

---

---

# MAJOR LEGISLATION & TREATIES

---

---

Jan.–Dec., 2016

---

---

## 1. Constitutional Law

**Act on the Promotion of the Elimination of Unreasonable  
Discriminatory Speech and Acts against Outsiders to Japan**  
(Law No. 68, June 3, 2016)

### **Background:**

In recent years, hate speech against Korean people residing in Japan has become a social problem. Especially, social threats against Korean people residing in Japan occur frequently, such as racially discriminatory demonstrations and compulsive acts by the Association of Citizens against

the Special Privileges of the Zainichi (Zaitoku-kai). Based on such social conditions, this act was enacted to eliminate racial hate speech in Japan, by a supraparty group.

**Main Provision:**

**Article 1:** This Act aims to provide a fundamental concept for an attempt to eliminate unreasonable discrimination and to find out the responsibilities of the government and local governments, in consideration of the pressing issue of eliminating discriminations against outsiders to Japan.

**Article 2:** In this act, “unreasonable discriminatory speech and acts” are defined as discriminatory speech or acts which advertise a will to harm life, body, liberty, honor or property, or defame the outsiders to Japan to promote or to prompt the discriminatory belief that native who are outsiders to Japan or their descendants, which are discriminatory speech and acts which incite the exclusion of outsiders to Japan from local society.

**Article 4:** The national government has obligations to eliminate unreasonable discriminatory speech and acts against outsiders to Japan and to counsel or take action to promote measures concerning local governments’ attempts to eliminate unreasonable discriminatory speech and acts.

2 Local governments should make efforts to take action to eliminate unreasonable discriminatory speech and acts for policies consistent with regional conditions.

**Article 5:** National government should maintain a system to grant outsiders' consultation and to prevent and resolve conflicts which concern unreasonable discriminatory speech and acts.

2 Local governments should make efforts to maintain system to grant consultations to outsiders, and to prevent and resolve conflicts which concern unreasonable discriminatory speech and acts for policies consistent with regional conditions.

**Article 6:** The national government must carry out the educational activities to eliminate unreasonable discriminatory speech and acts and implement attempts to do.

2 Local governments must make effort to execute educational activities to eliminate unreasonable discriminatory speech and act and implement necessary attempts to do for policies consistent with regional conditions.

**Editorial Note:**

The Act on the Promotion of the Elimination of Unreasonable Discriminatory Speech and Acts against Outsiders to Japan was enacted to eliminate hate speech against Korean people residing in Japan which has become a social problem. The features of this act are that: (1) it is not a penal regulation, (2) it obligates to take some measures, and to maintain the counsel and educational system to eliminate hate speech, and the legislators intent that administrator will make hate speech difficult.

(1) Why this act did not penalize hate speech is to make it consistent with the freedom of expression. In this act, hate speech is defined as unreasonable discriminatory speech or acts against outsiders to Japan

which incite the exclusion of the outsiders to Japan from local society because of their origin. Like this definition, the restriction on the freedom of expression would violate Article 21 of the Constitution. In the enactment process of this act, some members of Diet, NGO, scholars sought to exclude hate speech from freedom of expression, and to enact penal regulations on hate speech, but after all, such attempt was abandoned.

Because this act is not a penal regulation, this act requires national and local governments to carry out their obligations to eliminate hate speech, like (2). Specifically, this means anti-discriminatory education in public school, a rejection of the use of public facilities for hate demonstrations, zoning restrictions protecting Korean residential areas, and so on.

However, restrictions like (2) are actually content-based restrictions against hate speech, and functionally exclude hate speech from public spaces. In fact, in May, 2016, Kawasaki City, Kanagawa, rejected Zaitokukai to use a municipal park because of their hate speech. As a reason for the rejection, Kawasaki City used this Act. Compared with before enacting this act, public speech which allows hate speech has been reduced. But hate speech is one of the forms of “speech”, so we should consider this problem in light of the freedom of expression.