THE RIGHT TO ARTISITIC FREEDOM

JAPAN’S PERSPECTIVES.

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LEGISLATIONS

In the Constitution of Japan, although there is no particular provision on the right to artistic freedom, the rights to freedom of thought and expression are guaranteed. Also the Constitution declares that no censorship shall be maintained. It is difficult to define the right to artistic freedom are securely included in the freedom of thought and expression.

In 2001, the Fundamental Law for the Promotion of Culture and the Arts was enacted, and in Article 2, (1) “respect of the autonomy of entities that conduct cultural and artistic activities” and (5) “protection and development of diversity of the arts and culture” are mentioned as fundamental principles. In addition, the fundamental principles include “development of the status of entities that conduct cultural and artistic activities”. The Law concerns education and training for artists, however, there is no provision regarding to employment and work.

Based on the principles of the Fundamental Law, in 2012 the Law for Vitalising Theatre and Concert Halls was passed in the Parliament. The Law regulates the regional venues built and run by local authorities and quasi-autonomous bodies, and describes respect of the autonomy of artists and administrators as one of responsibilities for national and local governments in article 8 (2).

There is no legal definition for “artists”. In article 2, of the Copyright Law of Japan defines “author” as a person who creates a work and “performer” as actor, dancer, musician, singer, and other persons who give a performance as well as those who conduct or direct a performance” respectively. Within the legislation on “moral rights”, which contains the right to the integrity, to some extent, the artistic freedom can be sustained.

The Copyright Law does not directly influence the status of artists however it has been contributing to authors and performers economically through rights to authorisation and remuneration.

Until the amendment of the withholding tax system in 2003, the organisations in performing arts and entertainment industries had been compelled paying the unfair income tax since 1964. As a general principle of income tax, any trades between domestic organisations are not taxable, but the payment to organisations in performing arts and entertainment industries, with some limited exceptions, were taxable the income tax, mostly 10%, and the performers and workers were taxed another 10% when they had remunerations for their works. The abolishment of discriminative tax system in 2003 was a great achievement for improvement of the status of artist.

Under the Law on Control and Improvement of Amusement Business, which was enacted in 1948 and regulates licensing not only sex business but also game centre, restaurant, and bar, the business at night and dancing in pair have been controlled. In consequence of the law, dancing at “clubs” after the midnight and social dance events with admission at non-dance schools and parties have been regarded as “illegal”.

In 2008, the Supreme Court reversed a judgement by the Tokyo High Court on indecency of Mapplethorpe’s photo collection. The trial was originated in 1999, a publisher was confiscated the photo collection at custom inspection of Narita Airport because of its indecency. Although the Tokyo District Court judged it as an artistic work in 2002, the Tokyo High Court overturned in 2003.

In July 2012, City of Osaka and its controversial mayor Toru Hashimoto introduced a municipal ordinance on prohibition of political activities by civil servants, which include theatrical activities with political purposes. The offenders shall be applicable to disciplinary discharge.

FUNDING

There are national and quasi-autonomous bodies funding for the arts; the Agency for Cultural Affairs, the Japan Arts Council, the Japan Foundation, the Japan Foundation for Regional Arts Activities and so on.

The Agency for Cultural Affairs is a government body dealing with arts and culture, under the Ministry of Education, Culture, Sports, Science and Technology, which directly subsidise to National Museums run by National Museums of Art, National Theatres by the Japan Arts Council. Also the Agency has the support programme for selected regional public theatres, concert halls and arts centres; international tour, collaboration and festival; film making and so on. As for the support for individual producing bodies of performing arts such as orchestra, dance and theatre companies, the Agency entrusted its funding programmes into the Japan Arts Council.

Within the framework for development and training of human resources in the arts, there is a bursary programme for artists studying abroad. As the bursary is designed to provide training for “young” and “emerging” artists, it set in age limits, which depend on art form and length of training. Applicants must be Japanese or the right-holder of permanent residence in Japan.

The Japan Arts Fund was established in 1990 and the Japan Arts Council shortly after by merging with the National Theatre. The establishment of the Japan Arts Fund created a mechanism for theatre companies and medium-sized dance companies to receive government subsidy on a project basis for their own activities. Until 1990, the Agency’s support was limited into its commissioning works such as national touring, the recipient companies were selected by organisation status and industrial bodies intentionally.

Since 2011 for music and dance and since 2012 for drama and traditional and popular entertainment, the Japan Arts Council has installed programme director and programme officers within the Japan Arts Fund – Although the Japan Arts Fund has a mechanism of peer-panels, the Fund itself has been run by non-expert officers and its senior officers are mostly on loan from the Agency. An ultimate goal for programme directors and officers is to renovate the Japan Arts Council as more independent and professional body of the arts, but their duties include reducing disparity by region.

The Japan Arts Fund has two major funding programmes for music, dance, drama and traditional and popular entertainment, and one for film, art exhibition, and amateur activities.

In term of artistic freedom, activities with religious and political intention are not applicable.

For selection of each member of peer panel and managing committee, as a decision-making body, the gender balance is considered properly but not age balance yet – the Japanese society is dominated by the seniority system.

The problems with funding could be summarised as the scale of funding, the lack of revenue funding and the funding to prepared deficits. We recognise the steady revenue funding could sustain the artistic freedom.

In addition, in general, the funding system does not concern about employment in the arts, except for orchestra.

TRADE UNIONS

There is no legal or visible boundary between professionals and amateur in the arts. It is partly caused by the lack of trade union, except the Musicians Union of Japan and Japan Actors Union. Even these trade unions have very limited number of collective agreement for their works; such as recording at TVs and phonograms for musicians and voice acting at TV and films. Even though national theatres do not have any standard rate for performers, and their contracts are rather based on a commercial basis.

The lack of trade unions and collective bargaining leave the status of artists lower and the artists themselves weak. Even though he/she suffers the accidents at work, it is near impossible for individual artists claim his/her own right and compensation.

Although it is not matter for trade union, in 2011, it is widely recognised that an actor Taro Yamamoto was forced to resign from the agent and has lost many jobs because of his political involvement – activities against the nuclear power plant policy of the government.

Post 3.11, on stage, there are many new works and performances which describe about the problems caused by the nuclear problems and desire a society with non-nuclear power, however, on TV programmes, any presenters are not allow to mention about what he/she thinks about the nuclear power.

ETHICS ON FILM AND ART WORKS

EIRIN (Film Classification and Rating Committee) is an independent, non-governmental organisation, which has been responsible for the classification of films since 1956. Before and during World War II, the Japanese government strictly censored films according to the film law. Soon after the new Constitution was promulgated in 1946, the Occupation Forces advised the film industry to form a self-regulating body, envisioning the creation of a Japanese counterpart to the MPAA Code Administration Office. EIGA RINRI KITEI KANRI IINKAI, the predecessor to EIRIN, was established in 1949. In the 1950s, EIRIN was criticized by both the press and the authorities for its category decisions on controversial youth films depicting sex and violence. Its critics also pointed out that the administrators and examiners belonged to the industry that also financed EIRIN.  
In 1956, EIRIN was reorganised into a new self-financing body, recruiting professors, lawyers and teachers from outside the industry as its commission members. In 1962, the Ministry of Health and Welfare acknowledged and ratified the Code of the National Association of Theatre Owners of Japan, which among its articles specifies that its member theatres shall not exhibit a film without an EIRIN certificate. It also stipulates that theatres shall not allow admission of persons younger than 18 years old to restricted films classified as R-18.

Violent expression in film and manga for youth has often been in controversy. Because of a dominant culture “to hush up a scandal” in Japan, the authorities and teachers expect shutting any opportunities for youth to see any violent expressions, rather than teaching and navigating before and after its encountering.

Some local authorities have their own code for films by introducing the municipal ordinances, in order protecting young people from indecent expression and violence. In 2010, Tokyo Metropolitan Government amended its municipal ordinance on healthy development of youth. As the ordinance covers not only film but also books and its amendment had an intention tightening with vague descriptions, film creators, authors and publishers appealed against installing the ordinance.

The problem with the ordinance in Tokyo shared among the industry was the committee consists of mostly ex and current civil servants, not creators.

STREET PERFOMANCES

Performances in street and public spaces are generally prohibited and need permissions from polices or authorities. Tokyo Metropolitan Government introduced a auditioning and licensing system for street performers, so called “Heaven Artists”, which provides authorisation for performers performing at designated places. As of 2012, 369 individual or groups registered in the scheme and are performing in 64 designated places.

It may guarantee the quality of performance and safety, but at the same time may control artistic freedom of artists.

TRADE POLICY

In term of the arts and entertainment, there is no information available for the current TPP negotiations.

ARTIST BODY

GEIDANKTO, was founded as a national independent body of all performers in 1965, in order protecting performers’ rights, improving working conditions and developing the performing arts and entertainments. Under its umbrella, there are many associations of particular art form and some trade unions.

In term of the status of artists, the government has been mostly consulting with GEIDANKYO and Tokatsu Dantai of each art form or profession, mentions below.

However, GEIDANKYO has changed its focus and role into more “collecting society” of performers’ rights, and, to some extents, has lost its cohesive power in all the industry.

There are many industrial bodies which are recognised and categorised as “Tokatsu Dantai” - supervising organisations - by the Agency for Cultural Affairs. Each Tokatsu Dantai represents profession or art form, and can be a window for some government schemes.

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