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The Obligation of the Japanese Government after the withdrawal of the reservation to art.13 (2) (c) of International Covenant on Economic, Social and Cultural Rights

Masaharu NOSE *

Abstract

The Japanese Government has taken a new turn after it withdrew its reservation, which was the right not to be bound “in particular by the progressive introduction of free education” in applying the provision of subparagraph (c) of paragraph 2 of article 13 of ICESCR, on September 11, 2012. 33 years have passed since Japan ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1979.

The ratio of public tertiary education expenditure to the gross domestic product of Japan was higher in the 1960's than it is now. But the percentage of household expenditure of the total of public and private expenditure for tertiary education has significantly increased. This is owing to the government policy, “The beneficiary payment principle”.

Though the Central Education Council had recommended trying to increase public expenditure to the average of OECD countries in the draft of the Basic Plan for the Promotion of Education, the Japanese cabinet omitted this and approved the Basic Plan for the Promotion of Education on June 14, 2013.

In this article, I argue that the Japanese government should take steps to fully implement article 13 (2) (c) by analyzing the General Comments of Committee on Economic, Social and Cultural Rights (CESCR) and ICESCR.

Keywords : CESCR's General Comment, progressive introduction, withdrawal of reservation, household expenditure.

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Introduction

The Japanese Government has taken a new turn after it withdrew its reservation, which was the right not to be bound “in particular by the progressive introduction of free education” in applying the provision of subparagraph (c) of paragraph 2 of article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁾, on September 11, 2012. 33 years have passed since Japan ratified ICESCR in 1979.

The ratio of public higher education expenditure to the gross domestic product of Japan was higher in the 1960's than it is now. But the percentage of household expenditure of the total of public and private expenditure for tertiary education has significantly increased.

In this article, I argue an infringement of the right to receive a tertiary education as to Japanese measures against this situation through CESCR's General Comments.

1. The situation of worse burden of education fee

Compared to OECD countries, the ratio of tertiary education expenditure of public and private expenditure is high. For example, 34.4% which is Japanese public expenditure of tertiary is about half of OECD countries (68.4%) and Japan is the 25th of 27 published countries. 65.6% of public and private expenditure is the private sources expenditure in tertiary education expenditure and is 2.1 times as many as the percentage of OECD countries.

And compared to the percentage of tertiary public expenditure in GDP, 0.7%, which is Japan, is the 31st of all 31 published countries. As the average of OECD is 1.4 %, the present Japanese expenditure is 50% of it.

The percentage of tertiary public expenditure of Japan in GDP increased from 2009 to 2010, but the percentage of private sources expenditure in Japan did not decrease. (The percentage of private sources expenditure in Japan rather increased.)

On the other hand, when I see these three years trend of household expenditure while at school at each Income Level, we can classify it into four categories.

The 1st category (Figure1・2) is “2 M Yen or more 4 M Yen less”, the persons which were obliged to reduce expenditure of education to be needed. As the amount of house expenditure decreased in tight financial conditions, they didn't afford to pay education fees which they want to increase to be needed. Though the amount of school expenditure decreases, the ratio of it to the annual income increases.

The 2nd category (Figure1・2) is “4 M Yen or more 6M Yen less”, the persons who also decreased house

1) Article 13 -2(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

Table 1. Public and personal burden rate of higher education of OECD countries (2009-2010)

(%)

		Public sources		Private sources							
		2009	2010	2009	2010	2009	2010	2009	2010	2009	2010
2010's Rank of 28 countries		All public sources		All private sources		Household expenditure		Expenditure of other private entities		Private: of which, subsidised	
1	Norway	96.1	96.0	3.9	4.0	3	3.3	m	m	m	m
3	Denmark	95.4	95.0	4.6	5.0	-	-	-	-	m	m
5	Sweden	89.8	90.6	10.2	9.4	n	n	10.2	9.4	-	a
7	Austria	87.7	87.8	12.3	12.2	2.9	2.6	9.4	9.5	8.8	7.7
-	Germany	84.4	m	15.6	m	-	-	-	-	-	-
9	France	83.1	81.9	16.9	18.1	9.7	10.1	7.3	8.0	m	m
12	Spain	79.1	78.2	20.9	21.8	16.8	17.6	4.1	4.2	1.7	1.73
14	Netherlands	72.0	71.8	28.0	28.2	14.9	14.7	13.1	13.5	0.4	0.31
15	Poland	69.7	70.6	30.3	29.4	22.8	22.5	7.5	6.9	m	m
17	Mexico	68.7	69.9	31.3	30.1	30.9	29.8	0.4	0.4		1.35
18	Portugal	70.9	69.0	29.1	31.0	22.3	23.4	6.8	7.6	m	m
19	Italy	68.6	67.6	31.4	32.4	23.8	24.4	7.6	8.0	8.5	8.98
21	Canada	62.9	56.6	37.1	43.4	20.2	19.5	16.9	23.9	m	1.14
23	Australia	45.4	46.5	54.6	53.5	39.1	39.0	15.4	14.5	0.5	0.45
24	United States	38.1	36.3	61.9	63.7	45.3	47.8	16.6	15.9	m	m
25	Japan	35.3	34.4	64.7	65.6	50.7	51.5	14.1	14.1	m	m
26	Korea	26.1	27.3	73.9	72.7	49.2	47.1	24.8	25.6	1.4	1.0
27	United Kingdom	29.6	25.2	70.4	74.8	58.1	56.1	12.3	18.7	10.8	26.5
	OECD average	70.0	68.4	30.0	31.6						

(note) m: Data is not available. (Greece, Luxembourg, Turkey)

(source) Education at a Glance 2012 and 2013.

Table 2. The ratio of public higher education expenditure of the gross-domestic-product (GDP) (2009-2010)

Public tertiary education			Public tertiary education			Public tertiary education			Public tertiary education		
	'09	'10		'09	'10		'09	'10		'09	'10
1 Finland	1.8	2.2	11 France	1.3	1.3	21 United States	1.0	1.4	31 Japan	0.5	0.7
2 Denmark	1.8	2.4	12 Netherlands	1.2	1.7	22 Israel	1.0	1.0			
3 Sweden	1.6	2.0	13 Iceland	1.2	1.6	23 Portugal	1.0	1.1	OECD average	1.1	1.4
4 Canada	1.5	1.9	14 Slovenia	1.1	1.4	24 Hungary	1.0	1.0			
5 Austria	1.4	1.6	15 New Zealand	1.1	2.0	25 Chile	0.8	0.9			
6 Ireland	1.4	1.4	16 Germany	1.1	m	26 Italy	0.8	0.8			
7 Belgium	1.4	1.5	17 Spain	1.1	1.2	27 Australia	0.7	1.1			
8 Switzerland	1.4	1.3	18 Poland	1.1	1.2	28 Korea	0.7	0.8			
9 Norway	1.3	2.6	19 Czech Republic	1.0	1.0	29 Slovak Republic	0.7	0.8			
10 Estonia	1.3	1.2	20 Mexico	1.0	1.0	30 United Kingdom	0.6	1.0			

(note) m: Data is not available. (Greece, Luxembourg, Turkey)

(source) Education at a Glance 2012 and 2013.

expenditure in tight financial conditions in 2012 but increased house expenditure of education to be needed 2013.

And the persons in the 2nd category increase household expenditure for higher education and become near the limit. The 2nd category is approaching the 3rd category. On the other hand, the expenditure of the 3rd category decreases and in 2012 the expenditure of the 3rd category was 14.5% more than that of the 2nd category, but in 2013 that of the 3rd category was only 4.7% more than that of the 2nd category.

The 3rd category (Figure1・2) is “6 M Yen or more 8 M Yen less”, the persons who were obliged to reduce expenditure of education to be needed. But the expenditure is over a standard level to be needed. Though the amount of school expenditure decreases, the ratio of it to the annual income increases.

And the 4th category (Figure1・2) is “8 M Yen or more”, the persons who were obliged to reduce expenditure of education 2012. But they desire better Education and was able to turn to increase their education expenditure.

While they come to have a hard time making ends meet, the persons at all categories aren't supported enough by public expenditure (34.4%). They must get over this problem by their own efforts.

On the other hand, the Japanese government should promote the ratio of students who go on to higher education. Though one of the Japanese government policies is human preparation resource, the present Japanese ratio of students proceeding to higher education is 51.8% (Figure.3) and this ratio is the 21st among 32 OECD countries published.

And when I see the ratio of Japanese female students who go on to higher education, the ratio is worse (the 27th) than of male (the 14th). The Japanese government should raise it, too.

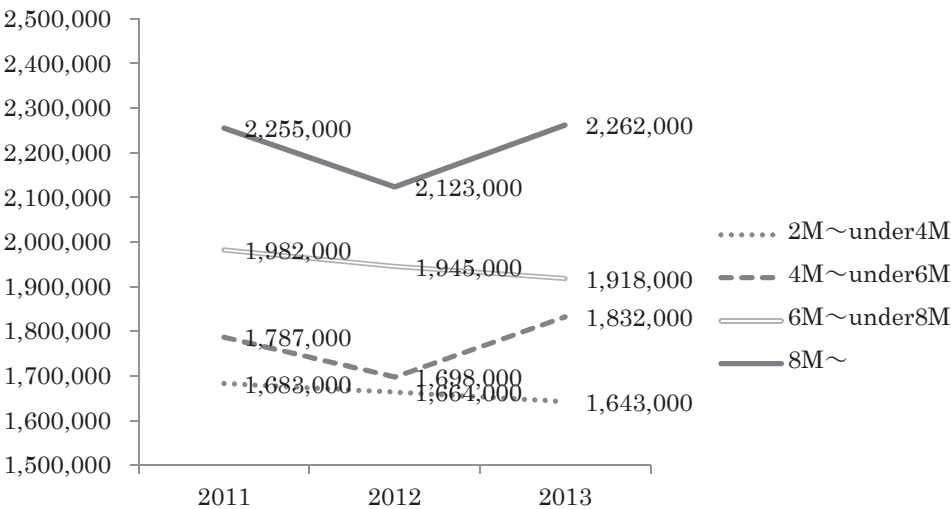
According to the survey of Independent Administrative Institutions Japan Student Services Organization (JASSO) (Table.4), the percentage of a student loan to the total of a student loan and a student grant scholarship is about 70 %. And Japan is the only country which does not have an institution of a student grant of higher education in OECD countries. Recently the total amount of a student loan significantly increased²⁾.

When I see the change of the fund according to JASSO, the fund of interest-free student loans was 200,500 M Yen (75.5%) and that of interest student loans was 65,000 M Yen (24.5%) in 1998, but in 2013 it was 291,200³⁾ M Yen (24.3%), 907, 000 M Yen (75.7%) respectively. During this period the amount of funds in 2013 was 4.5 times as large as that in 1998, but that of interest student loans in 2013 was 14 times as large as that in 1998. The number of debtors, who default on financial obligations, is increasing. This comes to be a social problem in Japan.

When I see debtors income by annual income, persons less than 4M Yen is 96.5% (persons less than 2M is 71.3%). Persons of this class carried a heavy load on their shoulders to receive an education. (Table.5)

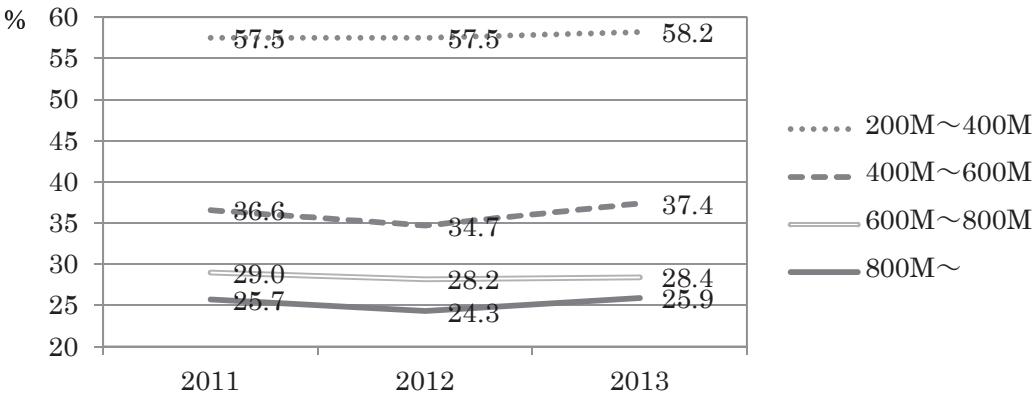
2) Japan Student Services Organization

3) Ministry of Finance, *The Point of Education and Science Budget 2013*.



(source) based on Japan Finance Corporation (2011), (2013) *The education expense burden of the household economy getting stuck at high levels.*

Figure 1 . School expense by the annual income class (yen)



(source) based on Japan Finance Corporation (2011), (2013) *The education expense burden of the household economy getting stuck at high levels.*

Figure 2. The percentage of school expense of annual income by annual income

Table 3. The percentage of students proceeding to higher education in OECD countries (2011)

	M+W		Men		Women				M+W		Men		Women		
	rank	a+b	rank	a	rank	b			b-a	rank	a+b	rank	a	rank	
Portugal	1	97.9	1	84.4	1	111.8	27.5	Israel	17	60.0	16	53.4	17	66.9	13.5
Australia	2	96.5	2	83.3	2	110.3	27.0	Spain	18	53.1	23	45.5	18	61.2	15.6
Iceland	3	80.8	5	67.7	3	94.4	26.7	Austria	19	52.2	20	46.6	19	58.2	11.6
Poland	4	80.5	3	69.7	5	91.9	22.2	Hungary	20	52.0	19	48.1	20	56.1	8.0
New Zealand	5	76.1	8	62.7	6	89.7	27.0	Japan	21	51.8	14	56.9	27	46.3	-10.6
Norway	6	75.6	7	63.6	7	88.3	24.7	Ireland	22	51.0	21	46.2	21	56.0	9.8
Slovenia	7	75.2	13	57.6	4	94.0	36.4	Italy	23	48.3	25	41.2	22	55.9	14.7
United States	8	72.2	6	65.2	10	79.3	14.1	Germany	24	46.3	22	45.9	26	46.7	0.8
Sweden	9	71.9	9	62.2	8	82.1	19.9	Chile	25	45.5	26	40.3	23	50.8	10.5
Denmark	10	70.7	11	60.1	9	81.7	21.6	Switzerland	26	43.8	24	41.6	28	46.0	4.4
Korea	11	69.0	4	68.4	11	69.7	1.4	Estonia	27	43.5	28	37.6	24	49.6	12.0
Finland	12	68.4	10	61.4	15	75.8	14.3	Greece	28	40.0	32	31.9	25	48.6	16.8
Netherlands	13	64.9	12	59.6	11	70.4	10.8	France	29	39.4	29	35.6	29	43.5	7.9
United Kingdom	14	64.0	15	56.7	14	71.6	14.9	Turkey	30	39.3	27	38.8	30	40.0	1.2
Slovak Republic	15	61.3	17	52.0	13	71.0	19.0	Mexico	31	33.9	30	34.2	32	33.6	-0.6
Czech Republic	16	60.5	18	51.9	16	69.6	17.7	Belgium	32	33.5	31	32.0	31	35.0	3.0
OECD average								60.0	53.2	67.1	13.9				

(source) Education at a Glance 2013.

Table 4. Amount of subsidy by a grant or loan

(in thousand yen)

	local public body	school	public-service corporation	profit corporation	an individual, etc.	total
grant	3,421,264	31,977,938	8,209,331	26,960	287,004	43,922,497
	2.4%	22.6%	5.8%	0.0%	0.2%	31.0%
loan	36,629,655	13,484,399	44,925,326	19,560	2,620,628	96,679,568
	25.9%	9.5%	31.7%	0.0%	1.8%	68.2%
concomitant use	208,528	333,793	482,167	2,600	30,900	1,057,988
	0.1%	0.2%	0.3%	0.0%	0.0%	0.7%
Total	39,259,447	45,796,130	53,616,824	49,120	2,938,532	141,660,053
	27.7%	32.3%	37.8%	0.0%	2.1%	100.0%

(source) The Survey of scholarship undertaking in 2010 by Japan Student Services Organization.

Table 5. Person in arrears of student loan by annual income

annual income (¥)	2011		2010	
	person	%	person	%
1M ~ under 2M	2,538	63.1	2,747	71.3
2M ~ under 4M	1,231	30.6	969	25.2
4M ~	255	6.3	136	3.5
Total	4,024	100.0	3,852	100

(source) The Survey of person with payment in arrears of student loan in 2011 by Japan Student Services Organization.

I will argue how the government's policy led to this situation from the viewpoint of the Human Rights.

2. Realization of the right to receive education and the Government

The right to receive education is not a right of civil liberties which cease a state of unreasonable restrictions, but a social right which supports persons by a state. This means a state should try to support persons positively.

For example, a state should provide teachers, teaching materials and other circumstances to be needed for education. When I see similarly the right to work which is a social right, a state is supporting persons who want to work by a national economic policy, a national budget, etc.

Namely, the support of a state is indispensable to resolve the social problem, "education differential", which is caused by social structure. Without this support, the right to receive education could not be realized.

Art.13 (2) (c) of the International Covenant on Economic, Social and Cultural Rights provide that the signatory nations should try to introduce progressively free education. Though Japan ratified ICESCR in 1979, it didn't approve of "the progressive introduction of free education" of ICESCR. Japan withdrew the reservation in 2012, which is 33 years later, but the percentage of household expenditure in the total of public and private expenditure for tertiary education has significantly increased.

3. The reason of the reservation and the awaiting solution (pending issues)

(1) Circumstances and an anxiety of withdrawal procedure.

From the view point of the idea of ICESCR, it was unreasonable that Japan's Government approved of art.13 -1 nevertheless it didn't approve of art.13-2 (b)·(c)⁴⁾. In fact, as of 2007 only three countries, which were Japan, Rwanda and Madagascar among the 160 signatory nations, reserved it. After Rwanda withdrew it in December 2007, two countries were left and Japan was the only country among advanced countries.

In this circumstance the Committee on Economic, Social and Cultural Rights (CESCR) strongly recommended to the Japanese Government to withdraw it by the concluding observations of Japan in September 2001⁵⁾ and required the Japanese Government to submit the third report based on ICESCR by 30 June 2006.

At the result, in December 2009 the Japanese Government reported to CESCR that it would not withdraw art.13-2 (b)·(c) on the ground of the benefit principle. Japan thought that students to receive education should

4) 4. Guarantee of receiving education as a Human Rights and the international norms. (2) The relations between art.13-1 and art.13-2: a limit of validity of the reservation.

5) The Committee on Economic, Social and Cultural Rights considered the second periodic report of Japan on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/6/Add.21) at its 42nd and 43rd meetings (E/C.12/2001/SR.42 and 43), held on 21 August 2001, and adopted, at its 56th meeting (E/C.12/2001/SR.56), held on 30 August 2001

pay education fees themselves.

On the other hand, in 2009 the Democratic Party of Japan came into the world. In January 2010, Prime minister Hatoyama said that he would promote the withdrawal of the reservation in his administrative policy speech, but he could not promote it. On the contrary, the economic recession by “Lehman shock” made reduced the budget of the Kan Government by 10% and the abolishment of high school free education was argued.

But on 9 and 21 February 2012, the Genba Foreign Minister at that time expressed the withdrawal of the reservation at the Budget Committee of the lower house of the Diet. And after the cabinet decision of the withdrawal on 11 September 2012, the Japanese Government sent this notice of motion to the UN. This notice was approved on the day and was informed of to the signatory nations. The reservation has been withdrawn.⁶⁾ But this matter has not been debated in the Diet in this process and the cabinet decided it.

As the national policy has been changed by the withdrawal, I think that the withdrawal should have been debated. But other than that, in particular what I want to point out is the lack of the people's debate. The Japanese people lost the opportunity to debate this problem from the viewpoint of Human Rights.

Many Japanese people need to have a lot of occasions to consider free higher education in order to be willing to admit public expenditure.

(2) The grounds for the withdrawal and the influence

When I read the second Government's report of 1998 to the UN and the third report of 2009, the Japanese government didn't approve of the social right to receive education on the grounds of the principle of benefit, the equity between public universities and private universities, and the fundamental principle of private universities. These reasons let the Government expend fewer funds than a householder. The Japanese Government did not approve of the right to receive tertiary education as a social right and laid the responsibility of higher education to a household. This is why the amount of public expenditure for the amount of tertiary education was decreased (34.4%) and household expenditure has increased (51.5%).

In other words, the Government's attitude for tertiary education wasn't based on a social right and the Government thought that a student and a family, who received a benefit, should pay a cost.

This attitude was a lack of Human Rights on which students seek to receive higher education. At the result of this, the amount of household expenditure has been higher among signatory nations (Table1, Figure1・2).

Namely, the reservation of art.13-2 (b)・(c) promoted the policy of a benefit principle. This principle has led to high household expenditure. In fact, a school fee of a national university in 1970 was 12 thousand Yen a

6) Yasuo Nakauchi (2013)

Table 6 . The worst 5 countries in OECD, as to the ratio of household expenditure. (2010)
(%)

Rank		Public sources	Private sources			Private: of which, subsidised
			Household expenditure	Expenditure of other private entities	All private sources ¹	
5	Korea	27.3	47.1	25.6	72.7	1.0
4	United States	36.3	47.8	15.9	63.7	m
3	Japan	34.4	51.5	14.1	65.6	m
2	United Kingdom	25.2	56.1	18.7	74.8	26.5
1	Chile	22.1	70.1	7.8	77.9	7.3

(note) 1. m: Data is not available.

2. The US has not ratified ICESR.

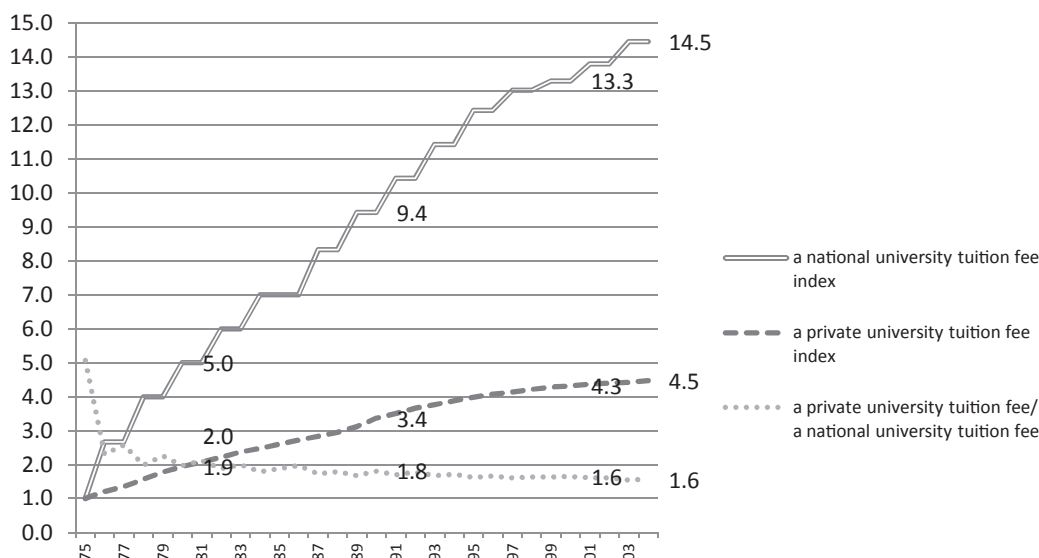
3. The feature of the UK is that private subsidy ratio is higher.

(source) Education at a Glance 2012 and 2013.

Table7. The change of a university fee.

(yen)			
	(A) a national university tuition fees	(B) a private university tuition fees	(A)/(B)
'75	36,000	182,677	5.1
'80	180,000	355,156	2.0
'90	339,600	615,486	1.8
'00	478,800	789,659	1.6
'04	520,800	817,952	1.6

(source) Based on Ministry of Education, Culture, Sports, Science and Technology publication numerical statement



(note) Based on based on Ministry of Education, Culture, Sports, Science and Technology publication numerical statement

Figure3. The increasing rate of a university fee and the ratio of public university to private university (1975=1.0)

year and a private university was 82 thousand Yen (The average starting monthly pay of college graduates at that time was about 40 thousand Yen.) A school fee of a national university was near a free school fee. But as mentioned above, by the benefit principle the amount of a private school fee increased to 851 thousand Yen and even a national university is 536 thousand Yen⁷⁾.

If the right to receive higher education had been approved as a social right by the government, the amount of household expenditure would not have been as high as it is today (Table7・Figure3).

On the other hand, the Act on Subsidies for Private Schools (ASPS) and the Resolution of the House of Councilors were in favour of the progressive introduction of free education. Art.4 (a subsidy of a current expenditure) of ASPS is admission of a grant which subsidizes up to 50%. This act does not deny the Government's free subsidy but approves an importance of a grant. This act is not based on a benefit principle. The resolution of the House of Councilors require the Government to prompt to subsidize students up to 50 % and try to realize the progress of introduction of free education.

But in reality the amount of house expenditure for tertiary education has increased (Figure3). During this period, the university entrance rate which has increased (Table3) is appreciated, but the result was due to a household expenditure under a benefit principle.

Persons who can't afford to pay a higher school fee can't access higher education. Even if they could, they must pay back a student loan on their own responsibility. The growth of university entrance rate was not backed up by the Government but by a household or an individual.

(3) The significance of the withdrawal of the reservation

The meaning of the withdrawal of the reservation is that it became obviously clear that the progressing introduction of free education is prior to the benefit principle. It is clear from the viewpoint of law that a benefit principle, which was a structural problem when persons seek for tertiary education, should be reconsidered.

According to the web page of Ministry of Foreign Affairs of Japan, "The withdrawal of the reservation of art.13-2(b) (c)"⁸⁾, by this notice to the UN Japan comes to be bound to "the progressing introduction of free education" from 11 September 2012. What the Ministry of Foreign Affairs of Japan expressed was an epoch-making event, considering the days of the reservation. In particular it is important that "the progressing introduction of free education" is legally valid.

But it is more important that "the progressing introduction of free education" will be put into practice. In order to realize "the progressing introduction of free education", it is important What the Government does and how the Government does it.

7) The average starting pay of college graduates: ¥205,647, in 2013. (The institute of labour administration).

8) http://www.mofa.go.jp/mofaj/gaiko/kiyaku/tuukoku_120911.html (2013.06.26.)

4. Guarantee of receiving education as a Human Right and the international norms.

(1) Universal Declaration of Human Rights and ICESCR

The withdrawal of the reservation is the change of the national policy in which the right to receive higher education was not a social right. In this paragraph I argue art.13-2(c) of ICESCR.

The contents of a social right are provided for in sec.6 to sec.15 of ICESCR. Art.13 is provided for about the right as to education. ICESCR is based on the Universal Declaration of Human Rights and has come into effect as a covenant. Art.26-2 of the Universal Declaration of Human Rights⁹⁾ provided that Education shall be directed to the full development of the human personality and to the strengthening of respect for Human Rights and fundamental freedoms. Art.13-1 of ICESCR provided that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for Human Rights and fundamental freedoms. And art.26-1 of the Universal Declaration of Human Rights provides that “everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.” And art.13-2(c) of ICESCR provides that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education. The Universal Declaration of Human Rights is not legally binding, but ICESCR, which is based on the Universal Declaration of Human Rights, is legally binding on signatory nations.

ICESCR is different from Universal Declaration of Human Rights in a binding effect. We should recognize Signatory countries, including Japan, have to obey the law, again.

(2) The relations between art.13-1 and art.13-2 : a limit of validity of the reservation.

The right as to an education (art.13 of ICESCR), as mentioned above, is based on the universal Declaration of Human Rights, art.26-1 of which is necessary for a personality development. Art.13-1 of ICESCR provided that “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for Human Rights and fundamental freedoms.” And art.2-1 of ICESCR provided that “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, . . .

On the other hand, art.13-2(c) means a practice target which is based on the progressive introduction of free

9) The adoption on 10 December, 1948.

education, as a practice target. The realization of it does not mean an immediate realization of art.13-2(c), but a progressive realization step by step and a final situation. Art.13-2 provides free education for each education category which are elementary education, secondary education and higher education. Elementary education is duty of free education. Secondary education and higher education are duty of a practice of a progressing introduction.

The relation of art.13-1 and art.13-2(c) is that the former is an abstract inclusive right and the latter is the aim of it. As higher education is the aim of free education step by step, art.13-1 and art.13-2 are on the same line. Though the Japanese government reserved art.13-2(b) (c), the reservation of art.13-2(b) (c) means the reservation of art.13-1. The Japanese government, which didn't reserve art.13-1, should have been duty bound to try to introduce free higher education step by step without expressing a progressing introduction.

As to this matter I think that as far as Japan approves art.13-1 and art.2-1, even if Japan reserved it, Japan should try to introduce free higher education step by step. And my argument is that the approval of art.13-1 is a contradiction with the approval of the reservation of art.13-2(b) (c) in an international law. Even if during the reservation period, the denial of art.13-2(b) (c) is not accepted in international law.

In view of international law, art.19(c) of Vienna Convention on the Law of Treaties provides necessary conditions of a reservation, "in cases not failing under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty".

The reservation of 13-2(b) (c) is incompatible with the object and purpose. Added to this, CESCR, had recommended the Japanese Government to withdraw the reservation at the second review. Though the committee doesn't have the authority to judge whether the reservation was valid or not, it has a strong power to affect signature countries, considering a committee which monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties.

I think that the reservation valid is extremely weak because other bodies which monitor implementation by its States parties have a power to judge whether it is valid or not.

When I consider the articles, which are art.2 of ICESCR, "...with a view to achieving progressively the full realization of the rights recognized in the present Covenant...", art.13-1, "...the States Parties to the present Covenant recognize the right of everyone to education..." and art.19 of Vienna Convention on the Law of Treaties, the Japanese Government should have tried to carry out the duty to introduce free higher education.

As mentioned above, signatory countries are duty bound to phase-in free higher education, if there are some countries which omit to try to do this, they would be in breach of duty.

(3) The CESCR's practice of introduction of free education.

In this section I argue how the CESCR interprets art.13, "an introduction of free education" at this para-

graph through the CESCR's General Comment 13¹⁰⁾.

When I read the CESCR's General Comment No.13, I think art.13-1 and art.13-2 can't be separated. These articles are one article. In order to carry out art.13-1, art.13-2 is automatically carried out.

According to the General Comment No. 13, the committee thinks each situation of a country is different from another situation of the country. And it thinks that the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party¹¹⁾,

But the four factors are common and important to promote the right to receive education¹²⁾. These four factors are interpolated to each other. The most important priority is the advantage for a student in practice. The four factors are Availability¹³⁾, Accessibility¹⁴⁾, Acceptability¹⁵⁾ and Adaptability¹⁶⁾.

The closest relation with a progressing introduction of free education is accessibility.

Accessibility requires 3 factors; non-discrimination, physical accessibility to receive education and economical accessibility to education.

The committee said that economical accessibility is "education has to be affordable to all" in the committee's comment and States parties are required to progressively introduce free secondary. As to this matter, Japan has a big problem.

The committee stated that signatory nations were due to try to introduce progressively free education. The comments of the committee means art.13 requires signatory countries try to introduce progressively free education through four points. In particular, a progressive introduction of free higher education is required as to accessibility. The committee pointed out that "the signatory countries also have an obligation to take concrete steps towards achieving free secondary and higher education"¹⁷⁾.

I argue the duty through the comments of the committee next.

5. Obligations of signatory nations

(1) General legal obligations

How does the committee think of General legal obligations as to art.13 of ICESCR? I'd like to make it clear what duty the committee requires of signatory nations.

It is clear that at elementary education free education is "compulsory" and "available free to all". But how is it at higher education? The committee said in the comment, "Signatory countries also have an obligation

10) E/C.12/1999/10.

11) E/C.12/1999/10, para.6.

12) *ibid.*17.

13) E/C.12/1999/10, para.6(a).

14) E/C.12/1999/10, para.6(b).

15) E/C.12/1999/10, para.6(c).

16) E/C.12/1999/10, para.6(d).

17) E/C.12/1999/10, para.14.

to take concrete steps towards achieving free secondary and higher education¹⁸⁾”. And it said, “States parties have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind” (art. 2 (2))¹⁹⁾, and the obligation “to take steps” (art. 2 (1)) towards the full realization of article 13. Such steps must be “deliberate, concrete and targeted” towards the full realization of the right to education²⁰⁾ .

In addition to this, the committee pointed out that an impermissibility of any retrogressive measures taken in relation to the right to education. In case retrogressive measures are taken, it said, “the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources.” The committee doesn't approve an easy retrogressive way.

(2) Specific legal obligations

The committee said, “States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13 (1). They are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13 (1).”²¹⁾ In particular it is important that a transparent and effective system is necessary and should be established and maintained. This practice is a lack of the Japanese government policy.

And in relation to article 13 (2), States have obligations to respect, protect and fulfil each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education²²⁾ . In addition, the committee said, “at a minimum, the State party is required to adopt and implement a national educational strategy which includes the provision of secondary, higher and fundamental education in accordance with the Covenant. This strategy should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.”²³⁾

Namely Japan is needed that institution and a monitor system should be established to measure the progress.

(3) The duty of signatory nations in Comments 3 of the Committee.

A general progressive attainment is described in Art.2-1 which provides that “...with a view to achieving

18) E/C.12/1999/10, para.14.

19) *ibid.*24.

20) E/C.12/1999/10, para.44.

21) E/C.12/1999/10, para.49.

22) E/C.12/1999/10, para.50.

23) E/C.12/1999/10, para.52.

progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” The progressive introduction of free education is based on it.

The committee said in the general comment No.3²⁴⁾ that ICESCR is based on a progressing introduction and requires a progressing result, “signatory nations’ obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result.”²⁵⁾

The progressing practice means ““to take steps”, which in itself, is not qualified or limited by other considerations” in article 2 (1). The signatory nations are duty bound to attain the purpose according to plan.²⁶⁾ In order to satisfy the obligation to take steps, legislative measures are useful, the committee said²⁷⁾. (Japan has the Act on Subsidies for Private Schools, which is one of the legislative measures.) Other measures are not limited to, administrative, financial, educational and social measures²⁸⁾.

There are many differences between signatory countries in economy and political, etc. But this situation does not make a target of each country unclear, but signatory nations have duty to try to attain a goal. The general comment No.3 as well as the general comment No.13 requires the reason why retrogressive measures would be taken and an alternative measure would be required²⁹⁾.

Art.2-1 described that “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”. This means signatory nations should do their best in order to get a progressing achievement³⁰⁾.

6. Conclusion

When I read the report (April 2013) of the Second Basic Plan for the Promotion of Education in response to a consultation by the Minister of Education, Culture, Sports, Science and Technology (MEXT), which was examined by The Central Council for Education (CCE), CCE pointed out a higher household expenditure compared to OECD countries and this situation should be reformed. Additionally, CCE stated the ratio of a household expenditure of the total of public and private expenditure should be decreased to the level of OECD countries.

24) E/1991/23, E/C.12/1990/8.

25) E/1991/23, Annex III, para. 1.

26) E/1991/23, Annex III, para. 2.

27) E/1991/23, Annex III, para. 3.

28) E/1991/23, Annex III, para. 7.

29) E/1991/23, Annex III, para. 9.

30) E/1991/23, Annex III, para. 11.

But in the Second Basic Plan for the Promotion of Education, which is adopted upon a Cabinet decision on 14 June 2013, the practice of the progressing introduction of a free higher education retrogresses compared to the report of CCE. The report was revised and a target table for a reduction of the ratio of a household expenditure of the total of public and private expenditure disappeared. The Second Basic Plan is far from setting a target table.

The significance of the withdrawal of art.13-2(c) is, as mentioned above, that the government is duty bound to try to carry out a reduction of the ratio of a household expenditure of the total of public and private expenditure. The Committee pointed out a nation should carry out the duty progressively by a plan, considering a target table.

Though I think the possibility of validity of the withdrawal would have been low, as the result, the government avoided the tackle of a free higher education by its reservation for 33 years. During this period, both the amount of the household expenditure and the university entrance rate were increasing.

The purpose of higher education is the full development of the human personality and the sense of its dignity as well as higher human resources. CCE demands strengthening basis for enabling all people to exercise their abilities and individuality. The government should recognize the importance of a free higher education which is based on the law and have to establish a target table to attain a free higher education progressively. The government should continuously tackle free higher education.

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