

絞首刑差止、受執行受忍義務不存在確認及び国家賠償請求訴訟の提起について

弁護士 水谷恭史

絞首による死刑執行の差止め、絞首による死刑執行を受ける義務がないことの確認、絞首による死刑宣告を受けた精神的苦痛に対する国家賠償請求

原告：大阪拘置所に拘置中の確定死刑囚3人

代理人：金子武嗣、正木幸博、定岡由紀子、仲尾育哉、西愛礼、城使洸司、  
水谷恭史 (MIZUTANI Kyoji) (主任)

2022年11月29日 訴えの提起 (大阪地方裁判所第2民事部)

【主張の骨子】

1 日本国政府の行う絞首刑は自由権規約7条・6条に違反する残虐な刑罰である

日本における唯一の死刑執行方法である絞首刑(3~4mの落下方式)は、延髄の破壊による生命維持機能の停止を想定しているが、脳血流の遮断や窒息による脳機能の停止、首の切断が起きるおそれがある。執行者は、執行を受ける者がどのような機序で死亡するか完全にはコントロールできない。また、執行を受ける者は、吊るされた後、少なくとも数秒間、長ければ数分間意識を保ち続け、その間、激痛と恐怖を感じる。執行を受ける者の外観は、執行中の痙攣、執行後の遺体の損傷や失禁など極めて凄惨である。したがって、日本の絞首刑は、市民的及び政治的権利に関する国際規約(B規約)7条の禁ずる「残虐な、非人道的な若しくは品位を傷つける刑罰」にあたり、かつ、同規約6条1項の禁ずる恣意的な生命の剥奪に該当して、執行を受ける者の尊厳を不当に冒すものである。

2 死刑廃止ではなく絞首による死刑執行の停止を求める訴えである

絞首刑は執行を受ける者に不必要な苦痛を与え、遺体を損傷させるおそれのある残虐な刑罰として違法であり、原告らに対する執行を許してはならない。この裁判による絞首刑執行の差止請求及び受忍義務の不存在確認は、確定した死刑判決の無効を主張するのではない。あくまで絞首による死刑執行が違法であることを主張する。

3 時代と環境の変化によって人権概念、刑罰の残虐性の基準は進化する

19世紀以降、諸外国は死刑を含む刑罰の手段・方法をより残虐でないものに変更してきた。日本も例外ではなく、かつて残虐性の高い死刑執行方法を廃止した。その結果、21世紀の今日では140を超える国が死刑を廃止・停止している。しかし、現代の日本国政府は絞首による死刑執行の実態を国民に秘匿し、その残虐性について現代の人権概念に照らして公に議論を行うことを避けている。日本国政府の世論調査で国民の8割が「死刑もやむを得ない」と答えるのは、絞首刑執行の実態が秘匿されていることに一因がある。

【今後の訴訟活動】一裁判で具体的(医学的・科学的・実証的)に証明を試みる事実

- ① 絞首刑の執行によって死に至る機序、執行を受ける者の身体・精神に何が起きるか
- ② 執行時の具体的・客観的な状況
- ③ 執行後の遺体にどのような損傷が生じるか

以上

**Lawsuits for Injunction against Hanging, Confirmation of Non-Existence of  
Obligation to Accept Execution, and State Compensation**

Attorney MIZUTANI Kyoji

**Plaintiffs:** Three death row inmates currently in Osaka Detention Center

**Counsels:** MIZUTANI Kyoji (Lead), JOSHI Kouji, KANEKO Takeshi, MASAKI Yukihiro, NAKAO Ikuya, NISHI Yoshiyuki, SADAOKA Yukiko

**Defendant:** SAITO Ken, Minister of Justice of Japan

Filed November 29, 2022 (Osaka District Court, 2nd Civil Division)

The plaintiffs claim the following:

- 1) Hanging is a cruel and unusual punishment in violation of Articles 7 and 6 of the International Covenant on Civil and Political Rights (CCPR).

The government has argued that hanging, the only method of execution in Japan (long drop method), destroys the medulla oblongata and terminates life support functions. However, the execution by hanging has the possibility of causing cerebral blood flow interruption, cessation of brain function due to asphyxiation, or decapitation. At the execution, there is no complete control over the mechanism by which the executed person will die. In addition, the executed person may remain conscious for several seconds to several minutes after the hanging, during which time he/she may experience extreme pain and fear. The appearance of the person undergoing execution is exceptionally gruesome, including convulsions during the execution, damage to the body after the execution, and incontinence.

Therefore, executions by hanging in Japan constitute "cruel, inhuman or degrading punishment" as prohibited by Article 7 of the International Covenant on Civil and Political Rights, and arbitrary deprivation of life as prohibited by Article 6(1) of the Covenant, and thus unjustly violate the dignity of the person being executed.

- 2) This is not an appeal to abolish the death penalty, but to stop executions by hanging.

Hanging is illegal as a cruel and inhumane punishment that may cause unnecessary suffering and damage to the body of the person who is to be executed, and its execution against the plaintiffs must not be allowed. The request for an injunction against the execution of the death penalty by hanging and the confirmation of the non-existence of the

obligation to accept the death penalty by this trial do not claim the invalidity of the death sentence that has become final and binding. It only asserts that the execution of the death penalty by hanging is illegal.

3 The concept of human rights and standards of cruelty in punishment evolve with changing times and environments.

Since the 19th century, other countries have changed their means and methods of punishment, including the death penalty, to less brutal ones. Japan is no exception, having abolished what were once highly brutal methods of execution. As a result, in the 21st century, more than 140 countries have abolished or suspended the death penalty. However, the Japanese government today keeps the reality of the death penalty by hanging a secret from the public and avoids public discussion of its cruelty in light of modern concepts of human rights. The fact that 80% of the public in a Japanese government opinion poll say that "the death penalty is unavoidable" is partly due to the fact that the reality of executions by hanging is kept a secret from the public.

[Future Litigation Activities] - Facts to be specifically (medically, scientifically, empirically) proven at trial

- (i) The mechanism of death by hanging, and what happens to the body and mind of the person who undergoes the execution.
- (ii) Specific and objective circumstances at the time of execution
- (iii) What kind of damage will occur to the corpse after execution?