

On Making Public the Complaint

I make my complaint public, hoping it will contribute to future public lawsuits in Japan. Please note that some of the endnotes in this complaint refer to the endnotes in the statement, which I will soon make public. Therefore, being sorry for the inconvenience to the readers of this complaint, I would appreciate it if you could wait until the statement is made public. For an overview of the case and the administrative lawsuit, please visit

[https://kiyotaka.sakura.ne.jp/Nakashima Notice 20230928 2ndRev1005.pdf](https://kiyotaka.sakura.ne.jp/Nakashima%20Notice%20230928%202ndRev1005.pdf).

I also would like to inform you of the following effort regarding public lawsuits in Japan:

<https://www.call4.jp/>.

The current situation of public lawsuits in Japanese society is very taxing for plaintiffs. I sincerely hope my administrative lawsuit will contribute to public lawsuits and related activities in Japan.

February 2, 2024
Kiyotaka Nakashima

Preface

This document is the complaint for the administrative lawsuit filed on April 9, 2021, against the defendant, the Japan Society for the Promotion of Science (JSPS). In this document, my legal lawyers and I, or the plaintiff, argue the defendant's legal defects: the legal fragility and indefiniteness of the investigating system for researchers' erroneous uses of research funds. Due to the nature of the complaint, we developed technically legal arguments; hence, we could not describe enough the reasons for and background of our claims. Thus, I have added notes at the end of this document for the reader's better understanding. I hope the endnotes will help readers understand not only the legal problems of the government's investigating system but also "why I went for the dispositional nature" and "how the ongoing settlement discussions began in the litigation."

As mentioned above, the defendant in this lawsuit is the JSPS. However, I have considered that not only the MEXT, which is the supervising ministry of the JSPS, but also all related government agencies and the Cabinet as their responsible party are "potential defendants." Therefore, it would be a lie to say I was unafraid when preparing the complaint with my lawyers. I am nothing more than "human," but my opponent is a "national system." It is like an ant and an elephant fighting. Accordingly, the fear that my life might be blown away and shattered struck me again and again.

Furthermore, I do not believe in anarchism or libertarianism, although I sympathize with them emotionally. I am more of a patriot who values "the natural love of my hometown." Thus, I also hesitated repeatedly to file an administrative lawsuit against a national agency. At the same time, above all else, I am a "liberal Christian" who loves the Bible and Hayek's writings emphasizing the significance of "the rule of law." Therefore, more than my fear and

hesitation, what drove me to this lawsuit was **my "anger" that researchers in Japan have been "disciplined = hunted" by such a legally fragile and indefinite system.** This anger prompted me to pursue the issue regarding the dispositional nature of the defendant's measures in the primary claim.

What I keenly felt in developing the argument on the dispositional nature through the litigation was the danger that even if the administrative authorities are mighty, they are not infallible since they comprise acts of human beings; on the contrary, **due to their mightiness, the "arrogance" and "conceit" of the human beings who become party to it can lead to a greater fallacy.** Such a potential danger inherent in the administrative powers' mightiness is an issue I have considered throughout this lawsuit. Then, I provide some of my considerations in the endnotes. In addition, I have written documents considering the issues regarding the rule of law and legal compliance during this litigation. I would like to also release those documents in due course.

However, I regret to inform you that due to the background described in the endnotes, I could not win the legal issue of the dispositional nature, which was "the head of the enemy's general" for me. Therefore, I must leave my job of winning the dispositional nature to successors feeling the same anger and hardship.

On the other hand, a settlement in an administrative lawsuit between an individual plaintiff and the government side—especially a substantively winning settlement for the individual plaintiff—is extremely rare or non-existent. Accordingly, the legal arguments in this lawsuit themselves may contribute not only to specialized discussions, including academic re-

search, but also to public discussions through the mass media. Hence, those who want information on this administrative lawsuit to win the dispositional nature, conduct academic research, or hold a public debate are welcome to contact us. I will gladly provide any information about this lawsuit, including case documents.

In retrospect, my steady pursuit of this lawsuit is due in no small part to the efforts of my current lawyers: Shinro Okawa, Masayuki Shigematsu, and Noriaki Yanagimoto. Lawyer Yanagimoto, the youngest of the three, has stood by me since we prepared for the lawsuit, planned the litigation strategy, and organized our team. Also, the presence of Lawyer Miyuki Sakai and her friend Yoshiro Tsutsui's sister was significant. Without them, I would not have had the opportunity to meet the current lawyers. In addition, Professor Mitsuru Noro, an excellent administrative law scholar, kindly gave us valuable advice on litigation. Without these encounters, I would undoubtedly live my academic life, remaining "blind" to the "depth" and "significance" of the law as a social scientist. Finally, I would like to thank Professor Yoshiro Tsutsui for standing by me at the court date and offering me warm words of encouragement. I cannot express how reassuring it has been that he is by my side at the court date. I want to express my sincere thanks to all these people. Thank you very much.

January 4, 2024,

Kiyotaka Nakashima

Complaint

April 9, 2021

Osaka District Court

Attorney-at-Law for Plaintiff: Shinro Okawa

Masayuki Shigematsu

Noriaki Yanagimoto

Indication of parties: As stated in the list of parties

Case for Revocation of Original Disposition

Value of suit: 1,600,000 yen (unquantifiable)

Amount of stamps to be affixed: 13,000 yen

The List of Parties

Plaintiff: Kiyotaka Nakashima

Attorney-at-Law for Plaintiff: Shinro Okawa

Masayuki Shigematsu

Noriaki Yanagimoto

Defendant: The Japan Society for the Promotion of Science

I. Purpose of the Claim

(Primary Claim)

1. The defendant's decision of October 2, 2020, not to provide the plaintiff with grants from Grants-in-Aid for Scientific Research, the Scientific Research Assistance Fund, and the Scientific Research Funds for the period from April 1, 2021, to March 31, 2031, must be revoked.
2. The defendant must bear the costs of the lawsuit.

(Preliminary Claim)

1. The Court must ensure that the plaintiff is in a position not to be denied by the defendant to provide him with grants from Grants-in-Aid for Scientific Research, the Scientific Research Assistance Fund, and the Scientific Research Funds, based on the defendant's decision "not to provide the plaintiff with grants from Grants-in-Aid for Scientific Research, the Scientific Research Assistance Fund, and the Scientific Research Funds for the period from April 1, 2021, to March 31, 2031."
2. The defendant must bear the costs of the lawsuit.

II. Cause of Claim

1. Parties

- (1) The plaintiff is a researcher specializing in monetary and financial economics. He was an associate professor at Kyoto Gakuen University in 2007 and an associate professor or professor at the Faculty of Economics of Konan University in 2008 and after that.

(2) The defendant is an independent administrative agency established under the Japan Society for the Promotion of Science Act (hereafter referred to as "the JSPS Act"). This agency aims to promote academics by providing grants for academic research and funds for the training of researchers (Article 3, Article 3-2 of the JSPS Act).

2. Background Leading Up to the Administrative Disposition

(1) Granting the Assistance Fund to the Plaintiff by the Defendant

On April 5, 2014, the plaintiffs applied for a grant from the Scientific Research Assistance Fund (hereafter referred to as "the Assistance Fund") from fiscal years 2014 to 2016 (plaintiff's exhibit 1; hereafter referred to as "Ptf. Ex. 1") and indeed received it as follows.

Classification by fiscal year by expense	Direct Expenses (Yen)				Indirect Ex- penses (Yen)
	Consuma- bles/ Facilities and Fixtures	Travel Ex- penses	Honorariums	Total Amount	
FY 2014	1,600,000	200,000	100,000	1,900,000	570,000
FY 2015	400,000	600,000	100,000	1,100,000	330,000
FY 2016	0	500,000	100,000	600,000	180,000
Total Amount	2,000,000	1,300,000	300,000	3,600,000	1,080,000

In addition, on April 6, 2017, the plaintiff requested the defendant provide him with a grant from the Assistance Fund from fiscal years 2017 to 2020 (Ptf. Ex. 2) and received it as follows.

Classification by fiscal year by expense	Direct Expenses (Yen)				Indirect Ex- penses (Yen)
	Consuma- bles/ Facilities and Fixtures	Travel Expenses	Honorariums	Total Amount	
FY 2017	600,000	500,000	300,000	1,400,000	420,000
FY 2018	200,000	400,000	300,000	900,000	270,000
FY 2019	100,000	300,000	200,000	600,000	180,000
FY 2020	100,000	300,000	200,000	600,000	180,000
Total Amount	1,000,000	1,500,000	1,000,000	3,500,000	1,050,000

(2) Submission of Documents for Evidence of Research Expenses

(a) Regarding the Assistance Fund granted by the defendant, the plaintiff submitted documents for evidence of research expenses, such as receipts, to the defendant through Konan University every time he made an expenditure.

As for the research fund for faculty members (hereafter referred to as "the KYOKENHI") and the research fund for the research institute (hereafter referred to as "the SOKENHI"), both of which Konan University grants, the plaintiffs submitted to the University all documents for evidence of research expenses, such as receipts, at once in February each fiscal year.

(b) Since the fiscal year 2015, the plaintiff had been so busy that he needed help classifying submitted and unsubmitted documents, such as receipts. The plaintiff had decided to use all the granted research funds (the Assistance Fund, KYOKENHI, and SOKENHI) for research purposes. Thus, without sufficiently scrutinizing whether or not he had already submitted, the plaintiff erroneously turned in submitted documents for research expenses of

the Assistance Fund, such as receipts, as evidence for the KYOKENHI and the SOKENHI, or he turned in submitted documents for research expenses of the KYOKENHI and the SOKENHI as evidence for the Assistance Fund.

(3) Investigation of Erroneous Use by Konan University

The plaintiff took a one-year sabbatical starting in September 2018. While receiving a salary from Konan University, he stayed in Tokyo as a visiting scholar at the Institute for Monetary and Economic Studies of the Bank of Japan from September 2018 until February 2019. From March 2019, he stayed in New York as a visiting scholar at the Center on Japanese Economy and Business of Columbia University. In June 2019, Konan University informed the plaintiff that the University found a duplicate document submission for a research expense, and then he returned to Japan temporarily. From then until June 2020, he has responded multiple times to inquiries from Konan University.

As stated above, the plaintiff did not intend to make a duplicate document submission; however, he admitted the erroneous use of research funds, or their double receipt, pointed out by the University because it is true that the plaintiff erroneously turned in submitted documents for research expenses of the Assistance Fund as evidence for the KYOKENHI and the SOKENHI, or he turned in submitted ones for research expenses of the KYOKENHI and the SOKENHI as evidence for the Assistance Fund.

(4) There Was No Fact of Private Misappropriation

(a) As described below, the plaintiff did not divert grants of the Assistance Fund from the defendant for his profit.

(b) What is Private Misappropriation?

Generally, "private misappropriation" of research funds is understood as the erroneous use of research funds for the researcher's self-interest.

The penalty for private misappropriation is the most severe since it is considered the most malicious type of erroneous use. Indeed, regarding private misappropriation, the defendant's regulation uniformly stipulates a period of ten years during which the defendant does not grant the public research funds, whereas prescribing a period of one to five years regarding erroneous uses that do not constitute private misappropriation (Ptf. Ex. 10, Appendix2).

(c) Factors to Certify as Private Misappropriation

In general, when finding an erroneous use of research funds, the research institution (e.g., university) examines and determines whether or not there has been private misappropriation of research funds by considering the following factors: the storage situation of research funds and the purposes of expenses.

Regarding the storage situation, private misappropriation is improbable if a researcher manages research funds and the researcher's private money (e.g., deposits) separately. However, even if the researcher manages research funds certified as relating to his/her erroneous uses in a deposit account for his/her daily use, it does not immediately constitute private misappropriation. The Ministry of Education, Culture, Sports, Science, and Technology (hereafter referred to as the MEXT) lists some cases that illustrate this point on its website titled "Cases of Erroneous Uses at Research Institutes (in Japanese, Kenkyukikan Niokelu Fuseishiyoujian)." For example, the case of a faculty member of the National Institute of Polar Research who conducted erroneous uses of research funds in 2013-2018

states that "the faculty member managed the money he/she had received improperly from research funds and his/her salary and other living expenses in the same bank account. Hence, we could not identify whether his/her payments from the bank account arose from improperly received or private money. We also checked the bank account but could neither find that the faculty member spent the improperly obtained money nor identify the purpose of the expenses. Therefore, we could not conclude that the researcher conducted private misappropriation" (Ptf. Ex. 3-1; all the documentary evidence of Ptf. Ex. 3 below are excerpts from the MEXT website).

Next, regarding the purposes of expenses, if a researcher does not spend research funds certified as relating to erroneous uses but keeps them in storage or if the researcher pays them for research expenses, it is considered that private misappropriation does not exist.

We can include, as an example in which a researcher does not spend improperly received money from research funds but keeps it in storage, the abovementioned case (Ptf. Ex. 3-1) and the case of the University of Tokyo, Hiroshima University, and the National Institute for the Humanities from 2011 to 2018 (Ptf. Ex. 3-2). The latter case states, "The faculty member has kept the duplicate travel expenses in cash in a locker in his/her laboratory. In addition, the faculty member has consistently deposited more than the duplicate travel expenses into a bank account in his/her name. Therefore, we cannot conclude that there was any private misappropriation in this case."

We can also raise some cases where a researcher spends improperly received money from research funds for research expenses—albeit partially keeps it in storage without spending. The first case by a professor at Kyoto University in 2016 states that "regarding

the money the researcher improperly received at this time, he/she has already paid it to the employees as gratuities for their work. The researcher also kept the amount of money equivalent to improperly returned gratuities from the employees in storage without spending it. Therefore, we conclude that there was no private misappropriation" (Ptf. Ex. 3-3). The second case by an associate professor of Hiroshima University in 2014 and 2017 states that "the associate professor paid a part of the gratuities received from the University through fictitious claims to the subjects for gratuities as well as to him/herself for private expenses, based on the records of receipts kept in the laboratory and the testimony of students in the associate professor's laboratory. Therefore, we conclude that there was no private misappropriation" (Ptf. Ex. 3-4).

(d) Regarding This Case

In this case, the account in the plaintiff's name, where grants he had received from the Assistance Fund were deposited, consistently had a balance far above the amount granted to the plaintiff (Ptf. Ex. 11). In addition, there is no evidence that the plaintiff spent grants provided by the defendant for his profit. Therefore, it is improbable for the plaintiff, who has a sufficiently large number of deposits, to conduct the duplicate submission to obtain only 6,732 yen for his profit (the amount certified by Konan University as "private misappropriation"; see below for more detail).

Furthermore, as described below, the plaintiff made research expenses that exceeded the amount of the Assistance Fund that Konan University reported as private misappropriation to the JSPS.

These transparent research expenses strongly indicate that the JSPS grants did not benefit the plaintiff privately (Ptf. Ex. 4). (See also **EndNote1**).

Date of Payment	Payment Details	Amount (Yen Equivalent)	No. of Plaintiff's Exhibition
2018/10/24	[REDACTED] [REDACTED] [REDACTED]	\$ 10,500 (1,169,595 Yen)	Ex. 4-1 and 4-2
2019/8/16	[REDACTED]	44,100 Yen	Ex. 4-3
2019/9/16	[REDACTED]	\$ 80.47 (8,700 Yen)	Ex. 4-4
2019/9/21	[REDACTED] [REDACTED] [REDACTED]	54,084 Yen	Ex. 4-5
2020/2/6	[REDACTED] [REDACTED] [REDACTED]	11,700 Yen	Ex. 4-6
2020/2/8	[REDACTED] [REDACTED] [REDACTED]	45,456 Yen	Ex. 4-7
2020/3/13	[REDACTED] [REDACTED]	96,762 Yen	Ex. 4-8
Total Amount		1,430,397 Yen	

Note: We convert dollars to yen using the dollar-yen exchange rate (closing rate) at the payment date.

(e) Summary

As described above, the fact that the plaintiff diverted the Assistance Fund granted by the defendant for his benefit does not exist at all. Indeed, as if to confirm this point, **there was**

little discussion of private misappropriation in the multiple interviews conducted between Konan University and the plaintiff, and there was no investigation regarding purposes of expenses; the University only checked the amount of the plaintiff's account into which the research fund was deposited.

(5) Konan University's Certification of "Private Misappropriation"

On May 26, 2020, Konan University certified the plaintiff's erroneous use of research funds (duplicate receipt) and approved that the plaintiff diverted some of them for his profit (Ptf. Ex. 5). This improper use of the defendant's Assistance Fund was only 13,092 yen, of which only 6,732 yen was certified for "private misappropriation."

The only basis for the University's certification of "private misappropriation" is that the plaintiff deposited the received money from the Assistance Fund into his deposit account containing personal property and did not manage this money and personal property separately (A5, p.5). However, as described above, **the plaintiff always held a balance far exceeding the received money from all the research funds, including the Assistance Fund (Ptf. Ex. 1-1), and has spent all the money for his research purposes (Ptf. Ex. 4).** Therefore, there is no evidence of private misappropriation. Konan University did not conduct any detailed investigation into the personal diversion of research funds. Nonetheless, contrary to these facts, the University certified that there was "private misappropriation," based on the formal and weak basis only that the plaintiff did not manage the received money from all the research funds and personal property separately.

(6) Disciplinary Disposition by Konan University

On August 20, 2020, Konan University dismissed the plaintiff (Ptf. Ex. 6). The reason for

this disciplinary disposition was only the plaintiff's erroneous use of research funds (duplicate receipt) but not private misappropriation. **Unlike this case, the University did not raise private misappropriation as a reason for dismissal; thus, the plaintiff received a notice of dismissal from Konan University on the 26th of the same month.**

(7) Return of Research Expenses Certified as Erroneous Use

At the end of August 2020, the plaintiff returned to Konan University the total research expenses of 1035,752 yen (including the Assistance Fund provided by the defendant) that the University certified as incorrect use of private misappropriation.

III. Administrative Disposition of This Case by the Defendant

(1) Partial Revocation of the Decision to Grant the Assistance Fund

On October 2, 2020, the defendant partially revoked its decision to grant the Assistance Fund (Grant-in-Aid for Scientific Research (C)) to the plaintiff for the fiscal years 2014 and 2017 (Ptf. Ex. 7 and 8). The defendant raises the following reasons for the revocation: "The principal investigator intentionally or through negligence prepared and submitted multiple documentary evidence for the identical expenses and received the money in duplicate, thereby violating the accounting rules and regulations of the research institution to which he belonged. Such incorrect use violates Article 13 (Restrictions on Use of Grants) in the JSPS's Guidelines for Using Grants-in-Aid for Scientific Research and the Scientific Research Assistance Fund (Regulation No. 19, 2011), thereby violating Article 1-1 (Observance of Laws and Regulations) in the Notice of Grant Decision, Article 1-3 (Responsibilities of Grantee) in that the grantee did not make efforts to carry out the granted project in good

faith, Article 1-5 (Management of the Grant by the Research Institute) in that the grantee forced the research institute not to manage the grants following "affairs to be performed by each research institute regarding the use of the Scientific Research Assistance Fund," and Article 2-1 (Fair and Efficient Use of Direct Expenses) in that the grantee did not make efforts for fair and efficient use of the grants."

However, as described above, the plaintiff's incorrect use is that he erroneously submitted identical documentary evidence (duplicate receipt) regarding the Assistance Fund, the Faculty Research Fund, and the Institute Research Fund, but not that he "prepared multiple documentary evidence for the identical expenses."

The amount of revocation by the defendant was 8,751 yen (of which direct expenses were 6,732 yen) and 8,268 yen (of which direct expenses were 6,360 yen) for the fiscal years 2014 and 2017, respectively.

(2) Administrative Disposition of This Case

Based on the partial revocation of the decision to grant the Assistance Fund mentioned above, the defendant, on October 2, 2002, also decided that it would not provide the plaintiff with grants from Grants-in-Aid for Scientific Research, the Scientific Research Assistance Fund, and the Scientific Research Funds for the period from April 1, 2021, to March 31, 2031 (Ptf. Ex. 9; hereafter referred to as "the disposition of this case" or "this disposition").

In the decision notice (Ptf. Ex. 9), the defendant described the reason for this disposition as **only "based on the University's report that it had found erroneous use."** The defendant did not explain why it would not grant the plaintiff ten years.

(3) Receipt of Notice of Disposition

On October 12, 2020, the plaintiff received the defendant's notice (Ptf. Ex. 7 to 9) through Konan University regarding the partial revocation of the decision to grant the Assistance Fund, the order to return the grants, and this disposition.

(4) Legal Nature of This Disposition (Dispositional Nature)

(a) It is understood that if an act gives a person the right to apply for receiving a subsidy and an administrative agency responds to the application by the person who has the right to apply after examining whether or not the applicant has the right to receive the subsidy, the decision by the administrative agency directly makes the applicant's rights and obligations and determines the scope of the rights and obligations—as an administrative action—under the act.

(b) According to Article 17-2 of the JSPS Act, the Assistance Fund (Grant-in-Aid for Scientific Research (C)), which is the subject of this disposition, fully applies *mutatis mutandis* The Act on Adjustment of Execution of Budgets Pertaining to Subsidies (hereafter referred to as "the Adjustment Act"). On this premise, the defendant noticed the plaintiff of this disposition (Ptf. Ex. 9).

In this regard, the Adjustment Act stipulates a procedure along which an administrative agency gives a person the right to apply for a subsidy (Article 5), and the agency responds to the person who has the right to apply after examining whether or not the applicant has the right to receive the subsidy (Articles 6 and 7).

It is not disputed on academic grounds that the grant, revocation, and return order of

subsidies to which the Adjustment Act applies have the legal nature of administrative disposition as formal administrative actions. In addition, many judicial precedents approve the dispositional nature of such administrative actions. Therefore, the revocation of the defendant's decision to grant the Assistance Fund has a dispositional nature.

(c) The disposition of this case is not based directly on the Adjustment Act but on the defendant's regulations (Ptf. Ex. 10: Regulation No. 19, 2006). However, as described above, the defendant enforced this disposition on the premise that the defendant follows the Adjustment Act and thereby revokes its decision to grant the Assistance Fund.

Furthermore, the legal effect of this disposition is that the defendant's unilateral decision against the plaintiff makes the plaintiff ineligible to receive Grants-in-Aid for Scientific Research and the Scientific Research Assistance Fund for ten years, regardless of the plaintiff's will. In this case, the defendant's decision to revoke the grant is not illegal, whereas determining the period during which the defendant will not grant the research funds is inherently illegal. In such a case, unless there is an opportunity for a person subject to such disposition (including this disposition) to directly challenge the decision to set a non-grant period of research funds in action for the judicial review of an administrative disposition, the effective restoration of his/her rights is not achievable.

Given the legal structure of the institutions relating to this disposition and its aforementioned legal effect, it is evident that this disposition is a legal act (administrative act) to directly form the rights and obligations of a person subject to a disposition and determine their scope.

(d) Therefore, this disposition constitutes an administrative act with a dispositional nature.

[See also **EndNote2**].

IV. Illegality of the Administrative Disposition

(1) Deficiency of Reason

(a) The Adjustment Act stipulates that when an administrative agency decides to rescind granting a subsidy as a disposition, the agency must clarify the reason for the rescindment (Article 21-2 of the Adjustment Act). This stipulation aims to prevent the agency from arbitrariness by ensuring the prudence and reasonability of its decision and to provide the other party with the convenience of filing a complaint by informing the reason for the disposition.

(b) As mentioned above, the decision notice (Ptf. Ex. 9) of the defendant described the reason for this disposition as "based on the University's report that it had found erroneous use," but it **did not explain why the defendant would not grant the plaintiff ten years**. In the regulation cited by the notice (Ptf. Ex. 9) (Ptf. Ex. 10: Regulation No. 19, 2006), the "degree of incorrect use" for setting the period of ten years as the non-granted period corresponds to only "private misappropriation for personal profit."

Therefore, it is possible to infer that the defendant has approved "private misappropriation"; however, it is impossible from the notice of this disposition (Ptf. Ex. 9) to figure out what facts the defendant has accepted and how and why the defendant has applied the accepted facts to "private misappropriation."

Such a notice cannot be said to prevent an administrative agency from arbitrariness by

ensuring the prudence and reasonability of its decision, thus making it extremely difficult for the plaintiff to file a complaint against the defendant.

(c) As described above, **this disposition is illegal due to the deficiency of reason** and must be rescinded accordingly.

(2) Factual Errors

(a) An administrative action must be based on correct factual findings, and **if there is a factual error, the administrative action is illegal under substantive law** (e.g., Supreme Court, July 30, 1954; Supreme Court, September 14, 2006).

(b) As mentioned above, in the regulation responsible for this disposition (Ptf. Ex. 10: Regulation No. 19, 2006), the "degree of incorrect use" for setting the period of ten years as the non-granted period corresponds to only "private misappropriation for personal profit." Therefore, it is possible to infer that the defendant has approved "private misappropriation."

However, as mentioned above, the plaintiff always had a balance far exceeding the received research funds (Ptf. Ex. 11); he appropriated all the received research funds for his research (Ptf. Ex. 4); hence, in the first place, there is no evidence regarding private misappropriation.

(c) Therefore, **this disposition, enforced based on the premise that there was private misappropriation, lacks a factual basis, is illegal**, and hence must be rescinded.

(3) Abuse of Discretionary Power

(a) **If, with due consideration of individual circumstances, the content of an adverse**

disposition is much more severe than that of his/her conduct, the adverse disposition is deemed to be significantly lacking in validity from the standpoint of social common sense and hence to be illegal as a departure from the scope of the discretionary power or an abuse of it.

(b) As stated above, the amount of the plaintiff's erroneous use is tiny: 8,751 yen (of which 6,732 yen is direct expenses) and 8,268 yen (of which 6,360 yen is direct expenses) for the fiscal years 2014 and 2017, respectively. Of these, the amount of the private appropriation certified by the defendant is not described as the reason for this disposition and is unknown. Nonetheless, supposing that the defendant reused the amount approved by Konan University as it is, it would mean that the defendant imposed the heaviest penalty of ten years for not granting the research funds by just certifying the plaintiff's private misappropriation of only 6,732 yen (the direct expenses).

Furthermore, as mentioned above, before this disposition, the plaintiff had already returned the total amount of grants from the Assistance Fund certified as erroneous use through Konan University to the defendant. The defendant should consider such a circumstance when taking disposition.

(c) In the first place, the defendant's regulation (Ptf. Ex. 10: Regulation No. 19, 2006) uniformly sets the non-granted period for private misappropriation to ten years. This regulation is highly inappropriate from the standpoint of social common sense as it eliminates the room for considering individual circumstances.

The content of this disposition that the defendant simply applies to the regulation is much more severe than the conduct of the disciplined person; therefore, it is illegal

and must be revoked. (See also **EndNote3**).

V. Preliminary Claim

Even if this disposition does not constitute the aforementioned administrative act and is of a dispositional nature, it has a severe defect and is legally ineffective due to a lack of a factual basis. Therefore, it is evident that the plaintiff is in a position not to be denied by the defendant to provide him grants from Grants-in-Aid for Scientific Research, the Scientific Research Assistance Fund, and the Scientific Research Funds, based on this disposition (substantial public law-related action, Article 4 of the Administrative Case Litigation Act).

Given that **the defendant's "Regulations Concerning Responses to Misconduct in Research Activities and Incorrect Use of Research Funds" stipulates that the defendant "shall continue a measure until the court judges that the content of the measure is inappropriate and this judgment fixes."** (Ptf. Ex. 10, Article 21), all the measures taken by the defendant, including this disposition, were initially expected to be the subject of some lawsuit.

VI. Therefore, this disposition is illegal, and we request that it be rescinded (**primary claim**).

Even if the disposition in question does not constitute an administrative act, we request the court ensure that the plaintiff is in a position not to be denied by the defendant to pro-

vide him grants from Grants-in-Aid for Scientific Research, the Scientific Research Assistance Fund, and the Scientific Research Funds, based on this disposition **(preliminary claim)**.

EndNotes for Complaint

Note 1: When I prepared this complaint with my lawyers, they did not know that travel and staying expenses for research can be included as research expenses; hence, my travel and staying expenses are not included in Ptf. Ex. 4. More concretely, for FY 2015 to FY 2019, for which Konan University certified that there was my erroneous use of research funds, my travel and staying expenses for research amounted to approximately 4.5 million yen. Therefore, **I spent about 6 million yen of private money on my research for the same period.**

Despite my repeated statements, Konan University's Investigating Committee, headed by Current President Itsuko Nakai, continued disregarding the research expenses of 6 million yen from my private money. Also note that in the written statement (p. 3), prepared later for the witness examination, I and my lawyers refer to the above 4.5 million yen of travel and staying expenses for research.

Note 2: From the filing of this administrative lawsuit in April 2021 to March 2022, we had many discussions with the defendant in **the primary claim**, in particular, from the viewpoint of whether or not all the measures taken by the defendant, the JSPS, **"have a legally dispositional nature (i.e., whether or not the JSPS's measures are administrative acts)."** See the following **Note 3** regarding "why the argument of dispositional nature is important" and "why I targeted this administrative lawsuit at dispositional nature."

After one year of litigation, in March 2022, under the lawsuit management by Presiding

Judge Osamu Yamaji, the Osaka District Court disclosed its determination regarding the dispositional nature as an interlocutory decree, saying, **"There is a possibility that the measures taken by the JSPS have a dispositional nature."** If this determination became the Court's final and binding judgment in the primary claim, it would significantly impact the JSPS and all its related ministries and agencies, as discussed in **Note 3**.

However, the personnel change of the presiding judge from Mr. Yamaji to Mr. Atsushi Tokuchi in April 2022 drastically changed this lawsuit's course. In October 2022, Presiding Judge Tokuchi suddenly disclosed his adverse determination on the dispositional nature "without any explanation" and then proposed to seek a settlement with the defendant **in the preliminary claim, i.e., the claim for confirmation of position**. My lawyers took Presiding Judge Tokuchi's proposal with great surprise because **settlements between an individual and a national administrative agency, like the JSPS and the MEXT, within administrative litigation are extremely rare or non-existent**. Since then, this lawsuit has proceeded following Presiding Judge Tokuchi's proposal.

As a side note, while suffering from flashbacks—although it may be inappropriate to say—I enjoyed being engaged in highly specialized and rigorous legal discussions regarding the dispositional nature of this case against the defendant's attorney because I felt like preparing a research paper with my lawyers. Accordingly, I had a good impression of the defendant's attorney as a "worthy opponent," although he was my "enemy" from my standpoint as a plaintiff.

At the same time, while researching previous administrative lawsuits with my lawyers, I often read "artificial—that is, hard to follow common sense and unnatural—judgments in

favor of the administrative side." Thus, I understand why it has been said among lawyers involved in administrative lawsuits that "there are judgments like '**referee whistle of football games at the Middle East**' in Japanese administrative lawsuits."

However, such a judicial environment for administrative lawsuits would lead to the over-reaching of the enormous administrative powers (i.e., the Cabinet as its responsible party), becoming a "fetter on maturity" for the Japanese people and society. A free and innovative civil society cannot exist without a "**proper power balance based on the rule of law**" between private citizens and the administrative powers (i.e., the Cabinet). The administrative powers should not be unthinking followers of "particular" private citizens, and "all" private citizens should not be those of the administrative authorities. A "key" or the "last resort" to prevent such unthinking following each other is that **administrative lawsuits work more substantively under the rule of law**. Further consideration and specialized research on this issue is my "assignment" as a plaintiff who has pursued this administrative lawsuit.

Note 3: Through this administrative litigation, my lawyers and I pointed out the following illegality of the defendant's (the Japan Society for the Promotion of Science, or the JSPS) measures: (1) **deficiency of reason**, (2) **factual errors**, and (3) **abuse of discretionary powers by the administrative agency** (i.e., violation of the principle of proportionality in adverse dispositions by the administrative agency). As mentioned in **Note 2**, if the Osaka District Court approved the "dispositional nature" of all the JSPS's measures against researchers, including that against me (ten-year denial of granting the Grant-in-Aid for Scientific Research) following the interlocutory decree of March 2022, not only the measure

against me but also **"all measures taken by the JSPS against researchers thus far" would be revoked under the restrictions of the "Administrative Procedure Law."**

More specifically, the illegality (4) of **deficiency of disposition criteria**, i.e., the illegality of **lack in the definition of private misappropriation** due to violation of Article 12 of the Administrative Procedure Law, would newly apply to "all measures certified as private misappropriation, thus far," including that taken against me. Furthermore, "all measures taken by the JSPS against researchers thus far," including that taken against me, would violate Article 13 of the Administrative Procedure Law because of the illegality (1) of the deficiency of reason. The illegality (3) of abusing discretionary powers would involve violating Article 30 of the Administrative Procedure Law. On the other hand, the illegality (2) of factual errors is the inherent illegality of this case, which is attributed to the "formal and flimsy investigation" by Konan University.

In sum, if the Court approved the "dispositional nature," not only the illegality (1) and (3) but also the illegality (4) would apply to "all measures taken by the JSPS thus far," which include "all measures certified as private appropriation." This is why I "went for the issue of the dispositional nature" in the primary claim, together with my lawyers. What drove me was the best hope that all researchers subjected to the JSPS's administrative measures would get relief through "my intensive attack on the legally vital point," i.e., the dispositional nature.

On the other hand, during the one-year litigation focusing on the issue of the dispositional nature after filing in April 2021, the defendant repeatedly emphasized, "We never approve only the dispositional nature." I infer that this defendant's strong assertion would

have stemmed from **"the retroactivity to all measures taken by the JSPS thus far"** related to violating the Administrative Procedure Law. Therefore, the interlocutory decree by the Osaka District Court in March 2022, which approved the dispositional nature of the JSPS's measure, may have significantly shocked the JSPS, the MEXT, and other related ministries and agencies. After the interlocutory decree in March 2022, Konan University (Chairman: Yoshiyuki Nagasaka, President: Itsuko Nakai), which "artfully" and "sneakily" submitted a "formal and flimsy investigation" report to the JSPS and the MEXT in June 2020 without informing me of the submission, joined this administrative lawsuit as the defendant's supporting intervenor in April 2022. At the same time, due to a personnel change in the Court, the Presiding Judge of the administrative lawsuit changed from Osamu Yamaji to Atsushi Tokuchi.

As mentioned in **Note 2**, after Konan University joined the lawsuit, it proceeded with the main issues being (2) "the illegality of factual errors" and (5) **"the unclearness of the definition of incorrect use of research funds"** in the preliminary claim (the claim for confirmation of position) following the proposal of Presiding Judge Tokuchi. The illegality (5) is a new legal issue found through the litigation in the preliminary claim, which is related to the illegality of deficiency of disposition criteria, like the illegality (4) of lack in the definition of private misappropriation. For the illegality (5) details, see **Note 13 in the endnotes of the statement**.

Thus, after about another year of litigation from April 2022, the Osaka District Court disclosed its determination, **"There is a strong possibility of serious factual errors, and it is impossible to conclude that there was private misappropriation of research**

funds" right after a witness examination on June 2023. Based on this Court's disclosure, I have been holding settlement discussions with the defendant, or the JSPS, under the mediation of the Osaka District Court and the supervision of the MEXT and other relevant ministries—more precisely, from my point of view, I have kept waiting for the settlement procedures on the government side since June.

Finally, due to the above background, the Court's interlocutory judgment of the dispositional nature will not be the final and binding judgment in this administrative lawsuit. However, I sincerely hope that the MEXT and all related ministries and agencies will consider the above legal issues (1) to (5), understanding the **"significance of the interlocutory judgment"** in March 2022 under the lawsuit management by Presiding Judge Yamaji. This wish stems from my earnest hope that **"under the rule of law,"** researchers like myself and my collaborators will never emerge from Japanese society again. Also, I would like to say that I have already sublimated my "anger" as described in the "PREFACE" of this document.

At the same time, while pursuing the lawsuit, I was repeatedly forced to consider the independence and autonomy of universities and researchers in Japan. Of course, I am not qualified to talk so highly of this issue since I belittled the procedure for using research funds. Nonetheless, I would like to express my view "with impudence." In **the government's convoy system for Japanese universities**, the university's unthinking obedience to the administrative authorities **"increases the powers without the authorities' reflection,"** which **dilutes the significance of "freedom"** as well as independence and autonomy not only in universities but also in society as whole, and makes it a dead letter conse-

quently. Thus, the doctrinaire and self-righteous or cynical and sidelong images and discourses—far removed from individuals' human fallibility or the ideals of civil society—are irresponsibly and vacuously rife. Accordingly, the "**dignity of life**" and the "**spirit of challenge**" disappear from society along with "**tolerance**."

The motto of Columbia University, where I stayed as a visiting scholar, is "**In thy light shall we see the light**" (Psalm 36:9). Needless to say, "light" means "truth" in this motto. No matter how naive you call me, **I earnestly hope that all universities are the place for the pursuit of truth.**

On the other hand, whether the place is a university or not, to freely pursue the truth with one's conscience—whether purely academic, educational, or welfare-related—"economic challenges including funding and daily living" will inevitably arise. Before the Reformation in the 16th century, the economic basis of the churches was under the aegis of the Catholic Church. Thus, the Protestant churches that rebelled against the Catholic Church had to face economic challenges to carry out their religious reforms. And they did not shy away from these financial challenges. As mentioned in the proverb in Mencius, "No stable assets, no stable mind." Therefore, I will deepen my thinking, reminding myself that "**the economic challenges themselves, including funding and daily living, are directly related to the pursuit of truth.**"

Method of Evidence

As described in the Description of Evidence

Attached Documents

1. One counterpart of the written complaint
2. One certificate of all matters
3. Two copies of the plaintiff's exhibit
4. One copy of the original and counterpart of the Description of Evidence
5. One power of attorney for litigation

Description of Evidence (1)

April 9, 2021,

Osaka District Court, 7th Civil Division

Attorney-at-Law for Plaintiff: Shinro Okawa

Shigeyuki Shigematsu

Tetsuyuki Yanagimoto

No. of Plaintiff's Exhibit	Item	Original and Copy	Creation Date	Author	Point of Proof
1	Application for Grants-in-Aid for Scientific Research (the Scientific Research Assistance Fund) for FY 2014	Copy	April 5, 2014	Plaintiff	The Assistance Fund provided by Defendants to Plaintiffs from FY 2014 through FY 2016
2	Application for Grants-in-Aid for Scientific	Copy	April 6, 2017	Plaintiff	The Assistance Fund provided by Defendants to Plaintiffs from FY 2017

	Research (the Scientific Research Assistance Fund) for FY 2017				through FY 2020
3-1	The Website of the Ministry of Education, Culture, Sports, Science and Technology (MEXT)	Copy	December 15, 2020	MEXT	A case illustrating that even though research expenses certified as erroneous use are in a researcher's deposit account for daily living, this does not simply lead to certification of private misappropriation
3-2	Same as above	Copy	September 13, 2019	Same as above	A case illustrating that if research expenses certified as erroneous use remain without being spent, it is interpreted as a circumstance to deny private misappropriation
3-3	Same as above	Copy	June 29, 2020	Same as above	A case illustrating

					that if research expenses certified as erroneous use remain without being spent or are spent for research purposes, it is interpreted as a circumstance to deny private misappropriation
3-4	Same as above	Copy	June 28, 2019	Same as above	Same as above
4-1	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 80px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 60px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 40px; height: 15px;"></div>	Copy	January 20, 2018	<div style="background-color: black; width: 60px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 60px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 60px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 40px; height: 15px;"></div>	<div style="background-color: black; width: 120px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 130px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 120px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 120px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 80px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 140px; height: 15px;"></div>
4-2	SMBC Website for Customer (SMBC Direct)	Copy	October 23, 2018	Plaintiff	<p>The evidence that the plaintiff paid [REDACTED]</p> <div style="background-color: black; width: 140px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 140px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 80px; height: 15px;"></div>
4-3	Receipt	Copy	August 16, 2019	<div style="background-color: black; width: 50px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 15px; height: 15px;"></div>	<div style="background-color: black; width: 120px; height: 15px;"></div>

					<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] the fact of payment thereof</p>
4-4	E-mail (recipient: Plaintiff)	Copy	September 17, 2019	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] the fact of payment thereof</p>
4-5	E-mail (recipient: Plaintiff)	Copy	February 6, 2020	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] the fact of payment of thereof</p>
4-6	E-mail (recipient: Plaintiff)	Copy	February 6, 2020	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] the fact of payment of thereof</p>
4-7	E-mail (recipient: Plaintiff)	Copy	February 8, 2020	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p>

					<p>██████████</p> <p>██████████ the fact of payment of thereof</p>
4-8	E-mail (recipient: Plaintiff)	Copy	March 13, 2020	<p>██████████</p> <p>██████████</p> <p>██████████</p>	<p>██████████</p> <p>██████████</p> <p>the fact of payment of thereof</p>
5	Notification regarding the content certified by the Investigating Committee on incorrect use of public research funds	Original	May 26, 2020	Konan University	<p>The evidence that, albeit did not conduct any detailed investigation of private misappropriation, Konan University, contrary to the facts, certified "private misappropriation" on the formal and weak basis only that the plaintiff did not manage deposits and research funds separately</p>
6	Notice of disciplinary disposition	Copy	August 20, 2020	Konan University	<p>The evidence that Konan University did not raise private misappropriation as a reason</p>

					for its disciplinary disposition
7	Notice	Copy	October 2, 2020	Defendant	The evidence that the defendant partially rescinded its decision to grant the Assistance Fund (Grants-in-Aid for Scientific Research (C)) of FY 2014 to the plaintiff
8	Notice	Copy	October 2, 2020	Defendant	The evidence that the defendant partially rescinded its decision to grant the Assistance Fund (Grants-in-Aid for Scientific Research (C)) of FY 2017 to the plaintiff
9	Notice	Copy	October 2, 2020	Defendant	The evidence that the defendant enforced the disposition of this case
10	Regulations concerning	Copy	December 6,	Defendant	

	measures to misconduct in research activities and incorrect use of research funds		2006		Regulations responsible for the disposition of this case, the evidence that defendant's regulation uniformly sets the non-granted period for private misappropriation to ten years, which eliminates the room for considering individual circumstances
11-1	Certification for the balance of bank account	Original	February 21, 2021	SMBC	The evidence that the plaintiff's bank account, in which the Assistance Fund was deposited, consistently maintained a balance far exceeding the Assistance Fund granted
11-2	Certification for the balance of bank account	Original	February 21, 2021	Same as above	Same as above
11-3	Certification for the balance of	Original	April 6, 2021	Same as above	Same as above

	bank account				
11-4	SMBC Website for Customer (SMBC Direct)	Copy	February 23, 2021	Same as above	Same as above