

Members of the Foreign Correspondents' Club of Japan

A Crisis of Parliamentary Democracy: The Illegality of the Ozawa Trial

Tomorrow, April 26, a verdict will be delivered in the trial of Ichiro Ozawa, a trial resulting from a decision, by the fifth Tokyo Prosecution Inquest Committee, to force an indictment in his case.

The day before yesterday, we addressed a demand to the Speaker of the House of Representatives and President of the House of Councillors to hold a closed session of the respective Justice Committees of both Houses to investigate the management of the Prosecution Inquest Committee. The demand was accompanied by a petition signed over the prior two days by 136 lawmakers. Please refer to the provided translation of the document.

As the illegality of the decision to order a forced indictment, made behind closed doors by 11 randomly selected members of the public, is explained in the document referred to above, I would like here to focus specifically on the Investigation Report submitted to the Prosecution Interest Committee by the Special Investigative Department of the Tokyo District Public Prosecutor's Office. Part of that report has been leaked by yesterday's issue of the weekly magazine *Shukan Asahi*, and it reveals that even though prosecutors were unable to indict Mr. Ozawa due to a lack of evidence, the report claims conclusive prove that Mr. Ozawa was involved in criminality. This is nothing more than the falsification of official documents by the investigative authorities, which is itself a criminal offence.

The court case involving Mr. Ozawa should be immediately suspended as it has become clear that a falsified report was submitted by prosecutors, behind closed doors, to members of the committee, who were not legal experts, in order to convince them to order an indictment for the purpose of delivering a guilty verdict against a specific individual politician. Those involved in falsifying the Investigation Report should also be severely punished. These acts can only be carried out on an organizational level. Mr. Ozawa is a member of the Diet, the highest organ of the Japanese state. He is a representative elected by the people of Japan through fair elections as determined by the Japanese constitution. As such, an organization-wide effort by the investigative authorities to unjustly repress the political activities of Mr. Ozawa, someone who, were it not for such underhand actions, would have gone on to become Prime Minister, is a threat to the core of Japan's democracy.

The media in Japan have not only failed to properly report these events, they have actually contributed further to the efforts to bring down Mr. Ozawa with incessant negative coverage.

We respectfully ask for the co-operation of the members of the Foreign Correspondents' Club of Japan in informing the Japanese people and the people around the world of the truth behind these events.

April 25, 2012

Yuko Mori

Member, House of Councillors

Former Senior Vice Minister of Education, Culture, Sports, Science and Technology

Demand to Hold a Closed Session of the Justice Committee to Investigate the Committee for the Inquest of Prosecution

Mr. Takahiro Yokomichi, Speaker, House of Representatives

Mr. Kenji Hirata, President, House of Councillors

To uphold the principles of parliamentary democracy, we make the following demands of the Speaker of the House of Representatives and the President of the House of Councillors.

We demand that both Houses hold a closed session of their respective Justice Committees to investigate the management of the Committee for the Inquest of Prosecution. We request that the required instructions be issued to those concerned.

Reason for this demand:

(1) According to the Act on Committee for Inquest of Prosecution, Article 3, the committee has independent authority. However, there is no law to specify which of the three branches of state has jurisdiction over the committee. As a result, although the committee is able to exercise extremely strong administrative authority by issuing orders for "forced indictments" as a result of the powers of indictment invested in the committee by an amendment of the Act, no-one is in a position to take responsibility for such indictments, a situation that many legal experts have identified as possibly unconstitutional.

Further, as Article 26 of the same Act legislates that the Committee for the Inquest of Prosecution proceedings should be carried out in secret, it is essentially impossible to examine whether decisions to force an indictment were reached by following the appropriate legal procedures.

(2) In addition to the above general shortcomings, the case of Ichiro Ozawa, a member of the House of Representatives now on trial in a criminal case resulting from such a forced indictment, has revealed unbelievable behavior by prosecutors, namely the falsification, by Prosecutor Masahiro Tashiro of the Special Investigative Department of the Tokyo District Public Prosecutor's Office, of the investigation report submitted to the fifth Tokyo Committee for the Inquest of Prosecution. The falsified portion the report was the principal reason behind the forced indictment, and we believe that this alone is enough to render the forced indictment invalid. It is also now clear that Prosecutor Tashiro engaged in other illegal activities including the use of incentives to

influence witness testimony, actions which have been severely criticized by the judge.

(3) In the first place, the fifth Tokyo Committee for the Inquest of Prosecution that ordered the forced indictment of Ozawa went through various problems in the selection of its members including repeated mistakes by the committee secretariat in calculating the average age of the 11 committee members, a major failure that resulted in three separate announcements. Furthermore, when announcing the average age of two separate groups of 11 randomly selected members of the public, the secretariat announced the average age of both groups to be 34.55, identical down to two decimal points, an extreme statistical unlikelihood. Other issues include problems with the software for random committee member selection. As such, the public have major misgivings about the fairness of committee member selection, a crucial issue under the Act on Committee for Inquest of Prosecution.

(4) Due to the extremely limited nature of information disclosed, there have even been repeated protests, including large demonstrations and meetings, by members of the public who have doubts over whether the Committee for the Inquest of Prosecution actually met at all.

(5) It has also been pointed out that an interview with prosecutors as required under the Act on Committee for Inquest of Prosecution, Article 41.6, Paragraph 2, was not carried out in accordance with regulations.

The Act on Committee for Inquest of Prosecution does not allow for a designated lawyer prosecuting the case to withdraw the indictments, nor does it allow the defendant to challenge the validity of the forced indictment resolution. Clearly, these are defects and omissions in the Act. Not addressing these issues would constitute a failure to act on the part of the legislature. This situation requires immediate investigation. In order to carry out an investigation while respecting the non-public and independent nature of the Committee for the Inquest of Prosecution, the only possible method is a closed-session of the Justice Committee in both Houses, and we therefore make the above demands.

April x 2012

Members of the House of Representatives and House of Councillors