

Pleading

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To: Osaka District Court

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Confirmation of Non-Existence of Obligation to Accept Execution of Death Penalty and
Claim for National Reparation on the Same Day as Notice of Execution

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Relief Claimed

1. The Defendant shall pay Plaintiff A 11 million yen and a sum of money at the rate of 3 percent per annum from the day after the service of the statement of claim to the date of payment.
 2. The Defendant shall pay Plaintiff B 11 million yen and a sum of money at the rate of 3 percent per annum from the day after the service of the statement of claim to the date of payment.
 3. The Defendant confirms that Plaintiffs have no obligation to accept execution of the death penalty on the same day as the notice of execution.
 4. The costs of the suit shall be borne by the Defendant.
- and a declaration of provisional execution shall be made with respect to paragraphs 1 through 3.

Cause of the claim

This is a lawsuit challenging the legality and inhumanity of carrying out the death penalty on the same day as the execution notice is given.

Section 1. Parties

1. Plaintiffs

The profile of each plaintiff is as described in (a) below. Each plaintiff has been sentenced to death as described in (b) below, and that sentence has become final and binding.

(1) Plaintiff A

A. Profile

- **Date of birth:** May 13, 1967 (Showa 42)
- **Place of birth:** Wakayama City, Wakayama Prefecture
- **Occupation at the time of the crime, as certified by the final judgment:** Construction worker
- **Age**
Age at the time of the crime as judged by the final and binding judgment: 37 years old
Age at the time of the final judgment: 50 years old
Age at present (at the time of filing the lawsuit): 54 years old

B. Death sentence

- **Date of final judgment:** December 8, 2017
- **Number of days from the date of final judgment to the present (date of filing suit):**
1,427 days (3 years, 10 months and 27 days)

(2) Plaintiff B

A. Plaintiff B's profile

- **Date of birth:** December 22, 1984
- **Place of birth:** Okayama City, Okayama Prefecture
- **Occupation at the time of the crime as certified by the final judgment:** Unemployed
- **Age**
Age at the time of the occurrence of the crime as judged by the final and binding judgment: 21 years old
Age at the time the final judgment became final: 26 years old
Age at present (at the time of filing the lawsuit): 36 years old

B. Death sentence

- **Date of final judgment:** March 25, 2011
- **Number of days from the date of final judgment to the present (date of filing suit):**
3,877 days (10 years, 7 months and 10 days)

2. Defendant

The Defendant State is the executor of the death penalty against the Plaintiffs, who are persons sentenced to death.

Section 2. Protocol of the execution of the death penalty

It is submitted that the execution shall be carried out in accordance with the following procedures.

1. Report by the prosecutor in charge of execution direction

When a death sentence becomes final and binding, the chief of the public prosecutor's office to which the public prosecutor who is to direct the execution of the sentence pursuant to the provisions of Article 472 of the Code of Penal Procedure (hereinafter referred to as the "prosecutor in charge of execution direction") belongs, shall submit a report to the court.

(b) the chief of the public prosecutor's office to which the directing public prosecutor (hereinafter referred to as the "prosecutor in charge of execution") belongs, shall submit to the Minister of Justice a written request for execution of the death penalty, together with two copies of the final criminal record and a transcript of the judicial decision, and submit a request for execution of the death penalty (Article 9-AB3 of the Rules on Execution Affairs).

2. Order of execution by the Minister of Justice

The Minister of Justice orders the prosecutor to execute the death penalty (Article 475, Paragraph 1 of the Code of Penal Procedure) after reviewing the report.

3. Direction of execution by the public prosecutor

When the Minister of Justice orders the execution of the death penalty pursuant to Article 475, paragraph 1 of the Code of Penal Procedure, the prosecutor shall direct the warden of the penal institution to execute the death penalty by means of a death penalty execution command (Article 10, paragraph 1 of the Rules on Execution Affairs - Kou B3).

The command of execution shall be made within five days of the Minister of Justice's order of execution (Article 476 of the Code of Penal Procedure).

Section 3. Timing of notification of execution for persons sentenced to death

1. Timing of Notification of Execution of Death Penalty

The Ministry of Justice notifies inmates sentenced to death of executions in their cells one or two hours before the execution.

This is the administrative operation of the execution notice.

This is evident from the following facts.

(1) The Japanese government's position in the Diet

The Prime Minister, who is in charge of the Defendant State's administrative operation, has made the following statements regarding the death penalty notification.

A. Comments in 2000

On June 2, 2000 (Heisei 12), the then Prime Minister Yoshiro Mori stated:

I do not believe that the death penalty requires advance notice as you pointed out in order to defend against an execution order.

Furthermore, I do not believe that it is appropriate to announce the fact of execution prior to the day of execution, as it would be extremely harmful to the emotional stability of the person who will be executed.

(Kou.-A1-2, p. 4, "About 11". Underlines are the Plaintiffs' counsel. The same applies below).

The above is stated in response to the "Questionnaire" of Nobuto Hosaka, a member of the House of Representatives.

In reality, (those who are sentenced to death) are notified of their execution only when they are brought to the place of execution on the day of execution. In order to guarantee the right to a defence, isn't it necessary to allow time for advance notice in order to prepare such a defence?

This is the answer to the question (Kou.-A1-1, p. 3, paragraph 11). The preparation of defence refers to "defense against execution order" (Kou-A1-1, p.3, para.11).

B. Comments in 2013

On 5 March 2013 (Heisei 25), then Prime Minister Shinzo Abe stated:

As a general rule, the head of the penal institution notifies the person sentenced to death of the execution prior to the execution on the day of the execution.

There are no plans to change this practice at this time.

There is no plan to change such treatment at this time" (Kou-A2-2, "refer from 5 to 7").

The above is a response the following "Letter of Intent for Questions" asked by House of Representatives member Tomohiro Ishikawa based on a questionnaire conducted by House of Councilors member Mizuho Fukushima from September to November 2012 (Heisei 24) for those who were sentenced to death at that time.

5. With regard to executions, please clarify what methods were used in the past to notify death row inmates of executions.
6. Please clarify when and by what method you gave notice of this execution.
7. (From the standpoint of humanity and the defence of the condemned, advance

notice is necessary. In addition, according to the results of the questionnaire, 33 people answered that they would like advance notice to be given more than one day in advance. This accounted for 40% of the 78 people who responded.

(2) External statements

In the fifth periodic report of Japan (December 2006) based on Article 40, paragraph 1 (b) of the International Covenant on Civil and Political Rights, the Government of Japan reported its views as follows (Kou-C16)

130. The notification of an execution to a person sentenced to death shall be made on the day of the execution, prior to the execution. The reason for this is that if the notification is made on a day prior to the day of execution, it is thought that the effect on the sentenced person's feelings will be great and it will be difficult to maintain peace of mind.

131. ... The execution date of the death penalty is not notified in advance to family members or other outsiders. This is because the prior notification of the date and time of execution to the family of an inmate sentenced to death may cause unnecessary mental distress to the family, and if the inmate himself/herself learns of the scheduled execution through a meeting with the notified family member, it may have a greater impact on the sentiment of the inmate than a direct notification to the inmate himself/herself. The reason for this is that the impact on the sentenced person's feelings is considered to be great and it is difficult to maintain peace of mind.

The same was reported or answered in the Sixth Report of Japan (April 2012) and the Answer to the Questionnaire in advance of the Seventh Report of Japan (March 2020) (Kou.C. 17, p. 25 (Paragraphs 110, 111), A.C. 18, p. 33 (Paragraph 69)).

(3) Time of notification

The Defendant State's notice of the death penalty was made on the day of execution. The following exchange in the Diet clarifies when exactly the death penalty is announced.

On December 3, 1998, at the 144th session of the Diet, the House of Councillors' Committee on Justice asked a question of Keiko Chiba (later Minister of Justice), to which the government member Ichiro Sakai, Director General of the Ministry of Justice's Bureau of

Corrections, replied clearly as follows:

- Ms. Keiko Chiba: I would like to ask you a few questions about the execution procedures. When will the three confirmed inmates be informed of their execution?
- Government Member (Mr. Ichiro Sakai): The fact of execution will be announced to the person in question on the morning of the execution day, or in other words, just before.
- Ms. Keiko Chiba: How much time does that mean?
- Mr. Ichiro Sakai: In short, it is just before the time when the prisoner is taken to the execution site. In other words, it is just before they are taken out of the room.
- Ms. Keiko Chiba: In that case, should I ask the question in this way how long does it take from the time of the notification to the time when the sentence is actually carried out or completed?
- Government Member (Mr. Ichiro Sakai): It depends on the case, but usually it is one or two hours. It usually takes one or two hours from the time of notification to the time of execution.
- Ms. Keiko Chiba: How did it work this time? How long did it take from the time the announcement was made to the time the execution was completed for those three persons?
- Government Member (Mr. Ichiro Sakai): As I mentioned earlier, all of them were executed within an hour or two.

(Kou-A3, page 7)

It is clear from these answers that the executions of those who were sentenced to death were announced on the day of execution, and even just one or two hours before the execution.

2. Summary

As described above, in Japan, executions are announced on the day of execution, often at most two hours prior to execution (hereafter, executions with two hours' notice are referred to as "same-day announcements and same-day executions").

Moreover, this is not prescribed by law. It is done by the government's administrative operation.

Section 4. The use of "same-day notice" for executions is unconstitutional (Reason No. 1)

The announcement of executions on the day of execution with often no more than two hours' notice is not a legal requirement, but rather an administrative practice, which is not based on the law.

This administrative operation violates the "due process" guaranteed by Article 31 of the Constitution, as follows.

1. Guarantee of "due process" in Article 31 of the Constitution

Article 31 of the Constitution stipulates that "No person shall be deprived of life or liberty, or be subjected to any other punishment, except in accordance with due process of law."

This is a "guarantee of due process" (Supreme Court, November 28, 1962, Criminal Law Report, Vol. 16, No. 11, p. 1593). The Supreme Court established the rule that Article 31 of the Constitution guarantees due process (Kou. B1, p. 1).

2. The Supreme Court's interpretation of due process under Article 31 of the Constitution

(1) Constitutional Ruling on the Death Penalty

The first time the Supreme Court interpreted Article 31 of the Constitution as guaranteeing "due process" was in its decision on the constitutionality of the death penalty (Supreme Court decision March 12, 1948 / Criminal Law Report, Vol. 2, No. 3, p. 191).

In response to the argument that the death penalty is unconstitutional, the Supreme Court recognized the constitutionality of the death penalty as follows.

Article 13 of the Constitution stipulates that all citizens shall be respected as individuals, and that the right of people to life shall require the greatest respect in legislation and other matters of national government. However, at the same time,..... if it is contrary to the fundamental principle of public welfare, it must be said that the right of the people to life is naturally expected to be restricted or deprived by legislation. Furthermore, according to Article 31 of the Constitution, it is clearly stipulated that even the preciousness of the life of an individual citizen may be punished by depriving him of it through a process established by law which accords with reason. In other words, the Constitution of Japan, as in most modern

cultural nations, envisages and endorses the existence of the death penalty as a punishment.

The Supreme Court deliberately used the phrase of "through a process established by law which accords with reason" instead of the exact wording of Article 31 of the Constitution - *except according to procedure established by law*. The phrase "a process established by law which accords with reason" refers to "due process of law" and has had a significant impact on the interpretation of Article 31 (Kou B1, pp. 10, 11).

In other words, although the Supreme Court upheld the death penalty as constitutional, it made it clear that the death penalty must be supported by "due process" under Article 31 of the Constitution.

(2) Unconstitutional confiscation of property owned by a third party

As stated above, the Supreme Court established the rule that "Article 31 of the Constitution guarantees due process" in the aforementioned Supreme Court decision of November 28, 1962.

It also ruled that "confiscation of property owned by a third party" was a violation of Article 31 of the Constitution in a case of violation of the former Customs Act. The Supreme Court, citing Article 29(1) of the Constitution and Article 31 of the Constitution, ruled that the Customs Act at that time provided for the confiscation of vessels used in criminal activities that were owned or possessed by the perpetrators.

In the case of confiscation of property belonging to a third party, it is extremely unreasonable and unacceptable under the Constitution to deprive the owner of his property without giving him any notice, excuse, or opportunity to defend himself against the confiscation. · · Since the aforementioned property of a third party is sentenced as an incidental penalty to the accused, and the effect of the penalty is extended to the third party property owner, it is necessary to give the third party whose property is confiscated an opportunity for notice, excuse, and defence, and to confiscate the property of a third party without this opportunity is to violate property rights without following proper legal procedures. This is because confiscation of a third party's property without such notice, excuse, and opportunity to a defence is no more than imposing a sanction on property rights without following proper legal procedures.

While the former Customs Law provided for confiscation of property owned by a third party,

it did not provide the owner of the property with any opportunity for notice, excuse, or hearing, nor did it provide any provision in the Code of Penal Procedure or other laws and regulations, thus violating Articles 31 and 29 of the Constitution.

and this was a separate issue from whether the third party was entitled to any remedy after the fact.

So that unconstitutionality should be decided solely based on whether an appropriate procedure was followed.

The aforementioned Supreme Court decision of November 28, 1962 was established based on the Supreme Court's decision of November 27, 1957 (Criminal Law Report, Vol. 11, No. 12, p. 3132) and the Supreme Court's decision of October 19, 1960 (Criminal Law Report, Vol. 14, No. 12, p. 1574) (KouB1, pp. 13-27).

The defendant state, which was pointed out to be in violation of the Constitution, enacted the Act on Emergency Measures Concerning Procedures for Confiscation of Property Owned by Third Parties in Criminal Cases (Act No. 138) by the Diet on July 12, 1963, and guaranteed "opportunities for notice, excuse, and defense" (Articles 3 and 5 of the said Act) to third parties subject to confiscation (Kou-B1, p. 26).

(3) Subsequent development of judicial precedents

A. Criminal penalties

① Unconstitutionality of third-party surcharge under the former Customs Act (violation of due process)

On December 12, 1962, the Supreme Court ruled that the provision of the former Customs Law on "collection in lieu of confiscation" was unconstitutional.

The Court ruled that the provision of the former Customs Law for "collection in lieu of confiscation" should be interpreted as a violation of Articles 31 and 29 of the Constitution of Japan and impermissible because it does not provide for the owner, a third party, to be given notice, excuse, and opportunity to be heard with respect to the confiscation of his property. In the case of the former bribery offense, it is reasonable to conclude that there is no room for the application of the provision of additional collection in place of confiscation when confiscation itself is constitutionally impermissible due to the abovementioned reasons.

(Criminal Law Report, Vol. 16, No. 12, pp. 1672, 1679) (Kou B1, p. 22)

② **Unconstitutional collection of bribes from third parties (violation of due process)**

Article 197-4 of the Penal Code at that time provided that "Bribes accepted by a criminal or a third party with knowledge of the offender shall be confiscated. If the whole or a part of the bribe cannot be confiscated, its price shall be collected. However, at the time of the incident, the Code of Penal Procedure and other laws and regulations did not provide any procedures for third parties to be ordered to pay additional fees.

The Supreme Court ruled on April 28, 1965 that

therefore, ordering a third party to pay a certain amount of money without notifying the third party or giving the third party an opportunity to explain or defend is a sanction that violates the right to property without following proper legal procedures and violates the right provisions of the Constitution (Note: Article 31 and Article 29 of the Constitution) (Criminal Law Report, Vol. 19, No. 3, p. 203).

(Kou B1, p. 23)

B. Administrative disposition

The Supreme Court has applied the due process requirements of Article 31 of the Constitution not only in the field of criminal punishment but also in the field of administrative disposition. Typical examples are the private cab license case (Supreme Court, October 28, 1971, Civil Law Report Vol. 25, No. 7, p. 1037) and the Narita New Law case (Supreme Court, July 1, 1992, Civil Law Report Vol. 46, No. 5, p. 437) (Kou.B1, p. 29 and below).

And this jurisprudence came to fruition in the enactment of the "Administrative Procedure Law" in 1993, which applied the requirements of "notice, excuse and hearing" to administrative procedures.

3. The Supreme Court's Guarantee of Due Process under Article 31 of the Constitution

As described above, the Supreme Court has held that due process under Article 31 of the Constitution is required for all adverse dispositions, not just punishment, and that the Constitution requires notice, excuse, and opportunity for a hearing under the law.

In particular, in the field of "criminal punishment," which is clearly defined by Article 31 of

the Constitution, the Constitution strictly requires it.

4. Provisions on Execution of Death Penalty

Execution is not unconditional.

This is because there are legally defined grounds for not executing the death penalty (grounds for suspension of execution), and the law also provides for appeals.

(1) Suspension of execution

Article 479 of the Code of Penal Procedure stipulates the grounds for suspension of execution (grounds for not executing the death penalty).

If a person sentenced to death is in a state of insanity, execution shall be suspended by order of the Minister of Justice (Paragraph 1).

If a woman sentenced to death is pregnant, the execution shall be suspended by order of the Minister of Justice (paragraph 2).

Where execution of the death penalty has been suspended pursuant to the provisions of the preceding two paragraphs, it may not be carried out without an order of the Minister of Justice after recovery from insanity or after childbirth (paragraph 3).

This provision of suspension of execution (provision to suspend execution) is not at the discretion of the Minister of Justice, to the contrary, it is mandatory.

(2) Existence of an Appeal System

The Code of Penal Procedure has a system of appeals (system of objections to execution, system of immediate appeal, etc.).

Article 502 of the Code of Penal Procedure provides that

a person subject to the execution of a judicial decision or his/her legal representative or enduring guardian may, if he/she considers the disposition made by the public prosecutor with regard to execution to be unreasonable, file an objection with the court that has rendered the judicial decision.

Those with the right of appeal are ① the person subject to execution, ② a statutory agent,

and ③ an enduring guardian.

This right of appeal is a legal and institutional right guaranteed to persons sentenced to death.

(3) Petition for questioning the interpretation of judicial decisions

The Code of Penal Procedure provides that a person may request the court's interpretation of a questionable interpretation of a sentence imposed by the trial court.

Article 501 of the Code of Penal Procedure: A person who has been sentenced may, if he or she has doubts about the interpretation of the judicial decision, file a petition with the court that sentenced him or her to seek the interpretation of the judicial decision.

This right to petition for interpretation is a right legally guaranteed to those sentenced to death.

(4) Appeal against the decision of the district court or High Court

In addition, the Code of Penal Procedure guarantees the right to file an immediate appeal to the High Court (Article 504 of the Code of Penal Procedure) against a decision made by the court of first instance in respect to Article 502 of the Code of Penal Procedure (objection to execution) and Article 501 of the Code of Penal Procedure (petition for interpretation) (hereinafter collectively referred to as "Appeals"). Further, the right to file a special appeal to the Supreme Court is also guaranteed in cases where there is dissatisfaction with the decision of the High Court (Article 433 of the Code of Penal Procedure).

5. Deprivation of the Right of Appeal for Persons Sentenced to Death

(1) Deprivation of the Right to Appeal

As described above, inmates sentenced to death are guaranteed the right to Appeals about the execution by the legal system. However, if the opportunity to exercise this right is not given, it cannot be called a genuine guarantee.

As mentioned above, the execution notice in Japan is given only two hours before the execution at most.

A person who is sentenced to death cannot take an action for Appeals to the court if the execution is announced two hours before the execution. Nor can they contact their lawyers.

It is obvious that a person sentenced to death cannot exercise the right of Appeals.

(2) Appeal by an inmate sentenced to death

Those who have been sentenced to death also recognize that they are denied the right to Appeals and strongly object to this.

Kou-B2 is a questionnaire which Forum 90 and Mizuho Fukushima, a member of the House of Councilors, jointly conducted targeting those who have been sentenced to death.

In the questionnaire, Hiroshi Sakaguchi, a person who has been sentenced to death, gave the following vivid description of the situation on the spot (Kou-B2, pp. 168, 169).

What I find most unconvincing is that I am deprived of the opportunity to exercise my right to object (to the execution), which is granted to me by law.

Article 502 of the Code of Criminal Procedure guarantees the right to object to the execution of a judicial decision.

However, the current execution procedure is as follows.

When the prison officer opens the door of the prisoner's room and announces the execution, the prisoner is immediately detained and taken to the place of execution. The warden of the jail is waiting inside the prison and he will officially announce the execution. When it is over, the prisoner is tied up, handcuffed, and taken to the execution table in the same clothes, where he is hanged with a noose, the treads are removed, and he is killed by hanging. In this process, we, the condemned, cannot object. We, the condemned, are not allowed to object to the execution.

This is the reason why the death penalty is carried out behind closed doors.

There is not a shred of due process here, nor is there any hint of it.

Not only is there no "proper law," there is no application of the law."

(3) Period of Appeal

Incidentally, the time limit for appeals to the decision made by the district court and High Court stipulated in the Code of Penal Procedure is 14 days for (Article 373 and 414 of the Code of Penal Procedure), a practical period for ordinary appeals (Article 421 of the Code of Penal Procedure), 3 days for immediate appeals (Article 422 of the Code of Penal Procedure), 5 days for special appeals (Article 433 of the Code of Penal Procedure), 3 days or a practical period for quasi-appeals (Articles 429 and 430 of the Code of Penal Procedure), and the same for objections to decisions of the High Court (Article 428 of the Code of Penal

Procedure).

(4) Summary

Looking only at the time limit for appeals stipulated by the Code of Penal Procedure, it is clear that the defendant state's advocacy of "immediate notice and execution" and the provision of two hour s'notice of the execution (even shorter in the case of Sakaguchi's appeal) is illegal.

The defendant state does not want the condemned to file an appeal.

Due to the non-legal operation of the defendant state, the inmates awaiting the death penalty are deprived of their systematically recognized rights, such as the right to appeal.

The rights of those sentenced to death as stipulated by law are being violated by administrative operations.

6. Violation of due process (violation of the Constitution)

Article 31 of the Constitution guarantees that criminal penalties and other punishments shall not be imposed without due process.

The fact that due process is also guaranteed to those who have been sentenced to death, who are subject to the ultimate disadvantage of deprivation of life (punishment), was made clear in the aforementioned Supreme Court decision of March 12, 1948, which ruled that the death penalty is constitutional. The Supreme Court in the same case stated that the constitutionality of the death penalty is supported by "due process of law" (the lawful procedure prescribed by law).

The "immediate notice and immediate execution" of a prisoner is an example of the defendant state implementing a "policy (administrative operation) without law" . The "due process" guaranteed by the Supreme Court in Article 31 of the Constitution guarantees prisoners the opportunity for notice, excuse, and hearing as stipulated by law. However, the announcement of the execution two hours before the execution is not required by law, much less can it be called "notification. It is only when there is enough time that a person sentenced to death can file an "appeal" (plea and hearing). Under the current administrative system, an inmate sentenced to death cannot file an "appeal" or have a hearing in court because of the lack of prior notice. Those who have been sentenced to death are deprived of their right to appeal, which is recognized by law, due to the administrative practice of "immediate notification and immediate execution. This is in violation of Article 31 of the Constitution.

7. Violation of the right to seek judicial decision (violation of Article 32 and Article 13 of the Constitution)

Persons sentenced to death have the right to appeal against execution under Article 502 of the Code of Penal Procedure, and the right to request the interpretation of judicial decisions under Article 501 of the Code of Penal Procedure. These are the rights to ask the court (judiciary) to make a decision, which are guaranteed by Article 32 of the Constitution.

In its judgment of September 22, 2021, the Tokyo High Court ruled that the court had deprived a foreign national who had applied for refugee status of the opportunity to have a judicial review of his refugee status by failing to notify the applicant of the decision to dismiss his objection to the refugee status until just before his deportation and by deporting him without allowing him to contact any third party after the notification. The High Court held that the deportation violated the right to a trial guaranteed in Article 32 of the Constitution, violated the guarantee of due process in Article 31 of the Constitution, violated Article 13 of the Constitution, which is connected with Article 32, and was illegal under Article 1(1) of the National Reparation Act.

Furthermore, in response to the claim filed by the defendant state that the applicant's objection was abusive and that there was no need for relief, the High Court ruled that the issue of refugee status and the guarantee of the opportunity to have a judicial review of the refugee denial are two different issues, and that the refugee application, including whether it was abusive or not, should be the subject of judicial review, and that it is not permissible to effectively deprive the applicant of the opportunity for judicial review (Tokyo High Court, 2020 (ne) No. 1423).

8. Conclusion

Those who have been sentenced to death are disadvantaged in that they are unable to exercise their "right of appeal" granted by law due to the administrative practice of "same-day notification and same-day execution".

The execution of the death penalty by the accused country is not in compliance with the due process obligation in Article 31 of the Constitution.

In addition, the administration of the death penalty by the accused country deprives those who have been sentenced to death of the right (opportunity) to receive judicial review as stipulated by law. The use of "same-day notification and same-day execution" infringes on the right to trial guaranteed by Article 32 of the Constitution and violates Article 31 of the Constitution that guarantees due process and Article 13.

Section 5. Violation of the Covenant on Civil Liberties

The administrative practice of not notifying inmates of the execution of the death penalty in advance at the appropriate time, i.e., on the same day (two hours before) of the execution, violates Articles 6, 7 and 10 of the International Covenant on Civil and Cultural Rights (hereinafter referred to as the "Covenant on Civil Liberties") and is illegal.

1. The Covenant on Civil Liberties (Reason for Illegality No. 2)

The Covenant on Civil Liberties provides as follows

Article 6 of the Covenant on Civil Liberties

1. 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.

Article 7, Covenant on Civil Liberties

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected to medical or scientific experimentation without his free consent.

Article 10 of the Covenant on Civil Liberties

1 All persons deprived of their liberty shall be treated humanely and with respect for the inherent dignity of the human person.

Article 6 of the Covenant on Civil Liberties guarantees that every human being shall not be arbitrarily deprived of his life; Article 7 guarantees that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; and Article 10 of the Covenant on Civil Liberties guarantees that every person deprived of liberty shall be treated humanely and with respect for the inherent dignity of the human person.

The rights guaranteed in Articles 6, 7 and 10 are naturally extend to those sentenced to death. In other words, the administrative practice of notifying those sentenced to death about two hours before the execution on the day of execution violates the provisions of the Covenant on Civil Liberties.

We will explain in detail below why the administrative practice of "same-day notification and same-day execution" in Japan is a violation of the Covenant on Civil Liberties, and why this practice is also illegal in Japan.

2. Why were the International Covenants on Human Rights enacted?

(1) Necessity of International Human Rights Law

The concept of international human rights was born from painful reflection upon the Second World War. Before World War II, human rights were domestic issues of sovereign states, and it was not permitted for other states to interfere in human rights violations committed within sovereign states as it was considered to be interference in their internal affairs.

However, the fact that the nation that caused the unparalleled tragedy of World War II was a totalitarian state that disregarded the human rights of individuals, and the Holocaust (massacre of the Jews) that occurred in Germany during World War II, brought about a turning point in this way of thinking. In particular, the fact that the Holocaust was carried out legally under the Weimar Constitution, which was said to have the most extensive human rights guarantee provisions at the time, and that countries continued to ignore the persecution of Jews as a domestic problem even though they were aware that it had begun, had a major impact on the birth of the international human rights concept.

Thus, from the painful reflection of too many sacrifices made during World War II, countries shared the lesson that human rights and peace are inextricably linked, and that to truly protect peace, human rights should not remain a "domestic issue," but must be protected internationally. The United Nations, established after World War II, set the goal of ensuring human rights, and by enshrining this in the UN Charter, human rights became a matter of international concern.

It is important to note that human rights cannot be ensured if they are left to domestic laws, and that in order to effectively ensure human rights, it is necessary to place human rights guarantees under international supervision, which led to the birth of international human rights, which have been functioning under this principle to this day.

(2) Birth of the Covenant on Civil Liberties

In 1948, the United Nations adopted the Universal Declaration of Human Rights as a common standard to be achieved by all peoples. In 1966, the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the "Covenant on Social Rights") and the Covenant on Civil Liberties were adopted to legally obligate countries to ensure human rights. These two international human rights covenants came into effect in Japan on September 21, 1979 (Article 49(2) of the Covenant on Civil Liberties, Article 27(2) of the Covenant on Social Rights, and Article 24(1) of the Treaty Law Treaty mentioned

below).

The Covenant on Social Rights is the most important international human rights document as it forms the core of international human rights law, and together with the Universal Declaration of Human Rights, forms part of the Universal Bill of Human Rights. In particular, while the Universal Declaration of Human Rights was a "declaration," the Covenant on Social Rights and Covenant on Civil Liberties were enacted as "legal norms" with legal force. In other words, these covenants are binding on party States as a legal norm.

(3) The interpretation of the Covenant on Civil Liberties was entrusted to the Committee on Civil Liberties.

After the entry into force of the Covenant on Civil Liberties, if the operation and interpretation of the Covenant on Civil Liberties were left to each State, the purpose of making human rights an international concern and guaranteeing human rights internationally would be lost. To this end, the Covenant on Civil Liberties establishes three systems to ensure the implementation of the Covenant: ① a national notification system (Articles 41 and 42), ② an individual notification system (First Optional Protocol), and ③ examination of government reports (Article 40). In addition, the Covenant Committee was established as an implementation mechanism for the Convention, and was charged with monitoring the implementation of the Convention and clarifying its content (Article 40).

The Covenant Committee deliberates on government reports submitted by each State party through dialogue with the government, issues general findings, examines individual reports, issues views, and adopts guidelines for interpretation of the Covenant, called "general comments" (Article 40, paragraph 4 of the Covenant). The Committee on the Covenant on Economic, Social and Cultural Rights ("CEFR") was established in 2009.

The Committee on the Covenant on Civil Liberties has received 1,245 individual reports and adopted 1,178 opinions (as of January 2020) to interpret the Covenant in the 10 years from 2009 to 2019 alone. In addition, through the accumulation of cases of the individual reporting system, the Committee has issued and revised general opinions that provide guidelines for the interpretation of the Covenant.

(4) Importance of the Interpretation by the Committee on the Covenant on Civil Liberties

As mentioned above, the Committee on the Covenant on Civil Liberties, as an implementation mechanism of the Covenant on Civil Liberties, has been accumulating interpretations of the Covenant through issuing general opinions and adopting opinions in

individual reporting cases. The views adopted by the Covenant on Civil Liberties Committee *"exhibit some important features of judicial decisions. These views are arrived at in a judicial spirit, including the impartiality and independence of the members, the thoughtful interpretation of the text of the Covenant and the definitive character of the decisions"* (Kou.C1, para. 11).

The general opinions adopted by the Committee on the Covenant on Economic, Social and Cultural Rights provide guidelines for the interpretation of the Covenant on Civil Liberties through the examination of government reports over the years and the accumulation of thousands of individual reporting cases. For this reason, the general opinions issued on the basis of the accumulation of general findings and opinions have served as the most authoritative and important interpretive guidelines for the Covenant on Civil Liberties (Kou.C2, p. 20, A.C3, p. 697).

This is also confirmed by the fact that the International Court of Justice (ICJ), in its advisory opinion on the Palestinian Wall, described the interpretation of the Covenant on Civil Liberties Committee as "well-established practice" and cited its general findings on Israel, and by the fact that the Committee on the Covenant on Civil Liberties, in ICJ's judgment in the Diallo case, found that the interpretation of the Covenant on Civil Liberties had been accumulated through, among other things, the individual reporting system and general opinions. These are supported by the fact that the Committee has accumulated interpretations of the Covenant on Civil Liberties through, inter alia, the individual reporting system and general opinions, and that the Committee "believes that great weight should be given to the interpretations adopted by this independent body established specifically to supervise the application of the Covenant" and cites the views and general opinions adopted by the Committee (Kou.C. 3, p. 693). (Kou.C3, p. 693).

The views and general opinions of the Committee on the Covenant on Civil Liberties are, so to speak, normative guidelines common to all parties and are treated as the main authoritative documents in the interpretation of the Covenant. It is hoped that through the uniform application of the interpretation of the Covenant on Civil Liberties, the international guarantee of human rights will be realized.

Thus, the "General Comments" and "Views" of the Committee on the Covenant on Civil Liberties are the standards for the interpretation of the Covenant on Civil Liberties.

3. Interpretation by the Committee on the Covenant on Economic, Social and Cultural Rights

(1) General Comments

The Committee on the Covenant on Economic, Social and Cultural Rights has issued the

following opinions on articles 6, 7 and 10 of the Covenant on Economic, Social and Cultural Rights.

① **General Comment 36 of the Committee on Civil Liberties (Article 6 Right to Life)**

40. **States parties that have not abolished the death penalty must respect article 7 of the Covenant, which prohibits certain methods of execution. Failure to respect article 7 would inevitably render the execution arbitrary in nature and thus also in violation of article 6.** The Committee has already opined that stoning, injection of untested lethal drugs, gas chambers, burning and burying alive and public executions are contrary to article 7. **For similar reasons, other painful and humiliating methods of execution are also unlawful under the Covenant. Failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the Covenant. ...**

② **General Comment 20 of the Committee on Civil Liberties (Article 7 The arbitrary deprivation of liberty is a form of torture and degrading treatment.)**

56. The arbitrary deprivation of life of an individual may cause his or her relatives mental suffering, which could amount to a violation of their own rights under article 7 of the Covenant. **Furthermore, even when the deprivation of life is not arbitrary, failure to provide relatives with information on the circumstances of the death of an individual may violate their rights under article 7, as could failure to inform them of the location of the body, and, where the death penalty is applied, of the date on which the State party plans to carry out the death penalty. ...**

③ General Comment 21 of the Committee on Civil Liberties (Article 10, Treatment of persons deprived of their liberty):

2. Article 10, paragraph 1, of the International Covenant on Civil and Political Rights applies to anyone deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere. State parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.

3. not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

4. Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

(2) Views on Individual Complaint Cases

The Committee on the Covenant on Civil Liberties has made the following judgments in individual reporting cases.

- Johnson v Jamaica (CCPR/C/56/D/588/1994)

If it is not established that there were compelling circumstances for the detention, the detention may constitute a violation of the Covenant.

- Brown v Jamaica (CCPR/C/65/D/775/1997)

Insofar as the allegations of the complainant have been substantiated, due weight must be given to them.

- Eshonov v Uzbekistan (CCPR/C/99/D/1225/2003)

With regard to the fact that the complainant, the father of the deceased detainee, was not informed of the circumstances of his son's death, the Court understands the ongoing anguish and mental stress caused by this and considers that this inhuman treatment of the complainant constitutes a violation of his human rights.

- Kovaleva and Kozyar v Belarus (CCPR/C/106/D/2120/2011)

The complete secrecy of the date of execution and place of burial, and the refusal to hand over the body for burial in accordance with the religious beliefs and customs of the family of the condemned person, has the effect of intimidating or punishing the family by deliberately placing them in a state of anxiety and mental distress.

(3) Summary

Based on the above general opinion of the Covenant on Civil Liberties, and the interpretation and judgments of individual reporting cases, it can be said that failure to inform a person sentenced to death of the date and time of his or her execution at the appropriate time usually constitutes ill-treatment, and subsequent execution is a violation of the Covenant on Civil Liberties.

It is clear that "same-day notification and same-day execution" cannot be regarded as notification at an "appropriate time". The above operation violates Articles 6, 7 and 10 of the International Covenant on Economic, Social and Cultural Rights.

4. The Covenant on Civil Liberties as a Legal Norm and its Binding Effect on Japan

(1) Ratification (Acceptance) of the Convention

The ratification procedure of a treaty requires the approval of the Diet (legislature) (Article 73, item 3 of the Constitution). By having the Diet, which is composed of representatives of the people, examine and approve the treaty, the democratic legitimacy of the treaty is guaranteed in Japan.

Relevantly, there is a treaty that stipulates the rules of international law concerning treaties, such as the establishment, validity, and interpretation of treaties. This is the Vienna Convention on the Law of Treaties (hereinafter referred to as the "Convention on the Law of Treaties").

In the preamble of this treaty, the principle that "agreements must be honored" is confirmed as a universal fundamental principle, along with the principle of free and voluntary consent and the principle of good faith. This principle is an axiom of international law (Kou.C7, pp. 304-305).

A treaty that has entered into force binds the parties in accordance with this fundamental principle, and the parties are obligated to fulfill it in good faith (Article 26 of the Vienna Convention on the Law of Treaties). In addition, the domestic law of a State may not be invoked as a basis for exemption from treaty obligations (Article 27: A.C. 8, Paragraph 4). This is well established in international judicial precedents, and the Permanent Court of International Justice (PCIJ) has stated that "*it is certain that a State may not rely on its own legislation to limit the scope of its international obligations*" (Kou.C7, p. 305).

(2) State Binding Nature of the Covenant on Civil Liberties

Since the Covenant on Civil Liberties was also ratified by the Diet, Japan, as a party to the Covenant, must abide by the rights and obligations stated in the Covenant (Preamble to the Covenant, Article 26).

Article 2(1) of the Covenant on Civil Liberties stipulates that States that are a party to the Covenant are obligated to "*respect and secure to all individuals in their territories*" the rights stipulated in the Covenant (Article 2(1)). In other words, States that are a party to the Covenant on Civil Liberties have a legal obligation to ensure the realization of all human rights stipulated in the Covenant as soon as they become party to the Covenant. This obligation must be fulfilled in good faith in accordance with the principles of Article 26 of the Vienna Convention on the Law of Treaties (Kou.C8, para. 3).

The obligations under the Covenant on Civil Liberties are not limited to the central government. The obligations (Article 2 in particular) are binding on party State as a whole including not only on the executive, but also on all public authorities, including the legislature, the judiciary and local institutions (Kou.C. 8, para. 4), and the courts are no exception.

In addition, in view of the aforementioned system for ensuring the international implementation of the Covenant on Civil Liberties and the fact that the Japanese government has accepted this system, interpretation of the Covenant on Civil Liberties must be made in accordance with the applicable international standards (the interpretation indicated by the

Covenant Committee), and it is not permissible for the Japanese courts to ignore these standards and interpret the Covenant on their own.

(3) The Covenant on Civil Liberties as Domestic Law in Japan

A. Domestic Effect of the Covenant on Civil Liberties

Since Japan has ratified the Covenant on Civil Liberties, it is naturally bound by the Covenant on Civil Liberties as a nation. However, it is left to the constitution of each country to determine how to incorporate the treaties concluded by the government into domestic law.

In Japan, all treaties of substantive meaning require the approval of the Diet (Article 73, item 3 of the Constitution), approved treaties are automatically promulgated by the Emperor (Article 7, item 1 of the Constitution), and the obligation to comply with the treaties and established international laws is imposed (Article 98, paragraph 2 of the Constitution). As such, in principle, treaties are accepted as domestic law and have domestic legal effect immediately upon promulgation without the need for special legislative measures (so-called "general acceptance" method).

Therefore, the Covenant on Civil Liberties has domestic legal effect from the day it enters into force in the country after ratification. On the other hand, in the case of the Covenant on Social Rights, it is understood that the Covenant stipulates the obligation of the State to make its best efforts to realize the rights, rather than granting specific rights to individuals, because budgetary measures and legal grounds are required to realize the rights, such as the right to receive social security benefits (so-called "progressive implementation" method).

B. Status of the Covenant on Civil Liberties in domestic law

In the case of Japan, Article 98(2) of the Constitution stipulates that "treaties and established international laws shall be observed in good faith," and therefore treaties are considered to be higher than general laws. This is the prevailing view in constitutional law and also the view of the Japanese government.

If this is the case, it logically follows that any domestic law that violates the treaty is invalid or must be amended or repealed.

C. Judicial Normativity of the Covenant on Civil Liberties

Even if a treaty has domestic legal effect, whether it is directly applicable or not, or whether

legislation or other measures are required for it to be applied (realized) , is discussed as a question of direct applicability of the treaty (the phrases "automatic enforceability" and "self-executability" of a treaty are sometimes used with almost the same meaning as direct applicability).

Since the wording of the Covenant on Civil Liberties considers the individual as the subject of rights, it is said that the Covenant is directly applicable and has judicial normativity, with exceptions such as Article 20(2) ("Any impulse of national, racial or religious hatred which is an incitement to discrimination, hostility or violence shall be prohibited by law"), which seems to impose an obligation on the legislature to enact laws (Kou.C. 9, p. 2).

The Government of Japan, based on Article 40 of the Covenant on Economic, Social and Cultural Rights, also acknowledged the superiority of the Covenant over domestic laws and the direct applicability of the Covenant in its first periodic report submitted to the Committee on the Covenant on Economic, Social and Cultural Rights on October 24, 1980, and in the reply of the representative of the Government of Japan at the 12th session of the Committee on the Covenant on Economic, Social and Cultural Rights, which was the session for the examination of the report, as follows (Kou.C. 9, p. 2):

In Japan, the Covenant is not transformed into ordinary domestic law. However, in practice, treaties have long been understood to form part of the Japanese legal system and have been given the appropriate effect. In other words, the administrative and judicial authorities have complied with and guaranteed compliance with the provisions of the Convention. Treaties are understood to occupy a higher status than national laws. This means that any domestic law that is found by a court to be incompatible with the Convention must be declared invalid or amended. This is why the government and the Diet examine the treaties to be ratified carefully and in detail to make sure that there are no differences between these treaties and existing domestic laws." (Kou.C. 10, p. 86)

D. Direct applicability and supremacy of law have been recognized by the courts

The direct applicability and supremacy of law of the Covenant on Civil Liberties have been recognized in many judicial decisions.

a Cases in which the Covenant on Civil Liberties has been directly applied and found to be superior to the law

Examples of cases in which the Covenant on Civil Liberties was directly applied and its

supremacy over the law was recognized, include the cases of Obstruction of Access to Prisoners for National Reparation and Refusal of Fingerprinting where the courts ruled as follows:

(a) (Case for national reparation for obstruction of access to prisoners Takamatsu High Court (November 25, 1997, No. 1653, p. 117) Tokushima District Court (March 15, 1996, No. 1597, p. 115, Hanta 997, p. 65)

Article 98, paragraph 2 of the Constitution of Japan stipulates that "treaties concluded by Japan and established international laws shall be faithfully observed". In Japan, treaties are accepted as a form of national law upon ratification and promulgation, and are applied to domestic legal relations without the need for special legislative measures, and it is understood that treaties are superior to general laws. However, not all of the treaties that Japan has concluded have the desired effect, and if the treaty is only a declaration of general principles or political obligations that we have concluded, legislative measures to concretize them will naturally be necessary. Relevantly, Covenant B is based on the idea that such rights should be enjoyed by all members of human society, and that the individual is the subject of such rights, and in view of the form of the provision, it cannot be understood as merely a declaration of abstract or general principles, etc., and therefore reference is made to the case of the refusal of fingerprinting

(b) Refusal of fingerprinting case

(Osaka High Court, October 28, 1994, Case No. 1513, p. 17)

The provisions of the Covenant on Civil Liberties are, in principle, self-executing and can be directly applied domestically, so that domestic laws in conflict with the Covenant on Civil Liberties are denied their effect.

b Supreme Court precedents recognizing violation of laws by referring to and supporting the Covenant on Civil Liberties

The following cases are examples of cases in which the Supreme Court relied on international human rights law, including the Covenant on Civil Liberties, in deciding that certain laws are unconstitutional.

(a) Ruling on unconstitutionality of Article 3 of the Nationality Act

(Supreme Court, June 4, 2008 (Heisei 20), Civil Law Report, Vol. 62, No. 6, p. 1367)

· · · The International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, both of which have been ratified by Japan, contain provisions to the effect that children shall not be subjected to any discrimination based on birth. Furthermore, after the establishment of provision of Article 3, paragraph 1 of the Nationality Law, many countries that used to make quasi-citizenship a requirement for the acquisition of nationality for out-of-marriage children of fathers who are their own nationals have amended their laws to allow the acquisition of their nationality simply when the paternity relationship with their own nationals is recognized through cognition. In light of the changes in the domestic and international social environment surrounding Japan as described above, it has become difficult to find a rational connection between the aforementioned legislative purpose and the requirement to acquire Japanese nationality by notification after birth.

This is a case in which the Supreme Court made a decision to make Article 3 of the Nationality Law unconstitutional, noting that there are provisions in the Covenant on Civil Liberties and the Convention on the Rights of the Child to the effect that children shall not be subjected to any discrimination based on birth, and also taking into consideration the trend of legislative amendments in other countries.

(b) Unconstitutional Ruling on Inheritance of Illegitimate Children (Supreme Court, September 4, 2013, Civil Law Report Vol. 67, No. 6, p. 1320)

The Covenant on Civil Liberties and the Convention on the Rights of the Child include provisions to the effect that children shall not be subjected to any discrimination based on birth. In addition, the Committee on the Covenant on Civil Liberties, based on the former treaty, and the Committee on the Rights of the Child, based on the latter treaty, have been established as relevant organizations of the United Nations, and these committees may express their opinions and make recommendations to the State Parties on the status of implementation of the above-mentioned treaties.

With regard to the status of implementation of the above-mentioned treaties concerning children born out of wedlock in Japan, the Committee on the Covenant

on Civil Liberties made a comprehensive recommendation to delete discriminatory provisions concerning children born out of wedlock in 1993, and since then, the above-mentioned committees have repeatedly expressed their concerns and recommended amendments to laws, specifically with regard to discriminatory provisions in nationality, family registration, and inheritance, including the provision in question. Even recently, in 2010, the Committee on the Rights of the Child reiterated its view that it is concerned about the existence of this provision.

This is a case in which the Supreme Court, after referring to the views of the Committee on the Covenant on Civil Liberties and the Committee on the Rights of the Child, held that the provision of Article 900, paragraph 4 of the Civil Code is unconstitutional and invalid in violation of Article 14 of the Constitution.

5. Effectiveness of the Covenant on Civil Liberties and Violation of the Covenant on Civil Liberties by “Immediate Notice and Immediate Execution

As mentioned above, human rights must be internationally recognized, and for this purpose, human rights guarantees (interpretation) cannot be left to each country. Based on this common understanding of human rights, each human rights treaty provides for a system to guarantee and implement human rights internationally. The Covenant on Civil Liberties was adopted to legally bind the parties to the Covenant on Civil Liberties in order to guarantee human rights internationally, and Japan ratified it with the approval of the Diet.

The Covenant on Civil Liberties has direct applicability under the Constitution of Japan in both word and nature, and as a treaty, its legal status is higher than that of domestic laws. It is well-established in case law that laws contrary to the Covenant on Civil Liberties are invalid to that extent. Moreover, what is occurring in this case is an administrative operation without any legal basis, and such an operation cannot be carried out in violation of the International Covenant on Civil and Political Rights.

In addition, as mentioned above, the views and general opinions expressed by the Committee on the Covenant on Civil Liberties are important guidelines for the interpretation of the Covenant on Civil Liberties. From the viewpoint of the international guarantee of human rights, the interpretation of the Covenant on Civil Liberties must be interpreted in an internationally uniform manner, and Japanese courts cannot make their own interpretive judgments that differ from the views and general opinions expressed by the Committee on the Covenant on Civil Liberties.

6. Comments on and improvements to the examination of Japan's report by the Committee on the Covenant on Freedoms

According to the interpretation of Articles 6, 7 and 10 of the Covenant on Civil Liberties mentioned above by the Committee on Civil Liberties, the administrative operation of "immediate notification and immediate execution" is in violation of the Covenant.

The Covenant on Civil Liberties requires each country that has ratified the Covenant to submit reports on a regular basis for review. This is a powerful means of ascertaining the human rights situation in each country and requesting improvements.

Japan is no exception.

(1) General Comments of the Committee on Civil Liberties on the Third Periodic Review of the Report of Japan in 1993

(Kou.C.11, Paragraph 12)

12. ...there are matters of concern relating to conditions of detainees. In particular, the Committee finds that the undue restrictions on visits and correspondence, and **the failure of notification of executions to the family are incompatible with the Covenant.**

(2) General Comments of the Committee on Civil Liberties on the Fourth Periodic Review of the Report of Japan in 1998

(Kou.C. 12, Paragraph 21)

"21. The Committee remains seriously concerned at the conditions under which persons are held on death row. In particular, the Committee finds that the undue restrictions on visits and correspondence and **the failure to notify the family and lawyers of the prisoners on death row of their execution are incompatible with the Covenant.** The Committee recommends that the conditions of detention on death row be made humane in accordance with articles 7 and 10, paragraph 1, of the Covenant."

(3) General comments of the Committee on Civil Liberties on the fifth periodic review of the Report of Japan in 2006

(Kou.C. 13, para. 16)

16. ...the Committee reiterates its concern that ...**death row inmates ...are executed without prior notice before the day of execution...**(arts. 6, 7 and 10)...The State party should also ensure that inmates on death row and their families are given reasonable advance notice of the scheduled date and time of the execution, with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for this event...

(4) Summary of the findings of the Committee on the Right to Freedom in response to the sixth periodic review of the Report of Japan in 2014

(Kou.C. 14, Paragraph 13)

13. The Committee remains concerned that neither the inmates nor their families are given prior notice of the day of execution. (arts. 2, 6, 7, 9 and 14).

The State party should: ...

(b) Ensure that the death row regime does not amount to cruel, inhuman or degrading treatment or punishment by giving reasonable advance notice of the scheduled date and time of execution to death row inmates and their families and refraining from imposing solitary confinement on death row prisoners except in the most exceptional circumstances and for strictly limited periods;

As described above, Japan has been informed by the Committee on Civil Liberties that executions are carried out "**without prior notice in advance of the date of execution**" (**5th Review**) and there is a requirement to "**ensure that the system of detention of persons sentenced to death does not result in cruel, inhuman, or degrading treatment or punishment by providing inmates and their families with reasonable advance notice**

of the scheduled date and time of execution. (6th Review), and has repeatedly recommended improvements.

It is clear that the accused country's use of the death penalty, "announcement and execution on the same day", violates Articles 6, 7 and 10 of the Covenant on Civil Liberties.

Section 6. Immediate notice and immediate execution are illegal and undermine human dignity (Reason for Illegality No. 3)

1. What is human dignity?

The United Nations Charter of 1945 "reaffirms" the "dignity and worth of the human person" in its preamble, and the preamble of the Universal Declaration of Human Rights of 1949 also reaffirms it.

Article 7 of the Covenant on Civil Liberties, which codifies this principle, states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 7 of the Covenant on Civil Liberties, which makes this a norm, specifically stipulates the guarantee of human dignity.

Article 10 of the Covenant on Civil Liberties states that "All persons deprived of their liberty shall be treated humanely and with respect for the inherent dignity of the human person."

Article 13 of the Constitution states, "All persons shall be treated with dignity and respect." Article 13 of the Constitution states that "All citizens shall be respected as individuals. This is a constitutional guarantee based on international human rights standards (the UN Charter and the Universal Declaration of Human Rights).

2. Death with human dignity

When the decision to execute a person is made, death becomes a reality that looms over the condemned person. The same is true for terminally ill patients when they are "told" that they have only a few days to live.

The situation of the condemned person and the terminally ill patient is basically the same, except for the fact that their freedom is restricted.

For a person who has been sentenced to death, the "death penalty" that comes with the death sentence is completely different from the "death penalty" that comes when the execution date is actually set. Death becomes a reality.

The same is true for terminally ill patients. For example, being informed that you have cancer and are likely to die is completely different from being informed that you have three

months to live.

In this sense, a person who has been sentenced to death and is informed of the execution is in the same position as a terminally ill patient who has been informed of his or her life expectancy.

What does it mean, then, to guarantee the human rights of terminally ill patients?

One form of "dying with dignity" is to live as a dignified and autonomous subject until the moment of death.

This is made possible by the "acceptance of death". This is understood as a series of processes.

3. Acceptance of Death

In the world of medicine, the following research has been conducted on the psychological state of terminally ill patients who have been told that they have little time left to live.

(1) Up to "acceptance of death"

What is the psychological process of a person who has been told of his or her own death?

The American psychiatrist, Elizabeth Kubler-Ross (1926-2004), was a pioneer in investigating the psychological changes that occur before a person accepts death. Kubler-Ross interviewed 200 terminally ill cancer patients and investigated how the mind of a person nearing death changes (Kou.D1).

According to Kubler-Ross, the process goes from the first stage to the fifth stage.

Stage 1: Denial

When most people learn that death is imminent for them, they say, "No! That's wrong! It's wrong!" and deny the fact. Denial is a healthy way to cope with unacceptable facts and acts as a buffer against unexpected and shocking news.

(Kou-D1, p. 68 and following)

Stage 2: Anger

In the anger stage, the response changes from "No!" to "Why me?"

(Kou- D.1, p. 88 and following)

Stage 3: Transaction

In the transaction stage, the person makes a deal with fate or God, saying, "I will do good deeds, so please extend my life! (Kou.D1, p. 140). (Kou-D1, p. 140 and following)

Stage 4: Depression

In the depressive stage, the person feels a sense of loss and hopelessness because of the imminent illness or death due to changes in body or appearance, and becomes depressed.

There are two reasons for this.

One is "reactive depression," which is a reaction to harsh reality. Reactive depression stabilizes when the patient is able to accept change and modify his or her unrealistic views.

The other is "preparatory depression," which the patient experiences in order to prepare for a break with the world., So to speak, to prepare for the loss of all the objects of the patient's love. (Kou.D.1, p. 146 and following)

Stage 5: Acceptance

The patient who has had enough time and has gone through the stages of denial, anger, bargaining, and depression reaches the stage where there is neither depression nor anger about his fate. (Kou-D1, p. 192 and following)

As mentioned above, the Ministry of Justice gives notice of executions two hours before the day of execution. It is impossible for a person who has been sentenced to death to "accept" his or her death if it is announced two hours before the execution. In the case of the "two-hour notice before execution," the condemned person's state of mind at the time of execution will be limited to the first stage of "denial" or, at most, the second stage of "anger.

(2) Rights at the end of life

A terminally ill patient who has been declared to be dying is granted the "right to the end of life."

The "end-of-life rights" guarantee the benefits of facing death, accepting death, and preparing for death. This has become the standard of medical care in the general society.

The patient is respected as a social being until the moment of death.

It is well known that for those whose death is imminent, how they spend their remaining time (life expectancy) is extremely important. For example, saying goodbye to family

members and reflecting on one's life are widely recognized as benefits of enjoying one's remaining life.

The issue of cancer notification is a clear manifestation of this idea. Until around 1990, it was common medical practice not to inform patients of their cancer or life expectancy, based on the discretion of the physician. However, with the rise of patients' rights, it became necessary to inform patients of the name of their disease and their life expectancy even if they have cancer, and this practice eventually took root in the medical field. In other words, "we are no longer at the stage of discussing 'to tell or not to tell,' but rather at the stage of considering the quality of notification: 'how to tell the truth and how to respond to and assist the patient afterwards'" (Kou-D2, p. 123).

Therefore, in order to have a full life expectancy, it is essential to inform the patient of the name of the disease and life expectancy. The importance of respecting the individual's way of life until the end of life is stated by guaranteeing the opportunity to express one's wishes on how to die.

As mentioned above, it is generally said that those who are informed of their life expectancy cannot immediately accept it. In accepting their own death, they think about how to spend the time they have left. (Kou-D1).

It can be said that it is important to know about death when it is irreversibly imminent in order to reach the end of life with dignity.

(3) Do people sentenced to death have no right to end-of-life care?

On the other hand, what about the notification to those who are sentenced to death? The administrative practice of "same-day notification and same-day execution," in which the execution date is announced two hours before the execution, is like a terminally ill patient being told, "You have only two hours left to live". A person sentenced to death would not be able to face death with dignity if he or she is informed of the date and time of execution only a few hours before the execution. This is in stark contrast to the fact that in general society, cancer notification should be done after careful consideration of when, where, by whom, and how it should be done.

A person sentenced to death and a terminally ill patient are different in that the person sentenced to death is "restrained in his or her freedom. However, this does not make a difference in guaranteeing the right to live until death with dignity. The fact remains that we are human beings.

4. From the perspective of "acceptance of death", "same-day notification and same-day execution" is incompatible with the theory of the existence of the death penalty (raison d'etre).

From the perspective of the theory of the existence of the death penalty, the following views are expressed.

- ① For extremely serious crimes, death is the only way to make amends. If the condemned person faces his or her crime, repents, and is ready to accept death, that is the best atonement.

(Kou-D3, p. 193)

- ② Mayumi Moriyama, Minister of Justice of Japan, at an international meeting on "Justice and Human Rights in the Observer Countries of the Council of Europe" in May 2002, said,

In Japan, when a person who has committed a big mistake expresses a strong feeling of apology, he often uses the expression 'I apologize to you by dying'. I believe that this idiom expresses our country's unique sense of guilt.

This statement has been criticized by the Council of Europe, who commented that it is strange to make the issue of the death penalty a cultural issue and that the death penalty cannot be justified on the basis of culture.

As mentioned above, a person sentenced to death who is informed of the time of his or her death one or two hours before execution is in the first stage of "denial" and the second stage of "anger", and "there is no way that the condemned person will be able to face his or her crime, repent, and accept death", nor will it be "the best atonement". Nor will it be "dying to apologize.

The current practice of announcing the death penalty on the day of execution is incompatible with the theory of the existence of the death penalty. If a person who has been sentenced to death is to reach such a state of "repentance" or "atonement," he or she must reach the fifth stage of acceptance of death. This is why time (advance notice) is necessary before the "acceptance" of death".

5. Death Penalty Notification and Execution in the United States

In the United States, where the death penalty exists, the death penalty is announced in

advance.

(1) Status of Notification in States that Exist the Death Penalty in the United States

The United States is the leading country that has the death penalty (currently, 23 of the 50 states have abolished it, Washington DC has abolished it, and 26 states, the federal government, and the military have the death penalty). In the U.S., advance notice is the norm in all states where the death penalty exists, and there are no states where "immediate notice and execution" is practiced as in Japan.

“Advance notice” is the global standard for human rights.

Professor Carol S. Steiker (Harvard University) and Professor Jordan M. Steiker (University of Texas), in their paper "The Death Penalty and Constitutional Regulation: A Comparison of the United States and Japan" (Kou-D5, hereinafter referred to as the "Steiker Paper"), state the following:

5 Setting the Date of Execution and Notifying Those Sentenced to Death

.

All U.S. death penalty states have a procedure for determining the scheduled date of execution. The date and time of execution must be set at least 30 to 90 days before the execution. The defender of the convicted person is given the opportunity to contest the scheduled date of execution if he or she needs to make a decision on the remaining issues. A public website (maintained by the Death Penalty Information Center) provides a list of scheduled executions throughout the country. For some of them, the execution dates are set three to four years in advance. In some states, such as Texas, failure to promptly inform the confirmed person and his or her attorney of the scheduled execution date is grounds for revocation.

In other words, the prevailing practice in the U.S. is to notify the confirmed person and his or her counsel of the impending execution. If execution is ordered without notice, the courts will reject such an order on the grounds that it violates the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution and the Eighth Amendment's prohibition of "cruel and unusual" punishment. It will also lead to the defender and his or her family meeting to sort out his or her affairs. (Kou.D. 5, p. 100) Notification also avoids the unnecessary anxiety and cruelty that unpredictable and unpredictable executions can cause. (Kou D5, p. 100).

According to a study by Professor Akiko Furukawahara of Ryukoku University (Kou D6-2) in response to an inquiry (Kou D6-1) by plaintiffs' counsel, in the federal government of the United States of America, notice is given at the latest 20 days in advance, and in the state of North Carolina, notice is given between 15 and 120 days (p. 3). In Oklahoma, 35 days' notice is given, along with the various documents mentioned below (p. 5).

(2) Reasons for Advance Notice

In the Steiker paper, the reasons for advance notice are as follows.

In early American practice, the death penalty was rooted in the perspective of religious salvation or the traditional practice of giving a "last meal" before execution. In that context, the U.S. Supreme Court ruled that executions without notice to the defender were unnecessarily cruel in the 19th century, and ruled that legal amendments providing for executions without notice were unconstitutional (Kou.D. 5, p. 99).

Today, there are other purposes for notifying those sentenced to death other than religious reasons and concerns about cruelty. First, notification to the condemned makes it possible to file lawsuits and objections that would not be possible without the impending execution. For example, challenges to the capability of the person sentenced to death for execution or to the execution protocol (specific drugs to be used for injection).

In the U.S., at the time of execution, the condemned person must be aware of his or her execution, and once the date is set, a process is initiated to evaluate the condemned person's mental state at the time of execution. Once the date of execution is set, the pardon process will be initiated. The executor must be given time to present the reasons for the pardon and to fully consider the petition. In addition, the date and time of the execution can be set to allow for the presence of the family of the condemned person, the family of the victim, and the media, who may with permission be present at the execution. (Kou.D.5, pp. 99, 100)

Thus, it is the right of the person sentenced to death to be notified in advance of the execution, which guarantees human dignity. This is the global standard for human rights in countries where the death penalty exists.

(3) Specific procedure for execution (Oklahoma case)

According to the response of Mr. Furukawahara (Kou.D.6-2), the procedure for execution in Oklahoma, a state with the death penalty, is as follows (page 6)

VII. Execution Schedule

A. Receipt of the order setting the date of execution

Upon receipt of the order setting the date of execution, the following officials listed below must initiate the following procedures

1. Legal Department

- a. Notify the Attorney General
- b. Send the original order with execution date to the Warden of the Oklahoma State Penitentiary or the Director of the Mable Bassett Correctional Center.
- c. Notify the coordinator of the victim assistance team, who will notify the victim that the court has issued an order setting an execution date.
- d. Notify the state government and law enforcement officials listed in this Procedure 6B.

2. Oklahoma State Director of Corrections

- a. Sets the time for execution and notifies the Oklahoma Court of Appeals...

3. Warden of Oklahoma State Penitentiary or Director of Mable Bassett Correctional Center

- a. Summarize the monitoring and evaluation of the behavior of the condemned person with respect to the duties of execution and the impact on the operation of the facility.
- b. Instruct the death row inmate concerned to complete and give to the Warden the "35-Day Notice Set" (Attachments F-1 through F-5) at least 30 days prior to the scheduled execution date.
- c. Notify said condemned person that minors are prohibited from being present at executions pursuant to Title 22, Oklahoma Statutes, Section 1015.
- d. Notify the family members indicated by said condemned person.
- e. Notify the person sentenced to death that Oklahoma Department of Corrections personnel are not permitted to be present at executions.
- f. Notify the person sentenced to death that the inmate will not be permitted to attend the execution.
- g. Request that the person sentenced to death in question review and update the "Instructions for Disposition of Property" (DOC 030120B). The Warden shall instruct the person sentenced to death to inform him/her of all changes at the latest 14 days before execution. If the condemned person fails to give such instructions, his personal belongings and accounts will be disposed of in accordance with "Inmate Property" (OP-030120).

- h. The person sentenced to death shall be informed that no organs can be donated from the body.
- i. Summarize the methods for the surrender and handling of the body of the said condemned person...
- k. Notify said condemned person that he or she may request a last meal by completing the "Last Meal" form (Exhibit F-5); make a reasonable effort to accommodate this request, not to exceed \$25.00.

The paperwork involved in the above is as follows:

Attachment F-1
OP-040301
35-Day Advance Notice Form Set
<p>This set includes the following documents</p> <ul style="list-style-type: none"> Summary of Rules and Procedures (Exhibit F-2) Witnesses (Exhibit F-3) Last Day Visitors List (Exhibit F-4) Last Meal (Exhibit F-5)
<p>Please fill out all the documents and return them to the person in charge by the following date.</p> <p>_____</p>
<p>Date</p>
<p>The Warden's approval will be final. Inmate's signature certifies that he/she has received this set of six (6) forms.</p>
<p>_____</p>
<p>Name / Inmate Number</p>
<p>_____</p> <p>Date</p>

Name of Warden _____	Date _____
----------------------	------------

The 35-day set requires that ① an outline of rules and procedures be issued, ② witnesses, ③ a list of visitors for the last day, and ④ the last meal be listed.

A. Summary of Rules and Procedures

The outline of the rules and procedures ① is as follows

Attachment F-2		
OP-040301		
Page 1 of 2		
Summary of Rules and Procedures		
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border-top: 1px solid black; padding-top: 5px;">Inmate Name</td> <td style="width: 50%; border-top: 1px solid black; padding-top: 5px;">Inmate Number</td> </tr> </table> <p>I am the warden of _____. You have been sentenced to death at _____ for murder. The purpose of this interview is to explain to you the rules and procedures for the next 35 days and to discuss the benefits to which you are entitled. At the end of this meeting, you will be transferred to a special private room where you will remain until your execution. In this room, you will be under the constant supervision of prison officers until your execution.</p> <p>6. If you leave the room, regardless of the reason, you will be handcuffed and searched.</p> <p>7. The lights in your room will remain on at all times. 3.</p> <p>8. A television is located inside the private room. 4.</p>	Inmate Name	Inmate Number
Inmate Name	Inmate Number	

- 9. If you are sick or injured, you will be treated in your private room if possible.
- 5. Personal belongings that may be brought into the private rooms are as follows
 - a. Legal and religious materials, one cubic foot each.
 - b. Secure ink and paper.
 - c. A book or magazine. Replaceable daily.
 - d. Sanitary items (comb, indigent-sized liquid soap, toothbrush, toothpaste). These can be used only when necessary. Remove immediately after use.
- 6. any personal belongings left behind by you will be listed, boxed, sealed and removed from your private room in your presence. These will be kept in the personnel office until your sentence is served or suspended. You will need to arrange for their disposal.
- 7. You will be contacted daily by the person in charge, clergy, mental service staff, and health service staff. You may meet with the facility's clergy at any time during the last 24 hours before your execution.
- 8. no more than two (2) non-physical contact visits at a time may be made from the approved visitor list within the established time frame. Visitation will end at 9:00 p.m. on the day prior to execution. You may visit in person with no more than two designated attorneys for up to two hours. Visitation will end at least two hours before the scheduled execution.
- 9. Burial arrangements will be made by your family. The facility will notify your family of this in writing at least two weeks prior to the execution. If your family does not make the arrangements for the funeral home, the state will be responsible for your burial.

Name / Inmate Number

Date

Warden Name

Date

(R 02/20)

B. Declaration of Witnesses

The declaration of the witness ② is as follows (Kou.6-2, page 9)

Witnesses

With the Warden's approval, you may list five (5) witnesses, next of kin and/or friends, and two (2) religious advisors/clergy; no one under the age of eighteen (18) will be permitted to be present. no staff member currently in charge of you or currently incarcerated will be allowed to be present.

	Name, Age	Address	Tel	Relationship
1				
2				
3				
4				
5				
6				Clergy
7				Clergy

_____ Date

Name / Inmate Number

_____ Approval

_____ Date

Warden Signature

_____ Rejected

And the witness will be notified as follows (Kou.6-2, page 11)

Exhibit B

OP-040301

Sample
Notice to Death Penalty Witnesses

[Date]

[Name]

[city, state, zip code]

Dear []

Notice is hereby given with condolences that [].In accordance with the provisions of Section 1015 of Chapter 22 of the Oklahoma Statutes, [name] will be executed by lethal injection at the Oklahoma State Penitentiary on [date]. The condemned person wishes you to be present at the execution.

Please arrive at [location] at [time] on the day of the execution. You will be greeted by a staff member and escorted at the appointed time. Please bring a photo ID with you.

If you need any additional information or assistance, please do not hesitate to contact us at 000-000-0000, ext. 0000.

Sincerely

C. Last meal request

The last meal request ④ is as follows (Kou.D. 6-2, page 11).

Exhibit F-5

OP-040301

Last Meal

With the approval of the Warden, you may choose your last meal. There is a maximum of \$25.00 for your last meal. Dinner will be served between 5:00 p.m. and 7:00 p.m. on the day before your assigned execution date.

Dinner Requests:

Name / Inmate Number	Date
_____ Approval	
Warden Signature	Date
_____ Rejected	

(R 02/20)

Subsequent procedures are also specified in detail, counting down from 35 days prior (Kou.D 6-2, page 13).

B. 35 days before enforcement

1. Institution

a. The warden or designee shall confirm in writing to the Agency Director that the following procedures have been completed.

- (1) The Warrant shall be read to the person sentenced to death.
- (2) An outline of how the conditions of confinement will change over the next 35 days is given to the inmate, along with a brief description of the relevant execution process.
- (3) Assess the condemned person's medical condition in order to identify any necessary

considerations or contingencies that may arise from his or her medical condition or history.

...

(4) Communicate to the special operations team concerns and policies regarding securing and maintaining a venous line, medical accommodations, and contingencies so that they can be discussed and addressed during training and rehearsals.

(5) Appropriate mental health personnel will assess the mental stability and well-being of the condemned person in light of the planned execution approximately 35 days prior to the execution.

...

(6) The condemned person shall be moved to a private room in Unit H of the Oklahoma State Penitentiary (MBCC in the case of women), where he shall be subjected to a search of his belongings, an X-ray, etc., before being moved. He will then be given new clothes and shoes.

(7) The designated private room shall be thoroughly inspected prior to the transfer of the condemned person.

(9) The death sentence is carried out. Until the death sentence is carried out or a stay of execution is issued, the staff will keep a record of their observations of the condemned person's behavior and speech.

...

Fourteen (14) days prior to the execution, body bags will be prepared, witness lists will be completed, and invitations to witnesses will be prepared.

Seven days prior to the execution, the line of flow in the facility is checked and access to the holding cells is restricted.

Twenty-four hours before the execution, final confirmation of execution preparations, completion of phone calls and home visits (except for lawyers, etc.), and confirmation that the condemned person has received the last meal requested.

Twelve hours before the execution, preparations are made for unforeseen circumstances, such as restricting access to the facility, canceling regular visits, leading witnesses, handling the media, and preparing AEDs.

(4) Summary

As described above, in Oklahoma, the procedures from the notification of the death penalty to the execution are set in detail, and the rights of those who have been sentenced to death are clearly defined.

After the announcement of the death penalty, the condemned is placed in a special position (moved to a separate room and given special treatment), but the treatment is extremely human, including witnesses, visits, and the last meal.

In other words, the dignity of the human being is respected.

6. Rights at the time of death

It is important to accept one's own death; think about "how to spend one's life until death in a human way" and "how to face death", and what to do.

(1) Preparation for death

A person who has been sentenced to death knows that they will be executed. In order to accept their death, it is necessary for them to do what they wish to do, what they have left to do, and to face their death. This is the guarantee of human dignity. Some (but not all) of the things that can be considered are as follows

Eat what they want.

Enjoy tobacco and other luxury items.

Do what they enjoy and what they want to do (write haiku and tanka).

Do something they have left to do.

Meet the people they want to meet (including those who say they want to meet).

If there are victims who want to meet, they can meet them.

Send letters to people who want to contact them.

(2) Self-reflection

Once death is accepted, the person sentenced to death can reflect on his or her life. This can lead to true reflection, or at least regret in looking back on life. In this way, they can confront their own death.

(3) Appeals can be made

If the condemned person has any objection to the execution, he or she can file an appeal during that period.

This can be done as described above.

(4) Post-mortem treatment: What happens after death

The condemned person can also take care of his or her "personal affairs" after death.

The following is a list of possible ways to deal with the condemned's personal affairs after death:

Disposal of property (gifts and bequests), preparation of wills, and notification of recognition

Organ donation (transplantation), body donation

Funeral arrangements

Designation of a place to hand over the remains

(5) Summary

Those who are sentenced to death are guaranteed by Article 13 of the Constitution, as well as Articles 7 and 10 of the Covenant on Civil Liberties, to be treated as human beings and to be guaranteed "human dignity."

7. Not "slaughtered like cows and pigs" but "respected and dying as human beings."

The following question was raised at the 168th session of the Diet, House of Councilors, Committee on Legal Affairs on October 30, 2007 (Heisei 19) (Kou A5).

The questioner was Kazuya Maruyama, a member of the House of Councilors, and the respondents were Kunio Hatoyama, Minister of Justice, and Hisashi Kajiki, Director General of the Correction Bureau of the Ministry of Justice.

- Mr. Kazuya Maruyama: Also, I am most concerned about the issue of notification of the date and time of execution. According to what I have heard, the announcement will be made to the condemned in the morning of the day of execution. I have heard that the execution will be carried out in the morning. Is this correct?
- Mr. Hisashi Kajiki: That is generally correct.
- Mr. Kazuya Maruyama: Now, I would like to ask the Minister of Justice a few questions. I would like to make a personal observation; no matter what crime a person has committed it is already confirmed that the death penalty will be carried out. There are exceptions such as pardons and retrials, but basically, the death penalty will be carried out at some point. On average, the

condemned wait seven years and six months for the death penalty. During the initial period, be it in the first month or two or after six months have passed, you may think that you will be fine for one or two years, but when it comes to three or four years, or the fifth year, you wonder what will happen tomorrow morning. When going to bed, people usually go to sleep knowing that they will eventually be sentenced to death, but without notice they always go through the night with a sense of anxiety about what will happen tomorrow morning. When I think about it, I think that this is a very cruel way to treat people, whether they are on death row or not. Therefore, when considering the human rights of the condemned, I would like to see a change in the way of thinking regarding the announcement of the execution date, and a new rule should be made. Furthermore, I think that at least a three-month notice period is necessary. During those three months, of course, it is necessary to sort out one's own mind, as well as that of one's relatives, or the bereaved family members of the victim should be able to have a final meeting with the victim and sort out their minds in various ways. Human beings are born and will eventually die, but I believe that human beings have the last dignity when that is cut off by law. I believe that even those on death row have dignity. If possible, I would like to make a suggestion that the prisoners be given a grace period of three months during which they can choose the date of execution. This is a completely new idea. The reason for this is that the prisoner will be executed as a sentence, but I think that the choice of the date and time should be a way to show the prisoner's dignity in the face of having his or her life cut short by law. Of course, if this is not possible, the execution can be carried out on the last day of the sentence, but I think it would be possible to realize this kind of choice in the execution system. Will you consider this? I would like to hear the views of the Minister of Justice, who has a very human and benevolent spirit. (Kou A5, page 11)

Mr. Maruyama stated that it is necessary to sort out one's own mind, to sort out the mind of one's relatives, and to sort out the mind of the bereaved family of the victim in various ways. He believes that people have dignity at the end of their lives, even those on death row. He believes that even those on death row have dignity. The purpose of Mr. Maruyama's question is as follows.

- Mr. Kazuya Maruyama: at first glance, this may seem outrageous, but I would like to reiterate that because it is a sentence, you are subjected to it, or to put it

in a bad way, you are beaten, and this is legally justified. However, I believe that it is a means to show one's dignity, or the right to make one's own decisions, and I believe that this is based on humanism. In addition, the United Nations Committee against Torture has pointed out that Japan's system is very problematic when it comes to the sudden implementation of torture without any notice, regardless of whether or not a three-month period is set. For example, there is unnecessary secrecy and arbitrariness regarding the timing of executions, which is supposed to respect the privacy of those sentenced to death and their families. In particular, the Committee, this is the Committee against Torture, regrets that persons sentenced to death are notified of their executions only a few hours before the execution, which places psychological pressure on the sentenced persons and their families due to the continued uncertainty of the date of execution. (Kou5, p. 12) I think this has been said repeatedly. (Kou5, p. 12)

In response to this, Justice Minister Hatoyama said:

- Minister of State (Mr. Kunio Hatoyama): What Mr. Maruyama just said was shocking. In fact, I had heard from him that there would be questions about the notification of the death penalty, but I had not thought that it would be for a period of time such as three months. I was shocked when I heard that the teacher was going to ask about the death penalty, but I didn't think it would be for a period of time like three months. When I was in elementary school, I remember watching a TV drama called "I want to be a clam," which made all of Japan very excited. Frankie Sakai gave me the tape and I watched it again and again. The first half was on video and the second half was live. That's exactly how I spent my days, terrified by the sound of the shoes, but hoping that the sound of the shoes would be my release. In the end, at the announcement on the day of the execution, he was told to drink and eat, with wine and cheese or something, and under the guidance of the counselor, he was executed. It's still the scene I recall most often. I wondered what it would have been like if it had been the day before. If it had been announced a day or two before the execution, it would have been unbearable, and he would have spent the next two or three days suffering emotionally. However, when you talk about choosing the day of execution three months in advance or as the last day of dignity, this is a very shocking thing. I would like to think about this carefully. (Kou 5, p. 12)

As this question makes clear, Mr. Maruyama's request that even those who have been sentenced to death should be treated with human dignity and be given a period of prior notice commensurate with that dignity, struck a chord with Justice Minister Hatoyama.

However, the Ministry of Justice's administrative practice of "same-day notification and same-day execution" has remained unchanged since then.

- Mr. Kazuya Maruyama: I think this is something that has been said repeatedly. I don't know if this is an appropriate analogy, but it is not like slaughtering cattle or pigs, so I think there should be a marked difference between being taken to a slaughterhouse and being sentenced to death. I would like you to consider this. (Kou 5, page 12)

Taking cattle and pigs to slaughterhouses involves the use of force (violence). The same is true for those who have been sentenced to death, who are notified two hours before the execution, pulled out of their cells, and taken to the execution site. There is no dignity as a human being there.

Those who have been sentenced to death should be guaranteed "their dignity" as long as they are human beings. (Kou 5, p. 12)

8. Summary

Same-day notification and same-day execution are illegal and undermine human dignity.

It is illegal to undermine the dignity of the human person as guaranteed by Article 13 of the Constitution and the Covenant on Civil Liberties.

Section 7. Plaintiffs' Claims for Damages (Compensation)

1. Breach of Duty by Defendant Public Officials

It is clear that the defendant government's administrative practice of "same-day notification and same-day execution" is illegal.

The plaintiffs are obliged to accept the execution of the death penalty, but they are not obliged to accept the illegal execution of the "same-day notification and same-day execution.

For the execution of the plaintiffs, the chief prosecutor of the Osaka District Public Prosecutors Office, to whom the execution commanding prosecutor belongs, submits a request for execution to the Minister of Justice (Article 472 of the Code of Penal Procedure,

Article 9 of the Execution Regulations - A B3), the Minister of Justice issues an order for execution (Article 475, Paragraph 1 of the Code of Penal Procedure), and the execution commanding prosecutor directs the director of the Osaka Detention Center to execute the death penalty based on the death penalty execution command (Article 10, Paragraph 1 of the Execution Regulations - A B3).

In this case, where the "same-day notification and same-day execution" is illegal, these public officials, the Chief Prosecutor of the Osaka District Public Prosecutors Office, the prosecutor in charge of execution, and the warden of the Osaka Detention Center, are obligated to "not execute a person sentenced to death by same-day notification and same-day execution" (duty of omission).

The fact that these public officials maintain the administrative practice of "same-day notification and same-day execution" in violation of this duty of omission constitutes a tort against the plaintiffs.

2. Fear of not being informed of the execution date in advance (Plaintiffs' Infringement Interest No. 1)

Those who are sentenced to death are living in hell because they are not informed of the date of execution in advance.

(1) The words of Sakae Menda

The sound of the prison guard's footsteps approaching stops in front of every cell. I grit my teeth and listen carefully. I try to hold back the sweat that forms on my back. Until I realized it wasn't me, my body froze and wouldn't move."

Sakae Menda (82), who became the first death row inmate to be acquitted at a retrial in 1983, looks back on his time in prison, not knowing when he would be executed. He was arrested as a suspect in a robbery-murder case in Kumamoto Prefecture, and after his death was confirmed by the Supreme Court in 1952, he lived with the fear of death for more than 30 years. Although he no longer has nightmares, he says that until recently he dreamt of the scene where he was sentenced to execution.

(The Yomiuri Shimbun, Social Affairs Department, "Death Penalty" - A E2, p. 38)

This is an experience common to all those who have been sentenced to death, including the plaintiffs, and it continues to this day.

(2) Words of Kazuya Maruyama, Member of the House of Councilors

As I enter my fifth year, I wonder what tomorrow morning will bring. When we go to bed, we usually go to sleep even if we know that we are going to be sentenced to death, but we always spend each and every night in fear of what will happen tomorrow morning. When I think about it, I think that this is a very cruel way to treat people, whether they are on death row or not. I think this is the result.

This is a statement made by Kazuya Maruyama, a member of the House of Councilors, at the 168th session of the Diet, House of Councilors, Committee on Legal Affairs on October 30, 2007 (Kou5, p. 11).

Furthermore, at the above-mentioned Legal Affairs Committee meeting, Mr. Maruyama wryly stated:

even if a person is on death row, it is not like slaughtering a cow or a pig, so there should be a marked difference between being taken to a slaughterhouse and being sentenced to death.

"It is a well-known fact among those who have been sentenced to death that inmates on death row are taken to the execution table and hanged like cattle or pigs."

(3) Words of Hiroshi Sakaguchi, an inmate sentenced to death

In the aforementioned questionnaire (5-5(2)), Hiroshi Sakaguchi, who was sentenced to death said: (Kou.B2-169)

However, the current execution procedure does not take into account the convenience and rights of the condemned and executes them as quickly as if they were dogs or cats being killed.

(4) The words of a prison guard

The following words of a prison guard in A-E2 (Death Penalty, Yomiuri Shimbun, Social Affairs Department) are illuminating:

A doctor who has worked in a detention center once heard a staff member who

treated death row inmates say, "If a prisoner is too noisy and complains a lot, you can call him in the morning for something else. They'll think it's an execution and become quiet."

This is a surprising statement (Kou.E.2, pp. 39, 40).

(5) Summary

People who have been sentenced to death are forced to live a life of "living with the fear of death," spending every night and night in fear of being executed (hanged), just like the slaughter of cats and dogs or cattle and pigs. The plaintiffs have no hope of a peaceful life. Every day they live a life of fear and hell.

This is the first interest of the plaintiffs that is being violated.

3. "Modest healing" lost by not being notified in advance (Plaintiffs' Infringed Interests, Part 2)

Then, what do those who are sentenced to death gain from advance notice, i.e., not being notified on the same day and not being executed on the same day?

(1) Examples of advance notice (Part 1 and 2)

In the context of the policy of non-disclosure and secrecy of the defendant state, very little information regarding the death penalty is revealed. However, even with the small amount of information that is revealed, there are records of advance notice being given in the past.

A. The case of the Osaka Detention Center in 1956 (case ①)

In "Death Penalty" (Kou.E2), edited by the Social Affairs Department of the Yomiuri Shimbun, the following two cases are reported.

The first is the case of the Osaka Detention Center in 1956: "The Voice of the Death Row Inmates: '53 Hours Before Execution'". The April 13, 1956, morning edition of the Yomiuri Shimbun's Osaka social page reported the story of a death row inmate (then 38 years old) who was informed by the Osaka Detention Center warden that his pardon had been denied, and how he was executed on the third day. The article introduces the contents of a tape secretly recorded by the jail.

The gist of the tape is as follows

<On the first day, his friends on death row held a farewell tea party. After some reminiscing, they began to sing a farewell song to him. The condemned prisoners sang one after another. The warden led a chorus of "Light of Fireflies.>

<On the second day, a farewell haiku session was held from 1:30 p.m. At 1:30 p.m., a farewell haiku poetry session was held, at which many of his haiku were introduced, including "If we don't quarrel, we won't make it through the autumn night". After the haiku session, he met with his sister for the last time (who had come the day before). As he talked about his memories of a happy childhood and his longing for his elderly mother, the time passed at 4:30 pm. He said, "Please give my best to your mother. When it was time for the execution, please open the window of your house and call my name loudly with your mother," hugging each other and crying. The head of the protection division said, "Time is running out. Please pray for his soul.>

<On the third day, all the prisoners on death row gathered for the final service. *"Now that I'm leaving you all, I'm going to the place of execution. If anyone asks me about it later, just think of it as the real me."* After he finished his speech, he shook hands with the condemned prisoners in line, wishing them "take care of yourself" and "live as long as you can". (The rest of the condemned shouted encouragement and cried).>

B. Prosecutor Yuzo Hirata's case (case ②)

Part 2 of the Yomiuri Shimbun's "Death Penalty" is the case of the Osaka Detention Center in June 1975 (Kou.E2, p. 41).

In June 1975, a former prosecutor, Yuzo Hirata (82), visited a male death row inmate at the Osaka Detention Center, with whom he had been in contact through visits and letters since he had been in charge of the interrogation. It was the day before his execution, and the man had requested to meet him. As Prosecutor Yuzo Hirata later wrote down in "Flowers, Birds and Clouds" (Kou.E4) in the presence of two prison guards, we talked knee-to-knee about the interrogation. The man's favorite food, nigirizushi, was prepared on a platter and we ate it together.

We talked endlessly, and the two hours passed in a blur. When the prison guard said, "It's time to go," the man stood up and shouted, "I'm going to be executed tomorrow. and I want to talk to Mr. Hirata,". At the end of the meeting, which continued for a while, the man said with a smile, 'I'm going to have a talk with another death row inmate after this.'"(Kou.

(2) Example of advance notice (Part 3) Attorney ... Noguchi Yoshikuni's (former prison guard) experience (case ③)

In the morning edition of the Asahi Shimbun on August 26, 2018, Noguchi stated the following as "Realization through witnessing killing a person" (Kou.E5).

It was around the end of 1971, soon after I became a prison guard, that I witnessed the execution of a man who had been sentenced to death for a robbery-murder case.

At the time, the Tokyo Detention Center had told him the day before the execution, and his wife and relatives, who had received a telegram, came to see him in a panic. His wife was crying all the time, and the man comforted her by saying, "You just have to take responsibility". At the end of the 30-minute visit, all the wife could say was, "My son's face is starting to resemble yours."

The next morning, I accompanied him to the prison. The warden and about ten others lined up, and when the warden asked him if he had any regrets, the man said, "I want to shake hands with everyone who has helped me."

When he was done, another executive said, "It's settled, so we'd better get going". I was blindfolded with a cloth and handcuffed behind my back, and the curtain in front of me slid open to reveal a rope hanging from the ceiling.

In A.E. No. 5, Mr. Noguchi, a lawyer who witnessed the death penalty, honestly describes his experience: "The death penalty is the realization that people are killing people."

In 1971, the Tokyo Detention Center also notified those sentenced to death the day before their execution, so that they could meet with their families for the last time and face the execution without hesitation.

(3) Examples of advance notice (Part ④) ... What former death row inmate Sakae Menda saw

Sakae Menda was acquitted of the death penalty in July 1983 after the retrial began. He

was sentenced to death for robbery and murder in 1952 and was subsequently detained at the Fukuoka Detention Center and other facilities. 1979 saw the decision to start a retrial, but it was subject to a special appeal by the prosecution. This appeal was rejected in December 1980, and the decision to start a retrial became final. In 1983, he was transferred to the Yatsushiro Detention Center as a defendant.

Menda was treated as a person with the death penalty from at least 1952 to December 1980 and wrote "Sakae Menda Jail Notebook" (Kou6, hereinafter referred to as "Jail Notebook") from the standpoint of knowing well the treatment of inmates sentenced to death.

The treatment of those sentenced to death has been changing. For example, in the 1960s, there was freedom in the treatment of those sentenced to death, and those sentenced to death were able to talk to each other and keep "canaries" in their cells.

In the "Prison Notebook," two cases are introduced.

A. May 11, 1973: Kunihiko Ninomiya (case ④)

Kunihiko Ninomiya, who was in the next cell, called out from the back window as he was eating his cold dinner with hot water "Thank you for the long time. I have just been notified of your appointment," in his usual cheerful voice. With my mouth full of rice, I felt my throat catch and was at a loss for a reply, but I finally swallowed and choked. He didn't answer, but said, "Be well and good luck. I'll sort it out now," as he closed the window. I thought his appearance was unusual, but the blue May sky was filled with white clouds and twinkling stars falling in between.

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(The next morning, he came to my cell to say goodbye and left with a tearful face, saying, "I'm sorry, but I wish you good luck." (Kou6, pp. 126, 127)

Here, we see a person who has been sentenced to death, who was notified of the next day's execution the previous evening, and who nonchalantly organized his belongings to face the next day's execution.

B. October 3, 1975: Shizuo Tsuru (case ⑤)

At that time, the sentence was handed down the evening before the execution, the prisoner was allowed to sort out his affairs, he was taken out at around nine o'clock the next morning, a farewell tea party was held with his family, he went back

to the scolding room where he was given a ritual by the scold of the sect to which he belonged, he said goodbye to the remaining prisoners, and then went to the place of execution.

Until 1975, the execution was shorter than at the Osaka Detention Center, but the prisoners were notified the day before (advance notification), met with their families, received teachings, and greeted the other death row inmates before being executed.

(4) What did those sentenced to death gain from prior notification?

In cases ① through ⑤ above, what did the inmates gain by being notified in advance?

In case ①, the person sentenced to death was able to participate in a tea ceremony with other people sentenced to death and sing songs, he was introduced to haiku poetry at a haiku gathering, was able to meet his sister and reminisce with her, and had the opportunity to say goodbye to all the people sentenced to death, shake hands with other people sentenced to death, and receive encouragement.

In case ②, he was able to talk with the prosecutor with whom he had corresponded for a long time over nigirizushi (rice ball) for a long time (2 hours), and after that he was able to talk with other death row inmates.

In case ③, the condemned person was able to talk with his wife and relatives who came to visit him, and shake hands with the guard who took care of him.

In case ④, the day before the execution, the condemned person was able to talk with his close friend, Menda, organize his belongings, and say goodbye to Menda on the day of execution.

In case ⑤, the prisoner was able to get his affairs in order, hold a farewell tea party with his family, and say goodbye to other persons sentenced to death.

Those sentenced to death who received advance notice were able to do these things, albeit in a "small" way. It is easy to imagine that this was, at the very least, a "comforting" experience for those condemned to death.

(5) Summary

As is evident from these examples of advance notice, the "small amount of healing" afforded to the dying inmates of the death penalty cannot be obtained by those who are notified of their death sentence two hours before execution and taken to the execution site, that is, those who are notified and executed on the same day.

The defendant state has used its power to deprive those sentenced to death of the "small

amount of healing" that they were able to obtain through prior notification, on the grounds that it would "undermine their emotional stability".

This is an interest of the plaintiffs and other people sentenced to death that is being re violated.

4. Damages to the plaintiffs

(1) Compensation for suffering

10 million yen each

As described above, those who have been sentenced to death have spent their days in pain and suffering, with no recourse against the execution without obligation to obey. By the time this lawsuit was filed, Plaintiff A had waited approximately 3 years and 11 months, and Plaintiff B had waited approximately 10 years and 7 months.

The suffering of the plaintiffs continues to this day, and will continue until the defendant state changes its illegal operation of the death penalty.

Such illegal operation by the defendant state is a tort against the plaintiffs, and the amount of compensation for their mental suffering is not less than 10 million yen for each plaintiff.

(2) Attorney's fees

1,000,000 yen each

Because the plaintiffs were placed to engage with their lawyers to file this lawsuit due to the defendant's unlawful act, the attorney's fees of 1,000,000 yen each are also damages caused by the defendant.

(3) Interest

3 percent per annum

With respect to the damages described in (1) and (2) above, the defendant State shall be liable for interest (at the rate of 3% per annum) as prescribed by the Civil Code (Article 4 of the National Reparation Law and Article 722 of the Civil Code).

Section 8. Illegal Acts of the Defendant State and Non-Existence of Obligation to Accept by the Plaintiffs (Public Law Party Action)

1. Illegality of the Defendant State's Execution of the Death Penalty

It is clear that the defendant's administrative practice of "same-day notification and same-day execution" is illegal.

Those who are sentenced to death are obliged to accept the death penalty, but they are not obliged to accept such illegal implementation of the death penalty.

The plaintiffs have the right to legally challenge the defendant State regarding their obligation to accept the illegal "same-day notification and same-day execution" of the death penalty.

2. this claim cannot be challenged under the Code of Criminal Procedure.

The Supreme Court of Japan held on December 5, 1961 (Showa 36), Civil Law Report, Vol. 15, No. 11, p. 2662, that "If the method of execution under the current laws and regulations (about death penalty: noted by plaintiffs' counsel) is illegal, then the criminal judgment based on such method of execution should be challenged in the manner prescribed by the Penal Procedure Law, without this..... in an administrative disposition such as the method of execution of the death penalty is in substance the same effect as suspension or alteration of the criminal judgment and therefore, such lawsuit is not admissible.

However, this case does not fall within the scope of the said ruling.

First of all, this case is not about the execution of the death penalty itself. It is not a case of "seeking the reversal of a criminal judgment through an administrative lawsuit," but a case of "confirming that there is no obligation to accept the death penalty, which is to be announced and executed on the same day".

In addition, as described below, there is no law to regulate the notification process for execution of the death penalty, nor is there any legal authority to regulate the execution, so this case does not fall under the category of "claiming the illegality of the current method of implementing the execution under the existing law".

Furthermore, although there is a system for objecting to execution as stipulated in Article 502 of the Code of Criminal Procedure, as explained in detail in Section 4, Violation of Due Process, due to the administrative operation of "same-day notification and same-day execution", those sentenced to death are unable to challenge the provisions of the Penal Procedure Law (the administrative operation of "same-day notification and same-day execution" itself has been an obstacle for the exercise of their rights to make an objection to the operation of the execution.)

3. How can it be argued that there is no obligation to accept "same-day notification and same-day execution" for persons sentenced to death?

The only way to dispute that an inmate sentenced to death does not have the obligation to accept "immediate notice and immediate execution" is taking an action to confirm the

legal relationship under public law (substantive party suit), as described below. This will be demonstrated in order.

(1) The relationship of rights or legal status to be confirmed is appropriate

The timing of the execution of the death penalty against the plaintiffs is, of course, undetermined. However, the judgment sentencing the plaintiffs to death has already become final and binding, and more than six months have already passed since the judgment (Article 475, paragraph 2 of the Code of Penal Procedure). Therefore, the plaintiffs are in a position where they can be executed at any time. Although there is a possibility that the plaintiffs may die before the execution due to reasons other than the execution, such a situation is not expected in light of the fact that Japan maintains the death penalty system as constitutional and the provisions of Article 475(2) of the Code of Penal Procedure.

In addition, as already mentioned, the defendant state has consistently adopted the administrative practice of the same day notification as a means of carrying out the death penalty since 2000 (Heisei 12) (Kou.A. 1-2, p. 4, "About 11"). In addition, as of 2013, the defendant state has clearly stated that it has no plans to change this administrative practice (Kou-A2-2, p. 2, "5 to 7").

Therefore, it can be said with certainty that the plaintiffs will be executed in the future, it is unlikely that the current administrative practice will be changed before the execution, and the operation has been Japan's firm policy of carrying out the death penalty.

There is a high probability that the current administrative practice of same-day notification and same-day execution will remain unchanged even in the event of future executions against the plaintiffs.

(2) There are no remedies available other than a lawsuit to confirm the non-existence of a duty under public law (a party suit under public law)

A. the warden of the penal institution to execute the death penalty by means of a death penalty execution command (Article 10, paragraph 1 of the Rules on Execution Affairs - Kou B3)

The death penalty is carried out when the prosecutor in charge of the execution direction orders the warden of the penal institution to carry out the death penalty (Article 10, Paragraph 1 of the Rules on Execution Affairs -Kou-B3). Therefore, the notice of execution itself does not form the rights and duties of the person sentenced to death who receives it, nor does it determine the scope of such rights and duties. As long as the notification is not a disposition, it is impossible to make the notice as an obligation.

Therefore, a lawsuit demanding that the defendant state, for example, "obligate to notify the plaintiffs of the execution one day before the execution" would be inappropriate.

B. Injunction lawsuit (Article 3, Paragraph 7 of the Administrative Procedure Act)

In an injunction suit, "it is necessary to clarify the legal basis for the disposition, etc., for which an injunction is sought" (Hirokata Minami et al., "Jokai Gyosei Jiken Sosyoho [Administrative Case Litigation Law] [Fourth Edition]" (2014, Kobundo), p. 108 [Hiroshi Kawakami]), and "it is also a primary condition that the administrative agency concerned has the authority to make the disposition that is the subject of the injunction" (p. 783 [Hiroshi Kawakami]).

As mentioned above, the execution of the death penalty goes through the following process. The chief prosecutor of the prosecutor's office to which the prosecutor in charge of execution direction belongs reports for execution to the Minister of Justice (Article 9 of the Rules on Execution Affairs); an order by the Minister of Justice to the prosecutor in charge of execution direction to execute the death penalty (Article 475, Paragraph 1 of the Code of Penal Procedure); an order by the prosecutor in charge of the execution direction to the warden of the penal institution to execute the death penalty (Article 10, Paragraph 1 of the Rules on Execution Affairs); and the actual execution of the death penalty. This is the execution of the actual death penalty. In other words, there is no legal system for notification of execution of the death penalty to those sentenced to death, nor is there any legal provision which determine the authority for the notification.

Therefore, an injunction lawsuit requesting, for example, that "no direction to execute the death penalty shall be given without giving notice of the execution on or before the day before the execution" is inappropriate because there is no legal basis for the notice and who holds the authority is not clear.

C. Conclusion - There is only a party suit under public law

In light of the above, the plaintiffs have no other means of litigation to obtain relief from the current illegal administrative practice of same-day notification and same-day execution except through an action for confirmation of legal relations under public law (Article 4 of the Administrative Procedure Law).

Therefore, the plaintiffs demand that the defendant state confirm that it has no obligation to accept the illegal administrative operation of "same-day notification and same-day execution.

4. When and why was the change made?

(1) What Sakae Menda said

Menda stated about the incident in 1975 (Showa 50) as follows (KouE6. p.134, p.135):

October 3, 1975, Mr. Shizuo Tsuru

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When the autumn sun was staining the western sky red and evening darkness was approaching, Mr. Yamaguchi and Mr. Tsuru, who were on either side of me, were summoned to the guidance section and notified of the death penalty. Mr. Tsuru, although a believer in the Soka Gakkai, had no one to lead him, and was working alone to support his faith and clear the final judgment in the retrial. For the past year, he has been suffering from back problems and has not been able to exercise.

After the death penalty was confirmed, he requested the warden and the education department allow him to receive teachings by a Soka Gakkai's scorcher in the scolding room in the prison. However, his request was not granted, and even when he met with them a few days before his execution, he still did not receive permission, and was so disappointed that he said to himself, "Damn it, I'll remember."

At around five o'clock the next morning, he cut his right wrist with a concealed safety razor and inserted the bleeding wrist into the footwear floor in an attempt to commit suicide. I was in the cell next to his, and I woke up to the sound of him moaning in the agony of shortness of breath, and I looked out the window into the hallway. The guard was sitting in the hallway, dozing off. I opened the window and closed it hard. The guard was startled by the noise and stopped breathing when I opened the cell door. There was an uproar in the cell and artificial respiration was being administered, but the suicide was successful as planned. What he had been saying on a daily basis was that the trial had not been fair and he had to take care of himself.

The root of this incident was the discriminatory policy of the authorities, who, in accordance with the constitutional principle of freedom of religion, allowed the Jodo Shu, the Jodo Shinshu, and Christian chaplain to visit, but not Soka Gakkai teacher. At that time, the Soka Gakkai was a heretical religion. The Jodo sect and the Jodo Shin sect were also heretical at first, but they have become cozy with the power of the time and continue to torment the common people. Today, the Komeito, whose electoral base is the Soka Gakkai, is in power with the Liberal Democratic Party. The Ministry of Justice (MOJ) and the prisons, which have no clear vision of the future, must be urgently required to reflect on their actions and reform their thinking.

After this incident, the police and prosecutors rushed to inspect the scene and

collect evidence. For the jail authorities, it was a matter of how to settle the case peacefully. It was announced that Tsuru had been given a razor in his chanchanko.

In those days, however, translators kept a number of old blades in their desk drawers for cutting paper, and they were not questioned during the inspection.

Under the command of Captain Fukada, the great search inspection began. Even if I had any objection, it would not be accepted in this society. They searched our naked body, documents in our cell, clothing, and even our private books. These inspections were conducted every five days during bath time. All windows were broken and replaced with bulletproof glass. They cut off the rails of the clothes hangers. Beads and rosaries are not allowed in the cells, and a white line was drawn along the corridor. When inspecting the cells, the prisoners must stand with their toes in line with the line. Absolutely no movement is allowed. The razors used by the transcribers were confiscated, and they threatened me with punishment if I had any hidden.

It wasn't just the condemned who were sacrificed. A miscellaneous officer named Nakazaki was ordered by Director Okada to clean up after the case was solved. He complained that it took him all day to clean up the blood on the floor and on the bedding and tatami mats.

He was also transferred to a new cell every two months instead of once every six months, and if a number of razors were found in the corner of the fence or wooden fence during the search after the transfer, he would be punished. Since Tsuru's suicide, the death row inmates' cells were placed under the jurisdiction of the security forces, and the cells were inspected more strictly than other cells.

From this point on, restrictions on correspondence and visits were gradually imposed, and when writing documents (retrial documents) in the cell, it was ordered that an application be submitted in advance, and when permitted, an application for approval be submitted every month during the term. Until now, the treatment of death row inmates had been left to the discretion of the head of the branch office, but now an unscrupulous entity known as the District has come to interfere, forcing each inmate to report on his or her living conditions. This system has been in place since before the war. From before the war until around 1950 after the defeat, there were only about five employees in the corner of the general affairs department in the prison. Suddenly, the system became independent, and a superintendent was appointed, and under him were the first three directors, and the deputy warden and more than 50 or 60 staff members were required. It was like the General Staff Headquarters before the war. We lost the war by gathering all the officers and calling

it a strategy meeting and playing Go and Shogi every day. It is as if this bad habit has come to the District Headquarters.

(Kou E6, pp. 135, 136)

As noted by Menda, there has been a significant change in the treatment of people sentenced to death, including the notification of death penalty, since October 1975.

Even if the suicide of an inmate described by Menda is the reason why the defendant state switched to immediate notification and immediate execution, it should be possible to take special measures for one of the few inmates sentenced to death and whose execution has already been decided.

There was no need to change to the cruel "same-day notification and same-day execution" system for all death row inmates because of the suicides.

(2) The defendant state has not clarified when and why the change was made.

The defendant state and the Ministry of Justice have not clarified when and for what reason they changed to "same-day notification and same-day execution" and have enforced the "same-day notification and same-day execution" system for the "sake of death row inmates" on the grounds of "emotional stability."

(3) What do the people sentenced to death want?

Then, what do those who have been sentenced to death, who are supposed to be assured of their "emotional stability," think?

On March 23, 1999, at the 145th meeting of the House of Councilors Committee on Justice, the following question was raised between Mizuho Fukushima, a member of the House of Councilors, Takao Jinnai, Minister of Justice, and Ichiro Sakai, Director General of the Correction Bureau.

- Ms. Mizuho Fukushima: I believe that visits with friends and acquaintances can rather put a person's mind at ease.

Mr. Koichi Kikuta, a scholar, recently conducted a survey on 15 prisoners sentenced to death. Fourteen of them were able to meet with their family members, and one did not fill in any information. Fourteen of them were not able to meet with their friends and acquaintances, and one did not fill in any information. They are not able to meet friends and acquaintances.

I want to see my friends and acquaintances, and since I am going to die anyway,

I want to see the people I love. I can't have enough meetings with my lawyer to discuss the lawsuit in his presence. Thirty minutes with the defense attorney is not enough. I want to talk to my wife and children for at least 60 minutes, and I want to meet with my wife and children in a room without partitions.

What do you think of these voices, Mr. Sakai?

- Ichiro Sakai: I have not seen the questionnaire, so I would like to refrain from criticizing it, but generally speaking, although the death row inmates have said such things, it is the correctional staff who treat the prisoners afterwards. The correctional staff, while observing the progress of the prisoners, think that the measures I have just described are the best at present, from the empirical point of view that not only prior notification but also allowing the prisoners to meet with each other may cause considerable psychological upset.

Therefore, although I cannot critique the results of the questionnaire, we do not believe that the actual situation is as described in the questionnaire. (Kou-A4, page 18)

The results of the questionnaire (May 1998) are summarized in A.E.7, pp. 298-301.

The Ministry of Justice has no intention of taking up any of the requests made by those who have been sentenced to death.

As is clear from the five examples mentioned above (No. 7), it is natural for those who have been sentenced to death to want to see their relatives, friends, and acquaintances when they are sentenced to death. Visits to relatives and friends have been a "small comfort" for the condemned.

This is why the execution is being carried out on the same day, without informing the prisoners, for the formal reason that it may cause psychological upset.

(4) Inhumanity of "same-day notification and same-day execution"

There is a striking exchange at the end of the above questioning.

- Government Member (Mr. Ichiro Sakai): It is human nature to leave death row inmates who are awaiting death alone. From this point of view, of course, it is not that we don't allow all prisoners to see each other, but we would like you to understand that there are considerable restrictions on this.
- Mizuho Fukushima : I think it is inhuman to say that a person who wants to be left alone wants to meet with you, but you do not let him/her meet with you because it is natural to leave him/her alone.

(5) Summary

In response to the statement of Mr. Sakai, Director General of the Bureau of Corrections, that "it is human nature to leave death row inmates who are awaiting death alone", Mr. Fukushima said, "I think it is inhuman not to let people see them because it is natural to leave them alone, even though people who want to be left alone want to see them." Fukushima's statement is probably the right one.

The inhumanity of "same-day notification and same-day execution" that does not allow people to meet even those who want to meet is becoming clear.

5. "Emotional stability is not a reason for "same-day notification and same-day execution."

It has become clear that "same-day notification and same-day execution" violates the Constitution, the Covenant on Civil Liberties, and is illegal and detrimental to human dignity. It is also clear that the "same-day notification and same-day execution" on the grounds that prior notification undermines the emotional stability of those sentenced to death is cruel and violently deprives those sentenced to death of a small opportunity to heal.

Section 10. The cause is the non-disclosure (secrecy) of information on the death penalty by the defendant state.

The plaintiffs have shown that the administrative practice of "same-day notification and same-day execution," whereby a person sentenced to death is executed approximately two hours after notification, is illegal. from the three perspectives of the Constitution (Article 31), international human rights (the Covenant on Civil Liberties), and "human dignity.

The most serious problem is that the defendant state has continued to withhold information about the death penalty, including those who have been sentenced to death and executions.

1. Japan's Withholding of Information on Executions

Until now, there has been no public disclosure of the actual status of executions in Japan.

Other accused countries have similarly not disclosed whether or not they have carried out executions, or even the number of executions.

Since the end of the war, the following are the executions that have occurred (Kou E1-1). This is the result of a survey conducted by Professor Koichi Hamai, who used to work for the Ministry of Justice and is now a professor of law at Ryukoku University (Kou E1-2).

1949 (Showa 24):	33 persons
1950 (Showa 25):	31 persons
1951 (Showa 26):	24 persons
1952 (Showa 27)	18 persons
1953 (Showa 28):	24 persons
1954 (Showa 29)	30 persons
1955 (Showa 30)	32 persons
1956 (Showa 31)	11 persons
1957 (Showa 32)	39 persons
1958 (Showa 33)	7 persons
1959 (Showa 34)	30 persons
1960 (Showa 35):	39 persons
1961 (Showa 36)	6 persons
1962 (Showa 37)	26 persons
1963 (Showa 38)	12 persons
1964 (Showa 39)	0 persons
1965 (Showa 40)	4 persons
1966 (Showa 41)	4 persons
1967 (Showa 42)	23 persons
1968 (Showa 43)	0 persons
1969 (Showa 44)	18 persons
1970 (Showa 45)	26 persons
1971 (Showa 46)	17 persons
1972 (Showa 47)	7 persons
1973 (Showa 48)	3 persons
1974 (Showa 49)	4 persons
1975 (Showa 50)	17 persons
1976 (Showa 51)	12 persons
1977 (Showa 52)	4 persons
1978 (Showa 53)	3 persons
1979 (Showa 54)	1 person
1980 (Showa 55)	1 person

1981 (Showa 56)	1 person	
1982 (Showa 57)	1 person	
1983 (Showa 58)	1 person	
1984 (Showa 59)	1 person	
1985 (Showa 60)	3 persons	
1986 (Showa 61)	2 persons	
1987 (Showa 62)	2 persons	
1988 (Showa 63)	2 persons	
1989 (Heisei 1)	1 person	
1990 (Heisei 2) to March 1993 (Heisei 5)	None	
1993 (Heisei 5)	7 persons	
1994 (Heisei 6)	2 persons	
1995 (Heisei 7)	6 persons	
1996 (Heisei 8)	6 persons	
1997 (Heisei 9)	4 persons	
1998 (Heisei 10)	6 persons	
1999 (Heisei 11)	5 persons	
2000 (Heisei 12)	3 persons	
2001 (Heisei 13)	2 persons	
2002 (Heisei 14)	2 persons	
2003 (Heisei 15)	1 person	
2004 (Heisei 16)	2 persons	
2005 (Heisei 17)	1 person	
2006 (Heisei 18)	4 persons	
2007 (Heisei 19)	9 persons	

In Japan, since the end of World War II, several to dozens of death sentences have been carried out every year. However, the Ministry of Justice (MOJ) did not release any information on the executions and kept them secret, and the reality of the death penalty remained "in the dark."

2. Information on the death penalty released by the accused countries

In November 1998, more than 50 years after the end of World War II, the Ministry of Justice (MOJ) finally announced the fact of the executions and the number of people executed after the executions.

About nine years later, in October 2007, the Ministry of Justice disclosed only the names and dates of birth of those sentenced to death, the facts of the crime, and the place of execution. This was after the executions.

To date, this is the only information the Ministry of Justice has released on the death penalty. The Ministry of Justice's disclosure of information on the death penalty is limited to the above, and it continues to keep all other information secret to this day.

3. The shameful operation should be improved

In the past, for more than 70 years after World War II, executions were sometimes announced in advance, as mentioned above. However, the administrative operation of executions in the accused country has been drastically changed from "advance notice" to "immediate notice and immediate execution. As a result of this change, the treatment of those sentenced to death has changed drastically.

However, the defendant state (Ministry of Justice) has never revealed when and for what reason it made this significant change.

This illegal "same-day notification and same-day execution" in Japan, the advocacy of "emotional stability" as a justification for the illegal executions, and above all, the "secrecy" of the death penalty, is a problem because it is far removed from the common sense of the world and the global standard of human rights.

This reality is "shameful" to the world.

4. Summary

Japan's "shameful practice" has continued for more than half a century after the end of World War II, and it must be changed as soon as possible.

In order to do so, the actual situation of the death penalty must be clarified, and the "immediate notification and immediate execution" must be shown to be illegal and in violation of the Constitution, international human rights law, and human dignity.

The administration (the government and the Ministry of Justice) shows no sign of changing this kind of operation.

Only the courts can do this, and it is the role of the judiciary.

It is for this reason that the plaintiffs have brought this suit.

Brief of Evidence

As described in the statement of evidence

Attached documents

1. Copy of the statement of claim: 1 copy
2. Copies of evidence marked as Kou: 2 copies each
3. Statement of evidence: 2 copies
4. Power of attorney for lawsuit 3 copies

List of plaintiffs

(Omitted)