

第1号事件プレスリリース

～再審請求中の死刑執行の人権侵害・憲法・国際人権法違反を問う裁判～

1 問題の所在

日本では、再審請求中であっても死刑が執行されている。しかし、再審請求は、死刑を言い渡した確定審の判断に誤りがあることを死刑確定者が裁判所に訴えるものであることからすると、誤った確定審の判断を実現してしまう危険を孕むものである。特に、死刑の場合、一度執行してしまえば後に確定審の判断の誤りが明らかになったとしても、失われた生命を取り戻すことはできない。

そのため、再審請求中の死刑執行は許されず、日本の死刑執行の在り方には問題がある。

2 憲法違反・法令違反・国際人権違反

(1) 裁判を受ける権利の侵害(憲法32条違反)

再審請求の判断権は裁判所(司法権)に専属している。再審請求をしている死刑確定者からみると、司法権を担う裁判所によって再審請求の適否の判断を受ける権利として保障されているにも関わらず、行政権(法務大臣)によって再審請求が認められない見込みであるとして執行されるのは憲法32条(裁判を受ける権利)が保障する再審請求権を侵害するものである。

(2) 国際人権準則(自由権規約)違反(自由権規約6条違反)

自由権規約6条4項は、死刑確定者の再審請求権の保障と再審請求中の執行停止効をも規定したものであるとの解釈は、国際人権のグローバルスタンダードになっている。そのため、再審請求中の死刑執行は自由権規約に違反するものである。

(3) 適正手続の違反(憲法31条違反)

裁判を受ける権利とともに認められている適正手続の保障の観点からみても、再審請求中に死刑を執行することは適正手続違反である。

3 本裁判

原告らは、2020年12月25日、大阪地方裁判所に、再審請求中の死刑執行が違憲・違法であり、執行された死刑確定者の元再審請求弁護人であった弁護士らの弁護権を侵害したものであることを理由に国家賠償請求訴訟を提起している。現在、同訴訟は、大阪地裁で審理中である。

以上

Trial on the question of human rights violations and violations of the Constitution and International Human Rights in executing a death penalty during a request for revision

1. The Issue

In Japan, the death penalty is carried out even during a request for revision. However, given that the request is an appeal to the court by a person who has been sentenced to death to appeal to the court about an error in the judgment of the final and binding court that sentenced him or her to death, there is a danger that the erroneous judgment of the final and binding court may be realized. In particular, in the case of the death penalty, once the execution is carried out, even if the error in the judgment of the final and binding trial court is later revealed, the lost life cannot be recovered.

For this reason, executions during retrial requests are not allowed, and there are problems with the way the death penalty is carried out in Japan.

2 Violation of the Constitution, Laws and Regulations, and International Human Rights

(1) Violation of the right to a trial (violation of Article 32 of the Constitution)

The right to request a retrial belongs exclusively to the courts (judicial power). From the viewpoint of an inmate under the death penalty who has requested a retrial, it is a violation of Article 3 of the Constitution to be executed by the administrative authority (Minister of Justice) on the grounds that the request for retrial is not likely to be approved, despite the fact that the right to a retrial is guaranteed by the court, which is in charge of judicial power. (2) The right to request a retrial, which is guaranteed by Article 3.2 of the Constitution (the right to a trial), is violated.

(2) Violation of International Covenant on Civil Liberties (Covenant on Civil Liberties Article 6)

Article 6(4) of the Covenant on Civil Liberties, which guarantees the right to request a retrial of a person sentenced to death and also provides for a stay of execution during a retrial, has become the global standard for international human rights. Therefore, execution during a retrial is in violation of the Covenant on Civil Liberties.

(3) Violation of due process (violation of Article 31 of the Constitution)

From the perspective of the guarantee of due process, which is recognized along with the right to a trial, executing a death penalty in the middle of a request for retrial is a violation of due process.

3 This Court's Decision

On December 25, 2020, the plaintiffs filed a lawsuit against the Osaka District Court, alleging that the execution of the death penalty during the retrial is unconstitutional and illegal. The plaintiffs filed a lawsuit for state compensation in the Osaka District Court on December 25, 2020, on the grounds that the execution was unconstitutional and illegal, and that it violated the right to defense of the lawyers who were former defense counsel for the executed death penalty inmates who requested a retrial. The lawsuit is currently being heard by the Osaka District Court.

The above is a summary of the lawsuit.