of International Human Rights Law

Human Rights Now (HRN), an international human rights NGO headquartered in Tokyo, is deeply concerned about the refusal of Prime Minister Suga to appoint six candidates as members of the Science Council of Japan (SCJ) despite recommendations from the SCJ (hereinafter referred to as the "appointment refusals").

The appointment refusals not only violate the Act on the Science Council of Japan (Act on the SCJ), but they also suppress academic freedom guaranteed by Article 13 of the ICCPR and Article 23 of the Constitution of Japan, which in turn impairs academic independence, hinders the role of the SCJ in making recommendations to the government, and adversely affects other human rights guarantees such as freedom of speech beyond academic freedom, which is unacceptable.

The effect of the appointment refusals is not limited to academic freedom as it also narrows down the field of ideas to which citizens should refer in order to address both their own and common problems, and it can lead to an intolerant society where persons are not allowed to have different opinions from others, which can hinder a free way of life. From this point of view, HRN calls on the Japanese government to respect academic freedom and to promptly appoint the six candidates based on the recommendation of the SCJ.

1. Facts Regarding the Appointment Refusals

On the morning of 1 October 2020, it was revealed that Prime Minister Suga refused to appoint 6 of the 105 candidates recommended by the SCJ as new SCJ members and that only 99 persons had been appointed.¹ According to media reports, the SCJ's secretariat and the human resources division of the Cabinet Office had sent a list of the 105 candidates to the Prime Minister's Office just as it was, but the Prime Minister's Office decided to refuse some of the appointments.

The names, affiliations, and areas of specialty of the six candidates who were refused appointments are as follows: Sadamichi ASHINA (Kyoto University Graduate School, Christian Studies), Shigenori UNO (University of Tokyo, History of Political Thought and Political Philosophy), Masanori OKADA (Waseda University, Administrative Law), Ryuichi OZAWA (Jikei University School of Medicine, Constitutional

¹ "PM Suga refuses to appoint 6 scholars to Science Council of Japan in unprecedented move", The Mainichi, 2 Oct. 2020, <https://mainichi.jp/english/articles/20201002/p2a/00m/0na/007000c>.

Studies), Yoko KATO (Tokyo University Graduate School, History and Modern History of Japan), Takaaki MATSUMIYA (Ritsumeikan University Graduate School, Criminal Law).

Of these, Professor Ashina is a member of the "Association of Scholars Opposed to the Security-related Laws", Professor Uno is a member of the "Association of Scholars Opposed to the Security-related Bills", and Professor Okada is a member of the "Waseda University Volunteer Association for the Abolition of the Security-Related Laws". In addition, Professor Ozawa attended a central hearing of the special committee of the House of Representatives deliberating on the security-related bills as a professor recommended by the opposition party, and he expressed his opinion that the bills violate Article 9 of the Constitution. Professor Kato is a member of the "Constitutional Democracy Society" which opposes the security-related laws, the conspiracy crime laws, and the extension of the retirement age of prosecutors. Professor Matsumiya visited the House of Councilors Legal Committee as a reference on the recommendation of the opposition about a bill to revise the constitutional requirements for conspiracy crimes and establish new preparatory crimes such as terrorism, and he commented that the bill was the worst security legislation since the war.

At a press conference, Chief Cabinet Secretary Kato said about the appointment refusals that "Until now, we always accepted the recommended persons list as it was, but this time was different in that the results were not like this, but the position that we responded has not changed" and "It is legally possible for us to exercise certain supervisory rights over the human resources matters of members. I don't think it will immediately lead to a violation of academic freedom."² However, regarding the specific reasons for refusing to appoint the six candidates, he stated that "I think there have been various reasons for each person up to now, but I am not making any specific comments", not clarifying the specific reasons.

2. How Members of the Science Council of Japan are Appointed

The Science Council of Japan (SCJ) is an institution established by the Act on the SCJ as a representative institution for scientists inside and outside Japan, the purpose of which is to improve and develop science, conduct administration, and to reflect and instill science within industry and into people's lives (Article 2 of the Act on the SCJ).

The SCJ is under the jurisdiction of the Prime Minister (Article 1.2 of the same act), but on an independent basis (Article 3); it responds to inquiries from the government of Japan (Article 4), and makes recommendations to the government on matters appropriate for achieving the above objectives (Article 5). The SCJ is organized to have 210 members (Article 7.1). Members are selected by the SCJ from among scientists with excellent research or achievements and recommended to the Prime Minister (Article 17), and the act provides that the Prime Minister appoints them (Article 7.2).

Since the Act on the SCJ came into effect, it is said that there have not been any cases in which a person recommended by the SCJ has not been appointed up to this point. Additionally, a government response

² "Kato comments on Science Council", NHK, 2 Oct. 2020, https://www3.nhk.or.jp/nhkworld/en/news/20201002_28/; <https://www3.nhk.or.jp/news/html/20201001/k10012643361000.html> (in Japanese).

to the Diet at the time of a revision of the Act in 1983, regarding this method of appointing members, stated that “We interpret this act such that the prime minister, as a formality, announces the appointments according to ‘the recommended scholars’.”

3. The Appointment Refusals are Acts that Suppress Academic Freedom and are Unacceptable

Article 13 of the International Covenant of Economic, Social, and Cultural Rights (ICESCR), which Japan has also ratified, provides for the right to education.³ However, since the right to education cannot be realized without the academic independence of faculties and students, Article 13 of the ICESCR confirms that academic freedom is also guaranteed.⁴ The international community should pay particular attention to institutions of higher education, as the faculties and students are particularly vulnerable to political and other pressures that marginalize academic freedom, as exemplified by the appointment refusals in this case.

The academic freedom guaranteed by Article 13 of the ICESCR includes the freedom of individuals to freely express their views on the institutions or systems in which they work, to perform their duties without fear of discrimination or oppression by the state or any other entity, to participate in professional or representative academic organizations, and to enjoy all internationally recognized human rights applicable to other individuals in the same jurisdiction.⁵ The same rights are guaranteed under Article 23 of the Constitution of Japan.

In light of the fact that not only were the appointment refusals contrary to the conventional interpretation and practice of the Act on the SCJ, but also that all six of the candidates whose appointments were rejected had been openly critical of government-supported bills and legislation and no reasons were given for the appointment refusals, they will have the effect of discouraging prospective members from conducting studies and research that differ from government policy and from expressing opinions that differ from the government in their professional capacity as a result of such studies and research.

These appointment refusals also threaten the independence of the SCJ. Given that the SCJ is not only an academic organization, but an organization that makes recommendations to the government from an independent professional standpoint on the basis of academic freedom, this problem goes beyond the suppression of the academic freedom of the six prospective members and other faculty members. It must be pointed out that the appointment refusals also undermine the policy advisory function of the SCJ and prevent the knowledge and disciplines that academia has historically accumulated from being reflected in the policies of the time, which may lead to the further deterioration of politics and the rise of anti-intellectualism.

Therefore, the appointment refusals not only violate the Act on the SCJ, but they also suppress academic freedom guaranteed by Article 13 of the ICESCR and Article 23 of the Constitution of Japan, which in

³ Committee on Economic, Social, and Cultural Rights, General Comment 13, para. 38, <https://www.refworld.org/pdfid/4538838c22.pdf>.

⁴ Ibid.

⁵ Id., para. 39.

turn impairs academic independence, hinders the role of the SCJ in making recommendations to the government, and adversely affects other human rights guarantees such as freedom of speech beyond academic freedom, which is unacceptable. It is feared that the suppression of academic freedom guaranteed by Article 13 of ICESCR and Article 23 of the Constitution of Japan will see the decay of free expression of opinion and dialogue, which in turn will lead to the collapse of democracy.

4. Recommendations

Therefore, to respect academic freedom, HRN calls on the government of Japan to promptly appoint the six candidates based on the recommendation of the SCJ and that members continue to be appointed in accordance with the recommendations of the SCJ.