

Japan's Supreme Court Limits National Anthem Punishments for Teachers 日本最高裁、

Asia-Pacific Journal Feature

Between 2012 and 2014 we posted a number of articles on contemporary affairs without giving them volume and issue numbers or dates. Often the date can be determined from internal evidence in the article, but sometimes not. We have decided retrospectively to list all of them as Volume 12 Number 30 with a date of 2012 with the understanding that all were published between 2012 and 2014.

Asia-Pacific Journal Feature

The Asia-Pacific Journal has closely followed (<https://apjff.org/-Lawrence-Repeta/2355>) the case of a group of Tokyo teachers punished because they refused to stand during school ceremonies for the playing of Kimigayo, Japan's national anthem. Some consider the anthem, a hymn of praise to the emperor, to be too closely connected to Japan's history of militarism and imperialism. For them, not standing is a form of conscientious protest. From 2004, Tokyo Governor and staunch conservative Ishihara Shintaro has led a drive (<https://apjff.org/-John-Spiri/2703>) to have the anthem played at Tokyo schools and to take punitive action, including fines and suspensions, against teachers who refuse to stand. That crackdown has spread, moreover, to Osaka and other cities.

In 2011, the Tokyo High Court rejected

(<https://apjff.org/events/view/37>) the claim of the teachers to protection based on based on constitutional language which declares "Freedom of thought and conscience shall not be violated."

Last week, however, the teachers won a victory of sorts when the Supreme Court deemed that punishments for not standing during the national anthem must not be "excessive". Below are editorials on the issue from the Mainichi Shimbun and Yomiuri Shimbun outlining this new development and its potential consequences.

Mainichi Shimbun Editorial: Supreme Court's national anthem decision a call for restraint

See original here (<http://mdn.mainichi.jp/perspectives/news/20120117p2a00m0na004000c.html>).

Atsuko Watanabe, left, smiles after a ruling removing her pay cut for refusing to stand during the national anthem, while representative of the plaintiffs Naoyuki Hoshino is seen at right, in Kasumigaseki,

Tokyo, on Jan. 16. (Mainichi)

Is it truly valid to punish teachers who don't stand for the singing of "Kimigayo" -- Japan's national anthem -- at school ceremonies, as many Tokyo Metropolitan Board of Education teachers have been? The Supreme Court presented its opinion on the matter for the first time on Jan. 16, when it ruled on a suit brought by some of those Tokyo teachers to have their punishments revoked.

And what was the Supreme Court's answer? As long as disciplinary action is not excessive from the perspective of school regulations and maintaining order, then it is within the discretion of the disciplinary authority, in this case the Tokyo education board.

However, what counts as "excessive"? The court ruling has an answer there, stating, "Opting for a punishment in excess of a reprimand, such as a major salary reduction or yet more severe measures, must be considered with caution."

Furthermore, regarding suspensions for teachers refusing to stand for the national anthem, "They have deleterious effects on (teachers') execution of their duties, their salaries and can also influence future raises. If such disciplinary measures accumulate with every school ceremony, this will compound the negative effects."

In examining the balance between preserving order and upholding school rules versus the negative effects of disciplinary action against teachers, the court stated that "in suspending a teacher, there must be concrete reasons that

suspension is the appropriate course of action." As to what constitutes a "concrete reason," the court listed a history of disciplinary infractions as well as the teacher's overall attitude, among other factors.

Considering these conditions, the Supreme Court ruled in the end that the suspensions and salary reductions applied to two Tokyo teachers should be rescinded. The Tokyo Metropolitan Board of Education must take this ruling extremely seriously indeed.

On the other hand, on the teachers given reprimands for refusing to stand for "Kimigayo," the court ruled that their punishments were appropriate, including the reprimands handed out to teachers who refused to stand only once. This, we suppose, was to make the point that disciplinary action should not go to "excessive" lengths.

In 2003, the Tokyo education board notified all the teachers in its employ that they must "Stand facing the Japanese national flag and sing 'Kimigayo' at school ceremonies." The board also directed school principals to issue orders to the same effect, and punishments were soon being meted out to many teachers actively opposed to the board policy. So far, these teachers have been the target of a total of more than 400 disciplinary actions.

However, even with the Supreme Court ruling, we continue to doubt whether it is at all appropriate for the board of education to try through its directives to stifle teachers with opposing views at school ceremonies; especially at those like entrance and graduation ceremonies intended to be

occasions for celebration.

The plethora of disciplinary action has surely been influenced by the 1999 passage of the Act on the National Flag and Anthem, which restored the red-on-white "Hinomaru" as the national flag, and "Kimigayo" as the national anthem. However, then Prime Minister Keizo Obuchi stated in the Diet that the law was not at all intended as a tool to coerce individuals.

Last year, the Supreme Court ruled that orders by principals to teachers to stand and sing the national anthem were not unconstitutional. In the decision, however, the court said, "It is hard to deny that standing and singing 'Kimigayo' is an indirect limitation on the freedom of thought and conscience," adding that it was a matter of course to judge carefully whether to issue even a reprimand to defiant teachers. That the court's decision was intended to mean "the lighter the punishment the better" hardly needs to be spelled out.

Also last year, Osaka Prefecture became the first local government to make it a legal duty for all public school teachers to stand and sing "Kimigayo." There is also a basic education law now under consideration in the Osaka Prefectural Assembly that would allow "habitual violators of job-related orders" to be fired outright. We would like to discuss these measures in light of the Supreme Court decisions.

(Mainichi Japan) January 17, 2012

Yomiuri Shimbun Editorial: Board fears more 'national anthem resisters' / Supreme Court rules salary cuts, suspensions 'too harsh' for teachers who refuse to sing 'Kimigayo'

See original here (<http://www.yomiuri.co.jp/dy/national/T120117005934.htm>).

A senior member of the metropolitan board of education said he cringed upon learning of the Supreme Court's ruling that it was "too harsh" for the board to suspend a teacher from work and cut another's salary for their refusal to stand during the national anthem at school events.

"If we cannot impose salary cuts or harsher punishments on teachers who continue to refuse to stand [during the singing of the national anthem], we believe other teachers will be encouraged to do the same," the official said.

However, another senior education board member said the board may review its criteria for reprimanding teachers and staff who refuse to stand during the "Kimigayo" national anthem at entrance and graduation ceremonies after the top court's ruling on Monday.

Osaka Mayor Toru Hashimoto, head of a local party that submitted a bill to the Osaka Prefectural Assembly enabling the Osaka

prefectural government to dismiss teachers and staff who refuse to stand during the national anthem three times, said he has no intention to revise it.

The metropolitan board of education has a graduated punishment system for teachers who disobey principals' orders to stand and sing "Kimigayo" at ceremonies, beginning with a warning, then a pay cut, then dismissal. This scheme was meant to prevent the board from arbitrarily punishing teachers. However, the Supreme Court ordered the board to be especially careful in reducing salaries or imposing harsher punishments, as they could "affect future pay increases as well."

"From now on, we need to look at the details of violations even more carefully when we seek to punish teachers with salary cuts. We need to review the current method of blindly punishing teachers [according to the number of violations]," the senior board of education official said.

According to the Education, Culture, Sports, Science and Technology Ministry, 432 teachers were reprimanded by the metropolitan board of education between the 2003 and 2010 school years for refusing to stand during "Kimigayo" or play the piano in accompaniment. This is more than any other prefectural board, and represents about 80 percent of such punishment cases nationwide.

However, as staff who were suspended from duty because of the violations have all left, and schools have strictly complied with the metropolitan board of education's 2003 notification stipulating that teachers and staff

must stand and sing "Kimigayo" at school ceremonies, the number of punishments have gradually decreased. Only one teacher received a warning from the board of education for not following the policy at an entrance ceremony in 2011.

Osaka Ishin no Kai (Osaka Restoration Group) submitted a bill on the "fundamental ordinance of education" to the Osaka Prefectural Assembly in October that stipulates punishments for government officials--including public school teachers and staff--who do not follow the orders of their superiors. The bill says in principle that first offenders would receive a warning or pay cut; a second violation would warrant suspension from duties; and a third, dismissal.

Hashimoto plans to submit a similar bill to the Osaka municipal assembly in February. He said the bills do not simply allow the local governments to dismiss government officials, teachers and school staff who violate orders three times, but require them to attend training, to give them a chance before being dismissed.

"When [local governments] teach them the necessity of fulfilling their obligations [through such training] and they continue to refuse to do so, I believe it is reasonable to ask them to leave their job," Hashimoto said.

However, Osaka Gov. Ichiro Matsui, who also serves as the secretary general of Osaka Ishin no Kai, suggested he would have talks with Hashimoto on whether to revise the education bills.

"The Supreme Court has ruled it is too harsh to suspend teachers from duty simply because of the number of times they refused to stand up [during the singing of "Kimigayo"]. We may need to revise [the bills] related to that particular part of the ruling," Matsui said.

A senior member of the Osaka prefectural board of education said, "There is a high risk of losing a lawsuit when we punish teachers only according to the number of violations, which is required by Osaka Ishin no Kai's bills. It will be extremely difficult to comply with the bill's standard."

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Defendants' reactions mixed

Defendants expressed mixed feelings at a press conference held after the Supreme Court ruling, as the top court issued divided rulings concerning three former teachers punished by the metropolitan board of education over their refusal to stand when the national anthem is sung at school ceremonies.

The suspension of Junko Kawarai, 61, and a

salary cut for Atsuko Watanabe, 61, were nullified by the Supreme Court, but the top court upheld the suspension of Kimiko Nezu, 61.

Kawarai welcomed the top court ruling, saying, "This decision will give teachers afraid of the metropolitan education board's notification [sent to schools in 2003 saying teachers and staff must stand and sing 'Kimigayo' during ceremonies] some support."

However, Kawarai dropped her voice when referring to Nezu's loss. "I'm bitterly disappointed because I can't share my joy [with Nezu]," she said.

"The Supreme Court didn't help me, but I hope the ruling will help guarantee the status of classroom teachers," Nezu said.

"This is a huge victory," Watanabe said with a smile. However, Watanabe also objected to the top court's ruling, which described the board of education's reprimanding of the three itself as constitutional, saying the ruling was "inappropriate."

(Jan. 18, 2012)