Complaint

December 25, 2020

Object of Claim

(translation omitted)

Statement of Claim

This case is a case where the defense counsel ("Death Penalty Retrial Defense Counsel" or "Defense Counsel") of O who was a prisoner sentenced to death executed during petition for retrial ("Death Penalty Retrial Petitioner") seek compensation of damages due to the illegality of the execution.

I. Parties

1. Plaintiffs

The Plaintiffs are attorneys belonging to the Osaka Bar Association and are the persons who were the Death Penalty Retrial Defense Counsel for the fourth retrial petition of the Death Penalty Retrial Petitioner who was executed at the Osaka Detention House on December 27, 2018. Plaintiffs Ikeda and Kishigami were the attorneys for the appeal and final appeal trials of the Death Penalty Retrial Petitioner and were the persons who were the Death Penalty Retrial Defense Counsel from the first retrial petition[1] to the fourth retrial petition after the death sentence became final for the Death Penalty Retrial Petitioner, and Plaintiff Saionji was the Defense Counsel from the first retrial petition of the Death Penalty Retrial Petitioner and thereafter was the Death Penalty Retrial Defense Counsel until the fourth retrial petition.

[1] Legal team note: In regard to a guilty verdict which has become final, the person sentenced may petition for retrial (Article 435 of the Code of Criminal Procedure). The grounds for which petition for retrial are allowed are stipulated in the Code. One of those is “when clear evidence which should make the court render an acquittal…or find a lesser crime is newly discovered.” If it is determined that there are grounds for retrial, the court will make a decision for start of retrial and start the retrial procedure. In most cases, the start of retrial is not permitted, and the petition for retrial will be dismissed, so there will be repeated retrial petitions.

Non-party Koji Oda, attorney-at-law, is in the same position as Plaintiffs Ikeda and Kishigami.

2. Defendant

The Defendant (Government of Japan) is the respondent for petition for death penalty retrial cases and is the entity who executed and killed the Death Penalty Retrial Petitioner at the Osaka Detention House on December 27, 2018, during the retrial petition.

II. Process of Criminal Trial for Death Penalty Retrial Petitioner

The case of the Death Penalty Retrial Petitioner which is the issue in this case is as follows.

1. Regarding the Death Penalty Retrial Petitioner

The Death Penalty Retrial Petitioner was born in Osaka in 1958. The judgment dismissing the final appeal for the Death Penalty Retrial Petitioner was rendered on September 13, 2004, and the first death penalty judgment became final for the Death Penalty Retrial Petitioner on October 15, 2004.

Thereafter, the Death Penalty Retrial Petitioner was imprisoned in the Osaka Detention House as a prisoner sentenced to death, however, he was executed at the Osaka Detention House on December 27, 2018.

2. Outline of the Case

(translation omitted)

3. Judgment of Final and Conclusive Trial Decision

(1) First Instance decision

The first trial court rendered a judgment of the death penalty for the Death Penalty Retrial Petitioner and S and life imprisonment for chi Y[2] on March 23, 1995 (Plaintiffs' Evidence A 1).

(2) Appellate court judgment

The Death Penalty Retrial Petitioner appealed the first judgment to the Osaka High Court. Suemori also appealed. The appellate court

[2] Translator's note: The full name is given elsewhere in the text and is abbreviated to "Y" thereafter.

dismissed the appeal of the Death Penalty Retrial Petitioner and Suemori on March 5, 1999.

(3) Decision of the Supreme Court

The Death Penalty Retrial Petitioner appealed the appellate court judgment to the Supreme Court. Suemori also appealed. The Supreme Court, which was the final appellate court, rendered a judgment to dismiss the final appeal (Plaintiffs' Evidence A 3) and the first instance decision for the Death Penalty Retrial Petitioner became final on September 13, 2004 ("Final Judgment").

III. Process of the Petitions for Death Penalty Retrial

(translation omitted)

1. First Retrial Petition

(1) First Petition for Death Penalty Retrial (Osaka District Court)

For the first petition for death penalty retrial, the Death Penalty Retrial Petitioner petitioned the Osaka District Court on February 8, 2008.
(translation omitted)

(2) Order to dismiss first retrial petition

(translation omitted)

(3) Motion for immediate appeal

(translation omitted)

(4) Order to dismiss immediate appeal

(translation omitted)

(5) Motion for special appeal

(translation omitted)

(6) Order to dismiss special appeal

(translation omitted)

2. Second petition for death penalty retrial

(1) Second petition for death penalty retrial (Osaka District Court)

On December 21, 2011, Defense Counsel made the second petition for death penalty retrial to the Osaka District Court (Plaintiffs' Evidence A 5-1)
(translation omitted)

(2) Order to dismiss second retrial petition

(translation omitted)

(3) Motion for immediate appeal

(translation omitted)

(4) Order to dismiss immediate appeal

(translation omitted)

(5) Motion for special appeal

(translation omitted)

(6) Order to dismiss special appeal

(translation omitted)

3. Third petition for death penalty retrial

(1) Third petition for death penalty retrial (Osaka District Court)

On December 4, 2015, Defense Counsel made the third petition for death penalty retrial to the Osaka District Court.

(translation omitted)

(2) Order to dismiss third retrial petition

(translation omitted)

(3) Motion for immediate appeal

(translation omitted)

(4) Order to dismiss immediate appeal

(translation omitted)

(5) Motion for special appeal

(translation omitted)

(6) Order to dismiss special appeal

(translation omitted)

4. Fourth petition for death penalty retrial

On September 12, 2017, Defense Counsel petitioned the Osaka District Court for retrial for the fourth time.

(translation omitted)

IV. Execution of the Death Penalty Retrial Petitioner

On the morning of December 27, 2018, while the fourth retrial petition case was pending with the Osaka District Court, the Defendant (Government of Japan) executed both the Death Penalty Retrial Petitioner and S ("Death Penalty Retrial Petitioners") at the Osaka Detention House.

December 27 is the day prior to the so-called last business day of the year at government offices. Under Article 178, Paragraph 2 of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees, during the period of January 1 to 3 and December 29 to 31 (same for other holidays, Saturdays and Sundays), executions are prohibited.

In the situation for the operation of executions currently, a prisoner sentenced to death cannot know in advance when the death sentence for him or her will be carried out. That is because, on the morning of day of the execution, he or she is informed, is taken to the place of execution and is executed. For that reason, weekdays from Monday to Friday are days of unease and despair. From December 29 to January 3, there is no such worry and there is a short time of days of rest. December 27 which is the day prior to the last business day of year for government offices is a time close to the days of rest.

Moreover, in 2018, the largest mass execution ever of 13 prisoners sentenced to death of persons related to Aum Shinrikyo (seven persons on July 6, 2018, and six persons on July 26, 2018) was carried out at the direction of Minister of Justice Yoko Kamikawa.

The death sentences were carried out for the Death Penalty Retrial Petitioners only three month after Minister of Justice Takashi Yamashita took office on October 2, 2018. Additionally, since being after the greatest number of executions in history being carried out, it was thought that no more executions would probably be carried out during that year. However, on the day prior to the last business day of the year at government offices immediately preceding the days of rest, the death sentences for the Death Penalty Retrial Petitioners were carried out.

V. Order to Dismiss Fourth Retrial Petition

On December 5, 2019, which was about one year after the execution of the Death Penalty Retrial Petitioner, the Osaka District Court dismissed the fourth retrial petition (Plaintiffs' Evidence A 7-4)

(translation omitted)

VI. Retrial Issues and Submission of New and Clear Evidence by Death Penalty Retrial Defense Counsel

1. Framework of arguments for petition for death penalty retrial

Article 435, Item 6 of the Code of Criminal Procedure stipulates that "when clear evidence which should make the court find a lesser crime than

the crime which was found in the original judgment is newly discovered," it is possible to petition for retrial.

What the Death Penalty Retrial Defense Counsel of the Death Penalty Retrial Petitioner consistently argued in the first to the fourth petitions for death penalty retrial is that "murder-robbery of K and W found by the Final Judgment differs from the facts and after the cash taking, the intention to kill for both parties arose, namely "the relationship of the consolidated punishments of robbery and murder." The latter is a lesser crime than the crime which was found in the original judgment and also has a material effect on the sentencing (death penalty).

2. Specific arguments of Death Penalty Retrial Petition Defense Counsel

(translation omitted)

3. New evidence submitted by the Death Penalty Retrial Defense Counsel and what was intended to be proven

The evidence submitted by the Death Penalty Retrial Defense Counsel for the first to fourth petitions for retrials to prove the above arguments (the mental element for intention to kill arose after the cash robbery) and facts to be provided are as follows.

(translation omitted)

4. Accumulation of proof of the Death Penalty Retrial Defense Counsel and the derailing by the execution

(translation omitted)

VII. Rights of Defense Counsel of Death Penalty Retrial and the Illegal Act

(translation omitted)

VIII. The Illegal Act of Defendant and Plaintiffs' Damages

The Defendant killed the Death Penalty Retrial Petitioner who was the client of the Death Penalty Retrial Defense Counsel of the Plaintiffs by execution.

1. Illegality of the execution of Defendant

The right to petition for retrial is a right guaranteed by Article 39 of the Constitution and the Code of Criminal Procedure and the court which

rendered the original judgment has jurisdiction for the retrial petition and will decide on the petition (Articles 435, 438, and 439 of the Code of Criminal Procedure). The judicial authority exclusively has the right to decide on the retrial.

The right “to access the courts (justice)” requiring this judicial decision cannot be infringed by anyone (even the government).

As mentioned above, the Death Penalty Retrial Petitioner appointed the Plaintiffs (Death Penalty Retrial Defense Counsel) and made the fourth petition for death penalty retrial and sought a judicial (court) decision thereon. In addition, what was being sought from the court is a central important part of the legal system and a central part of the public mission of the Death Penalty Retrial Defense Counsel which is “to right wrongful convictions and restore faith in the legal system."

However, due to the death (killing) of the Death Penalty Retrial Petitioner by the Defendant, it became extremely difficult for the Plaintiffs (Death Penalty Retrial Defense Counsel) to provide the proof in the petition for death penalty retrial.

The Death Penalty Retrial Petitioner was the source of the Plaintiffs' fact-finding. All defense activities, from the final trial stage to the fourth petition for death penalty retrial, were developed based on fact-finding regarding the Death Penalty Retrial Petitioner. The Death Penalty Retrial Petitioner himself was the one and only person who had value as evidence and was indispensable for the Plaintiffs' defense activities.

The Defendant killed the one and only person. As a result, the Death Penalty Retrial Petitioner as well as the one and only evidence of a first-hand experience with this petition was forever lost. The Plaintiffs became unable to prove the facts depending on the Death Penalty Retrial Petitioner (destruction of evidence). It is no longer possible for the Plaintiffs to confirm the facts with the Death Penalty Retrial Petitioner regarding the evidence and information collected and obtained other than from the Death Penalty Retrial Petitioner (sabotage of evidence). In this way, the loss of the Death Penalty Retrial Petitioner made it impossible for the Plaintiffs to carry out further activities for proof in the lawsuit. The execution of the Death Penalty Retrial Petitioner is an act of obstructing testimony by the State.

Moreover, considering that the "State" was not just the institution that carried out the death penalty, but was the respondent in the retrial petition

hearing, it is an act which makes it impossible (at least extremely difficult) to petition for the retrial due to the execution, which is a remarkably unjust act against the Plaintiffs by the other party (the respondent), which is the "eradication" of the other party by one party in the proceedings, and which is the greatest obstruction of justice.

2. Infringed right

The execution of the Death Penalty Retrial Petitioner is a direct infringement of the right to counsel for the Death Penalty Retrial Defense Counsel.

In particular, while the defense counsel in a death penalty case has the duty to right a wrongful conviction and save the life of a prisoner sentenced to death and to restore faith in the legal system and there is a duty to realize the public interest aiming for a fair legal system that goes beyond personal interests of the prisoner sentenced to death, the execution by the State has made it impossible to carry out that duty.

It also interfered with the performance of the Defense Counsel's mission, as it undermines the retrial petition of the prisoner sentenced to death. It must be said to be obstruction of justice by the administrative authority, and its illegality is high.

3. Damages

The execution of the Defendant on December 27, 2018 is an illegal act against the right to counsel of the (Plaintiffs Death Penalty Retrial Defense Counsel).

It has been made difficult or impossible to pursue the mission to right the wrongful conviction and restore faith in the legal system for the Plaintiffs, as the Death Penalty Retrial Defense Counsel. In addition, the purpose of the retrial petition to save the "life" entrusted by the Death Penalty Retrial Petitioner can no longer be fulfilled.

To compensate for this, the amount of money for each Plaintiff is not less than 5 million yen as consolation money.

In addition, since it became necessary to institute this Case and appoint counsel, there is also the attorney fee of 500,000 yen as the damage caused by the Defendant's illegal act.

Therefore, that is why the Plaintiffs (Death Penalty Retrial Defense Counsel) seek compensation of damages from the State that executed the retrial petitioner during the petition for retrial as stated in the Object of Claim.

Issues in this Case (Illegality of Execution during Retrial Petition)

In this case, the Defendant will seemingly also argue as a defense that execution during a retrial petition is legal. Therefore, to clarify the important issues in this Suit from the beginning, we will clarify the Defendant's arguments (defenses) that are expected, and we will present the Plaintiffs' rebuttal of such arguments in advance.

I. Expected Arguments of Defendant

1. Legal provisions

Article 442 of the Code of Criminal Procedure stipulates that "The petition for a retrial shall have no effect to suspend the execution of sentence; provided, however, that the public prosecutor of the public prosecutor's office corresponding to the competent court may suspend the execution of sentence until a decision on the petition for a retrial is made."

Article 475, Paragraph 2 of the Code of Criminal Procedure stipulates that "The order set forth in the preceding paragraph (execution order of the Minister of Justice) shall be rendered within six months from the date when the judgment becomes final and binding; provided, however, that, where a petition to restore the right to appeal or a petition for a retrial, or an application or petition for an extraordinary appeal or a pardon is made, the period before these proceedings have finished shall not be included in this period. Neither shall the period before the judgment becomes final nor binding for persons who are co-defendants be included in this period."

2. Legal interpretation

In the proviso of Article 475, Paragraph 2 of the Code of Criminal Procedure, there is no effect after six months has passed from the date when the judgment becomes final and binding. That only means that the retrial petition period is not included in the period being "six months has passed from the date when the judgment becomes final and binding." Conversely, the six months provision does not affect the retrial petition after six months have passed. If that was not the case, execution would be impossible and punitive authority could not be exercised. There is not a suspensive effect for execution after six months based on Article 475, paragraph 2.

Rather, the main text of Article 442 of the Code of Criminal Procedure clearly stipulates that "The petition for a retrial shall have no effect to suspend the execution of sentence." This provision is a provision for all criminal sentences and this provision also applies for death sentences.

The balancing of rights between guaranty of the right to petition for retrial and the securing punitive authority is made with the six months provision of the main text of Article 472, Paragraph 2 of the Code of Criminal Procedure. Therefore, execution in accordance with the six months provision of the Code of Criminal Procedure will not be illegal.

3. Broad discretionary power of the Minister of Justice

Under the provisions of Article 442 and Article 475, Paragraph 2 of the Code of Criminal Procedure, once the adjustment period of six months passes, executing when and which prisoner sentenced to death is solely left to the broad discretion of the Minister of Justice. However, the discretion is not without limitation and is required to be exercised appropriately in accordance with the Code of Criminal Procedure. For example, Article 479 of the Code of Criminal Procedure stipulates the prohibition of execution for a person in a state of insanity (Article 479, Paragraph 1) and pregnant women (Article 479, Paragraph 2). The Minister of Justice selects a person to be executed upon carefully investigating that the person is not a person falling under the grounds for suspension of execution from among the prisoners sentenced to death.

It is also clear in the history of criminal justice in Japan that some people who have been sentenced to death have been subsequently acquitted by a retrial. Therefore, among prisoners sentenced to death, persons to be executed are selected after the actual situation of the petition for retrial being investigated in detail, and careful investigation determining how likely it is that the final death sentence will be overturned by the retrial even for persons making a petition for retrial.

In this way, in selecting a person to be executed, appropriate discretion is exercised in accordance with the purpose of each of the articles of the Code of Criminal Procedure.

4. In this case

This case is not a case of a person in a state of insanity (Article 479, Paragraph 1) or a pregnant woman. In addition, since the final trial decision, the issues have always been the charges and the number of charges i.e., "robbery murder (murder with an intention of taking money)" or "robbery and murder (an intention of murder occurred after the robbery)." This was not a case where the findings would be overturned, such as claiming that Okamoto was not the murderer or that his actions did not constitute a crime. In view of this, the fact that Okamoto was selected as a person to be executed does not show any deviation or abuse in exercising discretion.

Also, as mentioned above, the Minister of Justice has broad discretion as to "when" to have an execution. No deviation or abuse of discretionary power can be recognized for the date and time selected in this case.

(translation omitted)

II. Rebuttal of Plaintiffs (Rebuttal 1)….. International Covenant on Civil and Political Rights Violation

In this case, the Death Penalty Retrial Petitioner (Okamoto) was executed on December 27, 2018, when the fourth retrial petition case was pending with the Osaka District Court as mentioned above.

However, the execution during petition for retrial in this case violates Article 6 of the International Covenant on Civil and Political Rights and must be said to be illegal.

1. International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights ("ICCPR") is a treaty that was adopted by the United Nations General Assembly on December 16, 1966 and came into effect on March 23, 1976. Japan ratified it on June 21, 1979, and it came into effect on September 21, 1979.

ICCPR Article 6 provides as follows.

(translation omitted)

As will be described in detail below, ICCPR Article 6.4 is interpreted to include a prohibition on executions during a petition for retrial. Therefore, execution during a petition for retrial falls under "arbitrary deprivation of life" in violation of international law.

This is an international human rights standard (global standard) by which the courts of Japan are bound.

2. Protection of human rights is not a domestic issue but rather requires an international understanding

Under ICCPR Article 6, death sentences and executions are strictly limited to only exceptional cases, so the right to take all procedures to avoid death sentence and execution such as retrial petition, pardon, and special pardon procedures is guaranteed for the person sentenced to death. Not being executed during such procedures is an internationally established basic human right, and the execution of the Death Penalty Retrial Petitioner (Okamoto) is an illegal act that violated fundamental human rights in light of such international human rights standards.

As will be described later, the main text of Article 442 of the Code of Criminal Procedure of Japan stipulates that "The petition for a retrial shall have no effect to suspend the execution of sentence." If this also applies to petition for retrial for death sentences[3], the conflict with the ICCPR, which prohibits executions during retrial, becomes an issue. Therefore, the article will be interpreted as conforming to the ICCPR, which is higher than domestic law, or is invalid to the extent it is related to execution of death sentences as a domestic law violating international law.

As will be described later in II. 8., based on the history of human rights violations and the development of basic human rights concepts, these days, the guarantee of basic human rights is not left to the policies and interpretations of each country as a domestic issue. The human rights protection of each country is to be administered internationally and is under the supervision of international organizations. In other words, as long as execution during a petition for retrial is prohibited by international law, Japan is not allowed to take measures contrary to international law, even on the basis of domestic law, as to whether or not to allow execution of a death sentence during a petition for retrial.

In this section, we first argue that execution of a death sentence during a petition for retrial is prohibited under international human rights law and

[3] Article 442 is a provision for all crimes and applies to fines and imprisonment with work and other punishments. The argument of the Legal Team is that it does not apply to death sentences.

make it clear that this provision under international law is a human right that is guaranteed domestically regardless of the provisions of domestic law.

3. Right to life/prohibition of arbitrary deprivation of life

ICCPR guarantees the "right to life" as "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." in Article 6.1 and requires States Parties to establish the legal framework required to ensure the enjoyment of the right to life and furthermore prohibits the arbitrary deprivation of life.

This "right to life" is the foundation of all rights and without effective protection, the protection of other rights is meaningless, and it is the supreme right.

For this reason, Article 6 is provided for at the opening of Part III of the ICCPR which sets forth substantial rights. The Human Rights Committee, which was established as the enforcement body of the Covenant, makes clear that the right to life is a "fundamental right" "whose effective protection is the prerequisite for the enjoyment of all other human rights" in the "General Comments" which are the interpretative guideline of the ICCPR (Plaintiff's Evidence C 1[4] Paragraph 2). The ICCPR tolerates a certain level of human rights restriction "in time of public emergency which threatens the life of the nation" in Article 4, however, the human rights stipulated in ICCPR Article 6 are non-derogable rights even during public emergency (ICCPR Article 4.2).

States Parties owe a duty to take positive measures to ensure the right to life (ICCPR 2.2, second sentence of 6.1) and ICCPR 6.1 includes a requirement to establish by law sufficient systems and procedures to ensure that all people have the right to not be arbitrarily deprive of life for States Parties.

4. Position towards the death penalty of the UN… International trend toward abolition/restriction of execution of the death penalty

Here, we will describe what kind of stance the United Nations has towards the death penalty system.

ICCPR Article 6 itself is not a requirement for the States Parties to

[4] General Comment No.36

abolish the death penalty.

However, the United Nations stated in the Second Optional Protocol to the International Covenant on Civil and Political Rights adopted by the 44th General Assembly in December 1989 (generally called, the "Convention on Abolition of the Death Penalty") in the opening, "Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights…Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable, Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life, Desirous to undertake hereby an international commitment to abolish the death penalty" and the States Parties which abolished the death penalty after ratifying the Second Optional Protocol, etc. are prohibited from reintroducing the death penalty and are not permitted to scrap the Second Optional Protocol (Plaintiff's Evidence C 1[5] Paragraph 34).

In fact, there are countries which have ratified the ICCPR and have not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights and have a death penalty system (Japan is one of those). Also, ICCPR Article 6.1 prohibits "arbitrary deprivation of life" and indicates that "deprivations of life which are not arbitrary" are possible, so it seems that the death penalty is also likely permissible although based on strict conditions. However, according to the Human Rights Committee, "the death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights." (Plaintiff's Evidence C 1[6] Paragraph 50). Therefore, ICCPR Article 6 allows "deprivation of life which is not arbitrary" in Paragraph 1, and as "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State

[5] General Comment No.36

[6] General Comment No.36

Party to the present Covenant." in Paragraph 6, the ICCPR does not actively tolerate the death penalty system. And that is made clear from "the position that states parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future" (Plaintiff's Evidence C 1[7] Paragraph 50). On November 17, 2020, the Third Committee of the United Nations General Assembly adopted a "resolution calling for moratorium on the death penalty."

ICCPR Article 6 imposes strict restrictions on the States Parties that currently retain the death penalty on the premise that it is necessary to abolish the death penalty due to the importance of the right to life. It demands that deprivation of life by the state (execution) "must be carried out only in extremely exceptional cases."

This is the attitude the United Nations has towards the death penalty.

5. Application/authority of execution of the death penalty of the Japanese government is strictly restricted

ICCPR Article 6.2 and below imposes strict restrictions on the application and enforcement authority for the death penalty in countries where the death penalty is retained as follows.

Given the overall structure of ICCPR Article 6, the death penalty is understood to be the last resort after other alternatives have been exhausted or such alternatives are considered inadequate considering that the "right to life" set forth in Paragraph 1 is a significant right underlying all basic human rights and the application and execution of the death penalty in countries with the death penalty "must be construed narrowly" as follows: (Plaintiff's Evidence C 1[8] Paragraphs 12, 33).

(1) ICCPR Article 6.2

First, ICCPR Article 6 states that the death penalty be imposed "only for the most serious crimes" "in accordance with the law in force at the

[7] General Comment No.36

[8] General Comment No.36

time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide" and execution is only possible with a "final judgement rendered by a competent court."

Due to the inherently incompatible nature governing the application of the death penalty in the Covenant that guarantees the right to life, the requirements stipulated in paragraph 2 must be narrowly interpreted (Plaintiff's Evidence C 1[9] Paragraphs 33, 35).

(2) ICCPR Article 6.4

ICCPR Article 6.4 furthermore guarantees the right to seek a special pardon or commutation of the sentence for a person for whom a death penalty judgment has become final. It is guaranteed as a human right that execution is avoided as much as possible even in the death penalty phase. As will be described below, ICCPR Article 6.4 directly prohibits "execution during a petition for retrial."

(3) ICCPR Article 6.5

ICCPR Article 6.5 prohibits the imposition of the death penalty for crimes committed by persons below eighteen years of age and the carrying out of the death penalty on pregnant women.

(4) Application of the death penalty will not violate ICCPR (Articles, 9, 10, 14, etc.)

ICCPR Article 6.2 does not permit the death penalty unless "the law…not contrary to the provisions of the present Covenant," for example, the imposition of the death penalty by a court which does not satisfy the due process requirements of ICCPR Article 14 violates Article 14 of the Covenant and Article 6 of the Covenant. Death sentences based on information obtained through torture or cruel, inhumane, or degrading treatment also violate Article 7 of the Covenant and Article 6 of the Covenant (Plaintiff's Evidence C 1[10] Paragraph 52-55).

(5) Execution of death penalty will not violate ICCPR (Article 7, etc.)

Even if the death sentence itself does not constitute an ICCPR violation, its enforcement may violate the ICCPR. For example, not giving timely notifications to death row prisoners about the execution date is a

[9] General Comment No.36

[10] General Comment No.36

form of torture of death row prisoners and can violate Article 7 of the Covenant (Plaintiff's Evidence C 1[11] Paragraph 13 and Plaintiff's Evidence C 4[12]).

(6) Application and execution of the death penalty will not be "arbitrary"

ICCPR Article 6.1 prohibits "arbitrary deprivation of life," The execution by the state is a "deprivation of life," and it must not be carried out "arbitrarily." Along with Articles 6.2, 6.4 and 6.5, and Article 6.1 is a restriction on the execution authority of States Parties (Plaintiff's Evidence C 2[13]).

This concept of "arbitrary" has a very broad meaning.

A. Being irreconcilable with domestic law is arbitrary

The "deprivation of life," which has no legal basis or is incompatible with other life-protecting laws and procedures, is, in principle, "arbitrary." For example, the death penalty issued after a procedure that violates the criminal procedure code is illegal and arbitrary (Plaintiff's Evidence C 1[14] Paragraph 11). Execution of a person whose guilt has not been proved a reasonable doubt is also an arbitrary deprivation of life (Plaintiff's Evidence C 1[15] Paragraph 43).

B. Violation of international law is arbitrary

The "deprivation of life" is, in principle, arbitrary if it is incompatible with international or domestic law, and therefore, even if it complies with domestic law, it violates international law and is "arbitrary" (Plaintiff's Evidence C 1[16] Paragraph 12). For example, not notifying the execution date mentioned in (5) is a violation of ICCPR Article 7, even if it is not a violation of Japanese domestic law, therefore, there is a possibility of violating ICCPR Article 6 as an "arbitrary deprivation of life." If a crime

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[11] General Comment No.36

[12] Concluding observations on the 6th periodic report of Japan

[13] Nowak's CCPR Commentary 3rd Ed.

[14] General Comment No.36

[15] General Comment No.36

[16] General Comment No.36

that is subject to the death penalty under Japanese criminal law cannot be said to be "the most serious crime," that may violate ICCPR Article 6.

C. Violation of due process such as being inappropriate/unfair is arbitrary

Moreover, the concept of "arbitrariness" is not limited to violations of domestic and international law, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality. The "deprivation of life" including the death penalty, must be the last resort after all other alternatives have been exhausted or they have been deemed inadequate (Plaintiff's Evidence C 1[17] Paragraph 12).

(7) What is required of countries which retain the death penalty

The countries which retain the death penalty have only the authority to apply and enforce the death penalty to the extent that it does not violate all of the above restrictions. In addition, they are obliged to prepare domestic laws to prevent the arbitrary application and enforcement of death penalty, including violations of the provisions of the Covenant (ICCPR Article 6.1, protection of life by law).

In Japan as well, these are required in view of international human rights law and human rights codes.

6. Protection of "the right not to be executed during retrial petition" of a prisoner sentenced to death

Based on the above, we will clarify in this section that "right to petition for retrial for a person sentenced to death" is guaranteed and "execution during petition for retrial will not be permitted" under ICCPR Article 6.4.

(1) Interpretation of ICCPR and the importance of the views of the Human Rights Committee

As will be described later in II. 7., after the ICCPR came into effect, the Human Rights Committee was established as the enforcement body of

[17] General Comment No.36

the Convention and was given the role of monitoring the implementation status of the Convention and clarifying the content of the Convention (ICCPR Article 40).

The Human Rights Committee received 1245 individual communications in the last ten years from 2009 to 2019 alone and has adopted 1178 views (as of January 2020) and has been interpreting the Covenant. In addition, through the accumulation of cases of the individual communications system, General Comments showing the interpretation guidelines of the text have been published and revised.

The "General Comments" and "Views" of the Human Rights Committee have become the standards for interpretation of the ICCPR.

(2) Right to petition for retrial of a prisoner sentenced to death

ICCPR Article 6.4 provides that "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

ICCPR Article 6.4 does not include "retrial" in the language but it is interpreted that it also includes the guarantee of the right to petition for retrial.

The Human Rights Committee has stated in its "General Comments" in which it presents the interpretation guideline for the ICCPR that States parties must take all feasible measures in order to avoid wrongful convictions in death penalty cases to review procedural barriers to reconsideration of convictions and to reexamine past convictions on the basis of new evidence, including new DNA evidence. (Plaintiff's Evidence C 1[18] Paragraph 43). That is because ICCPR Article 6 requires the State party to review the procedural barriers to retrial, and it is assumed that the opportunity for retrial is guaranteed for a prisoner sentenced to death under ICCPR Article 6.4. As for the guarantee of the right to life, even for death penalty by a final judgment, to avoid the execution as much as possible,

[18] General Comment No.36

procedures for avoiding the execution are guaranteed, and further the States Parties are to constantly review whether such guarantee is substantive and if there are any barriers to retrial.

Article 6 was established on the premise that each country has its own legal system for the review of the final judgment. Therefore, the "pardon" and "commutation of the sentence" referred to in Article 6.4 of the Covenant cannot be narrowly interpreted as being limited to the "special pardon" and "commutation of the sentence" under the Pardons Act made by the government in Japan and naturally includes "retrial," which is a review of sentence (commutation).

As mentioned above, ICCPR Article 6 prohibits "arbitrary deprivation of the right to life" in Paragraph 1, and even the death sentence and execution by a country where the death penalty is retained must be avoided as much as possible. In light of that, the right to appeal is guaranteed in Paragraph 2 and the death penalty cannot be carried out unless by a final judgment. In addition, to allow those who have been sentenced to death to file any procedure to avoid execution to eliminate the possibility of wrongful conviction and avoid execution as much as possible, what has recognized the right to petition for any procedure to avoid execution is ICCPR Article 6.4. If so, the right guaranteed to a prisoner sentenced to death in ICCPR Article 6.4 is interpreted to mean the general procedures that can be taken to avoid execution. This includes "petition for retrial" under the Japanese legal system (Plaintiff's Evidence C 6[19] in regard to the above).

(3) Right not to be executed during retrial petition is protected

It is also clear from the view of the Human Rights Committee that the execution of a death sentence during the procedures for pardon etc. violates ICCPR Article 6.4.

In regard to the case where Dimitri Chikunov, who was sentenced to death on January 24, 2000, in Uzbekistan, applied to the presidential office for a special pardon, but before the decision was made, he was

[19] An article by a Japanese criminal procedure law professor.

executed, the Human Rights Committee accepted the individual communication and expressed the view that execution while filing an application for pardon etc. violates ICCPR Article 6.4 (Chikunov v. Uzbekistan (Case No. 1043, 2002): Plaintiff's Evidence C 6[20]).

The judgment on the application for "pardon or commutation of the sentence" guaranteed by ICCPR Article 6.4 is different from the case of convictions other than the death penalty, and if the death penalty is carried out life itself is lost so it must be done before the execution. Therefore, it is interpreted that ICCPR Article 6.4 also includes a guarantee that the death penalty will not be carried out while the procedure for petitioning for a pardon and commutation of sentence (including the petition for retrial as mentioned above) is pending.

The States Parties are required "to ensure that sentences are not carried out before requests for pardon or commutation have been meaningfully considered and conclusively decided upon according to applicable procedures" in General Comment 36 which is the most recent "General Comment" adopted by 124th Session of the Human Rights Committee (Plaintiff's Evidence C 1 Paragraph 47).

As a State Party to the ICCPR, Japan is also required to comply with the guarantee of the right not to be executed during petition for retrial. It is an international human rights standard that the death penalty must not be carried out during a petition for retrial, and that cannot be changed by Japan's own unique interpretation.

(4) Provisions of the American Convention on Human Rights

In addition, in Article 4, Paragraph 6 of the American Convention on Human Rights, it is specified that "Capital punishment shall not be imposed while such a petition is pending decision by the competent authority" continuing the guarantee of the right to seek amnesty, special amnesty, and commutation of the sentence. Professor Nowak, an international human rights law expert, introduced this provision as "This self-evidence consequence" (Plaintiff's Evidence C 2[21] Page 158, Footnote 315) in an article-by-article commentary on the ICCPR.

(5) Recommendations for the Government of Japan

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[20] An article by a Japanese criminal procedure law professor

[21] Nowak's CCPR commentary 3rd Ed.

Since 1999, Japan has proceeded with executions of prisoners sentenced to death, even while petitioning for a retrial. In response, the Human Rights Committee has repeatedly issued the following recommendations to Japan so that petition for retrial and the petition for pardon will have the effect of suspending execution.

A. Fifth periodic report of Japan (October 30, 2008)

Concluding observations (Plaintiff's Evidence C 3)

The Committee notes with concern…that requests for retrial or pardon do not have the effect of staying the execution of a death sentence. (arts. 6 and 14)

The State party should introduce a mandatory system of review in capital cases and ensure the suspensive effect of requests for retrial or pardon in such cases. Limits may be placed on the number of requests for pardon in order to prevent abuse of the suspension….

(translation omitted)

B. Sixth periodic report of Japan (July 23, 2014)

Concluding observations (Plaintiff's Evidence C 4)

The Committee notes, furthermore,…that requests for a retrial or pardon do not have the effect of staying the execution and are not effective.

(translation omitted)

The State party should:

[(a)～(c) omitted]…

(d) In light of the Committee's previous concluding observations (see CCPR/C/JPN/CO/5, para. 17), establish a mandatory and effective system of review in capital cases, with requests for retrial or pardon having a suspensive effect,

…〔(e)…

(translation omitted)

C. Seventh periodic report of Japan

List of Issues (Plaintiff's Evidence C 5)

11. With reference to the previous concluding observations (para.13) and the Committee's evaluation of the follow-up replies of the State party (see CCPR/C/116/2 and CCPR/C/120/2), please:

[(a)～(b)omitted]…

(c) Clarify whether a mandatory and effective system of review has been established in capital cases and the conditions under which requests for retrial or pardon have a suspensive effect;

…〔(d)…

(translation omitted)

As mentioned above, in the periodic reports of the Human Rights Committee, Japan has been repeatedly recommended to rectify executions during the petition for retrial (rectification of violation of ICCPR Article 6), that is, the petition for retrial or pardon having a suspensive effect.

(6) Summary

As described above, ICCPR Article 6.4 prohibits execution of a prisoner sentenced to death during a petition for retrial, and execution contrary to this is illegal. Execution in violation of ICCPR Article 6.4 is an "arbitrary deprivation of life" and also violates ICCPR Article 6.1.

7. Why "international" human rights?

As mentioned above, focusing on the ICCPR, it has been stated that execution during petition for retrial in violation of ICCPR Article 6 is illegal. This court might think that human rights are fully guaranteed by Japan's domestic law and it is not necessary to bring up international human rights law, or that it can interpret human rights treaties independently because the courts have authority to interpret domestic law. Therefore, we would like to confirm once again why the concept of international human rights was established.

(1) The necessity of international human rights law

The concept of international human rights arose from the remorseful repentance of World War II. Prior to World War II, human rights were a domestic (internal affairs) issue of sovereign nations, and it was not permissible for other nations to interfere with human rights abuses committed within sovereign nations as internal affairs interference.

However, the nations that caused the unparalleled tragic war of World War II were totalitarian nations that disregarded the human rights

of individuals, and the Holocaust caused by Germany during World War II (the Jewish genocide) was the tipping point for this idea. In particular, while each country noticed that the Jewish massacre was legally carried out under the Weimar Constitution, which was said to have the most complete human rights provisions at the time, and that the persecution of Jews had begun, while each country continued to ignore that as a domestic issue and this had a great impact on the establishment of the concept of international human rights.

In this way, human rights and peace are inextricably linked from the remorseful repentance which paid for too many sacrifices during World War II, and to truly protect peace, human rights cannot be kept as a "domestic problem." The lesson was shared by each country that it should be protected internationally. The United Nations, which was established after World War II, has set the goal of ensuring human rights, and by stating this in the Charter of the United Nations, human rights have become an international concern.

What we would like to confirm here is that human rights may not be always secured by entrusting them to domestic law, and it is necessary to place human rights guarantees under international surveillance to effectively secure human rights. From that, international human rights were established and are functioning to this day under this philosophy.

(2) Establishment of ICCPR

The United Nations adopted the Universal Declaration of Human Rights in 1948 as a common standard to be achieved by all people and all nations. Then, to make each country legally obliged to secure human rights, in 1966, the International Covenant on Economic, Social and Cultural Rights, (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were adopted. In Japan, these two international covenants on human rights came into effect on September 21, 1979 (ICCPR Article 49.2, ICESCR Article 27.2, and the Vienna Convention on the Law of Treaties Article 24.1).

The ICCPR is the most important international human rights document at the core of international human rights law and is part of the International Bill of Human Rights along with the Universal Declaration of Human Rights. In particular, the Universal Declaration of Human Rights was a "declaration," but the ICCPR has been enacted as a "legal

norm" with legal effect. That is, the ICCPR, as a legal norm, binds the States parties.

(3) Ensuring enforcement of ICCPR and the importance of the Human Rights Committee

After the ICCPR came into effect, with each nation entrusted with the operation and interpretation of the ICCPR, the purpose of making human rights an international concern and guaranteeing human rights internationally would be frustrated. Therefore, the ICCPR established the Human Rights Committee as the enforcement body of the Covenant and gave the Human Rights Committee the role of monitoring the implementation status and clarifying the contents of the treaty (ICCPR Article 40) upon having established the three systems of the Inter-State Communication System (ICCPR Articles 41 and 42), Individual Communication System (First Optional Protocol), and the government periodic report (ICCPR Article 40) as the means for ensuring the performance of the Covenant. The Human Rights Committee deliberates on government reports submitted by each State Party through dialogue with the government, publishes concluding observations, reviews individual communications, and issues views and monitors the implementation status of the Covenant and clarifies the contents of the Covenant, which is the above role, by adopting the ICCPR interpretation guidelines which are called General Comments (ICCPR Article 40.4).

The Human Rights Committee, as the enforcement body of the ICCPR, has already repeatedly reviewed the reports of all States Parties for nearly 40 years, and has announced the concluding observations after "constructive dialogue" with the States Parties. The concluding observations are to interpret the ICCPR through dialogue with the States Parties.

In addition, the Human Rights Committee has received 1,245 individual communications in the last ten years from 2009 to 2019 alone and has adopted 1178 (as of January 2020) views and has been interpreting the ICCPR. The views adopted by the Human Rights Committee "exhibit some important characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the

language of the Covenant, and the determinative character of the decisions." (Plaintiff's Evidence C 7[22] Paragraph 11).

In addition, the General Comments adopted by the Human Rights Committee provide guidance on how to interpret the text through these years of government periodic reports and the accumulation of thousands of individual communications. Therefore, the General Comments, which are published based on the accumulation of concluding observations and views, have served as the most authoritative and important interpretation guideline for the ICCPR (Plaintiff's Evidence C 8[23] Page 20, Plaintiff's Evidence C 10[24] Page 697).

This is also clear from the International Court of Justice (ICJ) citing of the views and the General Comments adopted by the Committee upon stating "it believes it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of the Covenant" after stating that the interpretation of the Human Rights Committee was "established practice" in Advisory Opinion concerning the Palestinian Wall and in light of the interpretations of the ICCPR accumulated by the Committee through the individual communication system and the General Comments especially in the case which cited the concluding observations to Israel and in the judgment of the Diallo case (Plaintiff's Evidence C 10[25] Paragraph 693).

The views and General Comments of the Human Rights Committee are, so to speak, a normative guideline common to all States parties and are treated as a major authoritative document in the interpretation of the Covenant. In this way, it is hoped that the international guarantee of human rights will be realized by unifying the interpretation of the ICCPR.

The above-mentioned General Comment 36 on ICCPR Article 6 (Plaintiff's Evidence C 1) is also the most authoritative and important interpretation guideline of the ICCPR.

8. ICCPR as a legal norm

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[22] General Comment No.33

[23] A Japanese textbook of international human rights law

[24] An article by a Japanese international human rights professor

[25] An article by a Japanese professor of international human rights law

(1) Treaty ratification (acceptance) and binding effect on states

The Convention is accepted by the State Parties' agreeing that the State Parties are bound by the Convention (ratification). The ratification procedure of the treaty requires the approval of the Diet (Japan's parliament) (legislative branch) (Article 73, Item 3 of the Constitution). The democratic legitimacy of the treaty is guaranteed even within the country by examining and approving of the treaty by the Diet, which is composed of representatives of the people.

By the way, there is a treaty that stipulates the rules of international law concerning treaties (establishment, effect, interpretation method, etc. of treaties). This is the Vienna Convention on the Law of Treaties ("Convention on the Law of Treaties").

In the preamble of the Convention on the Law of Treaties, it is acknowledged that the principles of free consent and of good faith and the "pacta sunt servanda" rule are universally recognized. This principle is a maxim of international law (Plaintiff's Evidence C 11[26] Pages 304-305).

The treaties that come into effect bind the parties in accordance with such basic principles, and the parties are obliged to implement them in good faith (Convention on the Law of Treaties, Article 26). In addition, it is not possible to use the domestic law of one's own country as a basis for evading the treaty obligations (Plaintiff's Evidence C 2[27] Paragraph 4). This is well established in international case law, with the Permanent Court of International Justice (PCIJ) saying, "it is certain that (France) cannot rely on her own legislation to limit the scope of her international obligations." (Plaintiff's Evidence C 11[28] Page 305).

(2) State binding effect of ICCPR

Since the ICCPR has also been ratified after approval by the Diet, Japan, a party to the ICCPR, must comply with the rights and obligations stated in the ICCPR (Preamble and Article 26 of the Convention on the Law of Treaties).

It is stipulated in ICCPR Article 2.1 that the States Parties to the ICCPR are obliged to "respect and to ensure to all individuals within its

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[26] An international human rights law textbook by Japanese scholars

[27] Nowak's CCPR commentary 3rd Ed.

[28] An international human rights law textbook by Japanese scholars

territory" the rights stipulated in the Covenant. In other words, the States Parties to the ICCPR have a legal obligation to ensure the realization of all human rights stipulated in the ICCPR immediately after becoming a State Party. This obligation must be fulfilled in good faith in accordance with the principles of Article 2 of the Convention on the Law of Treaties (Plaintiff's Evidence C 12[29] Paragraph 3).

The ICCPR obligations that should be performed are not limited to the central government. The ICCPR obligations (especially Article 2) are binding on the States Parties as a whole. That is, it binds not only the government but also all public institutions such as legislature, judiciary, and local institutions (Plaintiff's Evidence C 12[30] Paragraph 4). That is, the courts are no exception.

Given that the Japanese government has accepted the system for ensuring the international performance of the ICCPR and its system, the interpretation of the ICCPR must be according to international standards (interpretation presented by the Human Rights Committee), and the courts cannot ignore this and have an arbitrary interpretation.

(3) ICCPR as domestic law in Japan

A. Domestic effect of ICCPR

Since Japan has also ratified the ICCPR, it is naturally bound by the ICCPR as a nation. However, how to incorporate the treaties concluded by the government into domestic law is left to the provisions of the constitution of each country.

In Japan, all substantive treaties require the approval of the Diet (Article 73, Item 3 of the Constitution), the approved treaties are automatically promulgated by the Emperor (Article 7, Item 1 of the Constitution), and treaties and established international laws must be observed (Article 98, Paragraph 2 of the Constitution), so a treaty is immediately accepted as a domestic law by promulgation without requiring any special legislative measures (general acceptance method).

Therefore, the ICCPR has had domestic effect from the day it came into effect in Japan after ratification. In regard to that, in the case of the ICESCR, since budgetary measures and legal grounds are required to

[29] General Comment No.31

[30] General Comment No.31

realize the rights like the right to social security, rather than specific rights being given to individuals, it is understood that the obligation stipulated is to make the best efforts toward the realization of rights (so-called "progressive implementation").

B. The position of ICCPR in domestic law

What kind of domestic legal status is granted to treaties is basically left to how treaties and international law are positioned in the constitutions of each country. In the case of Japan, it is understood that the treaty is higher than general laws because it is stipulated in Article 98, Paragraph 2 of the Constitution that "The treaties concluded by Japan and established laws of nations shall be faithfully observed." This is the prevailing constitutional view and the view of the Japanese government.

Then, since the treaties are positioned as a norm higher than the domestic statutes, domestic laws that violate the treaties are logically invalid or must be amended or abolished.

C. Judicial normativity of ICCPR

Even if a treaty has domestic legal effect, whether it is applied directly or not, or whether it is applied (realized) only after first legislation or other measures being required is discussed as an issue of direct applicability of the treaty (note that the terms "automatic enforceability" and "self-enforcement" of treaties are sometimes used with almost the same meaning as direct applicability).

Since the wording of the ICCPR itself regards the individual as the subject of rights, with the exception of provisions that appear to impose legislative obligations on the legislature, such as ICCPR Article 20.2 ("Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."), the direct application of the Covenant is possible and has judicial normativity (Plaintiff's Evidence C 2[31] Page 2).

The Government of Japan also responded as follows in the first periodic report of Japan submitted to the Human Rights Committee on October 24, 1980 under ICCPR Article 40 and the answer of the Representative of the Government for the review of the 12th regular

[31] Nowak's CCPR commentary 3rd ed.

session of the Human Rights Committee which was the review session and gave an answer recognizing the precedence over domestic law of the Covenant and the direct application of the Covenant (Plaintiff's Evidence C 9[32] Paragraph 2).

> "In Japan, treaties were not transmuted into ordinary Japanese law. In practice, however, treaties had long been regarded as forming part of Japan's legal framework and had been given the appropriate force; in other words, the administrative and judicial authorities were obliged to comply and ensure compliance with treaty provisions. Treaties were deemed to have a higher status than domestic laws. That meant that such laws as were held by the court to be in conflict with a treaty must be either nullified or amended. In view of the great inconvenience that would be caused by such a situation, the Government and the Diet scrutinized proposed treaties most carefully to ascertain whether there was any discrepancy between them and existing domestic law."

D. Direct application and legal precedence being recognized by the courts

The direct applicability and legal precedence of the ICCPR has been recognized in numerous court cases.

a. Court cases which directly applied ICCPR and which recognized the effect to give precedence in law

As court cases in which the ICCPR was directly applied and the effect was recognized to have precedence over Japanese law, the courts in the cases of claiming national compensation for obstructing inmates' interviews and the case of refusing fingerprinting ruled as follows.

(a) Case claiming reparation for obstructing prisoner interviews Takamatsu High Court (November 25,1997) Tokushima District Court (March 15,1996)

(translation omitted)

[32] International human rights textbook by a Japanese professor

(b) Case of the refusal of fingerprinting (Judgment of the Osaka High Court, October 28,1994)

(translation omitted)

b. Supreme Court cases where violation of law was recognized which refer to or cite ICCPR

The following cases are examples of cases in which the Supreme Court can be considered to have relied on international human rights law, including the ICCPR to reach decisions on unconstitutionality.

(a) Decision of unconstitutionality of the Nationality Act (Judgment of the Supreme Court of Japan June 4, 2008)

(translation omitted)

(b) Decision on the share in the inheritance of an illegitimate child (Judgment of the Supreme Court of Japan, September 4, 2013)

(translation omitted)

10. Summary

As mentioned above, human rights must be common internationally, and for that purpose, human rights guarantee (interpretation) cannot be entrusted to each country. With this common understanding of human rights as a foundation, a system for guaranteeing and implementing human rights internationally is stipulated in each human rights treaty. The ICCPR was adopted to legally bind the States Parties with the trend of internationally guaranteeing human rights, and Japan ratified it with the approval of the Diet.

Under the Constitution of Japan, the ICCPR has direct applicability both in terms of language and nature, and its legal status as a treaty is higher than that of Japanese laws and Japanese laws that violate the ICCPR must be nullified or interpreted to conform to the

ICCPR. It is established judicial precedent that a Japanese law contrary to the ICCPR is denied effect to that extent.

Regarding the interpretation of the ICCPR, the Views and General Comments presented by the Human Rights Committee are important guidelines. From the perspective of international protection of human rights, the interpretation of the ICCPR must be interpreted in a unified manner internationally. It is not possible for the courts of Japan to make an original interpretation judgment different from the Views and General Comments presented by the Human Rights Committee.

III. Rebuttal of Plaintiffs (Rebuttal 2)…. ICCPR violation and domestic law

1. ICCPR Article 6 and its effect

As mentioned in II., ICCPR Article 6.4 prohibits executions during a petition for retrial, and if contrary to that, there is an "arbitrary deprivation of the right to life" of ICCPR Article 6.1 and it is illegal as an ICCPR violation.

As well, in Japan, the ICCPR has direct effect as domestic law and moreover has an effect taking precedence over Japanese laws. That was clearly held by Takamatsu High Court on November 25, 1997 and by Tokushima District Court on March 15, 1996 and is established judicial precedent.

2. If there is a conflict between ICCPR and domestic law

In this way, if the ICCPR, which has direct effect as a domestic law and has an effect taking precedence over Japanese law, conflicts with the domestic law, it must be interpreted that the lower domestic law conforms to the higher ICCPR or if it is not possible to change the interpretation of domestic law, that domestic law is null to the extent that it violates the ICCPR and must be amended.

It has been considered in the same way in Japanese practice. That is clear from the following statements by the Government of Japan.

(1) October 1981 First periodic report of Japan

The memorable first periodic report of Japan was reviewed in October 1981 after the report was submitted to the United Nations in October 1980 (Plaintiff's Evidence C 13[33]).

Akinori Tomikawa, Secretary of the Planning and Coordination Division, United Nations Bureau, Ministry of Foreign Affairs, West German Ambassador Matsuo, and Secretary Yagi attended the review as representatives of the Government of Japan and Representative Tomikawa stated the following (Plaintiff's Evidence C 14[34] Pages 62, 87).

> "As had been pointed out by Sir Vincent Evans, in Japan treaties were not transmuted into ordinary Japanese law. In practice, however, treaties had long been regarded as forming part of Japan's legal framework and had been given the appropriate force; in other words, the administrative and judicial authorities were obliged to comply and ensure compliance with treaty provisions. Treaties were deemed to have a higher status than domestic laws. That meant that such laws as were held by the court to be in conflict with a treaty must be either nullified or amended. If an individual brought an action against the Government on the ground that the latter had violated a treaty, the court would usually find some domestic legislation relevant to the individual's claim and hand down a verdict on the basis of that legislation. In the rare cases where there was no relevant domestic legislation, the court would directly invoke the treaty and render its verdict on the basis of the treaty's provisions. If the court found a conflict between domestic legislation and the treaty, the latter prevailed."

(2) July 1988 Second periodic report of Japan

The second periodic report of the Government of Japan was submitted to the United Nations on December 24, 1987 and was reviewed in July 1988. Mr. Kunieda of the Human Rights and Refugees Division of the Ministry of Foreign Affairs and Mr. Fujita (Counselor seconded from the Ministry of Justice to the Ministry of Foreign

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[33] Japanese article about the periodic report

[34] Japanese article about the periodic report

Affairs) of the Legal Affairs Department of the Permanent Mission of Japan in Geneva attended the review. Representative Kunieda stated:

"Regarding the first point (a), according to Article 98 of the Constitution of Japan, the treaties concluded by Japan must be observed in good faith. Treaties take precedence when they conflict with domestic law. Prior to becoming a party to a treaty, Japan will reassess any potential problems and, if any, will take the necessary legislative steps to resolve them"

(3) Summary

These statements made by the representatives of Japan at the United Nations are official opinions of Japan.

In other words, the Government of Japan expressed at the United Nations as a formal opinion that if domestic law conflicts with the ICCPR, the conflicting domestic law must be amended or interpreted so that the domestic law does not conflict with the ICCPR.

3. What should the Interpretation of domestic law concerning execution be?

(1) Article 442 of the Code of Criminal Procedure

Article 442 of the Code of Criminal Procedure stipulates that "The petition for a retrial shall have no effect to suspend the execution of sentence; provided, however, that the public prosecutor of the public prosecutor's office corresponding to the competent court may suspend the execution of sentence until a decision on the petition for a retrial is made."

ICCPR Article 6.4 prohibits execution during a petition for retrial. "The petition for a retrial shall have no effect to suspend the execution of sentence." of Article 442 of the Code of Criminal Procedure means execution of a sentence other than the death penalty (imprisonment with work, imprisonment without work, fine, etc.) is appropriate, but if the death penalty is also to be applied, that violates the ICCPR Article 6.

For that reason, it must be interpreted that "execution of sentence" of Article 442 of the Code of Criminal Procedure does not include "execution of the death penalty."

(2) Article 475, Paragraph 2 of the Code of Criminal Procedure

Article 475, Paragraph 2 of the Code of Criminal Procedure stipulates that, "The order set forth in the preceding paragraph (the execution order of the Minister of Justice) shall be rendered within six

months from the date when the judgment becomes final and binding; provided, however, that, where a petition to restore the right to appeal or a petition for a retrial, an extraordinary appeal, or an application or petition for a pardon is made, the period before these proceedings have finished shall not be included in this period. Neither shall the period before the judgment becomes final nor binding for persons who are co-defendants be included in this period."

A. The main text of Article 475, Paragraph 2 of the Code of Criminal Procedure is an advisory provision

The main text of Article 475, Paragraph 2 of the Code of Criminal Procedure provides that "The order set forth in the preceding paragraph (the execution order of the Minister of Justice) shall be rendered within six months from the date when the judgment becomes final and binding," however, the government also acknowledges that this is an advisory provision without mandatory force (Reply of the Minister of Justice to the Question of Member of the House of Representatives), and that has also become clear in the case law. (Judgment of the Tokyo District Court, March 20, 1998).

B. The proviso to Article 475, Paragraph 2 of the Code of Criminal Procedure is important

To conform to the interpretation of ICCPR Article 6, it should be interpreted that "Depending on the outcome of the procedures for pardon application and petitioning a retrial, the final judgment of the death penalty may be affected. Therefore, it is clear from the purpose that an execution order must not be issued until these procedures are completed. In addition, if there is a legal reason for not carrying out the execution, the execution must not be ordered, and as long as the procedure such as pardon or petition for retrial has not been completed, or the judgment does not become final for a person who was a co-defendant, the execution order itself should not be issued. "

4. International human right standards (global standard) prohibiting execution during retrial petition

As of the end of December 2020, 142 countries around the world have abolished the death penalty (including countries which have effectively abolished it), and the death penalty is entirely abolished in the

EU. There are only 56 retentionist countries. Only the United States and Japan retain the death penalty among so-called developed countries.

In the United States, one of the few countries where the death penalty is retained, 22 of the 50 states and Washington DC have abolished the death penalty, and there are 28 states which retain the death penalty (three of which are death penalty moratorium states). In these retentionist states, as will be described below IV 2., there are strict regulations on executions after the death sentence becomes final, and the application of the death penalty and executions must be avoided as much as possible and the international human rights standard (global standard) that executions are prohibited during procedures for avoiding the carrying out of the death penalty is observed.

5. Summary

As mentioned above, ICCPR Article 6, which is the international standard for human rights, states that "execution during a petition for retrial is illegal." State Party, Japan (including judicial authority), is bound by this, and the Code of Criminal Procedure, which is a domestic law, must be construed to comply with this.

IV. Rebuttal of Plaintiffs (Rebuttal 3) ….. Infringement of the Right to Obtain Judicial Decision (Right to Access to Justice)

1. The judicial authority has exclusive jurisdiction over the retrial petition and the administrative authority cannot decide it

In Japan, the decision for a petition for retrial is exclusively for the judicial authority (Article 438 of the Code of Criminal Procedure), and it is clear that the administrative authority itself does not have the power to decide this.

Moreover, the right to petition for a retrial for a prisoner sentenced to death is a right to a decision of the judicial authority (the right to access to justice), which is the “the right of access to the courts” guaranteed by Article 32 of the Constitution, and it is protected by the legal procedure guarantee of Article 31 and respect of the individual and respect for the right to life, liberty and the pursuit of happiness in Article 13 of the

Constitution, and the administrative authority cannot deprive the decision on such a petition for retrial. The usurping of this means the infringement of judicial power by the administrative authority.

In this regard, in the United States, which is one of the few countries where the death penalty is retained, there is a deep relationship between executions and petition to the judiciary, and access to the justice is guaranteed for a prisoner sentenced to death.

2. Right of access to justice of a prisoner sentenced to death in the United States

In the United States, which has states where the death penalty is retained under a similar constitution as Japan, there is an important relationship between execution (the authority of the state governor) and post death penalty conviction lawsuits.

In Carol S. Steiker (Professor, Harvard University) and Jordan M. Steiker (Professor, University of Texas) "Death Penalty and Constitutional Rules: Comparison of America and Japan" (Horitsu Jiho Vol. 91, No. 4, Page 96: Plaintiff's Evidence D 2), the actual situation in the United States is clarified as follows.

(1) Three stages of litigation after death penalty judgment in the United States

In the United States, the procedure for a death penalty case goes through three stages after the defendant is found guilty and sentenced to death at trial. There are (1) direct appeal procedures in state courts, (2) post-conviction procedures in state courts, and then (3) habeas corpus procedures in federal courts.

If sentenced to death in the first instance trial, it is possible to make constitutional and legal claims based on the trial record in the direct appeal procedure. For example, it is possible to dispute whether the submission of confession evidence in court or the instruction to the jury was appropriate.

After the direct appeal is concluded, in the post-conviction proceedings in the state court, arguments based on evidence outside the trial record can be made. Prosecutor misconduct (such as concealment of evidence of innocence) and evidence that defense attorney did not defend effectively at the trial stage (for example, the

defense attorney at the trial stage did not investigate the mitigation circumstances and did not submit mitigation evidence that would be grounds for sentencing to a lighter sentence than the death penalty).

A prisoner sentenced to death can file a record-based or new evidence-based motion in federal court, even if the motion has been dismissed in a direct appeal or state post-conviction procedure. A federal district court judge then decides whether the state court's decision should be upheld. The federal habeas corpus procedures further "check" for compliance with the standards of the United States Constitution.

(2) Three stages of litigation and execution is not possible during that period

It is not appropriate for a state to set an execution date and time in the middle of this three-stage process if the sentenced person files the motion by the deadline. The Federal Supreme Court has never ruled that this three-stage review process is required under the US Constitution. However, many people share the idea that each of these three stages is essential to ensuring the fairness of the death penalty procedure. All states which retain the death penalty guarantee a direct appeal and post-conviction procedures, and Congress also has legislated that state convictions be examined by the federal government.

As mentioned above, some motions can only be filed after the direct appeal procedure is completed. For example, there is an objection to the capacity to be sentenced and execution method of a prisoner sentenced to death. All jurisdictions provide procedures for filing these motions prior to execution, and the death penalty is not usually carried out if such motions are filed. It is expected in the death penalty procedure that the petition of the sentenced person will be disposed of in an orderly manner. Both state and federal courts are aware of such fact when the date and time of execution is set and settle all pending suits before execution (or allow a stay of execution to ensure a decision on the pending suits).

(3) Right to seek a judicial decision and infringement of such right. not being permissible

The sentenced person's right to seek a decision on a motion is often protected in state courts by a state constitution guarantee of "access to courts." In federal courts, due process provisions guarantee the right to seek court decision on a motion prior to execution. However, as in the above-mentioned three stage procedure, the operation that the death penalty will not be carried out is deeply rooted in the past, and this point is rarely a problem.

As a case deviating greatly from the standard on this point, it is possible to mention a death penalty case in the State of Texas. In 2007, on the date that Michael Richard was executed, the Federal Supreme Court determined to decide the constitutionality of the protocol for drug injection in another case. The defense counsel for Mr. Richard sought a stay of the execution from the Texas Court of Criminal Appeals which is the highest court of the criminal courts in the State of Texas to make the same motion in regard to drug injection. However, when the defense counsel of Mr. Richard submitted the motion, the time was after 5 p.m. Presiding Judge Sharon Keller of the Texas Court of Criminal Appeals refused to decide on the motion. It was because the court "closed at 5." Mr. Richard was executed without an opportunity to have a decision on the motion. The action of Presiding Judge Keller has been greatly criticized and was found to be a violation of Texas state law. There was also the suggestion of the Federal Supreme Court that there is the possibility that there were grounds for a motion under the Federal Constitution in the motion of Mr. Richard. Presiding Judge Keller who refused to consider the motion of Mr. Richard was subject to disciplinary proceedings. The great criticism of Presiding Judge Keller in the case of Mr. Richard reinforces the dominant standard which is the decision of the court on all motions must be presented prior to proceeding with the death penalty.

As stated above, in the states which retain the death penalty in the United States, it is natural that execution cannot be carried out while a motion for an objection in the three stages is pending (including the case which such is anticipated). Execution during the judicial decision procedure is an important matter being a "contempt

of justice" which is "obstruction of justice" of "not making a judicial decision."

In the above paper, in the United States, even after the defendant is found guilty and sentenced to death at trial, the procedure for the death penalty case will proceed through the three stages of (1) direct appeal procedure in the state court, (2) post-conviction procedure in the state court, and (3) habeas corpus procedures in the federal court, however, in addition, (1) there is a first instance, an appeal and a certiorari appeal to the Federal Supreme Court in ordinary state procedure; (2) state habeas corpus procedure has a first instance, an appeal, and a certiorari appeal to the Federal Supreme Court and (3) Federal habeas corpus procedure has a first instance, an appeal, and a certiorari appeal to the Federal Supreme Court and it is possible to dispute in three stages for each of the three stages, and it becomes a nine stage procedure.

This is the "super due process" for the death penalty in the United States (Plaintiff's Evidence D 3[35]).

3. Execution during retrial petition of prisoners sentenced to death in Japan

(1) Execution during retrial petition in Japan

A. Start of execution during retrial petition in 1999

Execution during petition for retrial in Japan started with the execution of Teruo Ono, a prisoner sentenced to death, by Minister of Justice Hideo Usui on December 17, 1999.

The answer (opinion) of the Cabinet in this regard was:

"The Minister of Justice has the authority and obligation to issue execution orders, and to fulfill that obligation, the Minister of Justice examines whether there are grounds for retrial, etc., and if it is found that there is no need for starting a retrial, the Minister of Justice will order the execution to be carried out" "If it is found that there is no need to start a retrial, for example, petitions

[35] An article by a Japanese criminal procedure law professor, "Death Penalty and Due Process"

for retrial may be repeated frequently for exactly the same reasons, and it has to be expected that there will naturally be a dismissal in such case and it is considered unavoidable to order the execution."

(Reply to the Question of Member of the House of Representative) (Plaintiff's Evidence D 5-1, 5-2)

B. Execution of July 13, 2017

In continuation of this, Masakatsu Nishikawa, a prisoner sentenced to death who was petitioning for retrial, was executed by Minister of Justice Katsutoshi Kaneda.

C. Executions by Minister of Justice Yoko Kamikawa

Thereafter, executions during petition for retrial were repeatedly carried out by Minister of Justice Kamikawa:

December 19, 2017

Teruhiko Seki and Kiyoshi Matsui, prisoners sentenced to death

July 6, 2018

Chizuo Matsumoto, Kiyohide Hayakawa, Yoshihiro Inoue, Tomomitsu Niimi, Masami Tsuchiya, Tomomasa Nakagawa and Seiichi Endo, prisoners sentenced to death

July 26, 2018

Masato Yokoyama, Yasuo Koike (Hayashi), Kazuaki Okasaki, Toru Toyoda, and Kenichi Hirose, prisoners sentenced to death

(2) Official position of the government of Japan

As mentioned in II., the Human Rights Committee stated in the concluding observations of the 2016 periodic report of Japan that it recommended to the Japanese government to "establish a mandatory and effective system of review in capital cases, with requests for retrial or pardon having a suspensive effect."

The Government of Japan responded to this recommendation as follows.

12 In capital cases, counsel must be appointed in the proceedings before the judgment on the case is confirmed, and under the strict rules of evidence, the determination of fact and the decision to select the death penalty are made after careful proceedings. In addition, a three-tiered judicial system is ensured for the defendant before the judgment becomes final and conclusive.

A death sentence that has been finalized after these strict and careful proceedings is rigorously executed, in principle.

13 On the other hand, if any execution order were suspended during requests for a retrial, etc., the execution of the death penalty would never be carried out as long as the inmate sentenced to death repeatedly files requests for a retrial, etc., making it impossible to achieve the outcome of a criminal trial.

14 In issuing an order for the execution of the death penalty, the Minister of Justice fully and carefully inspects the relevant records of each case and deliberately examines whether or not there are any grounds for commencing a retrial as stipulated in the Code of Criminal Procedure.

15 From these viewpoints, the Government of Japan considers that it is not appropriate to establish a system of suspending the execution of the death penalty without exception whenever a request for a retrial, etc., is filed.

(6) Infringement of judicial authority and infringement of right to access to justice by the administrative authority

The above-mentioned Japanese government's counterargument is that the execution of the death penalty is legal because the Minister of Justice, who is the head of the administrative authority, examines the grounds for the retrial and carries out the execution upon deciding there are no grounds for retrial.

However, since the decision on retrial is the exclusive right of the court, which is the judicial authority, the Minister of Justice's decision on the existence of the grounds for the retrial (the above View 14 of the Government of Japan) is an infringement of the judicial authority by the administrative authority. That is, it is a violation of the separation of powers (Articles 41, 65, and 76 of the Constitution).

Furthermore, for a prisoner sentenced to death, the petition for retrial is a petition seeking a court decision and this is guaranteed by Article 32 of the Constitution as the right to access to the courts, Article 31 of the Constitution which recognizes due process, and Article 13 of the Constitution which recognizes the dignity of the individual so

execution during a petition for retrial is also an infringement of the judicial access right of a prisoner sentenced to death.

Therefore, the execution of the death penalty during the petition for retrial violates Article 31 of the Constitution that recognizes due process, and Article 13 of the Constitution that recognizes the dignity of the individual, as well as, Article 32 of the Constitution as a violation of the separation of powers.

4. Even Japan followed the global standard prior to 1999

Execution during a petition for retrial in Japan began in 1999. Until then, even in Japan, under the post war[36] Constitution of Japan, the Ministry of Justice (Minister of Justice) did not carry out the death penalty during a petition for retrial.

That was a policy on the death penalty that was made from the following interpretation of the Japanese government.

This is clear from the following circulars.

(1) September 5, 1951 No. 31555 (From Director-General of the Criminal Affairs Bureau to Prosecutor-General, Superintending Prosecutor, and Chief Prosecutor) "Regarding report in the case there is a retrial petition for a prisoner sentenced to death" (Plaintiff's Evidence D6)

In this note, it stated:

"There is no clear textual basis for suspending the execution when there is a petition for a retrial of a prisoner sentenced to death, however, it is considered appropriate to postpone the issuance of the death penalty execution order until the conclusion of the retrial case for the prisoner sentenced to death and if there is a retrial petition from a prisoner sentenced to death under the Criminal Related Report Rules Supplement No. 4 Administrative Report 9 based on such stance, a report concerning that from the head of the public prosecutor office to which the prosecutor who should direct the execution belongs is required, however, the above report is related to the preparation for the execution and is required promptly, so it

[36] The current constitution of Japan was written during the US occupation after World War II and came into effect in 1947.

should be made as soon as possible. Notice based on the above order."

(2) December 27,1951 public prosecutor's assistant officer No. 8287 (From Director-General of the Criminal Affairs Bureau to Superintending Prosecutor and Chief Prosecutor) "Treatment in the case there is retrial petition from a prisoner sentenced to death prior to execution after the issuance of the execution order" (Plaintiff's Evidence D7)

In this note, it stated:

"It is understood that when there is a petition for retrial, a petition for restoration of the right to appeal, or an application for pardon after the issuance of a sentence execution order and before the start of execution, it is not naturally always the case that the execution should be suspended, however, executions of capital sentence are considered to require particularly careful handling, so if a petition like the ones above is filed, the direction of the Attorney General (homusosai) is to be sought. If there is not enough time to seek the direction of the Attorney General due to the time limit set forth in the Code of Criminal Procedure, Article 476[37], it is desirable to suspend the execution of the death penalty and immediately seek the direction of the Attorney General.

Then, in the case where the execution is carried out under the direction in accordance with commission of a public prosecutor who should direct the execution, if the above-mentioned petition is filed after the commission and before the execution, the public prosecutor who was commissioned for the direction of the execution will immediately contact the public prosecutor who made such commission to such effect ("Commissioning Public Prosecutor") and make a report to the Attorney General or if there is not enough time to contact the Commissioning Public Prosecutor, the execution will be tentatively suspended, and immediately, contact the Commissioning Public Prosecutor to such effect and report to the Attorney General and in such case, the Commissioning Public Prosecutor who was contacted will immediately take measures to

[37] Article 476: When the Minister of Justice orders the execution of the death penalty, the death penalty shall be executed within five days.

seek the direction of the Attorney General as stated in the above paragraph. Notice based on the above order."

(3) January 28, 1957 No. 1538 (To: Director-General of the Criminal Affairs Bureau, Prosecutor-General, Superintending Prosecutor, Chief Prosecutor) "Regarding report in the there is a retrial petition for a prisoner sentenced to death" (Plaintiff's Evidence D8)

"A stance to postpone the issuance of the death penalty execution order until the conclusion of the retrial case was adopted when there is a petition for retrial for a person sentenced to death, however, of the recent persons sentenced to death, there seems to be a tendency to petition for retrial repeatedly without substantive retrial grounds and because of that there is a significant obstacle to execution. Therefore, the Criminal Affairs Bureau considers that it is unavoidable to execute despite being while the retrial case is pending in some cases, however, in regard to this point, it is necessary to understand the substance of the retrial petition for the individual cases and to decide the propriety of the above execution upon careful consideration, so in future, at your office, it is desirable to attach the purport of the grounds for such petition in making a report of the petition for retrial, or to attach the transcript of the decision in making a report on the decision on such petition, in accordance with the Criminal Related Report Rules"

(4) There were no executions during retrial petitions prior to 1999

Until around 1960, as mentioned above, there was no execution if there was a petition for retrial.

Around 1960, it was announced that the execution during the petition for retrial might be sometimes unavoidable ((3) above), but even so, before 1999 no execution was carried out during petition for retrial (Plaintiff's Evidence D 9).

The status of executions at that time is as follows.

1960	39 people
1961	6 persons
1962	26 persons
1963	12 persons
1964	0 persons

1965	4 persons
1966	4 persons
1967	23 persons
1968	0 persons
1969	18 persons
1970	26 persons
1971	17 persons
1972	7 persons
1973	3 persons
1974	4 persons
1975	17 persons
1976	12 persons
1977	4 persons
1978	3 persons
1979	1 person
1980	1 person
1981	1 person
1982	1 person
1983	1 person
1984	1 person
1985	3 persons
1986	2 persons
1987	2 persons
1988	2 persons
1989	1 person
None from 1990 to March 1993	
1993	7 persons
1994	2 persons
1995	6 persons
July 11, 1996	3 persons
December 20, 1996	3 persons
August 1, 1997	4 persons
July 11, 1998	3 persons
November 19, 1998	3 persons
September 10, 1999	3 persons
December 17, 1999	2 persons

Since 1996, executions have been carried out almost twice a year, but the persons executed were only prisoners sentenced to death who had not petitioned for retrial.

(5) 1999 Policy Change – However, there was no reason for the change

In Japan, for more than 50 years after the war[38], there were no executions during petition for retrial.

However, in 1999, there was 180-degree change in policy to "execution during petition for retrial."

"The Minister of Justice has the authority and obligation to issue execution orders, and to fulfill that obligation, the Minister of Justice examines whether there are grounds for retrial, etc., and if it is found that there is no need for starting a retrial, the Minister of Justice will order the execution to be carried out" "If it is found that there is no need to start a retrial, for example, petitions for retrial may be repeated frequently for exactly the same reasons, and it has to be expected that there will naturally be a dismissal in such case and it is considered unavoidable to order the execution."

However, it is clear in the context of the legal system that the Minister of Justice does not have "the authority to judge the existence of grounds for retrial." That also did not change before and after December 1999.

Also, in December 1999, there was no urgent need of "having to execute during petitioning a retrial," and there was no change of circumstance but rather only a change of policy of "not executing during petition for retrial." As mentioned above, the Ministry of Justice executed prisoners sentenced to death not petitioning for a retrial every year, and until 1999, there were two execution a year.

There was no need for the Minister of Justice to execute the death penalty by selecting prisoners sentenced to death who are petitioning for retrial in violation of ICCPR Article 6 and Articles 32, 31 and 13 of the Constitution.

There was no reason for the 1999 policy change.

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[38] WWII, which ended in 1945

5. Summary

Even in Japan, executions were restricted according to the global standard until 1999. This was changed, and the execution of the death penalty during the petition for retrial, which is considered to be a violation of international law, was started in 1999.

However, there was no reason for such a policy change.

V. Conclusion

As mentioned above, the arguments of the Defendant violate the ICCPR and violate Articles 32, 31 and 13 of the Constitution which is an infringement of the right to receive judicial decisions (justice access right).

From any viewpoint, “executions during petition for retrial” which have been carried out since 1999 are illegal and unacceptable.