

**AMNESTY
INTERNATIONAL**



19 October 2009

The Supreme Court,
1st Petty Bench,
Hayabusa-cho 4-2,
Chiyoda-ku,
Tokyo,
102-8651

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Case Number: (Shi) No.458 2009

Concerning the Indictment for Trespassing
on a Structure and Theft

Defendants: Mr. Junichi Sato and Mr. Toru Suzuki

Honourable Judges:

Amnesty International writes in support of the appeal of Mr. Junichi Sato and Mr. Toru Suzuki, who seek disclosure of important documents necessary to their defence. Such disclosure is required under international human rights standards governing fair trials. In addition, the government's prosecution of these two activists is an unjustifiable interference with their rights to freedom of expression and association, particularly as relates to legitimate activities on their part that may expose illegal activity by the government.

The two Greenpeace activists did an in-depth investigation into allegations that illegal conduct was taking place aboard whaling ships belonging to Japan's government-subsidised whaling fleet. In the course of their investigation, they removed a box filled with whale meat from a mail depot and turned it and other evidence over to the Tokyo Public Prosecutor with a request for an investigation. The prosecutor subsequently closed that investigation and initiated charges against the two men. They were arrested, detained 23 days without charge, and then prosecuted for theft and trespass.

A central element of the two activists' defence is that they removed the whale meat to expose alleged Japanese government complicity in, or tacit acceptance of, whale meat embezzlement, a matter of significant public concern in Japan. In fact, we understand that the prosecutor in this case has conceded that the defendants were not acting for personal gain; rather, that they were attempting

to expose what they consider evidence of illegal activities connected to the Japanese government-sponsored Southern Ocean whaling programme.

Nevertheless, both the Aomori High Court and the Sendai High Court have refused to order the disclosure of evidence the prosecutor may have of embezzlement or other crimes connected to the whaling programme.

International law guarantees the right to a fair hearing. A fair hearing requires, among other elements, that both parties are in an equal position to make their case. In particular, the defence must be afforded a reasonable opportunity to prepare and present its case on a footing equal to that of the prosecution. The prosecution must disclose all material information to the defence. (See International Covenant on Civil and Political Rights, art. 14(1); Human Rights Committee, *General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14)* (1984) ¶ 9 (the right includes “access to documents and other evidence which the accused requires to prepare his case”).)

UN treaty bodies have repeatedly raised questions about the extent to which Japanese criminal procedures provide defendants with access to the information they need to prepare their defence. In 2007, for example, the UN Committee against Torture expressed concern with the “limited access to all relevant material in police records granted to legal representatives, and in particular the power of prosecutors to decide what evidence to disclose upon indictment.” (*Concluding Observations on the Initial Periodic Report of Japan submitted under Article 19 of the UN Convention against Torture*, U.N. Doc. CAT/C/JPN/CO/1 (2007) ¶ 15(h).) Just last year, the UN Human Rights Committee called on Japan to guarantee all suspects access “to all police records related to their case.” (*Concluding Observations on the Fifth Periodic Report of Japan submitted under Article 40 of the International Covenant on Civil and Political Rights*, UN Doc. CCPR/C/JPN/CO/5 (2008) ¶ 18.) And in 1998, the Human Rights Committee noted that criminal procedures in Japan systematically fail to provide defendants with access to needed information:

The Committee is concerned that under the criminal law, there is no obligation on the prosecution to disclose evidence it may have gathered in the course of the investigation other than that which it intends to produce at the trial, and that the defence has no general right to ask for the disclosure of this material at any stage of the proceedings. The Committee recommends that, in accordance with the guarantees provided for in article 14, paragraph 3, of the Covenant, the State party ensure that its law and practice enable the defence to have access to all relevant material so as not to hamper the right of defence.

(*Concluding Observations on the Fourth Periodic Report of Japan submitted under Article 40 of the International Covenant on Civil and Political Rights*, UN Doc. CCPR/C/79/Add.102 (1998) ¶ 26.)

In addition, Amnesty International is concerned that the detention of these two activists, the charges against them, the Aomori District Court's refusal to allow them to present relevant witnesses and other evidence at trial and its refusal to order disclosure to them of relevant evidence in the possession of the prosecutor, and the police raids on Greenpeace's office and the homes of five of its staff are aimed at intimidating both activists and non-governmental organizations.

In conclusion, the disclosure of material information by the prosecution to defendants is an essential element of the right to a fair hearing, and this Court should uphold the right to a fair hearing by ordering the disclosure to the defendants of the information sought. In so doing, this Court will also ensure that it does not condone the improper use of the police power to infringe on the rights to freedom of expression and association of those who seek to expose alleged government wrongdoing.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Bochenek". The signature is written in a cursive, flowing style.

Michael Bochenek
Director of Policy
International Secretariat
Amnesty International