

29 November 2022 (Reiwa 4)

Pleading

To: Osaka Magistrate's Court

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Indication of case name	Requests for suspension of execution of hanging, etc.
Value of the subject matter of a lawsuit	33 million yen
Stamp duty amount	13,200 yen

Annexures

A duplicate copy of the pleading

1 letter of appointment for each lawsuit

Copy of A certificate 1 copy each

Party List

Indication of Plaintiffs: As shown in the attached list of Plaintiffs.

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Purpose of Claim

1. The defendant shall not execute the plaintiffs by hanging.
2. The defendant confirms that the plaintiffs are not obligated to accept the death penalty by hanging.
3. The defendant shall pay to the plaintiffs 11,000,000 yen each, plus interest at the rate of 3% per annum from the day after service of this suit.
4. The defendant shall bear the costs of the lawsuit, and a declaration of provisional execution is requested with respect to Paragraph 3.

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This case is a trial to determine the cruelty of executing a person by hanging.

I. Parties

1 Plaintiffs

(1) Plaintiff A

Plaintiff A (born August 1-4, 1954) was charged with murder and destruction and abandonment of a corpse. Plaintiff A (born on August 1, 1954) was convicted of murder and destruction or abandonment of a corpse. On March 30, 1998, the Osaka District Court sentenced plaintiff A to death. On March 15, 2001, the Osaka High Court dismissed plaintiff A's appeal and upheld the death sentence handed down in the first trial. On December 15, 2005, the First Petty Bench of the Supreme Court rejected plaintiff A's appeal, and the death sentence became final. Plaintiff A is currently being held in the Osaka Detention Center. A request for retrial is currently pending.

(2) Plaintiff B

Plaintiff B (born March 9, 1971)) was charged with murder, robbery, homicide, and other crimes. On January 20, 2002, the Ichinomiya Branch of the Nagoya District Court sentenced plaintiff B and his two alleged accomplices to death. B and his two accomplices were sentenced to death. On July 8, 2003, the Nagoya High Court dismissed the appeals of plaintiffs B and others, and upheld the death sentences. On January 30, 2007, the Third Petty Bench of the Supreme Court dismissed all appeals by plaintiffs B and others, and the death sentences became final. After the death sentence became final, plaintiff B was transferred to the Osaka Detention Center. A request for retrial is currently pending.

(3) Plaintiff C

Plaintiff C (born December 22, 1984) was charged with injury, violation of the Violent Acts Punishment Law, robbery, and murder. Plaintiff C (born on December 22, 1984) was convicted of assault, violation of the Violent Acts Punishment Law, robbery, murder, and other crimes. On May 22, 2007, the Osaka District Court sentenced only plaintiff C to death. On May 20, 2008, the Osaka High Court dismissed plaintiff C's appeal and maintained the death sentence. On March 25, 2011, the Second Petty Bench of the Supreme Court dismissed plaintiff C's appeal, and the death sentence became final. Plaintiff C is currently being held in the Osaka Detention Center.

2 Defendant

The Defendant is the Executioners who executes the death penalty against the Plaintiffs.

//. Procedure and Method of Execution

1 How is the Death Penalty Executed?

1 Appeal by the public prosecutor to direct the execution

Pursuant to Article 472 of the Code of Criminal Procedure, the head of the public prosecutor's office to which the public prosecutor who is to direct the execution of the sentence (hereinafter referred to as "prosecutor directing the execution") belongs shall, when the sentence of death becomes final, submit a written request for execution to the Minister of Justice, together with two copies of the criminal final case record and its written decision, and submit a request regarding execution (Rule 9 of Execution Administration Regulation - Kou-C1).

2 Death Penalty Execution Orders by the Minister of Justice

The Minister of Justice shall order the execution of the death penalty by the public prosecutor after reviewing the application for execution (Article 475, Paragraph 1 of the Code of Criminal Procedure).

3 Conduct of Execution of Death Penalty by Public Prosecutor

When the Minister of Justice orders the execution of the death penalty pursuant to Article 475, paragraph 1 of the Code of Criminal Procedure, the public prosecutor shall direct the warden of the penal institution to execute the death penalty by means of a written order (Rule 10-1 of Execution Administration Regulations – Kou-C1). The order of execution is issued within five days of the Minister of Justice's order (Article 476 of the Code of Criminal Procedure).

4 Execution of the death penalty

Upon receiving notification, the warden of the penal institution (detention director) notifies the inmate of the execution and executes the death penalty by hanging. Currently, the notification is made on the morning of the execution, two to three hours before the execution, and until then, the confirmed offender is not informed of the execution date.

2 Method of Execution of Death Penalty against the Condemned person

1 Provisions on Method of Execution of Death Penalty

(1) Provisions of the law

Article 11, Paragraph 1 of the Penal Code stipulates that "the death penalty shall be carried out by hanging in a penal institution," and Article 11, Paragraph 2 stipulates that "a person sentenced to death shall be detained in a penal institution until his execution. In addition to hanging, there are other methods of execution, such as electric or drug execution, but in Japan, hanging is the only method of execution, and there is no other choice.

There is no law that specifically defines how hanging is to be carried out, from its beginning to its end. Article 179 of the Act on Penal Detention Facilities and Treatment of Inmates (hereinafter referred to as the "Penal Detention Facilities Act"), which specifically defines part of the process, stipulates that

"When executing the death penalty, the noose shall be released after five minutes have elapsed since the death of the hanged person was confirmed. The death of the hanged person shall be confirmed after five minutes have elapsed. There are no other legal provisions.

(2) Provisions of the Dajokan Nunbunsho No. 65 of 1873

The Dajokan's Proclamation (Grand Council of State) No. 65 of 1873 (Kou-C2) is as follows (the original katakana has been converted to hiragana).

To Prefectures

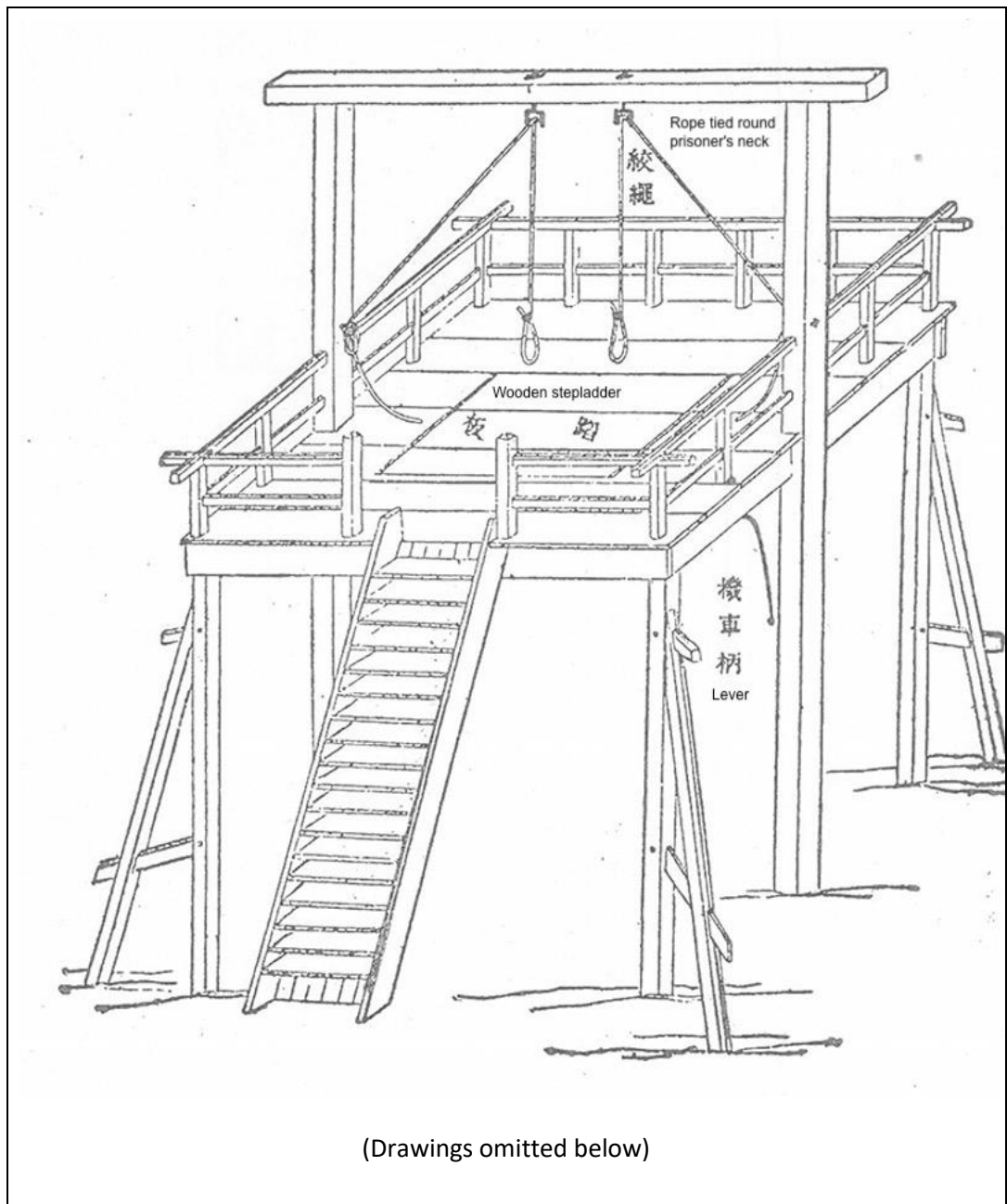
While the chart attached is being revised, each locality may manufacture the strangling instruments in accordance with the chart on the right.

The drawing of the strangling frame, 1/60th of the actual size

Although this drawing shows a structure for strangling two dead prisoners, it can also be used for the execution of three or more, and should be made in the same manner and painted with black ink.

To execute the strangulation, first bind the hands behind the back, cover the face with paper, and make the prisoner climb the stranglehold, then stand on the treadle, next bind the feet, next apply the strangling ropes to the neck and place them on the throat, then tighten the ropes by inserting the iron ring after the top, then grind the wheel handle, and suddenly open the treadle to release the prisoner, and hang him a foot off the ground, for about two minutes. After two minutes, the death is observed, and the prisoner is released.

(The words "strangulation" and the following are after the original drawing of the strangulation rack.)



The above figure is a "full drawing of the shibori". Other illustrations include a backside view of the treadle, a diagram of the machine wheel device, a plan of the treadle, and an abbreviated diagram of the noose.

The Dajokan's Proclamation above is said to have stipulated the "rooftop strangling rack," which was an imitation of English-style execution equipment. The condemned person (called "dead prisoner" in the Dajokan's proclamation No. 65 of 1873) was made to climb 17 flights of stairs, bind his feet, hang a noose from the ceiling around his neck, and hang his body in midair by opening a step board. The body was then suspended in mid-air.

The Dajokan Proclamation No. 65 of 1873 was issued about 150 years ago. With regard to its validity, the Supreme Court of Japan, about

The Supreme Court of Japan, in its decision of July 19, 1961, p. 1106 of the Penal Code, vol. 1, No. 5, No. 7 of the Penal Code. The Supreme Court, in its ruling of July 19, 1961, on the validity of the said proclamation, held that the said proclamation had the force and effect of law and that the "method of execution" of "hanging" under the said proclamation was still valid at the time of the said ruling. The court held that the said proclamation had the force of law and that the "method of execution" of "hanging" under the proclamation was still valid at the time of the judgment.

(3) There are no laws and regulations regarding the method of execution of hanging other than the Dajokan's Proclamation.

Article written by Supreme Court Research Officer Tadashi Kurita on the July 19, 1961 (Showa 36) Grand Court Decision is "*the Sentence of Death Penalty (Hanging) Violating Article 31 of the Constitution?*" (Jurist No. 232, August 15, 1961, p. 51, <Judicial Precedents of the Time>, Kou-C. 3) 3) and points out the following.

In the end, the 65th Decree is considered to be the basis for the method of execution of the hanging sentence, and there are no other special orders or notices (according to an inquiry to the Criminal Investigation Bureau and the Correction Bureau of the Ministry of Justice).

This point clearly shows that, in his investigation of the above Grand Court decision, Mr. Kurita inquired of the Criminal Investigation Bureau and the Correction Bureau of the Ministry of Justice as to whether or not there were any orders, notices, etc. concerning the hanging penalty, and found that there were no special orders, notices, etc. other than the said Dajokan proclamation. In the above paper, Mr. Kurita wrote, "It is truly strange that the basic matters concerning the execution of such a serious punishment as the death penalty are still based on an archaic Dajokan proclamation issued about a century ago. It is my earnest hope that legislation will be promptly enacted to meet the needs of the modern age" (Kou-C. 3, p. 55). Contrary to the wishes of the investigator Kurita, no law has ever been enacted to date regarding hanging.

(4) Summary

As described above, the Ministry of Justice states that the current specific method of execution of the hanging penalty under Article 11 of the Penal Code is based on the Dajokan Proclamation No. 65 of 1873 (Meiji 6).

2 Practice of Execution of Death Penalty

(1) Outline of the method of execution

The details of the method of execution have not been officially clarified, and nothing is clear as to how the death penalty is carried out, at least at the Osaka Detention Center. In books and other publications, it is generally said that the following order is used for executions.

- (1) On the day of execution, the death penalty is announced and the inmate is taken to the execution site.
- (2) In the execution chamber, the inmate will receive a final instruction and make a last will and testament.
- (3) The inmate is taken to the execution chamber, blindfolded and bound, a noose is placed around his/her neck, and he/she is made to stand on a step board.
- (4) The prison guard presses several buttons at once on cue, the floorboard opens, and the prisoners fall.
- (5) With the noose still around their necks, they are suspended in mid-air under the floor where the treads were.

The distance at which the body of the condemned falls at the time of (5) above is unknown. At the Tokyo Detention Center, the height from the footboard to the ground is set at 4 meters, but it is not at all clear whether it is the same at all penitentiaries, whether it varies from prison to prison, whether it is adjusted to be the same distance for all condemned persons, or whether it varies from executioner to executioner.

(2) Specific Scenes of Executions

The State has never revealed how hanged condemned persons were executed and how they died. The only way for the plaintiffs to learn about the reality of executions is through the writings of journalists who interviewed former prison wardens, former prison guards, prison chaplains, Ministry of Justice officials, and prosecutors who were present at the hanging ceremonies. One of them, Osamu Aoki, in his book "Death by Hanging" (Kou-D1), describes the scene of the execution as follows.

A man, flanked on both sides by prison guards, approaches the execution table. One of the two veteran prison guards waiting by the execution table

One of the two veteran prison guards, who was waiting by the execution table, thought to himself: "No matter how many times I've been involved in this job, I really don't like it. No matter how many times I've been involved in this, it's still a really unpleasant job."

As soon as the condemned prisoners were brought in and made to stand within the one-meter square border, one of the prison guards tied their legs with a white cloth, and now he himself had to quickly place a rope around their necks.

The white rope hanging from the ceiling is about two centimeters thick. Leather is wrapped around a round loop, and iron links are attached to the base of the loop. The rope is placed around the condemned man's neck, the iron links are placed tightly around the back of the neck, and the rope must be tightened. The rope must not be allowed to fall off due to the shock of a fall.

We carefully inspected and prepared the execution equipment from the day before. Perhaps feeling anxious about the execution, which could never go wrong, they even held a rehearsal to confirm each step of the execution procedure under the order of the detention center director, who had only been in office a short time. However, there were times when the condemned person suddenly resisted and went berserk.

Unforeseen circumstances can arise. That is why a veteran like myself was assigned to the task. Even so, my legs are shaking a little from the strain.

In all the executions this prison guard has been involved in, not a single inmate has gone berserk. Rather, they looked terrified, and without even a hint of resistance, they stood on the execution table and fell to the ground with a roar.

This time, too, the condemned stood quietly on the execution table. However, his entire body was shaking badly. Nevertheless, at about the same time that another prison guard tied his ankles, a rope was placed around his neck and an iron link was firmly fastened behind his neck. Everything was in accordance with the prescribed procedure. It probably took no more than a few minutes from the time the accordion curtains were opened and the man stepped into the penitentiary to this point.

Everything was ready. The prison guard quickly moved away from the execution table on which the man stood, checked once more to see the man standing in the center of the one-meter square border, and signaled to the room where the execution button was located.

Namu amida bumps."

At that moment, the prison guard heard a small, dry voice that was certain. The man's last words on earth. The chants of sutra chanting by the chaplain's priest echoed through the prison.

Push!

The low, sharp command of the prison guard in command broke the silence in the dimly lit small room. The lamp announcing the execution also turned a bright red. The prison guards, who had been towering against the wall, pressed the red button in front of them all at once. The young prison guard, who had reached the peak of his tension, also pressed the button selflessly. His mind was already blank.

Psshhhh.

Instantly, a sound like the escape of air rang in his ears. The floor of the execution table opened with a loud "bang!" and the man fell straight down. The pulley spun violently and the white rope creaked. The monks, who were chanting the last sutra loudly, heard the floor beneath the man's feet open up.

"Slam! The monks, who were chanting the last sutra in a loud voice, heard the violent sound of the floor under the man's feet opening.

(Kou-D1, pp. 28-30)

However, the eyes of the prosecutor, who was frowning at the warden's explanation, were drawn to a square hole in the center of the "stage" through the thick glass. A white rope was extending straight down through the center of the hole. I followed the faintly swaying end of the rope with my eyes and saw a man's body hanging limply from it. The execution was over in a flash.

In a dimly lit, concrete-lined room on the lower floor of the prison, the body of a man with a rope deeply embedded in his neck was floating in the air. A medical officer dressed in white stared up at him.

Both the veteran prison guard with the rope around the man's neck and the young prison guard who was selflessly pressing the button in front of him were staring up at the man who had given himself to them.

When the young prison guard finished his assigned task and came downstairs to his room, he saw the man's body clearly. A body floating in the air, swaying slightly. However, the young prison guard could not continue to look at it squarely and quickly looked away.

The neck was tightened at once with a powerful force, probably due to the compression of the hyoid bone, the tip of the tongue protruded from the man's mouth, and the front part of the body was twitching finely and repeatedly. The man's neck, which had been stretched out, looked oddly long. A small amount of liquid, perhaps drool or vomit, was trickling down from his mouth to his chin.

In the room downstairs, there was also a prison guard who was supposed to catch the man's body at the moment of execution. If the man's body was left to fall, it would recoil and bounce up and down, left and right. Therefore, they had to hold him at the right moment and stop his body from bouncing.

It is one of the most unpleasant roles in the execution.

The young prison guard had also heard such stories from his seniors. Before the execution, a veteran prison guard assigned to receive the prisoner said, "Please give me a break. I am old enough to have grandchildren now! The man's body was still twitching.

The man's body was still convulsing, but it gradually subsided. In some cases, feces and urine would be leaking from the lower half of his body. The drains at his feet are there to take care of that.

The distance from the man's toes, which are left hanging in the air, to the floor, which he never reaches, is about 30 centimeters. This was also the result of the veteran prison guards adjusting the length of the rope in advance, taking the man's height and other factors into consideration. Everything went according to their calculations.

Time seemed to be passing unusually slowly. One minute. Two minutes. Three minutes.

The medical officer began to take the pulse of the man hanging in the air. At that moment, the warden and the prosecutor, who had been watching the execution from the witness stand, also appeared in the room downstairs.

The prosecutor, who had come down to the basement, was urged by the warden, could clearly see the man floating in mid-air.

The man was floating in mid-air. He was a corpse that had almost stopped convulsing and was just hanging there.

He will probably lose consciousness momentarily.

The detention center chief emphasized this to the prosecutor at the witness stand.

The acceleration caused by the steep drop of several meters and the man's own weight. All of this is concentrated on the neck in an instant. The thyroid cartilage and hyoid bone, which can be broken even in a normal hanging suicide, are instantly shattered, the muscles supporting the neck are torn, and the seven cervical vertebrae are severed. At the same time, the cervical spinal cord, which connects the brain to the nerves of the body, is also severed. So, perhaps you should lose consciousness instantly - and so on.

But no one knows the truth. No one can be sure.

The medical officer was still taking the man's wrist and checking his pulse. The "average time" from when a condemned man falls to when his heart finally stops is roughly 13 to 15 minutes. The convulsions had already mostly subsided. But no one gathered in the downstairs room was willing to utter a word. The medical officer now holds a stethoscope to the man's chest and stares at his watch. The prison guard, the jailer, and the prosecutor can only continue to stare, breathless, at the man's body, the rope deeply embedded in his neck.

Cardiac arrest!"

Such a single word from the medical officer was a "end of life announcement". However, he still had to remain in this condition for another five minutes. The law demands "certain death".

After five minutes had elapsed, the prison guards, prompted by the medical officer, lowered the man's body, removed the ropes around his neck, and stripped him of his clothes. Immediately the autopsy began.

On his back. Lying down. Prone. The medical examiner checked every inch of the man's body, while the prosecutor silently stared at him. When it was over, the prosecutor and the detention center director would leave. The body was clean, but the thick scars on the neck were still vivid in the prosecutor's mind.

But the prison guards still have work to do. The prison guards were also responsible for irrigating the man's body, dressing him in white clothes, and placing him in a white wooden coffin. After all this work was done, the young prison guard placed a few flowers that he had prepared in advance into the coffin.

Finally, everything was over. The "solemn" but infinitely "depressing" process of execution was all over.

(Kou-D1, pp. 31-35)

In his book, Aoki describes the reasons for the above description as follows.

The scenes of executions presented at the beginning of this book are "average scenes" of executions reconstructed based on the testimony of many people who have been involved in executions, including several former detention directors, former prison guards, and prison chaplains who agreed to be interviewed by us, as well as Ministry of Justice officials and prosecutors.

Of course, all of the accounts have testimonials and factual support, and I could have enumerated the circumstances of executions that various witnesses were involved in at different times. I would have had to do so, rather, if it were a manuscript or an article that would have appeared in the newspapers of the news agencies to which I once belonged. However, there are several reasons why I dared to take this form of description.

As I spent long hours visiting prison guards and prison chaplains and listening to their testimonies, the scene of executions gradually crystallized in my mind. As I mentioned earlier, the anguish and hesitation of those who have no choice but to be directly involved in the state's work of capital punishment, even if it is carried out as part of their duties, stuck deeply in my mind and did not leave my heart.

I wanted to reproduce these images as realistically as possible and present them to the reader in a vivid form. Above all, I wanted to show the anguish and hesitation of those involved in the executions not as "other people's business," but as our own personal problems, and I wanted to show them to the readers in the most realistic way possible.

Another former prison guard told us that there was a problem with the floor of the execution table not opening because the prison guard who was executing the inmate hesitated to press the execution button. Many prisoners on death row are said to go to the execution table quietly and without resistance, but there have been cases in which prisoners have continued to resist the execution by exerting all their strength and going berserk. A former prison chaplain confided to us that there was a prison guard who raised his voice in strong protest after the execution, which was so heartless.

There is no way that the execution of a sentence that forcibly takes one life is not gruesome. Again, all those surrounding the "death penalty" stand in hesitation and anguish.

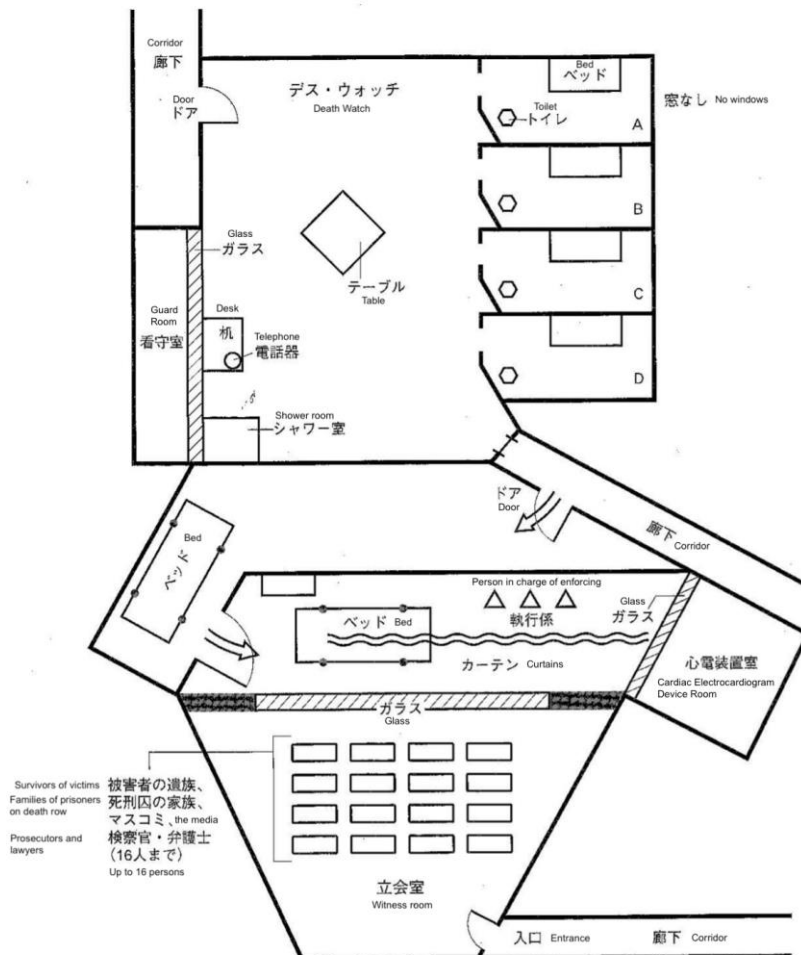
(Kou-D1, pp. 330-332)

3 Place of execution (execution site)

(1) Undisclosed location of the place of execution

Article 178, Paragraph 1 of the Penal Detention Facilities Law stipulates that "the death penalty shall be carried out in a penal institution. In Japan, seven execution sites have been established: Sapporo Prison, Miyagi Prison, Tokyo Detention Center, Nagoya Detention Center, Osaka Detention Center, Hiroshima Detention Center, and Fukuoka Detention Center.

In the United States, execution sites are open to the public in states such as South Carolina and North Carolina. For example, the following is a diagram of the execution site in North Carolina (Kou- C4: Report of the Japan Federation of Bar Associations on the Problem of the Death Penalty in the United States).



On the other hand, in Japan, Article 477, Paragraph 2 of the Penal Code stipulates that "only persons authorized by the public prosecutor or the warden of the penal institution may enter the place of execution" at the time of execution. No law prohibits public access to the place of execution except at the time of execution. However, execution sites have stubbornly remained closed to the public, with only a few exceptions as indicated in the table below.

1947 (Showa 22)	Asahi Graph reporter visits Hiroshima Prison and Nagoya Times reporter visits Nagoya Prison execution sites.
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1951 (Showa 26)	In the appeal trial of the Supreme Court on April 17, 1958 (a criminal trial in which lawyers such as Shoetsu Mukoe argued that the hanging penalty was cruel and unconstitutional), defense counsel, the warden of the Osaka Detention Center, and two expert witnesses were present to examine the execution site in the Osaka Detention Center.
1959 (Showa 34)	In the first trial of the Supreme Court on December 5, 1961 (a lawsuit by Shigetsu Mukae and others claiming that hanging was cruel and unconstitutional), the execution site in Miyagi Prison was inspected (the witnesses other than the three judges were unknown).
1961 (Showa 36)	Sun Doo-hachi, the condemned person himself, filed a lawsuit against the unconstitutionality of the death penalty, and as verification of the lawsuit, he personally inspected the execution site at the Osaka Detention Center where he is detained.
1967 (Showa 42)	Minister of Justice Isaji Tanaka accompanies a newspaper reporter on a tour of the newly completed Kosuge Prison (now the Tokyo Detention Center).
1998 (Heisei 10)	Minister of Justice Shozaburo Nakamura visits the execution site at the Tokyo Detention Center.
2003 (Heisei 15)	Minister of Justice Taizo Nozawa visits the new execution site at the Tokyo Detention Center with nine members of the House of Representatives Committee on Justice.
2007 (Heisei 19)	Eleven members of the House of Councillors' Legal Affairs Committee and 13 members of the House of Representatives' Legal Affairs Committee visited the execution site the following week.
2010 (Heisei 22)	Execution site at Tokyo Detention Center opened to the public at the direction of Justice Minister Keiko Chiba.

Except for the above limited examples, there is no information about where the execution site is located in each jail or other facility, what equipment is available for the execution of hangings, who uses it and how exactly the hangings are carried out, how the condemned person dies, how the condemned person is treated after death, and so on. No information regarding the process of killing is made public.

The Osaka Detention Center was rebuilt after 2010 (2010), after the second verification by the court mentioned above. The execution site was reconstructed. Since then, the execution site has never been inspected.

(2) Tokyo Detention Center's execution site open to the public

August 27, 2010 (Heisei 22), Keiko Chiba On August 27, 2010, at the direction of then Minister of Justice, the newly reconstructed execution site of the Tokyo Detention Center was opened to the press. The photos reported in the press are as follows (Kou-C5).



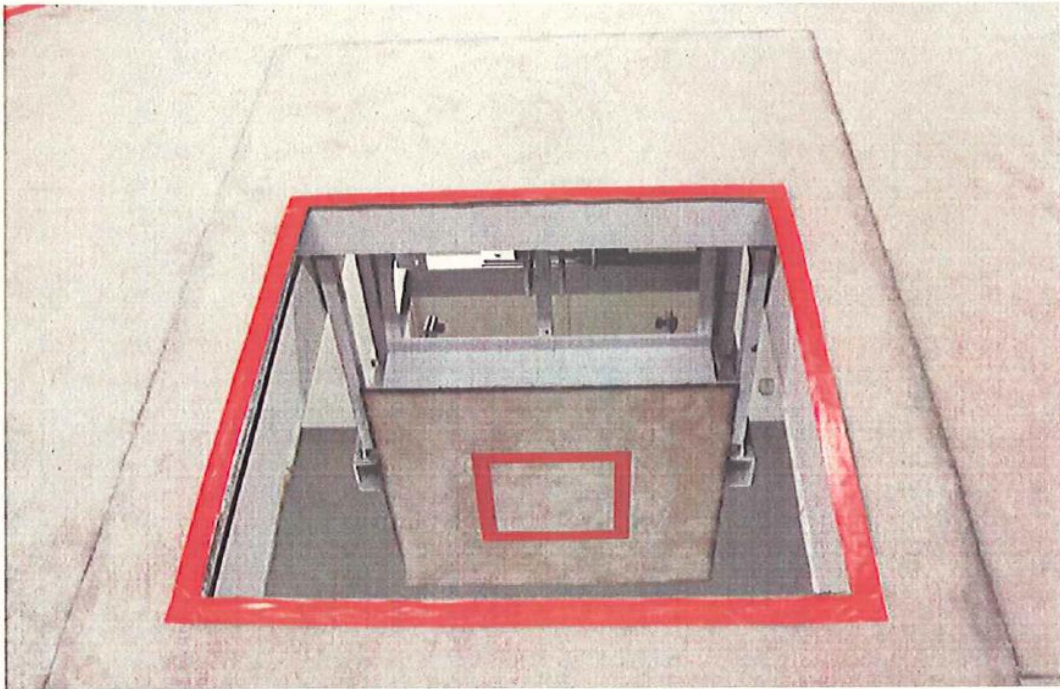
○ 前室から執行室を撮影したもの(カーテンを開けた状態)

○ Photograph of the execution chamber from the front room (with curtains open).



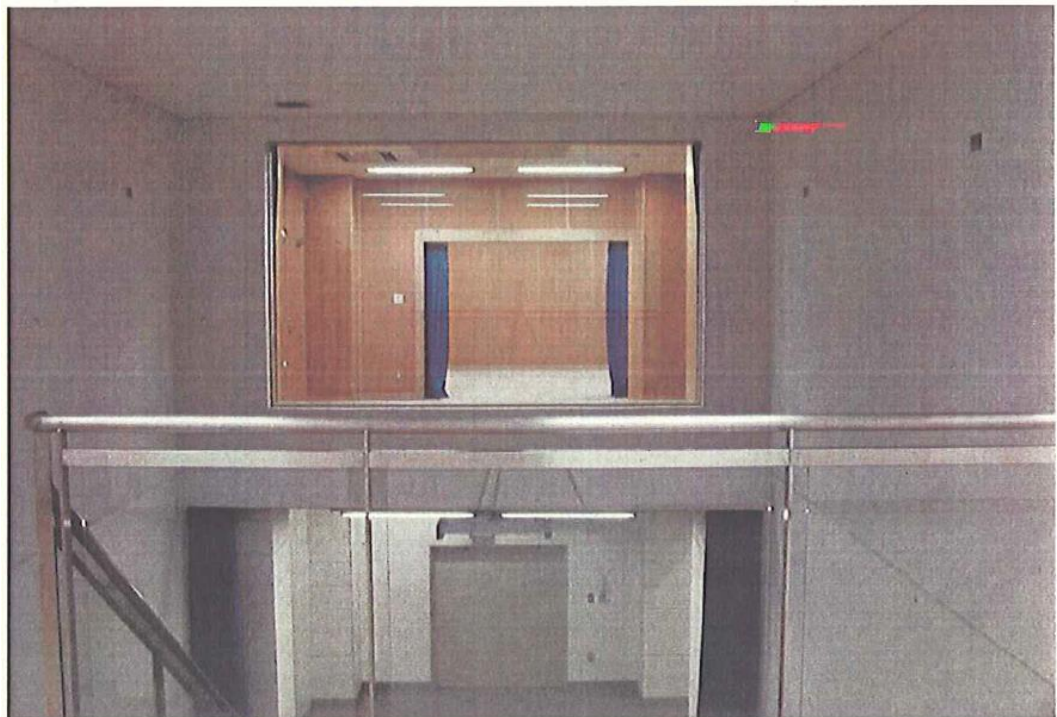
○ 踏み板を撮影したもの(閉めた状態)

○ Photographs of the treads (closed).



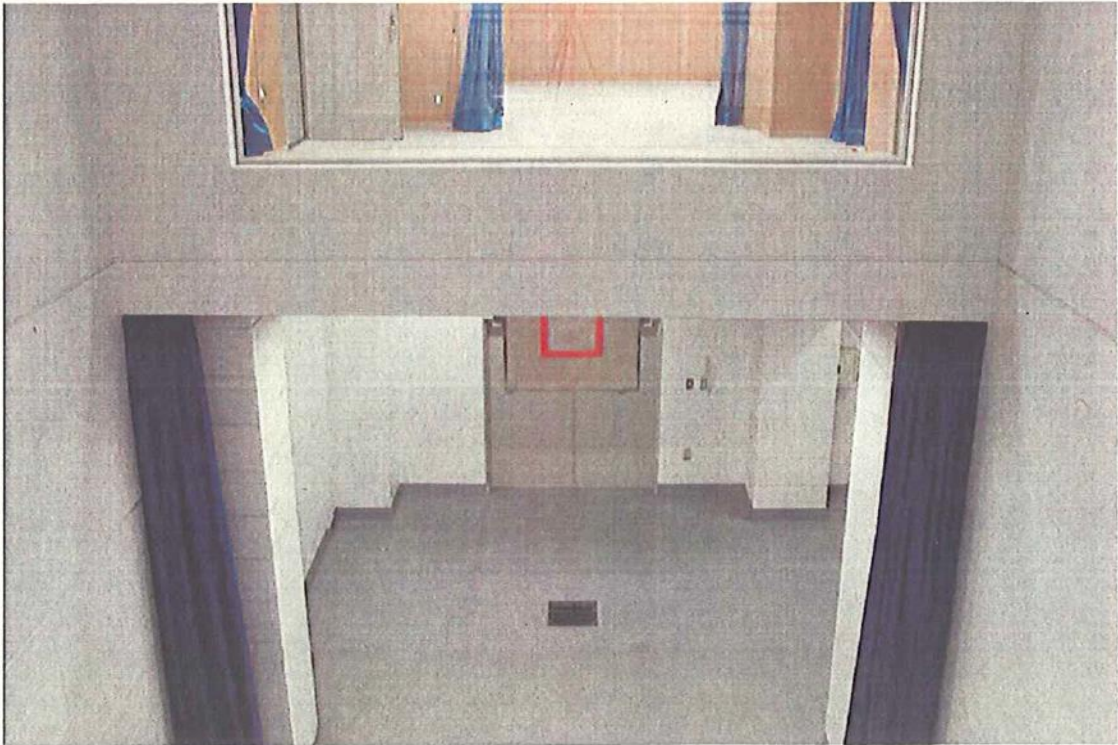
○ 踏み板を撮影したもの(開いた状態)

○ Photograph of the treads (in the open position).



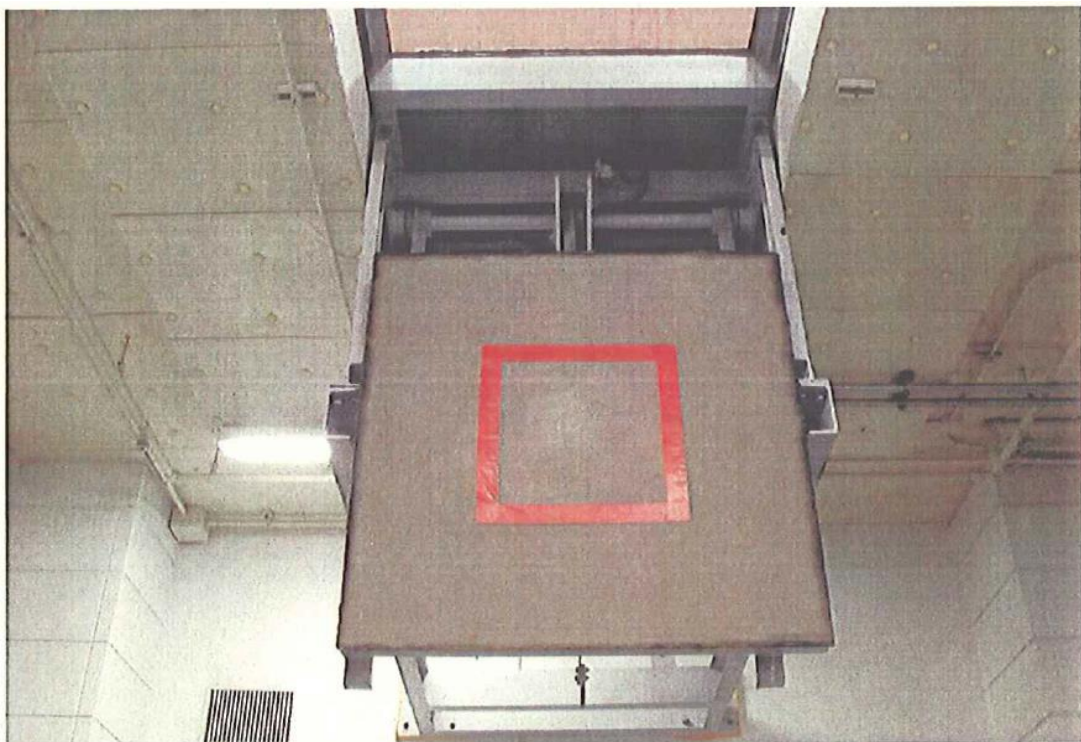
○ 立会室内から執行室を撮影したもの(踏み板を閉じた状態)

○ Photograph of the execution chamber taken from inside the witness room. (with the treads closed).



○ 立会室から執行室階下を撮影したもの

○ Photograph of the execution chamber downstairs from the witness room.



○ 執行室階下から開いた踏み板を撮影したもの

- Photo of an open tread from the execution room downstairs.

This disclosure was inadequate. The noose was removed at the time of the public presentation, and the noose itself, which was to be used, was not shown. The entire lower floor was not exposed, and it was not clear how far the hanged victim would fall when the treads were opened.

(3) Difference between the Dajokan's Proclamation and the actual situation as revealed in the government's response.

A Question by Councillor Mizuho Fukushima and the Government's Response

In response to the August 2010 disclosure of the execution site, a member of the House of Councilors, Mizuho Fukushima, submitted a written question to the government on October 25, 2010. Ms. Mizuho Fukushima, asked the government about the difference between the execution site at the Tokyo Detention Center and a map of the gallows shown in Dajokan Proclamation No 65 of 1873 (Meiji 6).

The following is a copy of the October 25, 2010 Written Opinion of Councilor Fukushima (Kou-B2-1) and his response to it. B2-1) and then-Prime Minister Naoto Kan's written response (Kou-B2-2) dated November 2 of the same year (hereafter referred to as the government's response).

Statement of Questions Concerning the Ministry of Justice's Opening of the Tokyo Detention Center's Penitentiary to the Press

On August 27 of this year, the Ministry of Justice opened the Tokyo Detention Center's prison to the press. This was the first time that the structure, etc. of the prison was officially revealed. We would like to ask the following questions regarding the doubts that arose as a result of this disclosure and matters that were not subject to disclosure.

- (i) *The shape, dimensions, etc. of the publicly disclosed penitentiary clearly differed from those shown on the full drawing of the gallows, etc. shown in the Dajokan's Proclamation No. 65 of 1873 ("Proclamation No. 65"). Is this recognition correct?*
- (ii) *According to the full drawing of the strangulation frame shown in the "Proclamation No. 65," the height from the footboard to the ground is 9 shaku (about 2.7 meters). On the other hand, the height from the step to the floor of the lower floor in the publicly disclosed penitentiary appears to be around 4 meters from the photos reported in the press. What is the exact height of the public prison?*
- (iii) *According to the Proclamation No. 65, it is stipulated that the hanged person shall be "suspended in the air for about a foot off the ground. In other words, the condemned person is dropped to a height of about 30 centimetres above the ground and suspended in mid-air. Is the same procedure used in the current executions at the various penitentiaries?*
- (iv) *If the current operation of executions at each penal institution is not in accordance with Decree No. 65, please explain the timing and details of the*

change and the reason for the change for each period in which the operation has been changed.

- (v) *In other countries, when executing the death penalty by hanging, the length of the noose is adjusted according to the weight of the person to be executed, and the distance from which the person is dropped is changed. This is because a short fall may cause the victim to suffocate while remaining conscious, prolonging the time until death, while a long fall may cause the victim's neck to be severed by the impact of the fall. Is the same practice used for executions in Japan?*
- (vi) *If such operation as indicated in (v) is carried out in our country, how exactly is it carried out? If so, how is it done? If so, what kind of table is used? If so, what is it and how long has it been in operation? If there was a trigger, please explain it.*
- (vii) *When the penitentiary was opened to the public this time, the lasso was not shown to the public. Are there any differences in the shape of the noose used in the Tokyo Detention Center from that stipulated in Proclamation No. 65? If so, please explain each of these differences in detail.*
- (viii) *In order to stimulate public debate on the death penalty, what kind of study group will be established under the leadership of Justice Minister Yanagida, and with what kind of members? Also, please indicate your future policy or concrete plans, such as whether you plan to open the prisons of detention facilities other than the Tokyo Detention Center to the public.*

The government's written response to the Cabinet decision is as follows.

Written answer to the question submitted by Mr. Mizuho Fukushima, a member of the House of Councillors, concerning the Ministry of Justice's decision to open the Tokyo Detention Center to the public (Kou- B2-2)

Regarding question (i)

The shape, dimensions, etc., can be different from those of the drawing of a wringing instrument (Dajokan Proclamation No. 65, 1873).

Regarding question (ii)

The length is approximately 4 meters.

Regarding question (iii) and (iv)

The hanging instruments in each execution site are designed to hang the hanged person by the dead weight of his/her body on the open-and-fall type treadle, and there is no difference in the operation of keeping the distance between the hanged person and the floor from that of the instrument of hanging. However, the distance between the hanged condemned person and the floor varies with each execution.

Regarding question (v) and (vi)

For each execution, the length of the noose is fixed to the length necessary to ensure the execution, taking into consideration the height and weight of the condemned person. There is no chart as requested.

(vii) Regarding the length of the lasso

Regarding question (vii)

The same applies except for the length of the noose. The length of the noose used at the Tokyo Detention Center is approximately 11 meters.

Regarding question (viii)

The Ministry of Justice has established an internal study group chaired by the Minister of Justice and composed of the Vice-Ministers of Justice, Parliamentary Secretaries of Justice, and officials from relevant departments within the Ministry of Justice.

There are no plans to open the prison to the public at this time.

In response to this response, Councilor Fukushima submitted an additional written question dated January 24, 2011 (Kou-B3-1). -1) dated January 24, 2011. It is as follows.

- (i) When and how did the differences between the current operation and the one in Decree No. 65 arise? For each period when the operation was changed, please explain the details and the reasons for the change. Also, under what authority and by what administrative rules were the changes implemented? Please explain for each period in which the change was made.
- (ii) According to Proclamation No. 65, it is possible to uniquely determine the fall distance of the person to be executed. On the other hand, "with respect to the distance between the hanged condemned person and the floor, it varies with each individual execution." and "With regard to the noose, for each execution, the length of the noose is fixed to the length necessary to ensure the execution, taking into consideration the height, weight, etc. of the executed person." The statement in the written answer that "the length of the rope is fixed for each execution, taking into consideration the height and weight of the inmate, etc., as well as the length necessary to ensure the execution of the death penalty. We would like to know the procedure for specifically determining the fall distance for each person to be executed and the method for calculating the fall distance.
- (iii) You answered that you currently determine the fall distance using a calculation method that differs from the one in the Proclamation No. 65. Please indicate the laws, ordinances, official directives, notices, and any other administrative regulations that form the basis for this method of determination.

- (iv) The length of the noose is fixed to the length necessary to ensure the execution, taking into consideration the height and weight of the inmate for each execution. The length of the rope is fixed to the length necessary to ensure the execution of each execution, taking into consideration the height and weight of the inmate. However, if the death penalty is to be carried out by strangulation of the neck and asphyxiation, it is considered sufficient to simply use the method described in the Proclamation No. 65, which is to keep the condemned person at a certain distance from the floor. For example, does the distance of the fall take into consideration the possibility of damage to the neck skeletal nerves and organs of the person to be executed due to the impact of the fall?
- (v) Under the leadership of the newly appointed Minister of Justice, Mr. Itsuki Eda, are there any plans to open six other prisons besides the Tokyo Detention Center to the public? Please indicate the Minister of Justice's policy and thoughts at this time.

Prime Minister Naoto Kan's response to this additional question on February 1, 2011 (Kou-B3-2) is as follows.

Regarding additional question (i)

As mentioned in the previous written answer (Cabinet Counselor No. 176-61 of November 2, 2010) regarding 3 and 4, each execution site has a mechanism to hang the condemned person by the dead weight of his/her body on the open-and-fall type treadle, and the operation of keeping a distance between the hanged condemned person and the floor is not different from that of the hanging instrument scheme (the Proclamation No. 65). The operation of the distance between the hanged condemned person and the floor is not different from that of the strangulation instrument (the Proclamation No. 65), and we do not believe that the operation was changed.

Regarding additional question (ii) to (iv)

In order to ensure the execution of the death penalty, it is necessary to place a distance between the hanged condemned person and the floor. Therefore, for each execution, the hanged rope is fixed to the necessary length at the penal institution where the death penalty is carried out, taking into consideration the height and weight of the condemned person, and the distance from which the condemned person falls is not determined.

Regarding additional question (v)

There are no plans to open the prison to the public at this time.

B What we can learn from the disclosure of the Tokyo Detention Center and the government's response to the questionnaire

As stated in the February 1, 2011 response, the government's view is that, although there are some differences from the strangling instrument shown in the Dajokan Proclamation No. 65 of 1873, there is no change in the mechanism of strangling by the dead weight of the condemned person's body and in the operation of keeping a distance between the hanged condemned person and the floor.

Even if the government "does not believe" that it has changed the operation, the publicly disclosed penitentiary and the government's answer above indicate that the current strangulation instrument at the Tokyo Detention Center differs in many respects from that stipulated in Dajokan Proclamation No. 65.

The current method of execution is not the rooftop elevated type as stipulated in Dajokan Proclamation No. 65, but the underground strangulation type, in which the rope is dropped from the floor of the execution chamber to the basement. In this method, a noose is lowered from the ceiling and placed around the neck of the executed person, and the body is dropped into the basement and suspended in mid-air when the footboard is removed. The "pull and climb the noose" that was in the Dajokan Proclamation No. 65 has been eliminated. The height from the step to the ground was 9 shaku (about 2.7 meters), but was now about 4 meters. The "structure to strangle two persons" was changed to a mechanism to hang only one person, and the length of the rope was changed from 2.5 shaku (approx. 7.6 m) to approx. 11 m. The length of the rope was changed from 2 lengths and 5 shaku (about 7.6 meters) to about 11 meters.

The specific method of execution of hangings carried out by different hanging instruments necessarily differs from the method stipulated in the Dajokan Proclamation No. 65. It can be inferred that the specifications of the execution site at the Osaka Detention Center and the specific method of execution also differ greatly from the instruments and methods stipulated in Dajokan Proclamation No. 65.

4 Problematic nature of non-disclosure of information on the death penalty

Thus, our country has made no attempt to reveal anything about where, how and by what procedure the executed person is killed. Information on executions has been kept thoroughly secret. The writer Kaoru Takamura accurately points out this problem in the afterword to the paperback edition of Osamu Aoki's book 'Death by Hanging' (Kou-D1), cited above, as follows.

Again, almost everything related to the operation of the death penalty is hidden in this country, with the only exception being the opening of the Tokyo Detention Center's penitentiary to the press in 2010 at the direction of the Minister of Justice. The only exception was in 2010, when the Tokyo Detention Center was opened to the press at the direction of the Minister of Justice, but even then there was no rope hanging from the neck of the condemned, and although there was a step board, only part of the underground space where the rope opens and the prisoner falls to the ground was open to the public. The reality of the death penalty remains shrouded in darkness, as does the actual process of hanging oneself to death with a noose around one's neck and what happens to one's body at that point. This is strange. Nowadays, photographs of the bodies of the victims are exposed to the judges for the purpose of jury trials, and if this is the case, photographs of the deaths must also be made available to those involved in the sentencing process. If photographs of the actual body are essential for an accurate understanding of the facts of the crime, then photographs of the actual body must also be essential for an accurate understanding of the death sentence. However, the fact that almost everything is hidden does not mean that there is no mystery about the death penalty or its operation. ... There is only the death row inmate awaiting death, the strict mechanisms and procedures for carrying out the death

penalty, the people involved, and the corpse...Nowhere is this more obvious than in the world of the death penalty.

(Kou-D1, pp. 355, 356)

There are two things about the death penalty in this country that need to be exposed in the light of day. One is the reality of the death sentences carried out behind the walls, and the other is the reality of the individual convicts who are hanged with the noose.

(Kou-D1, p. 359)

Capital punishment is by no means an abstract concept. There is an object called a treadmill, a pulley and a noose, a prisoner on death row with a noose around his neck, a prison guard who presses the execution button, and finally a corpse. In every way, it is a concrete activity in which human beings terminate human lives by human hands, and there are sounds and smells. The more one learns about such a place of execution and death, the more one is confused by the faces, voices, and breaths of the condemned in the visiting room, and it is natural for human beings to feel confused. It is natural for a human being to feel confused...to reject the idea of death in concrete terms, simply because it is a human being in front of us. From a perverse point of view, this is why the site of the death penalty is so carefully concealed. I believe that the judicial authorities know what would happen if the general public were to witness a death row inmate or the scene of an execution.

(Kou-D1, pp. 362-363)

III. Hanging - What it means to die by hanging

1 The reality of hanging has been hidden from the public.

The defendant, the State, has so far revealed almost nothing about the reality of hangings. In 2010, As mentioned above, only a small number of execution sites were shown to parliamentarians and the mass media. Even when the Tokyo Detention Center was opened to the public by order of the Minister of Justice, the Minister of Justice did not even disclose the noose used in the hanging process. In Japan, the death penalty has generally been kept a thoroughly secret. In particular, the circumstances of the execution of the hanged, the process that leads to the death of the condemned person, and the pain and physical damage caused to the condemned person were not made clear at all.

Therefore, in this complaint, the plaintiffs seek to clarify as much as possible from various evidences the mechanism and process of the death of the condemned person by hanging.

2 What is death by hanging?

Hanging is an execution method in which a noose (rope) is placed around the neck of a prisoner and he is killed by his own weight. Suicide by hanging appears to be similar in its external form, in which a suicide victim is killed by the weight of his or her own body after a noose is placed around his or her neck. However, the method of hanging currently used in Japan - the so-called long-drop method, in which the rope is dropped about 4 m at a stretch, and the method of hanging in which the distance of the drop is only a few tens of centimeters to 1 m - are different. The mechanism and manner of death differ greatly.

Dr. Ishibashi, an assistant professor of the Department of Forensic Medicine at Kyushu Imperial University, described in "Forensic Observation of Death Corpses (1)" and "Forensic Observation of Death Corpses (2)" (Kou-D2, Journal of Criminology, Vol. 9, Nos. 5 and 6) that the severe neck injuries seen in "death corpses" were caused by "suicide by hanging" and "non-stationary hanging". The severe neck injury seen in the "death corpse" was caused by the sudden fall of the heavy body at the same time of hanging, and the force exerted on the neck was much stronger than that of ordinary hanging death. So, what happens to the human body when a person commits suicide by hanging, which Dr. Ishibashi used as a comparison for hanging? The following photos are representative of "suicide by hanging".

<Photographs> (Kou-A1)

<Photographs> (Kou-A2)

<Photographs> (Kou-A4-3)

This photograph, which shows the "death" of a suicide victim by hanging, allows us to roughly imagine and understand what happens to the body of a hanged person when a more "extremely intense" force is applied almost instantaneously, only to the neck.

3 Mechanism of Death by Hanging

1 Expert opinion of Dr. Tanemoto Furuhata

In October 1952 (Showa 27), for the first time in a criminal trial in Japan, medical evidence was presented in the First Criminal Division of the Tokyo High Court of Appeals in a case against Matsushita Imasatoshi. The evidence was the written opinion of Dr. Taneki Furuhata dated October 27, 1952 (Kou-D3, hereinafter referred to as the "Furuhata opinion"). Prior to this, there were no cases, including the Supreme Court's 1948 decision and lower courts, in which medical or scientific evidence was examined as to how the execution of a hanged person causes death.

From a forensic perspective, Dr. Furuhata describes how hangings cause the death of the executed as follows

Therefore, when a person is suspended by weight with a rope around the neck (suicide), if the person weighs more than 20 kilograms, the left and right carotid

arteries and both vertebral arteries can be completely occluded, and the moment the person's weight acts on the neck, he or she will suffer a loss of consciousness. Therefore, it has become common knowledge in forensic medicine that routine suicide is the most painless and easy way to die.

< omission >

I believe that strangulation, when performed in the most ideal way, is superior to other methods in that it does not damage the corpse, does not cause pain to the condemned (except for mental anguish), and does not leave a sense of cruelty after death.

According to Furuhata's opinion, hanging is the most painless and easy way to die, with 1) instantaneous loss of consciousness, 2) no damage to the corpse, 3) the least pain, and 4) no lingering sense of cruelty after death.

Prior to the Tokyo High Court decision in which the Furuhata opinion was presented, on April 6, 1955, the Supreme Court, Grand Chamber Judgment, Penal Code, Vol. 9, No. 4, p. 663, stated that "The methods of execution currently employed in various countries include strangulation, beheading, shooting, electrokilling, and gas killing, etc., and although there is some criticism that each of these methods has its merits and demerits when compared with the others, there is no reason to believe that the hanging method currently employed in Japan is particularly cruel to humanity compared with other methods. Although there are some criticisms of the methods of execution currently employed in various countries, there is no reason to believe that the hanging method currently employed in Japan is particularly cruel from a humanitarian standpoint compared to the other methods. However, there is no evidence that the original trial or the first trial of the same decision examined the mechanism by which the execution of a hanged person leads to death. For a long time after that, there has been no examination of the medical evidence of the execution of a hanged man in Japanese criminal trials. Nevertheless, the Supreme Court's holding that "there is no reason to believe that the method of hanging used in Japan is particularly cruel to humanity compared to other methods" has been uncritically followed. However, it is now clear that the above 1, 2, 3 and 4 judgments of the Furuhata opinion are all erroneous.

2 Medical explanation of the mechanism of death by hanging

(1) Death by hanging

Dr. Walter Lovell ("Dr. Lovell") is a prominent Austrian forensic scientist who has served as Vice President of the Institute of Forensic Medicine at the Medical University of Innsbruck and President of the Austrian Society of Forensic Medicine. His work includes many years of research on the effects on the human body of suicide by hanging and execution by hanging.

In October 2011 (Heisei 23), Dr. Lovell testified at the trial of the so-called "Konohana Pachinko Parlor Arson Case" (Osaka District Court Decision on October 31, 2011, Kou-C6) in the Osaka District Court about the mechanism of death by hanging and the time required for death (Kou-D4). His testimony

provided medical and scientific evidence on how the execution of a hanged person leads to death. The mechanism of death by hanging is as follows.

- (1) A condition in which compression of the jugular vein prevents oxygen from reaching the brain
- (2) Obstruction of the pharynx, resulting in inability to breathe
- (3) Head disconnection
- (4) Vertebral fracture with injury or compression of the medulla oblongata
- (5) Acute cardiac arrest due to vagus nerve injury

(2) Five mechanisms leading to death by hanging

Dr. Lovell describes these five mechanisms leading to death as follows (Kou-D4). 1 to 5 listed in order of likelihood of actual occurrence.

- (1) When oxygen is not supplied to the brain due to compression of the jugular vein

When the body falls and the noose tightens, the jugular vein is compressed and blood flow in the neck area is stopped. Oxygenated blood is no longer supplied to the brain, and brain cells in a hypoxic state gradually die, resulting in brain death. Eventually, cardiac death occurs.

- (2) When breathing becomes impossible due to obstruction of the pharynx

The airway in the neck area is obstructed by the tightening of the noose caused by the fall of the body, making it impossible to breathe. The lungs are unable to take in oxygen, and although the blood flow does not stop, oxygen is not supplied to the brain, causing brain cells to gradually die, leading to brain death, and eventually cardiac death.

- (3) When head separation occurs

The impact of the fall causes the head and body to be severed at the neck. There are cases in which the head and torso are completely detached (total detachment) and cases in which the head and torso remain partially detached (partial detachment). In partial dissection, only part of the external surface of the neck (including the skin) is dissected (partial external dissection), or only the internal tissue is dissected (internal dissection), but not the external surface of the neck (skin). The reason why the internal tissues of the neck are sometimes severed but the skin remains intact is that of the tissues that make up the neck (skin, muscles, blood vessels, nerves, etc.), it is the skin that is most resistant to tensile forces. Dr. Lovell has confirmed this fact through experiments based on medical specimens.

If a blood vessel, especially an artery, is severed by partial dissection, blood flow to the brain is lost and death occurs by the same mechanism as in 1. If the trachea is severed, the mechanism is the same as in 2. At the same time, multiple tissues can be severed at the same time, in which case the 12 mechanisms compete. Some forensic scientists believe that a total dissection in an instant (as in a guillotine execution) leads to immediate death, while others believe that death occurs by the same mechanism as in 1.

(4) When Cervical Fractures Occur with Injury or Compression of the Medulla oblongata

The medulla oblongata is the part of the brain that controls central respiratory and circulatory functions. It is extremely vulnerable, and damage or compression of the medulla oblongata can result in cessation of function. In a drop hanging, the neck is the only part of the body that is subjected to the full weight and acceleration of the fall, which can result in cervical spine fractures. If the medulla oblongata is damaged or compressed by the impact of the fracture and ceases to function, the condemned person instantly loses consciousness, breathing and circulation cease, and oxygen cannot be drawn into the bloodstream, resulting in brain cell death and eventual cardiac death.

(5) When acute heart failure occurs due to vagus nerve injury

Acute heart failure can occur when the vagus nerve is damaged (severed) by the impact of a fall. When this happens, the heart stops beating, blood cannot go to the brain, and brain cells die. Eventually, the heart cells will also die.

3 Errors in the Furuhashi's Opinion

(1) "Instantaneous loss of consciousness" is not "the most painless and easy way to die"

According to Dr. Lovell, even if the blood flow in the four blood vessels in the neck could be completely stopped at the moment the rope strangled the subject after he fell, the subject would remain conscious for 5 to 8 seconds until the remaining oxygen in the brain was consumed. Therefore, even if the mechanism of death is as described in 1 above, the Furuhashi opinion that "the person loses consciousness instantaneously" is incorrect. The subject feels pain until he or she loses consciousness.

If the knot in the rope is shifted to the left or right instead of directly behind the neck, the blood vessel closer to the knot will be less constricted. The blood flow does not stop completely, and oxygen continues to be supplied to the brain. During this time, the condemned person remains conscious. During the execution of a hanging, a rope is placed around the neck of the condemned person by human hands, not by a machine. Therefore, it is possible that the ropes are not applied symmetrically (Kou-D5, p. 24 of Tsuchimoto's interrogation). In this case, the subject continues to feel pain for a longer period of time before losing consciousness.

When the subject is unable to breathe due to obstruction of the pharynx (2), it takes a long time before the subject loses consciousness. A normal person can remain conscious for 1 to 2 minutes, and a person who has been trained to hold his breath can remain conscious for 5 minutes. If the mechanism of death is 2, the subject will not lose consciousness instantly, but will remain conscious for about 5 minutes, depending on the person, during which time he or she will feel pain.

The case of head disconnection (3) does not always result in instantaneous loss of consciousness. As mentioned above, there is no academic consensus on whether or not a head disconnection causes instantaneous loss of consciousness. Whether or not a person loses consciousness depends on the degree of brain damage, but if the separation is not instantaneous or incomplete, the person may remain conscious as long as oxygen is supplied to the brain. During this time, the patient will feel pain.

In the case of a cervical fracture with injury or compression of the medulla oblongata (4), loss of consciousness may or may not occur almost instantaneously. If the spinal cord injury occurs high up in the body, close to the medulla oblongata, the loss of consciousness may be immediate. However, if the spinal cord injury occurs in the lower part of the body, general paralysis occurs, but consciousness is not lost immediately. Instantaneous loss of consciousness due to destruction of the medulla oblongata is extremely rare.

The case of acute heart failure due to vagus nerve injury (5) does not result in instantaneous loss of consciousness, but rather the patient remains conscious for approximately 10 to 12 seconds. Stimulation of the vagus nerve that causes immediate cardiac arrest occurs only rarely. Therefore, most cases of acute heart failure due to vagus nerve injury do not result in instantaneous loss of consciousness, but rather in a period of distress.

(2) Significant damage to the corpse

3. Head dismemberment causes significant damage to the corpse. Even if the head is not dismembered, the neck of the executed person is severely damaged by hanging.

In 1935, Dr. Ishibashi summarized and reported on autopsy cases of corpses after hanging in "Forensic Observations of Corpses on Death Row (1) (2)" (A.D.2). The Department of Forensic Medicine of Kyushu University School of Medicine dissected more than two dozen bodies executed by hanging. 1926 fire destroyed most of the specimens and records of the department. Dr. Ishibashi collected 11 cases whose records were preserved and 3 cases whose records were lost but whose preserved specimens showed changes in the cervical region.

Dr. Ishibashi found that the cervical organs of the executed corpse were different from those of ordinary hanging deaths, and were extensively torn, with fractures of the carapace cartilage and its upper horn, fractures of the greater hyoid bone, intramuscular separation and bleeding, lacerations or tears of the carotid artery lining, fractures of the cervical spine, etc." Dr. Ishibashi continued, as previously cited, "These changes were caused by the sudden fall of the heavy body at the same time as the strangulation, and the force acting on the neck was much more intense than in ordinary hanging deaths." The reports of all 14 cases are as described in Kou-D2, and the findings in the neck of Cases 7 and 9 are quoted below.

In case 7 (27-year-old male, height 164 cm, weight 51 kg)

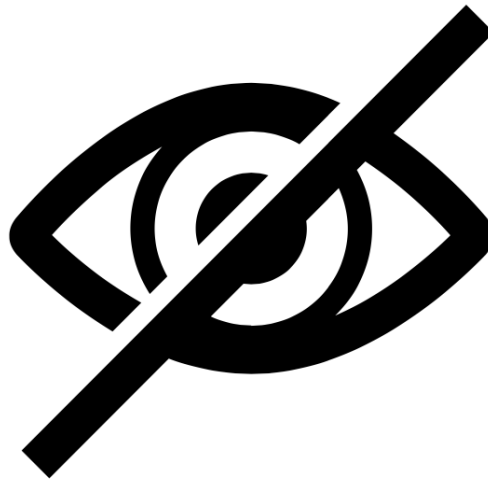
the cervical organs were completely dissected subcutaneously, the sternohyoid, hyoid, and median hyoid ligaments were all dissected vertically, and the larynx was also divided vertically below the epiglottis, creating a cavity measuring 6.0 cm in diameter from left to right and 2.5 cm from top to bottom. The upper end of the thyroid cartilage is separated from the larynx by the laryngeal ligament. The upper end of the thyroid cartilage was exposed, the superior horn of the thyroid cartilage and the greater horn of the hyoid bone were both fractured and crushed from the base, and there was hemorrhage between the surrounding tissues. At this level, there were several transverse lacerations measuring 0.2 cm and 0.5 cm in length on the internal carotid

artery on both sides, and a pigeon egg sized interstitium between the retropharyngeal collaterals.

In case 9 (53-year-old male, height 158 cm, weight 45.1 kg)

Cervical organs and tongue were pale with tooth marks. Cervical organs were almost completely ruptured with subcutaneous tissue remaining above the thyroid cartilage, and the sternohyoid, scapulothyroid, thyrohyoid, and medial thyrohyoid muscles were separated. The thyroid cartilage is broken down from the upper incision scar, forming a cavity with a diameter of 6.0 cm on the left and right, 2.5 cm vertically and horizontally, and 4.0 cm anteriorly and posteriorly. There was an intermuscular hemorrhage about the size of a fingernail above the sternocleidomastoid muscle on both sides, and an interstitial blood clot about the size of a fist between the posterior pharyngeal condyles.

These autopsy findings show that the neck organs were ruptured and the neck muscles were severed, although the neck skin was still connected. The above are autopsy photographs of the cervical region of a person who was hanged, but there are no autopsy photographs of a corpse by hanging. The autopsy photographs in the case of hanging are shown in Kou-A4-1. A representative sample is shown here.



A4-1

It is obvious from this photo that the muscles in the neck have been cut.

4 The mechanism leading to death is not predictable.

The mechanism of death by hanging is as described in (2) a. 1-5 above. It is important to note that the mechanism of death by hanging cannot be selected in advance, nor can it be predicted. There are too many variables that can affect the outcome, such as the weight of the condemned person, the length of the rope, the material and elasticity of the rope, the number of times it is used, the position of the knot in the rope, the size of the condemned person's neck, the strength of the internal tissues, muscle mass, and other physical characteristics. Therefore, no one knows what kind of pain will be caused to the executor until the actual execution is over. The executor himself will know, but the deceased executor will not be able to tell.

What is certain is that the Furuhata's Opinion that hanging is the most painless and easy way to die, with instantaneous loss of consciousness, no damage to the corpse, and no lingering sense of cruelty after death, is medically incorrect.

IV. Death Penalty and International Human Rights Law

1 Why International Human Rights?

1 The Purpose of this Petition and International Human Rights

This appeal shows that hanging as practiced in Japan constitutes "cruel, inhuman or degrading treatment or punishment" in violation of Article 7 of the Covenant on Civil Liberties, and that execution in violation of Article 7 constitutes "arbitrary deprivation of life" and a violation of Article 6(1) of the Covenant.

The court may think that the guarantee of human rights under Japan's domestic law is sufficient and that there is no need to bring up international human rights law, or that the court has the power to interpret domestic law and can therefore interpret human rights treaties on its own. First, we review why the concept of international human rights came into being. Then, the domestic validity and judicial normativity of the Covenant on Civil Liberties will be explained in detail.

2 The Need for International Human Rights Law

The concept of international human rights was born out of a painful reflection on World War II. Prior to World War II, human rights were a domestic (internal) affair of a sovereign state, and interference by another state in human rights violations within that state was not permitted as interference in internal affairs.

However, the totalitarian state that caused the unparalleled tragedy of World War II, a war that disregarded individual human rights, and the Holocaust (massacre of Jews) that occurred in Germany

during the war brought about a turning point in this thinking. In particular, the fact that the Jewish Holocaust was carried out legally under the Weimar Constitution, which was said to have the most extensive human rights provisions at the time, and the fact that countries were aware that the persecution of Jews had begun but continued to ignore it as a domestic problem had a major impact on the birth of the international human rights concept.

The fact that the Jews were persecuted as a domestic issue, even though they were aware of it, greatly influenced the birth of the international human rights concept.

Thus, from the painful reflection on the sacrifices made during World War II, the lesson that human rights and peace are inseparable and that in order to truly protect peace, human rights must not remain a domestic issue but must be protected internationally was shared by each nation.

The painful reflections on the sacrifices made during World War II led each country to share the lesson that human rights and peace are inseparable, and that to truly protect peace, human rights must not remain a domestic issue, but must be protected internationally. The United Nations, established after World War II, made human rights a matter of international concern by setting the securing of human rights as a goal and enshrining it in the UN Charter.

It is important to note here that international human rights were born out of the realization that human rights cannot be guaranteed by relying on national laws, and the need for international monitoring of the human rights situation in each country in order to effectively ensure human rights, and have functioned based on this principle to this day.

3 Birth of the Covenant on Civil Liberties

In 1948 (Showa 23), the United Nations adopted the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations. In 1966 (Showa 41), 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 in order to legally obligate states to ensure human rights. These two international human rights covenants entered into force 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 Convention on the Law of Treaties).

International human rights treaties are the most important international human rights instruments at the core of international human rights law, and together with the Universal Declaration of Human Rights form part of the Universal Bill of Human Rights. In particular, the Universal Declaration of Human Rights was a "declaration," while international human rights covenants are enacted as "legal norms" with legal force. In other words, the Covenant on Civil Liberties is binding on States Parties as a legal norm.

2 Interpretation of the Covenant on Civil Liberties

1 The Committee on the Covenant on Civil Liberties is responsible for the interpretation and clarification of the Covenant.

If the operation and interpretation of the Covenant on Civil Liberties were left to individual states after its entry into force, the purpose of making human rights an international concern and guaranteeing them internationally would be lost. Therefore, the Covenant established three systems as means of ensuring implementation: 1) the national reporting system (Articles 41 and 42 of the Covenant), 2) the individual reporting system (Optional Protocol I), and 3) the review of government reports (Article 40 of the Covenant). Furthermore, the Committee on Civil Liberties was established as the implementation mechanism of the Covenant, and was charged with monitoring the implementation of the Covenant and clarifying its contents (Article 40 of the Covenant).

The Covenant Committee monitors the implementation of the Covenant and clarifies the content of the Covenant, by deliberating on government reports submitted by each State Party through dialogue with the government, issuing summary findings, examining individual communications and issuing Views, and adopting interpretive guidelines for the Covenant called "General Comments" (Article 40(4) of the Covenant). The Committee monitors the implementation of the Covenant and clarifies its content by issuing "General Comments" (Article 40(4) of the Covenant). In the last 10 years from 2009 to 2019, the Committee received 1,245 individual reports and adopted 1178 opinions (as of January 2020) to interpret the Covenant. In addition, through the accumulation of cases of the individual reporting system, the Committee has issued and revised general opinions that provide guidelines for interpreting the articles.

2 Importance of the Committee's Interpretation of the Covenant

The Covenant Committee, as the implementing mechanism of the Covenant, has interpreted the Covenant through the publication of summary findings, the adoption of opinions in individual reporting cases, and so on. The Covenant Committee's adopted opinions "exhibit some important characteristics of judicial decisions.

These views were reached in a judicial spirit, including the impartiality and independence of the Commissioners, the thoughtful interpretation of the text of the Statute and the definitive character of their decisions" (Kou-E3: General Comment 33, para. 11).

The General Comments adopted by the Committee on Civil Liberties provide guidance on the interpretation of the Covenant through the review of government reports and the accumulation of thousands of cases of individual reporting over the years. The General Comments issued on the basis of the Summary Findings and Opinions have thus served as the most authoritative and important interpretive guide to the Covenant (Kou-E4, p. 20; A5, p. 697). This is also true for the International Court of Justice (ICJ), which, in its advisory opinion on the Palestine Wall, referred to the Covenant Committee's interpretation of the Covenant as "well-established practice" and cited its summary findings on Israel, and for the Diallo case, which stated that the Committee had built up its interpretation of the Covenant, particularly through its individual reporting system and general opinions. It is also clear from the fact that, in the Diallo case judgment, the Committee cited the views and general comments adopted by the Commission, stating that it "believes that great weight should be given to the interpretations adopted by this independent body specifically established to supervise the application of the Covenant", given that the Commission has built up its interpretations of the

Covenant, in particular through the individual reporting system and general comments (Kou-E5, p. 693 and Kou-5, p. 693).

The observations and general comments of the Covenant Committee 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, the international guarantee of human rights will be realized. Thus, the "General Comments" and "Views" of the Covenant Committee are the basis for the interpretation of the Covenant.

3 International Human Rights Law Norms on the Execution of the Death Penalty

1 Provisions of the Covenant on Civil Liberties

The Covenant on Civil Liberties is a treaty adopted by the UN General Assembly on December 16, 1966 and entered into force on March 23, 1976. Japan ratified the Covenant on June 21, 1979, and the Covenant entered into force on September 21 of the same year. The Covenant on Civil Liberties provides as follows.

Article 6 of the covenant on freedom of association

Article 6

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 of the Covenant on Civil Liberties

Article 7

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

The Covenant on Civil Liberties, as quoted above, guarantees every human being the right to life, prohibits arbitrary deprivation of life, and absolutely prohibits "cruel, inhuman or degrading treatment or punishment. Cruel punishment or treatment in violation of Article 7 immediately also constitutes 'arbitrary deprivation of life' prohibited by Article 6.

The Committee on Civil Liberties, which is responsible for interpreting the Covenant and clarifying its content, has established the criteria for "cruel, inhuman or degrading treatment or punishment" if it is not carried out "in a manner that causes as little physical and mental suffering as possible" through its review of general comments and individual reporting cases, as described in IV-2 to 6.

In all UN human rights bodies, including the Committee against Torture, the implementing body of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the UN Human Rights Council, the interpretation of Article 7 of the Covenant on Civil Liberties as given by the Committee on Civil Liberties is assumed.

2 Right to life/prohibition of arbitrary deprivation of life

Article 6(1) of the Covenant guarantees the "right to life," requires States Parties to establish the legal framework necessary to ensure the enjoyment of the right to life, and prohibits arbitrary deprivation of life.

This 'right to life' derives from human dignity (preamble to the Covenant on Civil Liberties) and is the basis of all human rights, and is the ultimate human right without which the guarantee of other rights would have no meaning.

Therefore, Article 6 of the Covenant is set forth at the beginning of Part III of the Covenant, which sets forth substantive rights. In its General Comment¹, which serves as a guideline for interpretation of the Covenant, the Committee on Civil Liberties has clarified that the right to life, as defined in Article 6 of the Covenant, is "the supreme right of the human being" whose effective protection is "a precondition for the enjoyment of all other human rights. (Kou-E1: General Comment 6, para. 1; Kou-E2: General Comment 36, para. 2). Article 4 of the Covenant permits a certain degree of restriction of human rights "in cases of public emergency threatening the survival of the people," but the human rights stipulated in Article 6 of the Covenant are non-derogable rights, even under emergency conditions (Article 4(2)).

3 Strict Limitations on the State's Authority to Apply and Execute the Death Penalty

(1) Direction to Abolish the Death Penalty

The Covenant on Civil Liberties, adopted in 1966, does not include a provision obligating States Parties to abolish the death penalty, but later, from the perspective of guaranteeing the right to life, the Second Optional Protocol to the Covenant (commonly referred to as the "Convention to Abolish the Death Penalty") was adopted in December 1989 at the 44th UN General Assembly (to which Japan is not a party). The Convention states at the outset that "Convinced that the abolition of the death

¹The Committee on Civil Liberties, which oversees the implementation of the Covenant, accumulates and develops interpretative jurisprudence of the Covenant through the adoption of "Views" in individual communications as a means of ensuring implementation, "Concluding observations" in the examination of government reports to monitor the implementation of the Covenant by each State Party, and other means. The General Comment is an official document adopted by the Covenant Committee that summarizes the interpretive jurisprudence of the Covenant and serves as an important guide to the interpretation of the Covenant. The General Comment is an official document adopted by the Covenant Committee that summarizes the interpretive jurisprudence and serves as an important guide for the interpretation of the Covenant.

penalty will contribute to the advancement of human dignity and the progressive development of human rights, ... (Convinced that all measures to abolish the death penalty should be regarded as progress in the enjoyment of the right to life, and desiring hereby to make an international commitment to abolish the death penalty," the Convention opens by stating that it is "convinced that the abolition of the death penalty will contribute to the enhancement of human dignity and the progressive development of human rights, noting that Article 6 of the [Covenant on Civil Liberties] mentions it in language that strongly suggests that its abolition is desirable. It is stated that States Parties to the Covenant that have abolished the death penalty by ratifying the Second Optional Protocol or otherwise are prohibited from reintroducing the death penalty and are not permitted to discard the Second Optional Protocol (Kou-E2: General Comment 36, para. 34).

In reality, there are states (including Japan) that have ratified the Covenant on Civil Liberties but have not ratified the Optional Protocol II to the Covenant and have in fact established the death penalty. Article 6(1) of the Covenant prohibits "arbitrary deprivation of life," and if there is a "non-arbitrary" deprivation of life, it would appear that the death penalty is permissible, albeit under strict requirements. However, according to the Committee on Civil Liberties, "the death penalty cannot be reconciled with full respect for the right to life, and its abolition is desirable and necessary for the extension of human dignity and the progressive development of human rights" (Kou-E2: General Comment 36, para. 50).

Therefore, while Article 6 of the Covenant permits "non-arbitrary" deprivation of life in paragraph 1, it also states in paragraph 6 that "nothing in this Article shall be used by any State Party to the present Covenant to delay or hinder the abolition of the death penalty," making it clear that the Covenant does not actively endorse the death penalty, but rather that "States Parties who have not yet completely abolished the death penalty are in a position to take the path which cannot be retraced towards the complete abolition of the death penalty in fact and in law in the foreseeable future". (Kou-E 2: General Comment 36, para. 50) On November 17, 2020, the UN General Assembly's Third Committee adopted a resolution calling for a moratorium on executions.

Based on the premise that the importance of the right to life necessitates the abolition of the death penalty, Article 6 of the Covenant imposes strict restrictions on states parties that currently have the death penalty, as described below, and requires that the deprivation of life (execution) by the state "shall be carried out only in very exceptional cases".

(2) Strict Limitations on the Application of the Death Penalty and Execution Authority

A. Article 6 of the Covenant on Civil Liberties in its entirety

The death penalty is a deprivation of life by the state. Therefore, while the Covenant does not obligate States Parties to abolish the death penalty, it imposes strict limits on the application of the death penalty and on the power of execution in countries where the death penalty exists (Article 6 of the Covenant).

Article 6(1) of the Covenant on Civil Liberties states that the "right to life" is the ultimate human right, the basis of all human rights, and that its effective protection is the "supreme right of human existence"

on which the enjoyment of all other human rights is based. The death penalty, which deprives a person of that right, is understood to be a last resort after other alternatives have been exhausted or deemed inadequate, and the application and execution of the death penalty in countries where the death penalty exists "must be interpreted as narrowly as possible" (Kou-E2: General Comment 36, paras. 12 and 33).

B. Article 6(2) of the Covenant on Civil Liberties

Article 6, paragraph 2, of the Covenant on Civil Liberties states that the penalty can be imposed "only for the most serious crimes" and can be enforced only by "a final judgment rendered by a competent court" "by a law in force at the time the crime was committed and not in conflict with the provisions of this Covenant and the Convention on the Prevention and Punishment of Crimes of Killing in Relation to Mass Killing.

The inherent incompatibility of the application of the death penalty in a statute guaranteeing the right to life requires that the requirements set forth in paragraph 2 be interpreted narrowly (Kou-E2: General Comment 36, paras. 33 and 35).

C. Article 6(4) of the Covenant on Civil Liberties

Article 6(4) of the Covenant guarantees the right to seek a special pardon or commutation of sentence for those who have been sentenced to death. The Covenant also guarantees the human right to avoid execution to the maximum extent possible.

D. Article 6(5) of the Covenant on Civil Liberties

Article 6(5) of the Covenant prohibits the imposition of the death penalty for crimes committed by persons under 18 years of age and the execution of the death penalty on pregnant women.

E. Prohibition of "arbitrary" application or execution of the death penalty

Article 6(1) of the Covenant prohibits "arbitrary deprivation of life". Article 6(1) of the Covenant, which states that execution is a "deprivation of life" by the state and must not be carried out "arbitrarily," is, along with Article 6(2), (4) and (5), a restriction on the right of States Parties to carry out executions.

The concept of "arbitrarily" has a very broad meaning, as follows:²

- (1) Violation of national law is "arbitrary"

² The Committee on Civil Liberties has stated that "deprivation of life is in principle arbitrary if it is contrary to international or national law. Even if the deprivation of life is provided for by national law, it can still be arbitrary. The concept of 'arbitrary' is not entirely synonymous with 'contrary to law' and must be interpreted more broadly to include elements such as unfairness, injustice, lack of foreseeability and lack of due process, as well as rationality, necessity and proportionality. (A-E2: General Opinion 36, para. 12).

Deprivation of life" that has no legal basis or is incompatible with other life-protecting laws and procedures is in principle "arbitrary".

For example, a death sentence issued after proceedings in violation of the Code of Criminal Procedure is illegal and arbitrary (Kou-E2: General Comment 36, para. 11). The execution of a person whose guilt has not been proven beyond a reasonable doubt also constitutes an arbitrary deprivation of life (Kou-E2: General Comment 36, para. 43).

(2) Violation of International Law is "Arbitrary"

Deprivation of life" is in principle "arbitrary" if it is incompatible with international or national law, and therefore it can be "arbitrary" in violation of international law even if it is in accordance with national law (Kou-E2: General Comment 36, para. 12).

For example, Article 7 of the Covenant on Civil Liberties prohibits "torture or cruel, inhuman or degrading treatment or punishment," and specific executions may violate Article 7. Failure to notify the date of execution is understood to be a violation of Article 7 of the Covenant, even if it is not a violation of Japan's domestic law. An execution in violation of Article 7 of the Covenant necessarily constitutes "arbitrary deprivation of life" and is also in violation of Article 6 of the Covenant (Kou-E2: General Comment 36, para. 40). Imposing the death penalty through a trial that does not meet the due process requirements of Article 14 of the Covenant would also be a violation of Article 14 and Article 6 of the Covenant.

(3) Violations of due process, such as impropriety and unfairness, are also "arbitrary."

Furthermore, the concept of arbitrariness must be interpreted broadly to include not only violations of national and international law, but also impropriety, injustice, predictability and lack of due process elements of law, as well as elements of reasonableness, necessity and proportionality. Deprivation of life," including the death penalty, must not be the last resort after other alternatives have been exhausted or deemed inadequate (Kou-E2: General Comment 36, para. 12).

4 Prohibition of cruel, inhuman or degrading treatment or punishment

The prohibition of torture or cruel, inhuman or degrading treatment or punishment was first addressed by the United Nations in the Universal Declaration of Human Rights in 1948, based on its reflection on torture and cruel treatment before and during World War II, and was then incorporated into the European Convention on Human Rights (entered into force in 1953) and the Covenant on Civil Liberties (1976).

Furthermore, in the face of the wanton and harsh repression of people by military dictatorships in some countries in the 1970s, on December 9, 1975, the UN General Assembly adopted the "Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Declaration considers any of these acts to be a "crime against human dignity" (Article 2). Subsequently, on December 10, 1984, the UN General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The "torture and other

cruel, inhuman or degrading treatment or punishment" prohibited by these conventions originated in Article 5 of the Universal Declaration of Human Rights, which is almost identical in text and meaning.

And like Article 6 of the Covenant, which guarantees the right to life, Article 7 of the Covenant guarantees the non-derogable right to life to all human beings, even in emergency situations.

The right guaranteed by Article 7 of the Covenant is a non-derogable right guaranteed to all human beings and cannot be restricted even in emergency situations (Article 4(2) of the Covenant). Therefore, any "cruel, inhuman or degrading punishment" would immediately constitute a violation of Article 7 of the Covenant without waiting for a weighing of competing interests.

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

1 Ratification (Acceptance) of the Covenant and Binding on the State

A treaty is accepted by its signatory states by agreeing to be bound by it (ratification). The ratification process of a treaty requires the approval of the Parliament (legislature) (Article 73, Item 3 of the Constitution). The review and approval of treaties by the Parliament, which is composed of representatives of the people, guarantees the democratic legitimacy of treaties domestically as well.

There are treaties that set forth the rules of international law regarding treaties, including their formation, validity, and methods of interpretation. The Vienna Convention on the Law of Treaties (hereinafter referred to as the "Vienna Convention").

The Preamble to the Vienna Convention affirms the principle that "agreements must be honored" as a universal fundamental principle, along with the principles of free and voluntary consent and good faith. This principle is an axiom of international law (Kou-E6, pp. 304-305).

Treaties that have entered into force are binding on the Parties in accordance with such basic principles, and the Parties are obliged to implement them in good faith (Article 26 of the Vienna Convention). Moreover, the domestic law of a State may not be used as a basis for avoiding treaty obligations (Article 27 of the Vienna Convention: Kou-E7: General Opinion 31, Paragraph 4). This is well established in international precedents, and the Permanent Court of International Justice (PCIJ) has stated that "it is certain that one cannot rely on one's own legislation to limit the scope of international obligations" (Kou-E6, p. 305).

2 State Binding Nature of the Covenant on Civil Liberties

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

Article 2(1) of the Covenant establishes that States Parties to the Covenant are obligated to "respect and ensure to all individuals within their territories" the rights set forth in the Covenant. In other words, States Parties to the Covenant have a legal obligation to ensure the realization of all human rights stipulated in the Covenant as soon as they become States Parties to the Covenant. This obligation must be fulfilled in good faith in accordance with the principles of Article 26 of the Covenant (Kou-E7: General Comment 31, para. 3).

The obligation to fulfill the obligations under the Covenant is not limited to the central government. The obligations of the Covenant are binding on States Parties as a whole (Article 2 in particular). That is, they are binding not only on the executive, but also on all public authorities, including the legislative, judicial and local authorities (Kou-E7: General Comment 31, para. 4). The courts are no exception.

Given the aforementioned system for ensuring the international implementation of the Covenant and the Japanese government's acceptance of that system, the interpretation of the Covenant must be based on international standards (the interpretation given by the Committee on Civil Liberties). It is not permissible for Japanese courts to ignore this and interpret the Covenant on their own.

3 The Covenant on Civil Liberties as Domestic Law in Japan

(1) Domestic Effect of the Covenant on Civil Liberties

Since Japan has ratified the Covenant on Civil Liberties, it is naturally bound by the Covenant as a state. However, the incorporation of treaties concluded by the government into domestic law is left to the constitutional provisions of each country.

In Japan, all substantive treaties require the approval of the Diet (Article 73, Item 3 of the Constitution), treaties that have been approved are automatically promulgated by the Emperor (Article 7, Item 1 of the Constitution), and the Constitution stipulates the obligation to comply with treaties and established international laws (Article 98, Paragraph 2 of the Constitution). Therefore, treaties are, in principle, accepted as domestic laws and have domestic legal effect immediately upon promulgation, without the need for special legislative measures (general acceptance method).

Therefore, the Covenant on Civil Liberties has domestic legal effect from the day it enters into force in a country after ratification. In contrast, the Covenant on Social Rights, like the right to social security benefits, requires budgetary measures and a legal basis for the realization of rights, and is interpreted as stipulating the obligation of the state to make best efforts to realize rights rather than granting specific rights to individuals (so-called "progressive implementation").

(2) Domestic Legal Status of the Covenant on Civil Liberties

The status of a treaty as a matter of domestic law basically depends on the position of the treaty and international law in the constitutions of each country. In the case of Japan, Article 98, Paragraph 2 of the Constitution stipulates that "treaties and established international laws shall be observed in good faith," which is interpreted to place treaties above general laws.

This is the prevailing view in constitutional law and the view of the Japanese government. This would logically mean that any domestic law below a law in violation of a treaty must be invalid or repealed.

(3) 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 it can be applied (realized) only after legislative or other measures are required, is discussed as an issue of direct applicability of the treaty (the phrases "automatic enforceability" or "self-executing" of a treaty are sometimes used with almost the same meaning as "direct applicability"). (In addition, the terms "automatic enforceability" and "self-executing" of a treaty are sometimes used with almost the same meaning as "direct applicability.")

The Covenant on Civil Liberties is directly applicable and has judicial normative character, with the exception of provisions such as Article 20(2) of the Covenant ("Impulses of national, racial or religious hatred which constitute incitement to discrimination, hostility or violence shall be prohibited by law"), which seem to impose an obligation on the legislature to enact laws (Kou-E8, p. 2), because the text itself regards individuals as the subject of rights.

Based on Article 40 of the Covenant, the Government of Japan also acknowledged the superiority of the Covenant over domestic laws and the direct applicability of the Covenant in the First Report of Japan submitted to the Committee on Civil Liberties on October 24, 1980, and in the reply by the representative of the Government at the Committee's examination at its 12th session (Kou-E8, page 2).

In Japan, treaties are not transformed into ordinary domestic law. In practice, however, treaties have generally been interpreted as forming part of the Japanese legal system and have been given corresponding force and effect. In other words, the administrative and judicial authorities have complied with and ensured compliance with the provisions of the Convention. Treaties are understood to have a higher status than national laws. This means that any domestic law found by a court to be inconsistent with the Convention must be nullified or amended. This would be very troublesome, so the government and the Diet would carefully examine in detail the treaties that are subject to ratification to ensure that there is no discrepancy between these treaties and existing domestic laws (A-E 9, p. 86).

(4) Direct applicability and superiority over law have been recognized in judicial decisions

The direct applicability of the Covenant on Civil Liberties and its superiority over law have been recognized in numerous court cases.

A. Court decisions directly applying the Covenant on Civil Liberties and finding it superior to the law

As cases in which the Covenant on Civil Liberties was directly applied and recognized the overriding effect of the law, the courts in the case of the State Claim for Compensation for Interference with Prisoners and the case of the Refusal to Seize Fingerprints held as follows.

Case of Claim for State Compensation for Obstruction of Access to Prisoners (Takamatsu High Court, November 25, 1997 (Heisei 9), HANREI JIHO No. 1653, p. 117; Tokushima District Court, March 15, 1996, HANREI JIHO No. 1597, p. 115; HANREI TA No. 997, p. 65)

“Article 98, paragraph 2 of the Constitution stipulates that “treaties concluded by the State of Japan and established international laws and regulations shall be faithfully observed,” which is understood to mean that in Japan, treaties are accepted as a form of national law upon ratification and promulgation and are applied to domestic legal relations without waiting for special legislative measures, and that treaties have superior effect to general laws. It is understood to provide that treaties have supremacy over general laws. However, not all of the treaties that Japan has concluded have this effect, and in cases where the treaties are merely declarations of general principles or political obligations that Japan has concluded, legislative measures to give concrete form to such principles or obligations are naturally necessary. The Covenant B is based on the fundamental right to liberty and the idea that such right should be enjoyed by all members of human society, and the form of the Covenant, which guarantees such right to individuals as subjects, cannot be understood as merely a declaration of abstract and general principles, and should therefore have direct effect as domestic law and superior force to law.”

Case of refusal of fingerprinting (Osaka High Court, October 28, 1994 (Heisei 6) judgment, HANREI JIHO No. 1513, p. 17)

“(The provisions of the Covenant are,) in principle, self-executing and directly applicable domestically, which means that domestic laws in conflict with the Covenant are denied their effect.”

- B. Supreme Court cases that referred to and supported the Covenant on Civil Liberties and found violations of laws and regulations.

The following cases are examples of cases in which the Supreme Court may have relied on international human rights law, including the Covenant on Civil Liberties, in reaching its unconstitutional decision.

Article 3 of the Nationality Law is unconstitutional (Supreme Court, June 4, 2008, Judgment, Civil Law Review Vol. 62, No. 6, p. 1367)

“... In other countries, it can be seen that the legal discriminatory treatment of illegitimate children is being eliminated, and the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, both of which Japan has ratified, contain provisions to the effect that a child shall not be subject to any discrimination on the basis of birth. Furthermore, after the establishment of the provision of Article 3, Paragraph 1 of the Nationality Law, many countries that had made the illegitimate child of a father who is a citizen of his own country a requirement for

acquiring nationality through paternity have amended their laws to allow a child to acquire his/her nationality only when paternity is established through acknowledgment, etc. In light of the above changes in the domestic and international social environment surrounding Japan, it has become difficult to find a rational connection between the above-mentioned legislative purpose and the requirement of acquiring Japanese nationality through notification after birth.”

In the above decision of the Supreme Court, the Court noted that the Covenant on Civil Liberties and the Convention on the Rights of the Child contain a provision that states that a child shall not be subject to any discrimination based on his or her birth, and also took into consideration the trends of legislative amendments in other countries.

Unconstitutional judgement on succession of child (born) outside of marriage (Supreme Court, September 4, 1925 (Heisei 25) Civil Law Review 67, Vol. 6, No. 1

“These treaties (the Covenant on Civil Liberties and the Convention on the Rights of the Child) provide that a child shall not be subject to any discrimination based on birth. In addition, the Committee on Civil Liberties, based on the former Convention, and the Committee on the Rights of the Child, based on the latter Convention, have been established as related organizations of the United Nations, and these committees are authorized to express opinions and make recommendations to the State Parties on the implementation status, etc. of the above conventions.

With regard to the implementation of the above conventions regarding children born out of wedlock in Japan, the Committee on Civil Liberties recommended the removal of discriminatory provisions regarding children born out of wedlock in a comprehensive manner in 1993, and since then, the above committees have repeatedly expressed their concerns and recommended amendments to the law, specifically regarding discriminatory provisions in nationality, family register, and inheritance, including this provision. The above-mentioned committees have repeatedly expressed their concerns and made recommendations for amendments to the law. Recently, in 2010, the Committee on the Rights of the Child reiterated its concern about the existence of the provision in question.”

In this case, the Supreme Court, referring to the opinions of the Committee on Civil Liberties and the Committee on the Rights of the Child, held that Article 900(4) of the Civil Code was unconstitutionally invalid in violation of Article 14 of the Constitution.

4 Summary

The Covenant on Civil Liberties has domestic legal force from the day it enters into force in a country after ratification. The Covenant also has supremacy over law and is recognized as a judicial norm.

Based on what has been said above about the validity of the Covenant, the next section will proceed to the argument that hanging violates the Covenant.

5 Violations of the Covenant on Civil Liberties

1 "Cruel, inhuman or degrading treatment or punishment" means

Article 7 of the Covenant on Civil Liberties (which is also almost identical and synonymous with Article 3 of the European Convention on Human Rights and Article 16 of the Convention against Torture) prohibits "cruel," "inhuman" and "degrading" treatment or punishment. Article 7 of the Covenant derives from the "human dignity" stipulated in the preamble of the Covenant, the purpose of which is to protect the dignity and physical and mental integrity of the individual (A10: General Comment 20, para. 1). Article 10 of the Covenant also requires States parties to treat all persons deprived of their liberty (including, of course, those who have been sentenced to death and are detained in penal institutions) "humanely and with respect for the inherent dignity of the human person," including the rights guaranteed in Article 7 of the Covenant.

Regarding the meaning of "cruel, inhuman or degrading" treatment or punishment in article 7 of the Covenant, the Committee stated that "the Committee has not drawn up a list of acts prohibited by the article and has not established a strict distinction between the different types of punishment, degrading treatment or punishment provided for in the article. The Covenant Committee has not drawn up a list of acts prohibited by the article and has not established strict distinctions between the different types of punishment or treatment provided for in the article. Those distinctions depend on the nature, purpose and extent of the treatment applied" (Kou-E10: General Comment 20, para. 4). They are not distinct acts, but are graded according to their intensity and degree of severity within the totality of the physical and mental infringement.

Cruel or inhuman punishment is the intentional infliction of great bodily or mental harm. The degree of intensity that constitutes "cruel" (cruel) or "inhuman" (inhuman) punishment "shall be determined on the basis of all the circumstances of the case, including duration, method, sex, age, and health of the victim. In such cases, even if there is no intention or purpose to demean the victim's character, the punishment may be "cruel" or "inhuman.

Degrading" or "degrading" treatment or punishment is considered a broader concept than "cruel" or "inhuman" treatment or punishment (e.g., the Tyler decision of the European Court of Human Rights). All "torture" is undoubtedly "cruel," "inhuman" and "degrading" treatment or punishment, and "cruel," "inhuman" or "degrading" treatment or punishment is not the same as "degrading" treatment or punishment. "Cruel" (cruel) or "inhuman" (inhuman) treatment or punishment generally causes severe physical or mental suffering, whereas "degrading" (degrading) punishment is highly subjective and humiliating or degrading to a person's status, position, reputation, or character. In addition, "treatment" is considered to be a broader concept than "punishment.

2 Criteria for "cruel, inhuman or degrading treatment or punishment

(1) Death penalty itself is a violation of Article 7 of the Covenant on Civil Liberties

The adoption of international legal instruments other than the Covenant on Civil Liberties that prohibit the imposition or execution of the death penalty, such as Protocol VI to the European Convention on Human Rights, the increase in the number of States Parties to the Second Optional Protocol to the

Covenant on Civil Liberties (90 countries), and the increase in the number of countries that have effectively suspended executions but have not abolished capital punishment indicate that significant progress is being made toward an agreement among the States Parties to the Covenant to treat capital punishment as a cruel, inhuman, or degrading form of punishment.

Committee on Civil Liberties General Comment 36 (Article 6 Right to Life)

51. Although the allusion to the conditions for application of the death penalty in article 6 (2) suggests that when drafting the Covenant, the States parties did not universally regard the death penalty as a cruel, inhuman or degrading punishment per se, 214 subsequent agreements by the States parties or subsequent practice establishing such agreements may ultimately lead to the conclusion that the death penalty is contrary to article 7 of the Covenant under all circumstances.²¹⁵ The increasing number of States parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, other international instruments prohibiting the imposition or carrying out of the death penalty, and the growing number of non-abolitionist States that have nonetheless introduced a de facto moratorium on the exercise of the death penalty, suggest that considerable progress may have been made towards establishing an agreement among the States parties to consider the death penalty as a cruel, inhuman or degrading form of punishment.²¹⁶ Such a legal development is consistent with the pro-abolitionist spirit of the Covenant, which manifests itself, inter alia, in the texts of article 6 (6) and the Second Optional Protocol.

(2) Execution methods that cause as little physical and emotional distress as possible

The Committee interprets Article 7 of the Covenant in light of the fact that countries where the death penalty remains in force are subject to strict limitations on the application of the death penalty and on the power of execution, and that the death penalty itself has been held to be a violation of Article 7 of the Covenant. The Committee strictly limits the method of execution in its General Comments and individual reporting cases, and determines whether the method of execution constitutes "cruel, inhuman or degrading treatment or punishment" based on all the circumstances of the case, including duration, method, sex, age and health of the victim, and the circumstances of the case. The court stated that whether or not the method of execution constitutes "cruel, inhuman or degrading treatment or punishment" is determined based on all the circumstances of the case, including duration, method, sex, age, and health of the victim, and if the method of execution is not carried out "in a manner that minimizes physical and mental suffering as much as possible," then the execution constitutes "cruel, inhuman or degrading treatment or punishment."

Committee on Civil Liberties General Comment 36 (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. Extreme delays in the implementation of a death penalty sentence that exceed any reasonable period of time necessary to exhaust all legal remedies may also entail the violation of article 7 of the Covenant, especially when the long time on death row exposes sentenced persons to harsh or stressful conditions, including solitary confinement, and when sentenced persons are particularly vulnerable due to factors such as age, health or mental state.

Committee on Civil Liberties General Comment 20 (Article 7 Torture and degrading treatment)

6. The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7. As the Committee has stated in its general comment No. 6 (16), article 6 of the Covenant refers generally to abolition of the death penalty in terms that strongly suggest that abolition is desirable. Moreover, when the death penalty is applied by a State party for the most serious crimes, it must not only be strictly limited in accordance with article 6 but it must be carried out in such a way as to cause the least possible physical and mental suffering.

Freedom of Copyright Statute Personal Notification Incident ³ Ng v. Canada Incident (CCPR/C/49/D/469/1991)

16.1 In determining whether, in a particular case, the imposition of capital punishment constitutes a violation of article 7, the Committee will have regard to the relevant personal factors regarding the author, the specific conditions of detention on death row, and whether the proposed method of execution is particularly abhorrent. In the instant case, it is contended that execution by gas asphyxiation is contrary to internationally accepted standards of humane treatment, and that it amounts to treatment in violation of article 7 of the Covenant.

³ The Covenant was established under the First Optional Protocol to the Covenant on Civil Liberties (adopted on December 16, 1966, but not ratified by Japan), which allows individuals who have suffered human rights violations to request a hearing and remedy directly from the Covenant Committee, the body that oversees the implementation of the Covenant. The Covenant Committee issues "Views" on whether or not a human rights violation has occurred.

The Committee begins by noting that whereas article 6, paragraph 2, allows for the imposition of the death penalty under certain limited circumstances, any method of execution provided for by law must be designed in such a way as to avoid conflict with article 7.

16.2 The Committee is aware that, by definition, every execution of a sentence of death may be considered to constitute cruel and inhuman treatment within the meaning of article 7 of the Covenant; on the other hand, article 6, paragraph 2, permits the imposition of capital punishment for the most serious crimes.

Nonetheless, the Committee reaffirms, as it did in its General Comment 20[44] on article 7 of the Covenant (CCPR/C/21/Add.3, paragraph 6) that, when imposing capital punishment, the execution of the sentence "... must be carried out in such a way as to cause the least possible physical and mental suffering". 16.3 In the present case, the author has provided detailed information that execution by gas asphyxiation may cause prolonged suffering and agony and does not result in death as swiftly as possible, as asphyxiation by cyanide gas may take over 10 minutes. The State party had the opportunity to refute these allegations on the facts; it has failed to do so. Rather, the State party has confined itself to arguing that in the absence of a norm of international law which expressly prohibits asphyxiation by cyanide gas, "it would be interfering to an unwarranted degree with the internal laws and practices of the United States to refuse to extradite a fugitive to face the possible imposition of the death penalty by cyanide gas asphyxiation".

16.4 In the instant case and on the basis of the information before it, the Committee concludes that execution by gas asphyxiation, should the death penalty be imposed on the author, would not meet the test of "least possible physical and mental suffering", and constitutes cruel and inhuman treatment, in violation of article 7 of the Covenant. Accordingly, Canada, which could reasonably foresee that Mr. Ng, if sentenced to death, would be executed in a way that amounts to a violation of article 7, failed to comply with its obligations under the Covenant, by extraditing Mr. Ng without having sought and received assurances that he would not be executed.

16.5 The Committee need not to pronounce itself on the compatibility, with article 7, of methods of execution other than that which is at issue in this case.

In addition, the United Nations adopted "Safeguards to ensure the protection of the rights of persons facing the death penalty" (May 25, 1984, Annex to UN Economic and Social Council Resolution 1984/50) (A E11), as follows.

9 Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

3 Hanging constitutes "cruel, inhuman or degrading treatment or punishment."

The Committee on Civil Liberties, established as the implementing body of the Covenant, has interpreted in its international implementation that executions violate Article 7 of the Covenant by constituting "cruel, inhuman or degrading treatment or punishment" unless they are "carried out in such a manner as to cause as little physical and mental suffering as possible" and that executions in violation of Article 7 also violate Article 6(1) of the Covenant as "arbitrary deprivation of life".

In light of this, UN human rights bodies such as the Committee against Torture and the UN Human Rights Council have also applied the international human rights standards (global standards) set forth by the Committee on Civil Liberties and held that hanging constitutes "cruel, inhuman or degrading treatment or punishment" under Article 7 of the Covenant.

(1) Examination of Japan's Report at the Committee against Torture⁴

The Committee against Torture is a UN human rights body established to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As noted above, "torture or other cruel, inhuman or degrading treatment or punishment" prohibited by the Convention against Torture is synonymous with Article 7 of the Covenant. The Convention specifically addresses the rights guaranteed by Article 7 of the Covenant, and the Committee against Torture monitors the implementation of the prohibition of "torture and other cruel, inhuman or degrading treatment or punishment" by States Parties to the Convention.

The review of Japan's report on the implementation of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment pointed out that the hanging sentences practiced in Japan are "cruel" and "inhumane" punishment, as follows.

The First Report of Japan submitted by the Government of Japan on December 20, 2005 contained the following reference to the cruelty of the death penalty (Kou-E12: Government Report).

145. The death penalty system in Japan is a punishment provided for in the Penal Code. It falls under the lawful sanctions referred to in paragraph 1 of Article 1 of the Convention and does not constitute the torture referred to in the Convention. Furthermore, hanging, presently practiced in Japan, is not considered to be inhumanly cruel compared to other methods, and does not fall under cruel, inhuman or degrading punishment.

⁴ Both the Covenant on Civil Liberties and the Committee against Torture require each State Party to submit reports on a regular basis in order to oversee implementation in each State Party. After the submission of a government report, the Committee convenes an examination of the report, which is followed by the submission of alternative reports by various NGO groups, including the Japan Federation of Bar Associations, and the adoption of "concluding observations," including recommendations.

The minutes of the 767th session of the Committee against Torture held on May 9 contain the following record (Kou-E13:CAT/C/SR.767).

40. Noting that Japan was a party to the International Covenant on Civil and Political Rights, which called on States to limit the crimes for which the death penalty could be imposed, he asked whether the Government had any plans to abolish the death penalty. He stressed that the matter should be kept constantly under review. He also expressed serious concern that, according to the report, execution by hanging was not considered inhuman in Japan.

The minutes of the 770th meeting held on May 10 contain the following record (Kou-E14: CAT/C/SR.770).

28. Mr. MATSUMOTO (Japan), having taken note of the Committee's concern that the death penalty was still in force in Japan, pointed out that hanging, which was the form of execution used in Japan, was not considered to be inhuman treatment in Japanese society and that it did not inflict any more physical or mental suffering than other existing execution methods.

52. The CHAIRPERSON welcomed the fruitful dialogue that had been started with the Japanese delegation on ways of ensuring better compliance with the provisions of the Convention against Torture. He regretted the – to say the least – expeditious reply given by the delegation to the question of hanging. Contrary to the assertions made, hanging was in fact cruel treatment within the meaning of the Convention. It was also difficult to accept references to public opinion as a justification for such a form of execution. It was well known that all countries which had abolished capital punishment had done so against the will of public opinion.

(2) Report of the Special Rapporteur at the UN Human Rights Council

The UN Human Rights Council is the UN human rights body established in 2006 as a subsidiary body of the General Assembly. The Council comprises 47 member states: 13 from Asia, 12 from Africa, 8 from Latin America, 6 from Eastern Europe, and 7 from Western Europe and Others. The functions of the Human Rights Council are: 1. to provide human rights education and learning, advisory services, technical assistance, and capacity building in consultation with and in agreement with Member States; 2. to provide a forum for dialogue on thematic issues of human rights; 3. to make recommendations to the General Assembly for the further development of international law in the field of human rights; 4. to promote full implementation of human rights obligations to which States have committed themselves and to provide protection for human rights arising from UN conferences and summits; 5.

Implementation of universal periodic review of States' human rights obligations and commitments; 6. Prevention of human rights violations and immediate response to human rights emergencies through dialogue and cooperation; 7. Inheritance of the role and responsibilities of the Human Rights Committee in the work of the Office of the High Commissioner for Human Rights (special procedures, appeals procedures, etc.); 8. work in the field of human rights in close cooperation with governments, regional organizations, national human rights institutions, and civil society; 9 preparation of recommendations on the promotion and protection of human rights; and 10 annual reports to the General Assembly.

The procedures for monitoring the human rights situation in each country are the Universal Periodic Review (UPR), the Special Procedures, and the Appeals Procedure. As of 2016, there were 43 thematic mandates and 14 country-specific mandates. In order to avoid politicization of the proceedings and to ensure impartiality, an independent human rights expert reports and makes recommendations on the human rights situation, including the implementation of human rights treaties.

The Special Rapporteur mandated under the theme "Torture and other cruel, inhuman or degrading treatment or punishment" reports on hanging as follows

(1) Special Rapporteur Juan E. Mendez (term 2010 to 2016)

The interim report of the Special Rapporteur Juan E. Mendez, submitted by the Secretary-General of the United Nations to the 67th session of the UN General Assembly on August 6, 2012, contains the following statement (Kou-E15)

33. The United Nations High Commissioner for Human Rights has suggested that hanging, as a matter of law, is contrary to article 7 of the Covenant. In 2007, the High Commissioner submitted an amicus curiae application to the Iraqi Supreme Criminal Tribunal because of the real risk that the method of execution would itself amount to inhuman or degrading treatment or punishment. Acknowledging that the prohibition of cruel, inhuman and degrading treatment was a core provision of international human rights law, the High Commissioner found that the executions (by hanging), were so flawed as to amount, in their implementation, to cruel, inhuman and degrading punishment.

(2) Special Rapporteur Nils Melzer (term 2016 to 2022)

On March 1, 2017, during a high-level panel discussion on the issue of the death penalty at the 34th session of the UN Human Rights Council, Special Rapporteur Nils Melzer made the following reference to hanging (Kou E16)

18. The Special Rapporteur also spoke of methods of execution that inflicted unnecessary mental or physical suffering or humiliation and had been found to violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. They included execution by stoning, gas asphyxiation, hanging, the electric chair, burning, live burial, decapitation, lethal injection (when untested and/or not administered properly) and any form of secret or public execution. In a 2015 report, the Secretary-General concluded that the death penalty was incompatible with human dignity, the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (see A/HRC/30/18, para. 55). He highlighted that many national courts had reached the same conclusion and noted that a number of states in the United States of America had abolished the death penalty because it constituted an extreme form of physical and psychological suffering that violated the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

4 Short Summary

As mentioned above, the Committee on Civil Liberties, established as the implementing body of the Covenant, has interpreted in its international implementation that executions, unless carried out "in such a manner as to cause the least possible physical and mental suffering," constitute "cruel, inhuman or degrading treatment or punishment" and thus violate Article 7 of the Covenant. Furthermore, the Committee interprets executions in violation of Article 7 of the Covenant as an "arbitrary deprivation of life" and a violation of Article 6(1) of the Covenant.

Based on this, UN human rights bodies such as the Committee against Torture and the UN Human Rights Council have applied the international human rights standards (global standards) set forth by the Committee on Civil Liberties and held that hanging constitutes "cruel, inhuman, or degrading treatment or punishment" under Article 7 of the Covenant.

6 Summary - Japan's Hanging Violates the Covenant on Civil Liberties

Human rights should be guaranteed universally regardless of country. To this end, human rights guarantees (interpretation) cannot be left to individual countries. Based on this common understanding of human rights, the international guarantee and implementation of human rights are stipulated in each of the human rights treaties. The Covenant on Civil Liberties was adopted to legally bind the parties to the Covenant, and Japan ratified the Covenant with the approval of the Parliament.

The Covenant is directly applicable under the Constitution of Japan in both letter and nature, and as a treaty, its legal status is superior to that of laws, and laws contrary to the Covenant must be nullified or interpreted in conformity therewith. It is well-established case law that laws contrary to the Covenant of Civil Liberties are to that extent denied validity.

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

Hanging as practiced in Japan is "cruel and inhumane" punishment and constitutes "degrading treatment or punishment", as described in detail below. Therefore, the hanging as practiced in Japan violates Article 7 of the Covenant, and furthermore, execution in violation of Article 7 constitutes "arbitrary deprivation of life" and a violation of Article 6(1) of the Covenant. As a contracting party, Japan (including its judicial power) is bound by the Covenant, and any provisions of its domestic law, the Penal Code, that violate the Covenant are invalid as a violation of the Convention.

V. The Brutality and Inhumanity of Japanese Hangings

1 Subjective and Objective Cruelty

There are two perspectives to the execution of a hanged person: subjective cruelty from the perspective of the person sentenced to death (the condemned person) and objective cruelty from the perspective of a third party. From both perspectives, cruelty and inhumanity can be questioned in two situations: during the execution process and after the execution.

First, subjective cruelty is recognized in the process of execution, as hanging causes great physical and mental suffering to the condemned person.

In addition, hanging causes serious damage to the condemned person's body. The hangings cause great physical and mental suffering to the enforcers.

Hanging also severely damages the body of the condemned person. The gruesomeness and horrific nature of the execution lays the foundation for objective cruelty. At the same time, the unwanted manner of death and post-mortem condition of the executed person also underlies subjective cruelty. The question here is whether such a manner of death or postmortem condition is inhumane to the person executed, whether it is degrading to the person executed, and whether it undermines his or her dignity as a human being.

In order to hold that the Japanese hanging does not constitute "cruel, inhuman or degrading punishment" prohibited by Article 7 of the Covenant, and therefore does not constitute arbitrary deprivation of life prohibited by Article 6, both the subjective and objective atrocities described above must be denied.

2 Standards of cruelty, inhumanity, and decency change over time.

As times and environments change, the way we think about, perceive and appreciate the dignity of 'how people die' changes. However, the Supreme Court's decision of March 12, 1948 (Showa 23) concluded that the death penalty is constitutional, but stated that "even in the case of the death penalty, if the method of execution is generally considered cruel from a humanitarian standpoint in the time and environment in which it is imposed, it must of course be considered cruel and inhumane" (underlined by the plaintiffs' counsel).

The cruelty and inhumanity of hanging in modern times must be judged from the perspective of human dignity and respect for the individual, which have changed dramatically with time and the environment, as stated by the Supreme Court 74 years ago, i.e., from a humanitarian perspective rooted in modern common sense and a sound and universal moral sense. Articles 6 and 7 of the Covenant on Civil Liberties are the most universal rules of our time, based on a moral sense of respect for the dignity of the individual. It is not surprising that the Supreme Court's decision of April 6, 1955 (Showa 30), which rejected the brutality of hanging, is evaluated differently today than it was in the past.

3 Changes in Execution Methods to Avoid Cruelty

1 Changes in Methods of Execution in Japan

(1) Study and Transition of Execution Methods in the Meiji Era

The method of execution in Japan has changed in line with the idea of reducing objective cruelty from a third-party perspective.

The Japanese Penal Code, enacted in 1742, had been followed since the Meiji era (1868-1912), but in the first year of Meiji, the "Provisional Penal Code" was created. The Provisional Penal Code stipulated six methods of execution: strangulation, beheading, gibbeted head, slaying, crucifixion, and burning.

In 1870 (Meiji 3), the new Code of Discipline established three types of death penalty: strangulation, beheading, and hanging. The new code of law stated that there were three types of death sentences: strangulation, beheading, and gibbeted head. The expression "strangle" emphasizes that it is a minimal means to end a person's life, and that the head and torso are not separated, meaning that the condemned person's body is not damaged.

Year	Criminal law	Method of Execution
1870 (Meiji 3)	Enactment and enforcement of the New Disciplinary Code	Strangulation, beheading, and gibbeted head (slaying, crucifixion and burning are abolished)

1873 (Meiji 6)	Enactment and enforcement of the Revised Ritsuryo Code	Strangulation, beheading, and gibbeted head (gibbeted head was abolished in 1879)
1882 (Meiji 15)	Enforcement of the old Penal Code	hanging execution
1980 (Meiji 41)	Enforcement of the current criminal law	hanging execution

For more information on this transition in the enforcement of the current Penal Code, see "A Study on the Transparency of Executions in Japan (1)" (Kou-F1-1) by Yusei Fuse.

(2) Abolition of the hanging tool in the New Ritual era

The hanging method of execution under the New Code of Penal Procedure was the strangling post. The prisoners were blindfolded and taken to the penitentiary, where they were made to lean their backs against the strangling post, the back of their neck was placed against a wooden pillow, the rope on the front of the strangling post was placed around their neck, which was then strangled by a weight on the back of the post, the body was suspended in midair and after three minutes death was confirmed and the body was taken down.

However, this method of execution was not suitable for practical use, and in 1872 (Meiji 5), there were cases of people being revived after execution, and many people called for its abolition on the grounds that it was "painful". In an inquiry to the Ministry of Justice, Kagoshima stated that the shape of the gallows was reminiscent of the crucifixion cross, which was abolished under the new Code of Discipline, and that "during the execution of a hanging, the abdomen of a prisoner whose life has not yet ended expands and his ears and nose bleed, which is more painful than beheading and equivalent to crucifixion" and called for the "abolition of the gallows" (A In 1872, the Ministry of Justice proposed to manufacture a new execution device imitating Western machines and to abolish the existing strangling post because of the long and painful process of ending a prisoner's life (Kou-F1-1, p. 74).

(3) Consolidation to hanging by abolition of the barbaric show and beheading

In July 1876, the Senate, established as a legislative body in 1875 (Meiji 8), unanimously passed the "Opinion that the Death Penalty be Stifled," which called for the abolition of "slaying" and "gibbeted head" as methods of execution. The reason given was that the "slaying" method was more gruesome than strangulation in two respects: the head and torso are cut off, and fresh blood flows from the body. The "gibbeted head" were even more gruesome than the "slaying" because the severed head was exposed to the public as an example of what was to come.

Since the Meiji government did not take any action, the Senate submitted another opinion on June 14, 1878 (Meiji 11) to only abolish gibbeted head. The revised law was adopted by proclamation of the Grand Council of State on January 4, 1879 (Meiji 12), and the gibbeted head practice was abolished.

As a result, hanging and beheading remained as methods of execution, and since beheading was also abolished under the old Penal Code that came into effect in 1882, the method of execution in Japan was unified into "hanging" (Kou-F1-1, pp. 72-74).

(4) Changes in enforcement methods aimed at avoiding objective cruelty

The beheading was abolished with the enactment of the old Penal Code. Boissonade, who was in charge of drafting the old penal code, stated in his Commentary on the Draft Penal Code, "In today's civilized world, the death penalty is a means of depriving a person of his life and making him suffer. The basic principle of the death penalty was to deprive a person of life, and the fastest and least painful means of execution was to be sought. It is not clear whether the death penalty is to be carried out by slashing or strangulation, but it is said that the strangulation method, which does not separate the body, was chosen for the utilitarian reason that the bereaved family would feel less resentment (Kou-F1-1, p. 77).

Boissonade judged the strangulation to be less brutal than the beheading, on the assumption that the strangulation would not cause head dismemberment when viewed by a third party. This was in accordance with the basic principle of choosing the least cruel method of execution.

The same understanding was expressed by Tsunetaro Ohno, Director General of the Criminal Affairs Bureau of the Ministry of Justice, at the 168th meeting of the House of Representatives Committee on Legal Affairs held on December 7, 2007.

The Penal Code promulgated on July 17, 1801 (Dajokan Nunbunsho No. 36, 1801), states that the death penalty was to be carried out only by hanging. The reason for the change to hanging as the sole method of execution is not necessarily clear, as it was a long time ago, but Boissonade, who was one of the committee members who compiled the Penal Code, gave the reason for the change to hanging only, or rather, the reason for the change to beheading only. There is a record that Boissonade, who was one of the members of the committee that compiled the Penal Code, explained that although there had been so-called beheadings before, hanging was less brutal than beheading.

(Kou- B1)

Boissonade not only explained that hanging is less brutal than beheading, but also added that "the subtlety of the power of the overpowering force or a chemical agent can stop the pulse, or a gas can cut off the habitat in an instant," and that if new methods of execution such as electricity, drugs, or gas were invented in the future, "these or the two types of beheading would be superior. If new methods of execution such as electricity, drugs, or gas were invented in the future, "they would be superior to these or to the two types of beheading. In other words, he was of the opinion that if a less cruel method than hanging was invented, the "least cruel method" should be used.

(5) Short summary

The method of execution in Japan changed in the early Meiji period in search of less cruel methods. The method of execution was mainly judged from the perspective of whether or not there was objective cruelty and the degree of cruelty from the perspective of a third party. In the Meiji era, hanging was chosen as a less cruel method of execution compared to earlier methods, and it has remained unchanged for the past 140 years.

2 Trends of Abolition of the Hanging Sentence in the United States

(1) History of the abolition of hanging

As mentioned above, Japan's former Penal Code went into effect in 1882. Under this law, the only method of execution of the death penalty in Japan was hanging, instead of "strangulation" and "beheaded".

In the United States, three years later, in 1885, the governor of New York told the state legislature that "the present mode of execution by hanging has existed since the Dark Ages, and it is to be asked whether present science can not provide a less brutal means of taking the life of a condemned man. In 1886, the New York State Legislature responded by creating the New York State Death Penalty Commission to "make an early investigation and report on the most humane and practical method of administering the death penalty in the light of modern science. The Commission's report was submitted to the State Legislature in 1888. The report is also known as the "Gerry Report" after the chairman of the Commission. The report prompted the State of New York to change the method of execution from hanging to electric execution in 1888. In the roughly 100 years between then and Delaware's abolition in 1986, hanging was abolished and replaced by other methods of execution. The situation of the abolition of the death penalty and the abolition of the hanging penalty in each states is as follows (Kou-G5-1, 2, Professor Furukawahara's written response (No. 1)).

Death Penalty Abolition States and Hanging

State	Year	
Wisconsin	1853	Abolished the death penalty when the state adopted hanging as a method of execution.
Maine	1887	Abolished the death penalty when the state retained hanging as a method of execution
Minnesota	1911	Abolished the death penalty when it retained hanging as a method of execution.

Michigan	1963	Abolished the death penalty when it retained hanging as a method of execution.
Iowa	1965	Abolished the death penalty when the state adopted hanging as a method of execution.
North Dakota	1973	Abolished the death penalty when the state adopted hanging as a method of execution.
Kansas	1977	Hanging has not been officially abolished as a method of execution, but there are no crimes for which the death penalty is endorsed in the state.
Washington	2018	Hanging had remained as one of the methods of execution, but a Supreme Court decision abolished the death penalty.
Alaska		Alaska has not had the death penalty since admission as a state.
Hawaii		Hawaii has not had the death penalty since it was admitted as a state.
Montana		Retains hanging as a method of execution, but no one has been hanged since the 1943 execution of Philip "Slim" Coleman, an African American man who confessed to killing a white woman.

(2) Reason for the change from hanging to electric execution

The Gerry Report assumed that the loss of life itself is the most serious loss a human being can suffer, and while "increasing the pain of death or increasing the loss in a way that makes a lawful execution more horrific is acceptable only if it has a deterrent effect," the deterrent effect of increasing pain and fear has not been proven. However, the deterrent effect of increasing pain and fear has not been proven. The court then concluded that the hanging penalty was contrary not only to the human spirit of the times, but also to the purpose of the law itself, because it increased the fear of death by causing the offender even more severe physical pain.

The Gerry Report cites 30 instances of hanging executions that it characterized as atrocious. The Gerry Report found 30 hangings to be objectively cruel, in a manner that makes legitimate executions more horrific, and in a way that increases the suffering of the executed by invading their bodies and damaging their flesh.

The electric chair and gas chamber methods of execution, which were adopted in the United States as more humane than hanging, were later replaced by lethal injection as a cruel and abnormal form of punishment. In addition, the use of lethal injections is now sometimes questioned as cruel.

3 Short Summary

In the United States, the selection and change of execution methods was based on the criteria of what is the least cruel method. The same was true in Japan, at least until the early Meiji period. The Japanese hangings were chosen as a less cruel method after the earlier methods of gibbeted head, slaying, crucifixion were abolished due to their objective cruelty and painfulness. Since then, Japan has not paid attention to what hangings do to the bodies and minds of the hanged, and whether there are less cruel methods.

The United States, on the other hand, has not only abolished hanging, but has also sought ways to reduce the physical injury and suffering of the condemned person. In some states, the death penalty itself has been abolished when hanging remains the method of execution.

4 Brutality and Indignity of Hanging

1 Report of the New York State Gerry Committee

(1) Proposed Electrocution as an Alternative to Hanging

The Gerry Report reviews past and current death penalty laws and 34 methods of execution (including hanging, firing squad, burning at the stake, Japanese harakiri, etc.), and offers criticism of the state's use of hanging at the time. The report concluded by proposing electrocution as an alternative to hanging. In response to this report, the state became the first in the world to adopt electrocution as a method of execution.

(2) 30 examples from the Gerry Report

The Gerry Report details the cruelty of hangings. The Gerry Report contains 30 cases. The following are quotations from some of the cases listed.

After the treadmill fell, he was shown several times in severe pain as he spasmed violently and spun around twice in constant agony.

(Execution of Samuel Mitchell, Kou-F2-2, p. 20)

The fall was nearly five feet, and the fall was so great that the man's head was severed by a strangling rope, and the ghastliness of it made those who witnessed it turn their faces away in awe.

(Execution of Nathan B. Sutton, Kou- F2-1, p. 24)

The 30 examples in the report describe the pain of the executor, the failure of the execution, and the reaction of the witnesses from a third party's objective perspective.

(3) Conclusion of the Gerry Report

The Gerry Report concluded that a change in the current method (hanging) was justified. "The deprivation of life is, in itself, the most serious loss suffered by any human being. Increasing that loss, even accidentally, in a way that makes the pain of death greater or the execution more terrible, is justified only on the basis of the argument that it has a deterrent effect", but that "it has been tried for many years without success" (Kou-F2-1, p. 37). The court decided that the execution of the death penalty should be limited to the mere taking of life, and that it should not be allowed to increase the agony of death.

He then noted that where the New York State Constitution at the time prohibited the imposition of "cruel and abnormal punishment," the hanging method of execution "may achieve the desired result, yet at the same time increases the fear of death by subjecting the offender to extra severe physical pain, in violation not only of the benevolent spirit of the times, but also of the content of the law. But at the same time, it is against not only the benevolent spirit of the times, but also the content of the law itself." (Kou-F2-1, p. 38), and proposed the electric chair as an alternative to hanging.

The Gerry Report objectively evaluated the cruelty and gruesomeness of the hanging method of execution from a third-party perspective and concluded that hanging is a cruel method of execution that causes extra severe physical pain to the condemned person.

2 Cases of head disarticulation

(1) Scientific experiments and medical findings

The mechanism of death by hanging of a executioner is described in detail in III-2-2 above. In any mechanism of death by hanging, some injury to the body occurs, but the most brutal and gruesome is the dismemberment of the head.

DVD (Kou-F3) is an experimental video of "hanging" using dummy dolls produced by the BBC (British Broadcasting Corporation). It is clear that under certain conditions, head dismemberment definitely occurs. In the case of human beings, unlike dummy dolls, the head itself is not severed because of the skin of the neck (including muscles), but there are cases in which the head is connected to the neck by a single piece of skin due to internal rupture. This can be understood from Dr. Ishibashi's paper mentioned above.

(2) Reported cases of head dismemberment abroad

The following are examples of head dismemberment resulting from hangings.

On May 1, 1942, Major Risenber, Robert James, was executed at San Quentin Prison in California, USA. Clinton Duffy, the prison warden at the time, wrote the following in his book "Death Row" (Sankei Publishing, 1978, original title "88 MEN AND 2 WOMEN", Kou-F4).

"Please share your thoughts on this death penalty."

One reporter asked.

"I wish everyone in California could have seen the execution. I wish everyone could have seen Risenber's face, his neck half torn off, his eyes popping out, his tongue hanging out, his legs swinging in the air, his urine, his defecation, his sweat, the smell of his blood. I wish everyone could have seen his legs swinging in the air, smelled his urine, his defecation, his sweat, his clotted blood."

Someone gasped, and one reporter murmured.

"You can't put that in print, sir."

"I know I can't do it. But if we could, it would be for everyone's benefit. It would help the people of the state to know exactly how their mandate was carried out. All the jurors who once voted for the death penalty, all the judges who once handed down sentences, all the legislators who helped pass the laws that forced us all to go through this painful ordeal, should be with me today."

I looked around at the circle of pale faces in front of me. I leaned further forward and said, "I'm sorry, but I'm not sure I'm going to be able to do this."

"This is how I feel, gentlemen. It was the most horrifying experience of my life, and I only pray to God that it will never happen again. I have nothing else to say."

(Kou-F4, pp. 14 and 15)

The example of Arthur Lucas at the Don Prison in Toronto, Canada, on December 11, 1962, is quoted in Japanese from "THE LAST TO DIE RONALD TURPIN, ARTHUR LUCAS, AND THE END OF CAPITAL PUNISHMENT IN CANADA" (ROBERT J.HOSHOWSKY, "THE LAST TO DIE RONALD TURPIN, ARTHUR LUCAS, AND THE END OF CAPITAL PUNISHMENT IN CANADA," DUNDURN 2007).

“At the same time that the hangman sprung the contraption and they fell to their deaths, the floor of the execution chamber fell beneath their feet with a deafening, shuddering sound that reverberated through the room. No one who witnessed the hanging would reveal what happened that night for many years. The newspapers of the time did not write everything. The hanging was botched. Turpin died cleanly, but Lucas's head was torn right off. Lucadius' head was hanging by only the tendons in his neck. Blood was spread all over the floor. The hangman had miscalculated Lucas's weight. What a way to die,” Everitt said many years later in an interview published shortly before his death.

..... (omitted)..... Everyone was shocked by the spray of blood, the horrific hemorrhaging, as if a water main had literally burst. The walls were sprayed with blood,” said Toronto police homicide detective Jim Crawford, who witnessed the hanging of Turpin and Lucas on that chilly December night.”

(Kou-F20, pp. 178-181)

The example of Barzan Ibrahim al-Tikriti, Saddam Hussein's half-brother in Baghdad, Iraq, on January 15, 2007, is cited from a report by New York Times reporter John Barnes (Kou-F18-1 & 2).

The Iraqi government released a limited video of the execution to show that Tikriti's head was not intentionally dismembered. Burns was one of the journalists shown the video by the Iraqi government. The following is a Japanese translation of an interview with Burns that was broadcast on CNN's Internet site in the United States.

The three-minute video is ... Brutal... As with any execution... Two frightened men... Two badly frightened men stand near the treadmill, dressed in Guantanamo camp-style orange jumpsuits. A black hood was pulled over their heads. The two men were... Mufamu Jihada (note: words were not clearly audible and unable to understand what they said.)... A prayer before death... There is no god but one god... And then he fell. And then he fell. Barzan Ibrahim al-Tikriti, the head of the secret police under Hussein and his half-brother, was eight feet (2.44 meters: note by defense lawyers) as determined.... When he fell that far... His head was torn off in an instant... The camera then... ...forward to look into the hole under the gallows... There he was lying on his face... "without his head... There was a pool of blood around his neck, his head was still in the black hood, and behind him... It was in a hole... What happened was that the Iraqi officials had tried very hard this time, and it was going well, but they seemed to have failed at the drop table and the hangman's call. This man of medium height was dropped too far and at too great a rate of fall. (A "fall chart" is a chart used to

determine the length of the rope and the distance to be dropped according to the weight of the hanged person.)

There are other cases of head dismemberment. The cases are listed in "Is Hanging a Cruel Punishment?" (Kou-F16). p. 54 is in Australia, p. 55 is in the United Kingdom, p. 58 is in the United States, and in many other countries around the world.

(3) Neck injury not resulting to head dissection

One example of incomplete head dismemberment is the case of Otowa Onozawa. The Yomiuri Shinbun of July 7, 1883, the day after the execution, reported the following:

"I have just heard that the death penalty was carried out at 8:30 a.m. yesterday at the Ichigaya Prison Station by order of Justice Ohki.... (omission)... The face was covered with Asakusa paper and bound in the back of the head. The body was pulled out to the execution site by a ladder, and a ladder was climbed up on the execution platform to enter the prison ... (omission) ... When the footboard of the platform was removed, Otowa's body was evenly hung around his neck, and he was fished down from a height of about one meter or more. When it was severed, blood gushed out in all directions, and within about five minutes he had completely lost his life."

(Kou-F5, Kou-F16, pp. 68~70)

The Tokyo Eiri Shinbun, dated the same day, also reported on the execution of Towa Onozawa as follows (Note by the plaintiffs' attorney: "Towa" is a misnomer for "Otowa").

"At 8:30 a.m. yesterday morning, Towa was sentenced to death at the Ichigaya Prison Station. The witness prosecutor, Mr. Tadazumi Nakagawa, the secretary, Mr. Shigetane Ichikawa, and other members of the prison staff stood in line and called Towa to the place of execution, as usual, and as they removed the treads to make him fall, the rope seemed to bite deeply into his throat due to his obesity and weight, and fresh blood gushed from his nose and throat, and he died without a trace. It was a very shameful sight. The body was dismembered a little while later. The lasso was cut with a knife and the body was placed directly into the coffin."

(Kou-F16, p. 71)

From these articles, we know that Otowa Onozawa's head was half torn off and fresh blood splattered from her nose, mouth, and throat as a result of the hanging. In accordance with the Dajokan (Grand Council of State) Proclamation No. 65, the hangings in Japan did not result in complete amputation, but in effect the head was separated from the body under the skin of the neck.

Keiko Horikawa describes what she heard from a chaplain who actually witnessed the hanging in her book "Chaplain" (Kou-F14) as follows.

"So, you will never be saved from failure. Because your neck will be cut. When you fall, the muscles in your neck are severed. It is the same as beheading.

(Even though it's a hanged head?)

It's a hangman's noose. The muscle breaks under its own weight. The muscle. The muscles inside are cut. That's why I would never survive the fall.

(If the neck is not torn off, but the muscle inside is cut?)

Yes. That's totally unrecognizable from the outside. It's just the moment of falling."

(Kou-F14, pp. 248, 249)

They say that hanging causes the muscles in the neck to break off, even if the neck is externally connected.

3 Other "Failures"

There have also been other instances of hangings that have failed, such as the rope breaking or the condemned person becoming dislodged from the rope when the condemned person is lowered to the ground. In these cases, there was a problem of re-executing the hanging (A F6).

4 Problematic cases of hangings in Japan and confidentiality of information

The revealed cases of head dismemberment and other problems resulting from hangings in Japan are all old. This is due to the fact era at which hangings were open to public was old. In the Meiji era, anyone with a permit could be present at the execution. Article 2 of the Supplementary Provision of the old Penal Code stipulated the secrecy of the death penalty, similar to Article 477, paragraph 2 of

the current Code of Criminal Procedure, but its application was flexible. At that time, newspaper reporters were allowed to observe executions, and general newspapers sometimes reported on executions. This continued until July 1908 (Meiji 41), just before the current Penal Code came into effect in October 1908, when the Director-General of the Bureau of Prisons of the Civil Penitentiary Bureau issued a letter stating that "strict control of the Penal Code should be exercised". The article quoted above was published against this background.

It was after the Showa period, based on the "Report of the Investigation into the Execution of Sentences (I)" (drafted from 1923 to 1924), that the hanging penalty was completely closed to the public.

5 Sub-summary – the atrocity nature of execution by hanging

What we have revealed so far in photographs, words, and images is the reality of hanging, and what can actually happen to an condemned person's body. Hanging invades the body of the hanged person and mutilates him or her. It is cruel and unbearable to watch. The pain of the condemned person's death is unbearable to imagine. It is shocking to anyone with normal human emotions. Hanging is cruel and brutal.

5 Subjective Cruelty to the Condemned person

1 How death is caused by the execution of the hangman's noose

As discussed in detail in III-3-2-(2), Dr. Lovell explained that there are five mechanisms leading to death by hanging (Kou-D4).

- (1) A condition in which compression of the jugular vein prevents oxygen from reaching the brain
- (2) Obstruction of the pharynx, resulting in inability to breathe
- (3) Head disconnection
- (4) Vertebral fracture with injury or compression of the medulla oblongata
- (5) Acute cardiac arrest due to vagus nerve injury

In each of the five mechanisms of death by hanging, what kind of physical pain does the condemned person suffer? The following is a detailed explanation.

2 Condemned person's suffering in light of the mechanism of death by hanging

- (1) When the brain is deprived of oxygen due to compression of the jugular vein

According to Dr. Lovell, even when the blood flow through the four large blood vessels that pass through the neck is completely stopped by hanging, the person remains conscious for 5 to 8 seconds

before the oxygen in the brain is consumed. During this time, the person continues to feel pain. When oxygen in the brain is depleted, the person feels a headache. This is considered to be the same symptom as that of so-called altitude sickness.

In 1948, Rossen et al. conducted experiments on healthy young test subjects to see how long they could remain conscious after blood flow to the brain was completely stopped. The results showed that most of the subjects lost consciousness 5 to 8 seconds after the blood flow was stopped. When resuscitation was performed immediately afterwards, many of them complained of headache after regaining consciousness (Kou-F8).

The Rossen et al. experiment, however, was conducted with the subjects seated in chairs and with a prearranged device to ensure that their necks were evenly squeezed. In actual hanging, the blood flow may not be completely stopped in many cases because the condemned person resists the noose when it is placed around the neck, or because the rope is not applied evenly due to inexperience of the condemned person, for example. In such cases, blood flow to the brain, or oxygen supply, will continue to some extent, which means that the subject will remain conscious and continue to feel pain. According to the opinions of the Death Penalty Information Center in the U.S. based on several literatures, when death by hanging does not result in instantaneous death and the asphyxiation continues, the condemned person's face becomes bloodshot, the tongue protrudes, both eyeballs protrude, defecation occurs, and violent movements of the extremities occur (Kou-F21). If the veins on the outside of the neck are compressed but the arteries near the center of the neck are not compressed enough, blood will continue to flow to the head for a period of time but will not circulate. Blood pressure above the neck increases, causing bleeding from weak vessels such as capillaries and injured areas. This is the reason why fundus haemorrhage is often observed in suicides committed by hanging, and the same is thought to occur in the case of hanging. The subject will feel pain from the rope rubbing against his neck and pain in his brain from the lack of oxygen, in addition to the severe pain from the fall, which causes the full weight and acceleration of gravity to be instantly applied only to his neck.

(2) When obstruction of the pharynx makes it impossible to breathe

If only pharyngeal obstruction occurs, it takes tens of seconds to several minutes for oxygen to be consumed in the brain. During this time, the person remains conscious and continues to experience physical pain. In addition to the physical pain caused by asphyxiation as described in (1) above, fear of asphyxiation (mental pain) occurs. This fear can be experienced by even those who are not the condemned person by diving into the water or holding the nose and mouth. As an eyewitness to the execution of a hanging described that "I could see the condemned person's heart was moving and pounding", "his chest was greatly puffed up" and "he was moving his legs like a dancer" (Kou- F10, description by lawyer (former prison guard) Yoshikuni Noguchi). It is thought that the movements were made in an attempt to suck in air since the victim was unable to breathe. If death by hanging were caused solely by asphyxiation, it would take several minutes for the victim to lose consciousness,

and then several minutes for the victim to go from cardiopulmonary arrest to death. The condemned person may suffer during this time.

(3) In case of head dissection

When the entire head is severed, the pain of receiving the impact of the fall on the neck is followed by the pain of having all the bones, muscles, blood vessels, nerves, epidermis, etc. inside the neck torn away. This pain is considered to be unimaginably painful because, unlike instantaneous amputation with a metal blade such as a guillotine, the force of the fall and the traction of the body's own weight pull on the tissues and tear them apart. Moreover, the entire separation may not occur instantaneously following the fall, but may take several seconds. In such a case, massive haemorrhaging is expected to occur from the area of the neck that was almost torn off. After the blood flow to the brain is cut off by the hemorrhage, until 5 to 8 seconds after the remaining oxygen in the brain is consumed, the victim would feel pain associated with the severe trauma of the neck tissue being torn off, in addition to the pain caused by the fall.

Secondly, in the case of partial dissection with external surface dissection, the patient feels pain from the impact of the fall on the neck, as well as pain from the partial tearing of the neck. Furthermore, unlike in the case of total dissection, the arteriovenous system may not be damaged immediately and blood flow to the brain may not cease, or the blood flow may decrease but continue for some time. In such cases, it may take tens of seconds to several minutes before the patient loses consciousness, during which time he or she will continue to feel pain.

In addition, there can be partial rupture, in which the outer epidermis is not ruptured, but only the internal tissues are ruptured. In this case, the patient continues to feel the pain of the neck receiving the impact of the fall, as well as the pain caused by the rupture of the internal tissues. If the blood vessels inside the neck are severed, massive bleeding will occur, and blood will drain into the body cavity rather than out of the body, followed by bleeding from organs open to the outside, such as the eyes, nose, ears, and mouth. If the arteries are completely torn off by internal dissection, blood flow to the brain will cease, but the condemned person will remain conscious for a few seconds until the oxygen in the brain is consumed, and will continue to feel pain. In either of the above cases, in addition to severe pain in the neck to catch the fall and pain from the rope rubbing against the neck, condemned person will feel pain from the skin, muscles, nerves, blood vessels, and other tissues and bones of the neck being torn away.

(4) Cervical vertebral fractures with injury or compression of the medulla oblongata

According to Dr. Lovell, the instantaneous destruction of the medulla oblongata by a fracture of the cervical bone causes immediate loss of consciousness, but this is not a mechanism that can be controlled in advance. If the fracture of the cervical bone and the destruction of the medulla oblongata occur progressively, the subject may feel the pain of the cervical spine fracture in addition to the severe neck pain of catching the fall and the pain of the rope chafing. It is difficult to imagine how much pain this would be.

(5) Acute heart failure due to vagus nerve injury

According to Dr. Lovell, even in cases of cardiac failure and death due to injury to the vagus nerve that runs through the neck, the subject will usually remain conscious for 10 to 12 seconds after acute cardiac arrest, during which time the subject will continue to suffer. It is unlikely that only the vagus nerve in the neck would be severed or damaged, but the skin in contact with the rope would be injured, and muscles and other tissues adjacent to the vagus nerve and other nerves would also be severed or damaged. In addition to the severe pain in the neck from the fall and the pain from the rubbing of the rope, the subject would feel pain from the amputation, including at least the severing of the muscles and other tissues surrounding the vagus nerve. It is difficult to imagine how painful this will actually be.

3 Experiments on pain caused by hanging

As mentioned above, Dr. Ishibashi describes hanging as "a result of the force exerted on the neck, which was much more intense than in ordinary hanging deaths. The condemned person who was hanged and died cannot speak of his suffering. However, there is a report of an experiment to see what kind of pain a person feels by hanging, which is a "normal hanging death. "Hanging and Suffocation Death" (Kou-F11, I. Asada, Professor, Tokyo Medical University, M.D.) refers a report of the self-experiment (p. 18 and below) of Professor Minovuichi. The following is an excerpt of the relevant part.

"In 1905, Professor Minovici of the University of Bucharest published a book titled "Study of Hanging" in Paris. I do not have a copy of the book, but the third and enlarged edition of "Forensic Medicine" written by Martin, Professor of Forensic Medicine at the University of Lyon, and his teacher Lacatsanille (under 18465), quotes Minovuich's experience in detail. Since this book was published eight years after Mr. Bu's book, it contains many things not found in Mr. Bu's book, especially his own experiences with regular and irregular "hanging". The use of the plural in the first person in the text suggests that it was done in cooperation with the pedagogical staff, just as Professor Shoji did. However, "hanging" would have died out without a collaborator. It has been reported that the pain is intense in the case of regular hanging. The subject could not endure the pain for more than 5-6 seconds. As soon as he leaned his neck on the strap, his face turned reddish purple, he became bloodshot, his eyes blurred, his ears rang, and he lost the will to continue the procedure. If the knot is tied around the arm, the blood vessels and the ch'i-duct close up too quickly. If the knot is on the gawa (side), it can withstand for 8-9 seconds. In a neck and neck experience with a maximum pressure of 5 kg, the heart stops due to cerebral anemia. Mr. Minovichi performed a routine hanging test. He weighed 79 kg and was suspended by a glider from a height of 1 m above the ground. From the beginning until he was let down, the pain of the

knot pressing against the right side of his hyoid bone was so severe that he was unable to continue the experience. The pain was so severe that it discouraged him from continuing the experience. As soon as his feet left the ground and he was suspended in mid-air, his eyelids contracted violently. His ki channels were blocked and he could not come. I cannot hear the voice of the messenger, who is shouting out the seconds, "One second, two seconds," as he pulls on the string that holds the five bodies to the pulley. My ears were ringing. I couldn't do it for more than 4-5 seconds due to the pain and breathlessness. I let him down. After I let him down, tears welled up in his eyes and the movement of his throat when he swallowed added to the pain, especially at the right greater cornu of the hyoid bone. This pain lasted for 10-12 days. The mucous membranes of the pharynx became bloodshot and bright red. It felt as if cocaine had been applied to the back of my throat, and I had a severe thirst for 1-2 days. The back of the throat felt dry and parched. The area around the neck was covered with numerous small blood spots, especially on the right side of the hyoid bone and at the end of the mastoid process behind the ear, where blood spots blended together for about 3 centimeters. The change of the spots appeared in 5 to 10 minutes and remained for 8 to 12 days."

From the above experiment, it is clear that even a hanging of about 1 m causes severe pain and distress due to suffocation and compression of blood vessels, and that the hanged person does not immediately lose consciousness but remains conscious for 5 to 6 seconds, and that the hanged person is aware of these pains and distress.

4 Should we be willing to accept the pain and suffering caused by hanging?

(1) One does not lose consciousness in an instant.

It is not possible to completely control the mechanism by which the execution of a hanging causes the death of the hanged person. Moreover, regardless of the cause of death, the condemned person does not necessarily lose consciousness in an instant; rather, he or she remains conscious for at least a few seconds, and possibly several minutes, during which time he or she continues to experience intense pain, breathing difficulties, panic, and fear.

(2) Osaka District Court ruling stating that the suffering caused by the hanging should be indulged.

The Osaka District Court, in its October 31, 2011 (Heisei 23) decision (the first trial decision in the Konohana Pachinko parlor arson case), adopted Dr. Lovell's trial testimony and found the following regarding the mechanism leading to death by hanging, the nature and duration of the suffering inflicted on the condemned person.

The two most common and typical patterns of death are: 1) carotid vein compression, which results in oxygen deprivation by blocking blood flow to the brain, resulting in death of brain cells and cardiac arrest; or 2) pharyngeal compression, resulting in airway obstruction, leading to oxygen deprivation and death by the same process. These can be considered competing cases. In the first case (1), the subject is conscious for 5 to 8 seconds while oxygen remains in the brain, and in the second case (2), the subject is conscious for 1 or 2 minutes while oxygen remains in the body. During this time, the patient feels suffering from neck compression and pain associated with the neck injury caused by the rope.

... However, depending on how the rope is applied, the neck may not be squeezed evenly from side to side, resulting in a longer period of conscious time and greater pain and suffering. In addition, if the force applied is too great, the head may break off. In such cases, because of the strength of the neck skin, the head may not be completely severed, but often only the internal tissues are partially separated. To avoid this, if the length of the rope (fall distance) is shortened, the tightness will be diffuse and the inmate's pain will increase. Since the strength of the neck tissue varies from person to person, it is impossible to prevent the head from breaking off completely. ... Thus, in most cases, a hanging takes at least five to eight seconds before consciousness is lost, and in some cases two minutes or more, depending on how the neck is tightened, during which time the prisoner may continue to feel pain. Moreover, in some cases, it may be accompanied by the severing of the head, especially of the internal tissues of the neck. Hanging is problematic because of the unpredictable course of a prisoner's death.

Thus, the court held that, while finding that the hangings caused pain and suffering to the hanged according to Dr. Lovell's testimony, and that the course of death was unpredictable,

"It is inevitable that the death penalty will cause mental and physical pain to prisoners and entail a certain degree of indignity. It is clear that the Constitution of Japan, in allowing for the existence of the death penalty, also considers these factors to be unavoidable and unavoidable.

... It is clear that it is not required to alleviate the subject's mental and physical suffering to the utmost limit and to keep it to the minimum necessary, as is the case with medical care.

... A method of capital punishment should be evaluated as cruel only if it is inhuman or inhumane and shocks those with normal human feelings. Unless this is the case, the choice of method is a matter of legislative discretion.

... Whether hanging is the best method of execution is debatable. However, those who are sentenced to death have committed a crime that deserves it. The execution should be accompanied by some mental and physical pain and suffering."

Such a view is contrary to Articles 6 and 7 of the Covenant on Civil Liberties and ignores the progress and achievements of international human rights to date. Furthermore, the above decision completely lacks the perspective that "the dignity of the individual" must be respected.

5 Pain of being exposed to a cruel way of death

(1) Distress of "such a way of death"

As long as people are human, it is natural that they want to die with dignity and respect. This is the guarantee of "respect for individual dignity" (Article 13 of the Constitution) and the guarantee of human dignity. To die by hanging is to die in unbearable pain, and it is natural for the condemned person to have strong feelings of "I can't bear to show such a way of death (manner of death) to others. Such an unbearable feeling itself is suffering.

(2) Fleishman report re-cited in Asada's literature

In his book (Kou-F11), Professor Asada references "a report by Mr. Fleischmann of Erlangen, Germany, based on his own experience and that of a British light industrialist in the French Journal of Hygiene, Vol. 8, p. 432," as a reference to the manner in which hangings were carried out. The following are excerpts from the report.

A. Symptoms until fainting

According to Fleischmann, there are three phases.

The first period lasts about one minute. First, the head is curt and hot. Ears ringing, eyes flashing. Next, your legs become heavy. Then you feel you are astounded.

B. Asphyxia spasm

The second stage of Mr. Bu's so-called asphyxia is characterized by intense convulsions. The length of the convulsions may be half a minute or a minute. When the convulsions are intense, the patient may have completely fainted. In the Bu era, doctors used the term "clonic convulsion" to describe the beginning of these convulsions, because of the jerking and twitching. In general, however, asphyxial spasms are characterized by the

separate twitching of the hands and feet, with the left and right sides of the body moving separately, the hands swimming through the water and the feet walking. Dr. Shin Hayashi, a professor of physiology at Keio University, together with his students Matsumaru, Nawa, Hamada, Sato, Mishima, Hayakawa, Suda, Okamoto, and others, studied it deeply and concluded that it is not clonic but alternating convulsion. (Article Reflections, 7, 9, 10, 11, and 12) When the strap is long at this time, the body rotates. When the face or limbs collide with a hard object such as a wall, a pillar, or a shoji (sliding door), scratches or subcutaneous bleeding may occur. Therefore, if there are scratches on the tip of the hangman's nose or on his arms or legs, they must have appeared during convulsions, and the place where they were caught should be carefully examined to determine the cause of the scratches. I have been allowed to witness several executions in my country. In our country, a leather loop is placed around the neck and the body is thrown down with a thud for about one kilometer, so the body rotates only by the twisting of the long strap. In the process, I have had large and small fecal matter scattered to the four sides by centrifugal action. I also saw an officer waiting in the abyss, holding a fallen body tightly and not allowing it to turn around. In any case, his face was so covered that he could not be seen. According to Mr. Bu's description, the skin muscles of the face and the orbits of the eyes would begin to twitch, creating a severe glabrous face. Next, the upper and lower limbs twitch. When the heel touches the ground or a wall, it is said to beat like a drum. This sound was well known to the guards of Mazars prison in France. It is said that the number of suicide victims suddenly increased on the day they had to obey the prison rules as a causative agent. The prison has studied various measures to defend against this. This footstriking is also used in strangulation. In Western apartment houses, when strangulation takes place on the second floor, the people downstairs hear this footstriking on the ceiling.

(248) In a house with a structure like ours, if there is a strangulation on the second floor, the people downstairs and in the next room will immediately notice the strange sound. These alternating spasms are followed by strong convulsive twitches that cause the whole body to flinch.

C. apparent death period (p. 16)

The third stage is the period of apparent death (248). Mr. Zwierzy says that he leaks both urine, feces and semen at this time, at the end of his convulsions. Tardieu and Bu disagreed with this theory. Dr. Jachman, a prison doctor, has found only two rows of corpses among 41 cases of suicide in Mazars Prison. However, since a well-prepared suicidal person usually excretes the contents of his or her bladder and rectum in advance, I cannot say that Mr. Jatkman's example applies to all of them. I have seen several cases of this in which one of the condemned persons leaked urine. If you treat him quickly, he will come back to life. Mr. Taylor said that he could not revive a man who had been in the state of apparent death for five minutes, and Mr. Fall said that he could save a woman who had been dead for seven minutes.(249) If you give artificial respiration for two hours within ten minutes, you can revive a rabbit by giving it a few breaths right after the last breath.

During the convulsions, the pupils are dilated, the eyeballs protrude, and the patient moves in a circular motion. When the convulsions cease, breathing stops temporarily. The more severe the convulsions, the longer the patient holds his breath. The more severe the spasm, the longer the respiration pause. This is called Matsugomae noikidomari, but the scientific term is preterminal respiratory arrest. This is called matsugonoiki, or terminal respiration in scientific terminology. The so-called third stage of Mr. Bu's practice lasts about one minute until this final breath is taken. The heart is still beating well after that. For about 20 minutes after the hanging, the heart is still beating, albeit faintly.

According to Prof. Asada's summary of Fleischmann's report, the objective manner of death of a hanged person, i.e., the manner of death observed from the outside, is as follows: 1. convulsions; 2. simultaneous stretching and twitching of both hands and feet and the whole body; 3. body rotation; 4. facial muscles convulse to make a frown; 5. pupils dilate and eyeballs protrude during convulsions; 7. leaking urine and semen at the end of convulsions.

(3) Dr. Lovell's five mechanisms and changes in appearance following the execution of the hangings.

Of the mechanisms of death by hanging described by Dr. Lovell, death by injury to the medulla oblongata or to the vagus nerve, if it were the only cause of death, would have little external effect. However, if death is caused by other mechanisms, it is inevitable that the death will be horrific.

When oxygen deprivation of the brain occurs due to compression of the jugular vein, if blood flow in the arteries and veins is completely stopped, there will be little change in appearance. However, if blood flow in the veins is stopped but not in the arteries due to incomplete occlusion, the subject's face will be congested, the tongue will protrude, the eyes will protrude, and blood will flow from the eyes, nose, ears, mouth, pores and other orifices.

If the pharynx is obstructed and the patient is unable to breathe, if the arteries are not completely blocked, one will see blood pouring from the surface of the head. In addition, there will be repeated gasping for oxygen, chest heaving, and leg movements as if trying to crawl up into the air. If external dissection of the head (separation of the epidermis of the neck) is involved, the neck and torso are separated, which in itself has a very gruesome appearance, and the area bleeds profusely. In the case of internal dissection without external dissection, the blood that flows out of the neck eventually fills the body cavity and then flows out through the eyes, nose, ears, and mouth. Furthermore, if the uncut tissues of the neck are not sufficient to support the body weight, the internal tissues will gradually become severed. If the epidermis, which is the most difficult of the body tissues to tear off, is not severed, only the interior will be severed, resulting in an unusually long neck where the head and torso are literally connected by the neck skin alone, and bleeding from the head.

The most frequently reported cases are incontinence and defecation of the condemned person. During

executions, there is an outlet in the downstairs room where the condemned person falls, presumably to wash away his/her excrement.

(4) Condemned person's thoughts and suffering

In a 2012 questionnaire for condemned persons (Kou-H1, p. 43 and following), Koichi Shoko, a former death-penalty inmate (Tokyo Detention Center), wrote, "My tongue is broken, my eyeballs protrude, blood flows unceasingly from my mouth, ears, and nostrils, I am hanging from a rope, spinning myself around until death is certain, I keep convulsing, and I always imagine the time when I will die. I always imagine the time of my death" (p. 55). The "constant imagining" of "the terror of being physically injured and dying" and the thought that "I don't want to die like this, and I don't want to show it to anyone" are indeed nothing short of "suffering".

6 Short Summary

Hanging is cruel and inhumane from two perspectives: objective cruelty from a third party's point of view and subjective cruelty from the point of view of the person sentenced to death (the condemned person).

VI. Hanging undermines human dignity

Hanging is cruel. Not only is it cruel and inhumane, it undermines human dignity as stipulated in Article 13 of the Constitution and the Covenant on Civil Liberties.

1 Development of the Idea of Human Dignity

1 Meaning and Role of Human Dignity

Human beings have inalienable rights as long as they are born human. By "human dignity" is meant the innate right to be respected. Dignity means the minimum dignity that belongs to every human being; every human being has dignity simply because he or she is human. Dignity cannot be acquired or lost. Even the worst criminal still possesses common human dignity" (Brennan, J., opinion in Furman).

This "human dignity" has played a prominent role in the post-World War II world as the source of human rights and the reason for their promotion. The following is a brief overview.

2 International Developments in Human Dignity

(1) Charter of the United Nations (1945)

After the devastation of World War II, the world established the United Nations to rebuild a new world. The Charter of the United Nations in 1945 states that "...reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and..." and set "human dignity" and "the guarantee of fundamental human rights" as new objectives for the international community.

(2) Universal Declaration of Human Rights (1948)

At the Third Session of the UN General Assembly in 1948, the UN adopted the Universal Declaration of Human Rights. In its preamble, it states: "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and in the fifth paragraph of the Preamble also states: "Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom".

(3) German Basic Law (Kou-G2, 1949)

The Basic Law of the Federal Republic of Germany, enacted in 1949 in West Germany (at that time) and after the unification of East and West Germany, stated in Article 1: "Human dignity is inviolable. It is the duty of all state authorities to respect and protect it. Even if it is not guaranteed as a fundamental right, any state action that violates the highest value of "human dignity" is prohibited and must be respected and protected.

(4) Covenant on Civil Liberties (1966)

The Covenant on Civil Liberties also provides in Article 10(1) that "all persons deprived of liberty shall be treated humanely and with respect for the inherent dignity of the human person.

(5) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, Kou-G3)

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which is also based on "human dignity," and states that in order to realize the guarantee of fundamental human rights, it is important for States Parties to prohibit torture, etc. and to make efforts

to realize such prohibition, and stipulates it strictly as a separate and independent treaty to guarantee physical safety in particular.

(6) The development of the United States Supreme Court's Eighth Amendment precedent

In the United States, since the U.S. Supreme Court's 1958 *Trop* decision, the U.S. Supreme Court has accumulated precedents on the 8th Amendment, including the *Atkins* decision in 2002 and the *Lorber* decision in 2006, establishing the "evolving standard of decency that indicates progress in a mature society" with "human dignity" as a fundamental value. The development of precedents concerning the 8th Amendment is detailed in Takenori Aoyama, "The 'Cruel and Unusual Punishment' of the 8th Amendment" (*Nihon Hogaku*, Vol. 76, No. 9, p. 287 (hereinafter Kou-G9)).

(7) Mandela Rule (2015)

In several fundamental treaties since the end of World War II, the international community has repeatedly and in various ways made clear that "human dignity" is the highest value and the basis for freedom, justice, and peace. This idea has taken root not only in Europe and the U.S. but throughout the world: 60 years after the 1955 the UN Standard Optimum Rules for the Treatment of Prisoners, the UN General Assembly enacted the new UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) in 2015 (Kou-G4). In Rule 1 of the first set of Basic Principles, respect for "human dignity" was explicitly stated as a principle for the treatment of detainees, including condemned persons.

Part 1 Basic Principles

Rule 1

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.

3 Japanese Executors

Article 13 of the Constitution of Japan, promulgated in 1946, stipulates that "All of the people shall be respected as individuals," a constitutional guarantee that is not only based on the 1945 UN Charter but also shares the same principle with subsequent international human rights standards (such as the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights). Around the world, the United Nations and others have established "human dignity" as a basic principle for the

treatment of detainees, including condemned persons. In Japan, as long as condemned persons are human beings, the same applies to them, and their human dignity is guaranteed.

2 The Punishment of Death by Hanging

1 Violates "human dignity" by inflicting pain that goes beyond taking a life

The death penalty is the ultimate punishment for taking the life of a guilty person. The decision of the Supreme Court of Japan, March 12, 1948, holds that

Life is precious. One life is more precious than the whole earth. The death penalty is the most severe of all punishments, and it is an extreme punishment that is truly unavoidable. It is, needless to say, the eternal deprivation of life itself, the basis of dignified human existence.

The 1948 decision of the Grand Chamber of the Supreme Court of Japan states that the death penalty "forever deprives a human being of life itself, the basis of his or her dignified existence" and compensates for it with "a human life heavier than that of the entire earth", and therefore, no more suffering than the taking of life must be inflicted on the condemned, nor must anything other than life be taken from them. To inflict unnecessary pain and fear is to deprive the condemned of human dignity. The Covenant on Civil Liberties is also commonly understood and practiced to include the requirement that the death penalty "shall be carried out in such a manner as to cause as little physical and mental suffering as possible" (General Comment No. 20 Article 7, Covenant on Civil Liberties). (General Comment No. 20 Article 7 of the Covenant on Civil Liberties). It is also a modern global standard not to cause unnecessary suffering and fear to the condemned.

More than 74 years have passed since the 1948 decision of the Supreme Court, and scientific and technological advances have been made, and the ethical view of life has evolved in line with the times. Despite these advances, to allow more suffering than mere deprivation of life in this day and age is tantamount to imposing a physical punishment. Although pain can be minimized, hanging, which inevitably causes more pain than mere deprivation of life, is tantamount to physical punishment.

2 Human dignity is guaranteed to the executor.

The condemned must be guaranteed human dignity up to the time of execution and even after death. The plaintiffs obtained from Professor Akiko Furukawahara of Ryukoku University a written response (Part 1) and (Part 2) (Kou-G5-1-2, 2-2) to their inquiry regarding the treatment of death penalty inmates in the United States. In her written response (No. 2), Professor Furukawahara stated, "Even those who have committed serious crimes must be treated like members of society until the moment of execution, if their dignity is to be recognized as human beings. In a mature society, this is a natural principle. This is even more so when we consider that the state is forcibly taking a life.

Japanese condemned are notified of their execution at the last minute on the day of execution. As a result, they are deprived of the opportunity to accept and face their death. Not only that, they are left in the dark as to how they will meet their death. Although the condemned knows that he or she is going to be hanged, the specific manner of death is never made clear to the condemned person. In order to illustrate how Japan's execution methods seriously undermine the human dignity of the condemned person, it is useful to contrast this with the United States, where the death penalty has been used as a means of execution.

The following is due to the valuable research results of the Furukawahara's Response (Part 1) (Part 2) (Kou-G 5-1-2 5-2-2).

3 The Case of the United States of America

1 Death Penalty in the United States of America

The death penalty in the United States varies from state to state: as of January 2022, there are 30 states with the death penalty, three of these states have moratoria (suspension of execution). The military retains the death penalty, while the federal government has a moratoria. Twenty-three states have abolished the death penalty. Twenty-seven states currently use the death penalty and 26 states do not.

2 Changes in Methods of Execution and "Human Dignity"

(1) Changes in execution methods

Since 1878 (Meiji 13), the method of execution in the United States and its states has changed dramatically, unlike Japan, where hanging has been the only method of execution up to the present day. Starting in 1888, the State of New York changed from hanging to the electric chair, and by the time Delaware changed its method in 1986, 40 states had abolished hanging and replaced it with electric, lethal gas, and drugging methods of execution. As of May 2022, no state maintains the hanging penalty. The change from hanging to other methods of execution was due to the fact that hanging is "cruel and abnormal punishment" and contrary to human dignity, as stated in the New York State Assembly Gerry Report.

(2) Current execution method

In the 30 states that currently have the death penalty, the "less brutal" methods of execution are electric execution, drugging, and gassing. The following table shows the current method of execution

in each state, whether or not it has changed from hanging, the year of the change, and the method of execution after the change (in alphabetical order, with moratorium states summarized later).

- (1) Alabama (1923, replaced hanging with electric execution)
Lethal gas death, electric execution, and drug death (choice of condemned person)
- (2) Arizona (1933, changed from hanging to lethal gas)
Sentenced on or after November 23, 1992
Drug death
Sentenced on or before November 22, 1992
Drug death and lethal gas (at the option of the condemned person)
- (3) Arkansas (1913, changed from hanging to electric execution)
Drug deaths
- (4) Florida (1923, replaced hanging with electric execution)
Electric execution and drug death (choice of condemned person)
- (5) Georgia (1924, changed from hanging to electric execution)
Death by Drugs
- (6) Idaho (1978 Drug deaths from hanging)
Drug Deaths
- (7) Indiana (1913 hanging to electric execution)
Death by Drugs (1913)
- (8) Kansas
Drug deaths
- (9) Kentucky (1938, changed from hanging to electric execution) Sentenced after March 31, 1998 Drug deaths
- (10) Louisiana (1940, changed from hanging to electric execution)
Death by Drugs
- (11) Mississippi (changed from hanging to electric execution in 1940)
Death by Drugs
- (12) Missouri (1937 Changed from hanging to lethal gas)
Drug deaths and lethal gas (not clear if the condemned person has a choice)
- (13) Montana
Drug deaths
- (14) Nebraska (1913, changed from hanging to electric execution)
Drug deaths
- (15) Nevada (changed from hanging to lethal gas in 1921)
Drug deaths
- (16) North Carolina (changed from hanging to electric execution in 1909)
Drug deaths
- (17) Ohio (1896, changed from hanging to electric execution)
Drug deaths

- (18)Oklahoma (1913, changed from hanging to electric execution)
Death by Drugs
 - (19)South Carolina (1912, changed from hanging to electric execution)
Drug deaths and electric executions (choice of condemned person)
 - (20)South Dakota (changed from hanging to electric execution in 1939)
Death by Drugs
 - (21)Tennessee (1913 hanging to electric execution)
Death by Drugs
 - (22)Texas (1923, changed from hanging to electric execution)
Death by Drugs
 - (23)Utah (1983 changed from shooting and hanging to shooting and drugs)
Drug deaths
 - (24) Wyoming (1935 from hanging to lethal gas)
Drug deaths
 - (25)California (1933 Changed from hanging to lethal gas)
Lethal gas and drug deaths (currently moratorium)
 - (26)Oregon (1937: changed from hanging to lethal gas)
Drug deaths (currently moratorium)
 - (27)Pennsylvania (1913: Hanging replaced by electric execution)
Drug deaths (moratorium in effect)
- (3) Reason for change in execution method

In these states where the death penalty exists in the U.S., execution methods have changed from hanging to electric execution or lethal gas, then drug death (execution by injection) was added, or was replaced by drug death. The reason for the disappearance of electric execution after the change from hanging to electric execution and lethal gas as a method of execution was that electric execution was also judged to be cruel. For example, the Georgia Supreme Court (October 2001) and the Nebraska Supreme Court (February 2008) ruled electric execution unconstitutional as cruel and unusual punishment. Furthermore, lethal gas was found not to be painless. In his "Jury Trials and Death Penalty Sentencing (Expanded Edition)" (Kou-G8), Professor Emeritus Yoshinori Kobayakawa of Meijo University analyzed the transition of execution methods from hanging to lethal injection in the U.S. (Kou-G8, p. 313).

In the United States, beginning with New York in 1888, states gradually abolished hanging and changed the method of execution to electric execution and lethal gas, etc. Later, however, all of these methods were considered cruel, and today lethal injection

is used in almost all areas of law as the least painful and most humane method of execution according to current science.

However, in recent years, due to the inability to import drugs from the EU for use in executions, some executions have been carried out by electric means. In the U.S., it is clear that execution methods are being changed from the standpoint of human dignity, i.e., whether or not the method of execution is "the least painful and most humane today based on current science."

3 Explanation of the method of execution (execution method) and human dignity

It is important for the dignity of a person scheduled to die to have his or her death explained to him or her and to die with an understanding of how he or she will die. For a person who is scheduled to die, such as a severely terminally ill patient who is dying, not knowing how he or she will die can cause anguish, fear, and anxiety, and increase suffering. Therefore, it is customary for severely terminally ill patients to have their death fully explained to them by their physicians. If the patient receives an adequate explanation, such anguish, fear, and anxiety are eliminated or reduced. The fact that the interest in receiving such explanations derives from the guarantee of human dignity (Article 13 of the Constitution) is recognized by court decisions concerning the notification of life expectancy and the name of the disease.

The same is true for a person sentenced to death as for a severely terminally ill person, who has the same interest in receiving an explanation of the manner of his or her death. This is evident in the situation of death-row inmates in the United States.

(1) Disclosure and explanation of the method of execution of the death penalty (Description of explanation)

In states where the death penalty is carried out in the U.S., information on various executions is widely available to the public, including the inmates. The Furukawahara Report clarifies, on a state-by-state basis, what information is disclosed in the states where the death penalty is carried out in the U.S. (Kou-G5-1-2). We explain on examples from three of these states.

1. Alabama⁵

In Alabama, the condemned person is given the opportunity to choose between electric or nitrogen hypoxia, and if he or she does not choose this option, the execution is carried out by lethal drug administration. Although the execution procedure is blacked out in several places, the details of the flow of events on the day of execution can be understood, as well as the type and amount of drug used to administer lethal drugs.

⁵ <https://files.deathpenaltyinfo.org/documents/AL-Execution-Protocol-April-2019.pdf>

One week prior to the scheduled execution date, equipment and drugs are prepared when lethal drugs are to be administered, and check the veins of the executed person. The electric chair is checked three times (execution procedure VI). The flow of events on the day of execution is as follows (under Procedure IX-H).

H. The condemned is taken to the execution room by the execution team and then secured to a stretcher.

1. If the execution is to be carried out with lethal drugs, the IV team is escorted to the execution room. A cardiac monitor line is attached to the definite. If the vein is in a condition that precludes administration, a central line for venous access will be provided.

2. If the execution is carried out by electricity, the condemned is taken to the execution room and placed in a chair at approximately ■. The condemned is immobilized with electrodes attached to his left leg and head.

J. Witness (abbreviated)

K. the confirming official informs the facility director that the execution is ready to take place. If the execution is to be done by lethal drugs, the IV team completes its task and ■. At this time, the facility director reports to the execution area. The IV team informs the facility director of the status of ■. The curtains in the witness room are opened.

L. The facility director enters the execution room. Switching on the microphone, the facility director reads the warrant to the confirmand.

M. The condemned is allowed to say a few last words. The words must be limited to approximately two minutes.

N. The director and ■ go from the execution room to ■. Two members of the execution team will remain in the execution room until the director is informed.

(Note that ■ is the state's current procedural provisions as they appear.)

After confirming that no suspension order has been issued, two staff members make a final check of the restraining straps, if it is an electric chair execution, and place headgear on the subject and cover his/her face (Procedure IX-O-2). The facility manager then presses a button and a 2200 volt current flows through the subject's body for 20 seconds. The current is lowered to 220 volts for the next 100 seconds (procedure IX-P-3).

On the other hand, in the case of lethal drug administration, a predetermined amount of the drug is injected according to the following procedure (Executive Procedure IX-P-1, 2)

1. In the case of lethal drug administration, the facility director initiates the administration of the lethal drug solution to the definite person. The lethal drug solution consists of

- 100 ml midazolam hydrochloride - two 50 ml syringes
- 20 ml saline
- 60 ml rocuronium bromide
- 20 ml saline solution
- 120 ml potassium chloride - two 60 ml syringes

2. In the case of lethal drug administration, after the facility director has administered 100 ml of midazolam hydrochloride and 20 ml of saline, and before administering the second and third drugs, one team member remaining in the execution room should assess the definite's consciousness by administering the following stepwise stimuli. The team member first calls the definite's name. If there is no answer, the team member gently strokes the eyelashes of the definite. If there is no answer, the team member pinches the definite's arm.

In the rare case that the definite is conscious, the facility director uses 100 ml of midazolam hydrochloride in a spare syringe to administer the dose. After all 100 ml of midazolam hydrochloride and 20 ml of saline have been administered, the team member remaining in the execution chamber repeats the above stepwise stimulation.

If a second IV line is used for midazolam hydrochloride, that line is used for the remaining drug administration.

After confirming that the definite is unconscious, it is recorded and the facility director continues to administer the second and third drugs.

2. Kentucky⁶

Inmates sentenced to death prior to March 31, 1998 may elect to be executed by electricity. Details of the electric execution procedure are as follows (Execution Procedures 501 KAR 16:340).

Section 1. preliminary steps

- (1) The prison shall provide at least three telephones that can be used simultaneously to communicate with the court and defense counsel on the day of execution. (2) The warden shall determine the availability of the necessary telephones prior to the execution.
- (2) The electrocution device shall be designed to deliver approximately 5 to 10 amperes at the designed voltage, depending on the size of the person to be executed.
- (3) The electrocution device shall be inspected and tested in accordance with 501 KAR 16:320, Section 3(3) within 48 hours of the scheduled time of execution by electrocution.

⁶ Kentucky Administrative Regulations, KAR Chapter 16, provides.

<https://casetext.com/regulation/kentucky-administrative-regulations/title-501-justice-and-public-safety-cabinet-department-of-corrections/chapter-16-capital-punishment>

- (4) Sodium chloride solution shall be prepared by a member of the execution team at least 5 hours prior to the scheduled time of execution by electrocution in the following manner
 - (a) Fill the container with room temperature water, approximately 5 gallons.
 - (b) Slowly add up to 128 ounces of iodized table salt to the water, stirring continuously, until the water visibly absorbs no more salt. The salt is considered to be dissolved to the limit when it does not dissolve in the water and remains in a visible pool at the bottom of the container.
- (5) Natural sponges for head and leg electrodes shall be prepared by soaking them in a sodium chloride solution until saturated.
- (6) If there is no electricity in the prison at the scheduled time of the execution, the generator in the execution building shall be started.
- (7) On the day of execution, the head and one leg of the executed person shall be shaved.
- (8) The warden shall order the condemned person to be escorted to the execution room and tied to a chair.
- (9) The facility director shall order the opening of the curtains.
- (10) The director shall inform the observer of the execution.
- (11) The director shall ask the executor if he/she wishes to make a final statement and shall give him/her at least two minutes to do so. (12) The witness may hear the statement of the executor.
- (12) The warden shall inform the witnesses of the final preparations for the execution.
- (13) Curtains shall be closed.
- (14) Members of the execution team shall
 - (a) Attach a chinstrap to the enforcer.
 - (b) Attach the headgear to the enforcer.
 - (c) Attach leg straps to the enforcer.
 - (d) Adjust the backboard.
 - (e) Attach the cables from the electroshock device to the head and leg electrodes. The nuts shall be fully tightened and securely connected.
 - (f) Wipe off any salt water from the sponges on the enforcer's head and legs. (g) Fasten the leather face cover to the subject.
- (15) The facility manager shall visually inspect the connections and straps.
- (16) The execution team exits the execution room.
- (17) Open the curtains.
- (18) The facility manager shall
 - (a) announce the execution of the executed person to the witnesses; and
 - (b) Place a face cover over the face of the condemned person.
- (19) Persons other than the executor shall leave the execution chamber.
- (20) Counsel designated by the cabinet and counsel designated by the attorney general shall ask whether the sentence has been suspended, ordered, pardoned, or commuted.

Section 2. Execution of Sentence

- (1) The warden shall order the execution to proceed.
- (2) The execution device shall be activated in two-minute cycles. The cycle shall be as follows
 - (a) Approximately 2400 volts for 15 seconds.
 - (b) Approximately 240 volts for the remaining two-minute cycle.

(3) When the facility director finds evidence of malfunction, the cycle shall be terminated by using the stop button on the electrical equipment.

(4) At the end of the two-minute cycle.

(a) Close the curtains.

(b) The facility director will observe the subject's vital signs (including, at a minimum, pulse and respiration) for 5 minutes.

(5) If the facility director sees a vital sign during the 5-minute observation period

(a) opens the curtains; or

(b) The facility director shall order a repeat performance of the execution cycle in subsection (2) of this section. (6) If the facility director again sees a life reaction, the execution is suspended.

The Commissioner will contact the Governor's Office and request that the execution be suspended. (7) If the facility director does not observe a vital signs reaction.

(a) The coroner checks the subject (including pulse and pupils) and pronounces death.

(b) The physician certifies the cause of death.

3. Tennessee ⁷

In Tennessee, a person convicted of a crime and sentenced to death before January 1, 1999, may elect to be executed by electricity by signing a document waiving the right to be executed by lethal injection.⁸ In fact, the number of persons who have elected execution by electricity reached five in the 16 months ending in February 2021.⁹ It is believed that the lethal drug deaths are so painful, depending on the type of drug used, that the electrocution method was chosen in search of a less painful way to die. The procedures require that the executor, who has a choice of execution methods, be informed 30 days prior to the scheduled execution date. An executor who waives the right to be executed by lethal injection signs an affidavit that reads as follows:¹⁰ Once waived, it can be revoked by informing the facility director at least 14 days before the execution date and signing a new affidavit to that effect.

⁷ Lethal Injection Execution Manual, Execution Procedures for Lethal Injection (Rev. July 5, 2018) <https://files.deathpenaltyinfo.org/legacy/files/pdf/TN%20LI%20Protocol%207-5-18.pdf>

⁸ From Tenn. Code Ann. § 40-23-114(b). Note that the execution procedures refer to "an inmate sentenced to death before January 1, 1999," and we have contacted the Death Penalty Information Center because of the discrepancy in the definition. However, this discrepancy does not affect the content of this response.

⁹ <https://apnews.com/article/7121e608498fe4c24359035853801ff3>

¹⁰ Execution Procedure p. 92

Affidavit Concerning Method of Execution

Under Tennessee law, you have the right to be executed by lethal injection. You may also waive this right and choose electrocution as the method of execution. The purpose of this affidavit is to give you the opportunity to waive your right to lethal injection or to refuse to waive your right. If you do not complete this form, the execution will be by lethal injection. This is the only time you may waive your right to lethal injections. If you waive your right to lethal injections, you may revoke it by notifying the facility director and signing a new affidavit at least 14 days before the execution date.

I, (name), TDOC number (number), make the following selections regarding the method of execution scheduled to take place on (date)

(check box) I waive my right to be executed by lethal injection and elect to be executed by electricity.

Signature.

(check box) I waive my right to night execution for the administration of lethal drugs I have been given the opportunity to do so and waive my right to do so.

SIGNATURE

This affidavit has been affirmatively presented to the inmate (name) TDOC Number (number), and

(check box) The inmate has refused to sign.

(check box) I certify that the inmate has signed this affidavit.

Signature of Warden

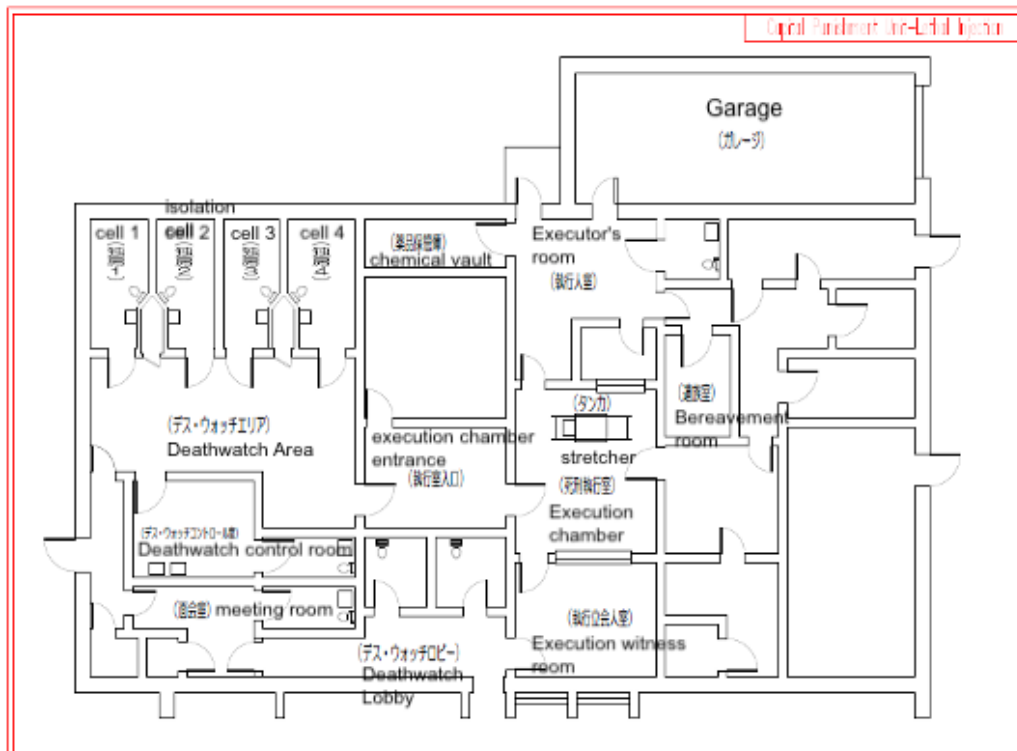
The flow of the day of execution is described in minutes as follows

5:00 p.m. The executor is made to change (cotton pants, shirt, socks and indoor shoes).

6:30 to 45 p.m. Witnesses enter the room.

7:00 p.m. The condemned person is handcuffed and placed on a stretcher. The condemned person is placed in the execution room. 7:10 a.m. The condemned person is allowed to say his last words.

Also noteworthy is the attached drawing of the execution unit, including the execution chamber.



In Japan, with the exception of the Tokyo Detention Center, there is no public access to execution sites in other detention centers or prisons (as noted above). In particular, nothing is made public at the Osaka Detention Center, which is the subject of this case.

(2) Disclosure of information on the method of execution to the executor

According to Furukawahara's written response (No. 1) (Kou-G5-1-2), several states have clarified the extent to which details of the execution method are provided to the inmate.

For example, in Idaho, the condemned person is informed in writing that he or she will be carried to the execution chamber on a stretcher for the administration of lethal drugs, that he or she will be given a saline drip, and that his or her eyes may be covered during the execution. In addition, a liaison officer is appointed to meet with the inmates on a daily basis to respond to their requests and questions. The State of Alabama also specifies in its execution procedures that the director of the facility should endeavor to answer any questions the definite may have about the execution.

A respondent in the United States may know in detail how the sentence against him or her will be carried out. This is not limited to states that offer a choice of execution methods. Even in states where lethal injection is the only method of execution, the inmate has the opportunity to know what drugs will be administered, how much, and how his or her body will be restrained during the administration of those drugs. In states with the death penalty in the U.S., the condemned person may "choose a less

painful method of execution," within the limits of the established death penalty system. They can also receive an "explanation of the method of execution" for themselves.

4 Choice of Execution Method and Human Dignity

The manner in which one dies is a fundamental part of human dignity. The ability to choose the method of execution is a factor in ensuring human dignity. In states with the death penalty that provide for more than one method of execution, the condemned person can choose how he or she wants to die. They are informed about the execution and have the opportunity to choose their own method of execution. In the following states, the executor can choose how he or she dies and the manner of execution, even if death is the inevitable result. This is an indication that the executor is respected as a human being and that "human dignity" is guaranteed.

Alabama, Arizona, Florida, Kentucky, South Carolina, South Dakota, Tennessee, Utah, California (under moratorium)

5 Differences from Japanese Executors

In states where the death penalty is carried out, the method of execution has shifted from hanging to less painful methods such as electrocution, gassing, and drugging. States with multiple methods of execution allow the inmate to choose the method of execution. In addition, the condemned person and the public are provided with a detailed explanation of the method of execution, including the process. Condemned persons are respected as human beings at the moment of death and even after death, and their human dignity is guaranteed.

On the other hand, Japanese condemned persons are still deprived of life by the barbaric method of hanging, based on the Dajokan (Grand Council of State) Proclamation No 65, which was enacted in the 19th century. The pain and suffering caused by the execution of hangings is considered to be acceptable, rather than being improved to a less painful method (Kou-C6, the first trial decision in the Konohana Pachinko parlor arson case). In the 74 years since the Supreme Court ruled in 1948 that the death penalty is constitutional, there have been no signs of revision or improvement. The only explanation given to death-penalty inmates in Japan by the detention centers is the "Guide to Life on Death Row" (Kou-F17). They are taken to the execution site one day and suddenly killed without any explanation of how they will be hanged.

There is no fact of "being treated as a human being," and the enforcer does not have a subjective awareness of being treated as a human being.

This gap between the U.S. and Japan is a major difference in whether "human dignity" is guaranteed or not.

Japanese death-penalty convicts are not guaranteed "human dignity" under Article 13 of the Constitution.

4 Injury to the Body and Human Dignity

1 Death that disfigures the appearance of the body violates human dignity.

When discussing human dignity, the presence or absence and degree of physical injury are important factors. Execution of punishment that causes physical injury constitutes cruel and degrading punishment as prohibited by Article 7 of the Covenant on Civil Liberties.

Human dignity is closely related to the preservation of one's appearance. The problem becomes more apparent in the terminal stage of a patient's life, since the patient often loses his or her appearance. Therefore, there are similarities between the dignity of patients at the end of life and the dignity of the executed person (Furukawahara, Answer (No.2) Kou-G5-2-2). Maintaining the appearance of the deceased not only preserves the dignity of the deceased, but also plays a role in grief care for the bereaved family. For example, the perfuming of the deceased's body after death prior to the funeral service is an example of this. Angel makeup and angel care are also acts that protect the dignity of the deceased against changes in appearance that occur after death, as they are performed to restore facial features to the extent possible that were lost due to invasion by medical treatment or illness. The Penal Code provides that "anyone who destroys, abandons, or seizes a corpse, remains, hair, or any object contained in a coffin shall be punished with imprisonment for a term not exceeding three years" (Article 190). The object of protection for this crime is considered to be the corpse, remains, hair, or other objects stored in the coffin, a type of crime that protects the (social) pious feelings toward the deceased (Ryuichi Hirano, "Criminal Law", 1977), and a type of crime that protects religious feelings rather than property (Danto, "Criminal Law Treatise, 3rd ed.", 1990). The crime of destruction of a corpse is a crime based on the protection of religious feelings, not on the protection of property. The crime of destruction of a corpse protects society's demand to treat a corpse with respect even after death.

There is also a sense of the need to avoid the destruction of corpses and methods of killing that inevitably result in their destruction. In other words, a sense of reverence for the human body, both before and after death, has been maintained throughout history. This is of great significance to human dignity.

The "body" (corpse or remains) exists as proof of human existence. There is a social consensus, not only in Japan but also in the rest of the world, to respect the human body, especially to avoid damaging the body as much as possible before death, and to make efforts to restore the body after death if it is damaged, in order to maintain human dignity.

2 Desecration due to significant physical damage

Hanging, however, is a violent assault on the body of the condemned person. The internal muscles of the condemned person's neck are severed by hanging. The damage to the corpse, especially from the neck up, is significant (as evidenced by the photographs in Kou-A4-1 to 4). In some cases, the neck is severed or even completely dismembered, which is a ghastly result. Hanging is not only cruelty in that the victim is killed by being tied by the neck with a rope and sent falling through the air, but also inevitably involves the desecration of the body itself in that the body is cruelly injured.

In the United States, the use of other execution methods in place of hanging has avoided damage to the corpse (body). On the other hand, in Japan, where hangings inevitably cause physical damage, the execution of hanged criminals inevitably seriously undermines human dignity.

5 Dignity of Japanese Condemned persons Does Not Extend to Animals to be Killed

1 Treatment of Condemned persons by the Japanese Ministry of Justice

Japan (Ministry of Justice) treats the condemned person not as a human being but as an object to be executed (killed). It is no different from the killing of dogs and cats; in fact, it treats them with more care than dogs and cats. They do not treat the executed person as a human being who should retain his/her dignity.

Mr. Hiroshi Sakaguchi, a respondent to a questionnaire conducted by Forum 90 with Mr. Mizuho Fukushima, a member of the House of Councilors, on death penalty inmates (Kou-G7), described the situation in vivid detail and likened executions by hanging to the killing of dogs and cats (Kou-G7, pp. 168-169).

The prison guard opens the door to the room of the convicted person, announces the execution, takes the convicted person into custody, and immediately takes him to the prison. Inside the prison, the warden is waiting, who officially announces the execution. After the execution, the convicted person is bound, handcuffed, and taken to the execution table dressed as he is, where he is hanged by a noose, the treadle is removed, and he is hanged to death. < omitted>... However, the current execution procedures do not take into account the convenience or rights of the condemned and speed the execution as if it were a dog or a cat to be killed. And they claim to be following due process.

2 From "Human Dignity" to "Dignity of Life"

Are the death sentences for those on death row in Japan at least as severe as the culling for dogs and cats? Unfortunately, this is not the case. A look at the animal protection legislation makes this clear. In Japan, the "dignity of life" of animals is also legally recognized. Article 2, Paragraph 1 of the Law Concerning the Protection and Management of Animals (hereinafter referred to as the "Animal Protection Law") stipulates as a basic principle that "in view of the fact that animals are living beings, no person shall kill, injure, or cause suffering to animals unnecessarily, but shall also treat animals properly in consideration of their habits and in consideration of the symbiosis between humans and animals. In addition, they shall take into consideration the symbiosis between humans and animals, and handle them appropriately in consideration of their habits.

Article 40 of the same law stipulates the following methods for culling animals: Paragraph 1: "If animals must be killed, it shall be done in a manner that causes them as little pain as possible," Paragraph 2:

"The Minister of the Environment may, in consultation with the heads of relevant administrative organs, determine necessary matters concerning the methods set forth in the preceding paragraph," and Paragraph 3: "In determining necessary matters set forth in the preceding paragraph, efforts shall be made to give due consideration to international trends concerning the methods set forth in paragraph 1.

3 Specific methods for killing dogs and cats (Ministry of the Environment Notification No. 105)

The Ministry of the Environment, in accordance with Article 40 of the Animal Protection Law, sets forth its basic position on the killing of animals in its "Guidelines Concerning Methods of Killing Animals (November 12, 2007, Ministry of the Environment Bulletin No. 105)" (Kou-C 7).

1 General Principles

In the event that an animal must be killed, the caretaker and the person carrying out the killing must understand the physiology, ecology, habits, etc. of the animal to be killed and, based on the principle of respect for the dignity of life, endeavor to use methods that do not cause pain to the animal and to prevent infringement on human life, body or property, or damage to human living environment caused by the animal to be killed.

The guideline is based on the principle of respecting the dignity of life, even for animals such as dogs and cats. The Guidelines also require that "the disposal of animals shall be conducted in a manner that does not cause pain to the animal".

Notification 1(4) defines "distress" of an animal to be killed of as "pain caused by painful stimuli and states of anguish, fear, anxiety, and depression caused by nerve center excitement, etc.". The term "pain" includes not only painful stimuli (pain) but also "states of anguish, fear, anxiety, and depression" and requires that such "pain" not be inflicted on the animal.

The "No 3 method of culling of animals" shall specify that "the method of culling of animals shall be by chemical or physical methods that cause as little pain as possible to the animals to be killed and that render the animals unconscious, irreversibly arrest their cardiac or pulmonary functions, or by other normal methods that are acceptable to society".

The Ministry of the Environment's "Take-back and culling of Dogs and Cats" (Kou-G8), " in accordance with the Ministry of the Environment's Notification No. 105, stipulates that:

3 Appropriate methods for culling of animals

Different methods of killing are used depending on the quantity of animals disposed of and the characteristics of each individual. In addition, each method should be constantly improved in accordance with advances in technology and knowledge, with a view to reducing physical and mental suffering.

		Anaesthetic drugs, etc.		carbon dioxide (gas)
		Injection	Oral	
Disposal volume	Majority	△	○	⊙
	Minority	⊙	⊙	△

✘ Carbon dioxide: Careful consideration should be given to adjusting the concentration. (If it is difficult to adjust the concentration, anesthetics may be used.)

Anesthetics: It may be difficult to maintain retention and ensure safety.

Oral anesthetics: Used in some municipalities, but not approved as veterinary drugs.

And dogs and cats are to be killed by carbon dioxide or anesthetics (injection or orally) from the "viewpoint of reducing physical and mental suffering".

4 Divergence between Dajokan Proclamation No. 65, which regulates hanging, and the Ministry of the Environment Announcement, which regulates culling.

Hanging was established as a specific method of execution by the Dajokan Proclamation No 65 in 1876. The methods of execution prescribed by the said Proclamation cause distress (including states of anguish, fear, anxiety and depression) to the enforcers.

On the other hand, according to Notification No. 105 of the Ministry of the Environment, animals are to be killed by methods that do not cause distress (including anguish, fear, anxiety, and depression) to the animals. This is because "we strive to use methods that do not inflict pain on the animal, based on the principle of respect for the dignity of life. Even in the killing of animals, the dignity of life is respected and efforts must be made to use methods that do not cause pain. The discrepancy between the Ministry of the Environment's Notification No. 105 on the culling of animals and the Dajokan Proclamation No. 65 of 1873, which does not give any consideration to the alleviation of suffering of the condemned, is staggering.

Japanese condemned are not treated like animals (dogs and cats). Japanese condemned persons who are executed by hanging are no better than animals. Not only are they not respected as human beings, they are not even respected for the "dignity of life" as living creatures (animals).

6 Illegal violation of human (individual) dignity

People are respected as human beings as long as they are born human beings. The same is true even for those who are executed. In Japan, however, executioners are given death by hanging, the only method of execution that can end a person's life, and are subjected to unnecessary suffering in the final stage of their lives, without any guarantee of their dignity and respect as human beings. The gap between the U.S. and the U.S. executions is obvious.

Japanese executioners do not respect the dignity of human beings, or even the dignity of life (living creatures), which is respected even in the killing of dogs and cats. The defendant (the Ministry of Justice) treats executioners not as human beings, but as no better than animals (dogs and cats). The inhumane treatment of executioners in Japan violates human dignity guaranteed by Article 13 of the Constitution and the Covenant on Civil Liberties.

VII. Illegality of Hanging in Japan - Summary

1 Hanging in Japan does not meet the minimum pain test - violation of the Covenant on Civil Liberties

Japan's only method of execution, hanging (Article 11 of the Penal Code), is a cruel and inhumane punishment that is likely to cause more physical and mental suffering than necessary, as prohibited by Article 7 of the Covenant on Civil Liberties.

The death penalty is essentially intended to deprive the offender of life, not to inflict mental or physical suffering. It is not a punishment that aims to inflict commensurate suffering, no matter how horrific the perpetrator's crime may have been or how much pain he may have caused the victim.

Article 7 of the Covenant on Civil Liberties requires that, in the execution of punishment, the suffering of the executioner should be kept to a minimum. Punishment that inflicts more than the minimum necessary suffering is an illegal measure that violates Articles 7 and 6 as cruel and inhuman treatment.

If, as the Furuhashi opinion states, Japanese hangings 1) cause instantaneous unconsciousness, 2) do not damage the corpse, 3) are the most painless and easy way to die, and 4) do not leave a sense of cruelty even after death, they would not violate the Covenant on Civil Liberties. However, as we have seen, the current hangings cannot predict or control the mechanism of the executioner's death. As a result, it is a punishment that inevitably inflicts more suffering than necessary on the executioner, and it is clearly contrary to the Covenant. The first instance court decision in the Konohana pachinko parlor arson case justified the mental and physical suffering that inevitably accompanies the execution of a hanging sentence by stating that a certain degree of suffering should be tolerated since the defendant committed a serious crime. In addition, the court of appeals in the same case (Osaka High Court, July 31, 2013) ruled that the method of execution of the death penalty, which is the ultimate punishment for taking away life, was based on the Dajokan Proclamation No. 65 of 1873, 140 years ago, even though it is a matter of law, and that there were numerous discrepancies regarding the specific method of execution, without establishing a new law. The court also stated that the current method of execution, hanging, does not cause unnecessary physical or mental suffering to the condemned, and therefore, the court ruled the hanging to be constitutional. The Supreme Court, Third Bench, in its decision of February 23, 2008, made no specific reference to the cruelty of hanging, but only stated that the death penalty, including the method of execution, does not violate the provisions of the Constitution in light of previous precedents. The first trial court's finding that "it is inevitable that the death penalty inflicts mental and physical suffering on prisoners and entails a certain degree of cruelty"

defeats the purpose of the death penalty and permits "mental and physical suffering and a certain degree of cruelty" to be inflicted. The decisions of the Court of Appeals and the Court of Final Appeal that accept this holding are in direct contravention of Articles 6 and 7 of the Covenant on Civil Liberties.

2 Hanging in Japan violates the human (individual) dignity of the condemned

In addition to the gruesome nature of the execution itself and the unavoidable suffering that exceeds the minimum, Japan's hangings do not allow for complete control over the mechanism of death resulting from the execution, and may cause severe damage to the body after the execution. It is an inhumane punishment that seriously undermines the human dignity and personal dignity of the executioner, and falls under the category of "degrading punishment" of the executioner as stipulated in Article 7 of the Covenant on Civil Liberties, as well as "arbitrary deprivation of life" prohibited by Article 6 of the Covenant, which is illegal.

3 Hanging in Japan is also contrary to Articles 13 and 36 of the Japanese Constitution

The "cruel and inhumane punishment" absolutely prohibited by Article 36 of the Constitution of Japan should be understood synonymously with the "cruel," "inhumane," and "degrading" punishment prohibited by Article 7 of the Covenant on Civil Liberties. The prohibition of cruel, inhuman, and degrading punishment stipulated in the Covenant on Civil Liberties is a concrete legal norm that all parties must comply with as a universal value standard that does not change regardless of differences in legal systems and cultural backgrounds.

Article 13 of the Constitution of Japan provides that "All of the people shall be respected as individuals. The rights of the people to life, liberty, and the pursuit of happiness shall be respected to the fullest extent in legislation and in all other governmental affairs, provided that such respect is not contrary to the public welfare. Even in situations where the state exercises its penal power, the personality and dignity of the person executed must be respected to the utmost. Rather, it is the ultimate deprivation of life, the source of human dignity, that requires the utmost respect. Executions that disrespect the personality and dignity of the executioner constitute inhuman and degrading punishment prohibited by Article 7 of the Covenant and arbitrary deprivation of life prohibited by Article 6 of the Covenant.

As already noted, hanging, the current method of execution in Japan, is a gruesome form of execution that severely diminishes the "state of death" of the executed person, and is an unavoidable method of inflicting bodily harm that violates posthumous dignity and is visually repulsive. If the sole purpose of punishment is deprivation of life, suffering must be minimized as much as possible, and a peaceful death must be ensured as much as possible. Nevertheless, the current practice of hanging, which inflicts excessive terror on the condemned in advance and forces him or her to endure pain and gruesome conditions at the time of execution and inevitable posthumous bodily harm that violates dignity, is impermissible because it constitutes "degrading punishment" of the condemned, as prohibited by Article 7 of the Covenant on Civil Liberties.

The U.S. Supreme Court has used "evolving standards of decency that mark the progress of a maturing society" in reviewing the cruel and unusual nature of punishment prohibited by the Eighth Amendment to the U.S. Constitution (*Trop v. Dulles*, 356 U.S. 86 (1958) (Kou-G9)). *Trop v. Dulles*, 356 U.S. 86 (1958) (Kou-G9). In *Furman v. Georgia*, 408 U.S. 238 (1972), in which the constitutionality of the death penalty was questioned, several judges, after considering the basic concept of the Eighth Amendment as human dignity, stated that the death penalty is an arbitrary punishment that undermines human dignity in light of the above standard (Kou-G1).

The 1948 decision of the Supreme Court also pointed out that a situation could arise in the future in which a method of execution that was considered appropriate at a certain time could be interpreted as generally considered cruel from a humanitarian standpoint, in violation of Article 36 of the Constitution, which prohibits cruel and unusual punishment, as time and circumstances change. The standard for examining whether or not an execution constitutes cruel and unusual punishment prohibited by law is not fixed, but rather assumes a dynamic standard that evolves in response to changing times and circumstances, a standard that is shared by the Supreme Court of the United States.

In the current era and environment, the most universal concept in assessing whether a punishment is cruel, inhumane, or degrading to the offender is the standard set forth in Article 7 of the Covenant on Civil Liberties. Current forms of hanging, which go beyond the deprivation of life, inflict unnecessary physical and mental suffering on the executioner, and fail to preserve posthumous dignity by damaging the body, are illegal as cruel, inhuman, or degrading punishment that does not meet the minimum necessary pain test required by Article 7 of the Covenant. It is so. As such, the hanging is also in violation of Articles 36 and 13 of the Constitution of Japan in light of modern standards of decency.

VIII. Plaintiffs' Damages - Fear of Execution by Hanging

1 The pain of not having an explanation for the hanging

The condemned person does not know where and how the hanging will be carried out, what kind of physical damage will be inflicted, what will happen to his or her body, what kind of pain will he or she suffer, what will he look like hanging from a noose after death, how will his or her body be disposed of, and so on. In states with the death penalty in the U.S., when an execution order is issued, the department in charge of executing the death penalty gives a detailed explanation to the offender about the process of completing the execution. This includes an explanation of the method of execution (drugging, lethal gassing, or electric execution). The person sentenced to death may not be convinced by the explanation given by the authorities, but he or she can understand it. On the other hand, Japanese death-row inmates, who are hanged without any explanation, are left in a state of mischievous anxiety and anguish, contrary to their understanding. The pain caused by this is heavy and daily.

2 Thoughts of a death-penalty convict

How do death-row inmates feel about the prospect of being hanged? To find out, it is useful to look at the results of past death-row inmates' questionnaires. The results of several surveys of death-row inmates have been made public. Kyodo News reporter Daisuke Sato conducted the following questionnaire survey of death penalty inmates between September and November 2012, and the results are available here. (Report: Death Penalty (The Realities of the Death Penalty Concealed by the Ministry of Justice)" (Kou-H1, p. 43 and following).

From September to November 2012, Mizuho Fukushima, a member of the House of Councilors of the Social Democratic Party (SDP), sent a questionnaire to all 133 convicted death penalty inmates (at the time), and received responses from 78 of them. When conducting this questionnaire, I was involved in the process of deciding the questions to be asked, as I belonged to the investigative reporting team (special reporting office) of Kyodo News at the time.

(Kou-H1, p. 43)

The questionnaire was ... on a single sheet of A3 paper, with a question and answer section on the front and back of the form. Following the columns for name, place of detention, etc., the following questions were asked, with a space for each answer.

- (1) Whether or not a request for retrial is made*
- (2) Feelings toward the victim*
- (3) Would you like to be notified in advance of the execution (if so, how far in advance)?*
- (4) Should the method of execution be reviewed?*
- (5) Views on the introduction of life sentences and the death penalty*
- (6) Opinions about visits, correspondence, medical care, etc.*

(Kou-H1, p. 45)

The questionnaire asked the question, "Should the method of execution be reviewed? Sato describes the results of the question item 4 under the subheading "Fear of Execution by Hanging" as follows.

"Furthermore, when asked about the method of execution, 44 of the 78 respondents wanted a review. The rejection of the current hangings is evident in such comments as "(Hanging) is the most barbaric and inhumane way to kill people" (Seijiro Yamano, convicted of two robberies and murder, in Osaka Detention Center)."

(Kou-H1, p. 54)

It shows a strong rejection of hanging. The survey revealed that nearly half of the respondents want other options. According to Sato, more than half of the death-penalty inmates who responded to the survey wanted to switch to drug injection. In addition, the following is a list of responses from death-penalty inmates regarding drug injection.

Twenty-five of the 44 requested that the method of execution be changed from hanging to the drug injection method used in the U.S. The other 44 requested that the method of execution be changed from hanging to drug injection, which is the method used in the U.S.

Takeo Inokuma, a death-row inmate who experienced general anesthesia during a cancer operation, asserts that "drug injections are the best". Masataka Kurayoshi, a robber and murderer on death row at the Fukuoka Detention Center, also stated, "I can die in three to four minutes even if I am hanged, so there is nothing wrong with it, but if you think about it from the human heart, I think I suffered for decades before my execution and I am making amends, so I think a drug injection is better". One respondent suggested that "push the switch for drug injection himself" in order to reduce the burden on the prison officers who actually carry out the executions. (former executive staff of Aum Shinji Miyamae, formerly Kazuaki Okazaki)

(Kou-H1, pp. 54 and 55)

Based on the results of the questionnaire, Sato points out the following rejection of the hanging penalty common among those sentenced to death, and then introduces the words of Koichi Shoko.

"However, a common thread that runs through the calls for a review of execution methods is the rejection of hanging.

Koichi Shoko, a Tokyo prisoner accused of robbery and murder of two housewives in Kanagawa Prefecture, said, "my tongue is broken, my eyeballs are poked out, blood is pouring from my mouth, ears, and nostrils, and I am hanging from a rope. I always imagine the time of my death. I always imagine the time when I will die". Shoko, who had expressed her fear that the execution would be carried out without any physical damage to her body, will stand on the gallows on August 2, 2019."

(Kou-H1, p. 55)

Along with the fear of being hanged, Shoko's fear of being hanged is, above all, that of "being hanged by the neck and hanging from a rope, my body being cruelly damaged, and I don't want to die this way. This is a sentiment shared by all death-row inmates.

3 Short summary

The fear of "breaking my tongue, my eyeballs popping out, blood flowing unceasingly from my mouth, ears, and nostrils, and being hung from a rope, spinning myself around and convulsing until death is certain, always imagining the time when I will die. As is clear from the answers to the questionnaire (Kou-H1, p. 43 and below), the defendant has continued to inflict a sense of fear on death-row inmates and their small but sincere wish to "at least die as a human being" has taken away by force.

The Ministry of the Environment's "Guidelines Concerning Methods of Killing Animals (Ministry of the Environment Notice No. 105, November 12, 2007)" (Kou-C7) states that "the principle is to respect the dignity of life" even for animals such as dogs and cats. It also requires that "the animal be treated in a manner that does not cause it pain. Distress" includes not only mere painful stimuli (pain) but also "states of anguish, fear, anxiety, and depression," and requires that such distress not be inflicted on the animal. The "states of anguish, fear, anxiety, and depression" that the above-mentioned death-row inmates experience on a daily basis are "unacceptable acts even for animals" as they "inflict suffering in violation of the above guidelines. If this were allowed for a human death-row inmate, the inmate would no longer be a human being. If this is allowed to be done to a human death-row inmate, he or she is no more a human being than a dog or a cat. These are the interests of the plaintiffs and other death-row inmates that will be violated.

IX. Plaintiffs' Claims

Plaintiffs claim against the defendant: 1. an injunction under Article 37-4 of the Administrative Procedure Law; 2. confirmation of obligations under public law by way of party suit under Article 4 of the Administrative Procedure Law; and 3. compensation for damages under Article 1, Paragraph 1 of the National Compensation Law.

1 Injunction against Execution of Death Penalty by Hanging

1 Illegality of the defendant's execution of the death penalty

Defendant's method of execution by hanging is illegal. It is clear that Defendants should not order the execution of Plaintiffs by hanging. Plaintiffs have the right to challenge Defendants' illegal "hanging" method of execution.

2 Dispositional nature

Decisions that are the subject of injunctive actions (Article 37-4, Paragraph 1 of the Administrative Procedure Law) are those acts of the national government or public bodies, which are the subjects of

public authority, that are legally recognized to directly form the rights and obligations of citizens or to determine the scope of such rights and obligations. In making such a determination, the system of individual laws concerning the act is interpreted, and whether the legislative policy of treating the act as a determination shall be considered spontaneously.

(1) Framework for Execution of Death Penalty

Regulation on the specific methods of executing the death penalty shall be recounted.

1. Propose from the head of the Public Prosecutor's Office (Chief Public Prosecutor)

Under Article 472 of the Code of Criminal Procedure, a request for execution of the death penalty is submitted to the Minister of Justice by the head of the public prosecutor's office to which the prosecutor is assigned to direct the execution of the sentence (Article 9 of the Rules of Administrative Affairs). The appeal is made by submitting a written request for execution, a record of the proceedings including records not submitted to the court, and a copy of the court transcript.

2. Order of the Minister of Justice

The Minister of Justice shall, after reviewing the report, order the public prosecutor to execute the death penalty (Article 475, paragraph 1 of the Code of Criminal Procedure).

3. Order of the Public Prosecutor

When the Minister of Justice orders the execution of the death penalty pursuant to the provisions of Article 475, paragraph 1 of the Code of Criminal Procedure, the public prosecutor shall order the warden of the penal institution (detention facility warden) to execute the death penalty by issuing a written order (Rule 10, paragraph 1 of the Administrative Rules). When the Minister of Justice orders the execution of the death penalty, the execution shall be carried out within five days (Article 476 of the Code of Criminal Procedure).

4. Execution of death penalty

The warden of the penal institution (warden of the penal institution) who has received the notice will notify the inmate of the execution and execute the death penalty by hanging. Currently, the notification is made in the run-up to the execution in the morning (2 to 3 hours before), and the inmate is not informed before that time.

In the above process, acts from 1 to 3 are conducted by different administrative agencies (institutions), and when such acts are conducted by different administrative agencies, the other administrative agencies execute the death penalty on the basis of such acts, which is a continuous series of action. In particular, the order of the Minister of Justice (2) is binding on the public prosecutor and deprives a person sentenced to death of his or her life. Although 4 is an action-in-fact, it is also an act that results in the death penalty inmate's death and the permanent deprivation of his or her human rights.

Regardless the other party to the act is an administrative body or the action is an action-in-fact, the acts of each of these bodies have a direct effect on the plaintiffs and other death- sentenced inmates.

(2) Administrative measures of injunction demanding the defendant as the state

There is also case law that presupposes the recognition of the dispositional nature of such a continuum of acts amongst internal administrative bodies and factual acts.

The Yokota Air Base Noise Injunction Lawsuit was filed by residents living near the base, seeking an injunction against the operation of aircraft of the Self-Defense Forces and others, with the government as the defendant. The Yokohama District Court, the court of first instance, granted the injunction as an unnamed appeal suit. The Tokyo High Court, the court of appeal, granted the injunction under Article 37-4 of the Administrative Procedure Law (injunction suits), and the Supreme Court, like the Tokyo High Court, recognized the "threat of serious damage" under Article 37-4 of the Administrative Procedure Law (injunction suits), but held that the case "cannot be said to be one where the administrative authority's discretion is found to exceed its scope or be abused. (Supreme Court, First Petty Bench, December 8, 2016, Judgment, Minshu, Vol. 70, No. 8, p. 1833; Supreme Court Case Commentary, Kou-C, p. 11). Supreme Court Case Commentary, Kou-C11).

In the said lawsuit, the requirements for the main proceedings are judged as fulfilling the requirements for an injunction lawsuit, and it is assumed that one or both of the following are "dispositions": 1) an order by the Minister of Defense to operate an SDF aircraft and 2) the operation of the SDF aircraft itself, which is conducted based on the order, as an exercise of the authority of the Minister of Defense. Although the first issue is that it is an internal act between administrative agencies, and the second issue is that it is an actual act, the Supreme Court has concluded that one or both of them constitute an "administrative measure".

The execution by hanging also constitutes an administrative measure of execution, which is a series of successive acts of internal orders by administrative bodies and factual acts based on such orders. Therefore, each of the acts 1 to 4 above is legally recognized as forming the rights and obligations of a citizen who has been sentenced to death, and thus constitutes an "administrative measure".

3 Fulfillment of Requirements for Injunction (Article 37-4 of the Administrative Procedure Act)

The requirements for a request for an injunction under Article 37-4 of the Gyosei Law are: (1) a threat of serious damage, and (2) no other appropriate means to avoid such damage. When the death penalty is carried out, the plaintiff and other persons sentenced to death are deprived of life by the defendant. Human life is the ultimate legal interest, and once executed, it is impossible to recover damages. Therefore, it is clear that the execution of the death penalty may cause serious harm. There is no other way to suspend the execution of the death penalty at this time, and the illegality of such a method cannot be challenged through other appeals.

(1) Unclear and arbitrary selection criteria for execution targets

Defendants have been executing people almost every year on a continual basis. However, it is not clear what criteria were used to select who to execute and when. Nor is the order of execution based on the date of the death sentence, with the oldest being executed first. It is clear from the data compiled by the plaintiffs' counsel (Kou-F15) that even if the death sentences were carried out in the same year, they were not carried out in the same manner. The period of time between the confirmation of each death sentence and the execution is indicated (yellow marker), and the period of time is indicated in handwriting. For example, among the eight cases confirmed in 1981, one case was executed in seven years, three in nine years, one in 11 years, two in 12 years, and one in 18 years. The length of time between the confirmation and execution was more than twice as long as that of the shorter cases.

In July 2018, 13 Aum Shinrikyo gurus and former followers were executed simultaneously in two separate executions, albeit on different dates. This was the largest group execution in Japan's death penalty history (12 people were executed in the Daigaku case).

On the other hand, there were no executions in 2019-2020; the Tokyo Olympics and the 14th United Nations World Congress on Crime Prevention and Criminal Justice were scheduled to be held in Japan in 2020. This was postponed one year to the summer/fall of 2021. The Japanese government has been reluctant to hold executions because it does not want diplomats, criminal officials, and other dignitaries from other countries, especially European countries that have abolished the death penalty, to know that such executions are taking place in Japan during their visits to the country. However, after the two events ended in the fall of 2021 and the foreign dignitaries left Japan, the Japanese government (Ministry of Justice) executed three people on December 21, 2021, at the end of the year. On July 26, 2022, another death sentence was carried out. In other words, executions of defendants are carried out arbitrarily, and the criteria for implementation and selection of the subjects are not made clear.

Thus, executions are carried out at the discretion of the defendant, without any criteria for existence or non-existence, or for the timing of executions.

It has been about 17 years for plaintiff A, about 15 years for plaintiff B, and about 10 years for plaintiff C since they were sentenced to death. The plaintiffs do not know when or if they will be executed. In addition, this lawsuit challenges the illegality of the hanging penalty, and for the defendants, the very foundation of the death penalty is being challenged. For a traitor who tries to challenge the basis of the death penalty in this way, execution in retaliation is quite possible.

(2) No legal means to prevent

Under current law, there is no other appropriate method (Article 37-4, Paragraph 1 of the Code of Criminal Procedure) other than an injunction action to avoid the serious damage of deprivation of life caused by the execution of the death penalty.

Article 502 of the Code of Criminal Procedure provides for a method of contesting the method of execution under the Code of Criminal Procedure, and there are two Supreme Court precedents related to this article. The first is the Supreme Court decision of December 5, 1961 (Minshu Vol. 15, No. 11, p. 2662), which stated, "If it is claimed that the current method of execution under the current laws and regulations (death penalty: plaintiff's counsel's note) is illegal, the criminal judgment that is based on such method of execution should be challenged in the manner prescribed by the Penal Procedure Law, and without this ... In the end, to dispute the method of execution of the death penalty under the Law on Special Measures for Administrative Case Litigation is, in effect, to seek the annulment or modification of a criminal judgment by means of an administrative case lawsuit, and such a lawsuit is not permitted". The second is the Supreme Court decision of August 24, 1961 (Penal Code, Vol. 7, No. 1301), which states that "an objection to the execution of a trial made before the prosecutor directs the execution of the trial or makes any other disposition is inadmissible".

At this point in time, the report to the prosecutor has not been filed or the execution of the death penalty has not been initiated in this case. Article 502 of the Code of Criminal Procedure provides for a system to file an objection to the prosecutor's disposition regarding the execution, but it is clear from the second case that no objection can be filed at this stage because the procedure for the prosecutor to conduct the execution, which is the subject of the objection, has not been initiated. Incidentally, in a previous case in which the Tokyo District Court ruled on 28 September 1960 in a substantive party action concerning the non-existence of the obligation to accept the death penalty (Kou-C12), the Tokyo District Court decided on 30 June 1959 to stay the execution (Kou-C13).

4 Legal interest

Since the plaintiffs are persons under the death penalty who have been sentenced to death and there is a probability that they will be executed by hanging in the future, they have legal interests as well (Article 37-4, Paragraph 3 of the Code of Criminal Procedure).

5 Jurisdiction

Based on the above, the filing of the injunction suit by the plaintiffs under Article 37-4 of the Administrative Procedure Law is lawful. The execution of the death penalty against the plaintiffs will be carried out by the Minister of Justice, the public prosecutor of the Osaka District Public Prosecutors Office, and the warden of the Osaka Detention Center, and since the national government, to which the administrative agency making the relevant administrative measure belongs, is the defendant, a lawsuit may be filed in the Osaka District Court (Article 11, Paragraph 1, Item 1 and Article 12, Paragraph 4 of the Administrative Case Litigation Act). And since the injunction lawsuit is the basic claim, and other claims are consolidated in order, the Osaka District Court has jurisdiction regardless of the jurisdiction of the other claims (Article 16, Paragraph 1 of the Administrative Case Litigation Act).

2. Confirmation of the non-existence of the obligation to accept execution (party suit under public law)

1 Necessity of Party Suit under Public Law

Even if the execution of the death penalty under the existing statute is stayed, there are certain limits to the effect of such a ruling. For example, even if the request for an injunction is approved, depending on the judgment in the reasons, there is a possibility that the death penalty may still be carried out by hanging if the government amends the law and changes the current hanging method. In particular, since the current hanged penalty is said to be based on the antiquated Dajokan Proclamation No. 65 of 1873, even if the request for an injunction against the current execution method is approved, there is still a possibility that the law will be amended to carry out the execution. If so, the plaintiffs have an interest in confirming that they have no obligations to accept the death penalty by hanging.

The existence or non-existence of the obligation to accept the death penalty can be disputed in a substantive party suit (Article 4 of the Code of Criminal Procedure). This was recognized by the Tokyo District Court on September 28, 1960 (Kou-C12), and more recently by the Osaka District Court, 2nd Civil Division, in a case (No. 122, 2021 (Reiwa 3)), in which the defendant demanded confirmation of the non-existence of the obligation to tolerate the notification of the execution and execution on the same day and demanded state compensation. The details are as follows.

2 Legal contestability

The plaintiffs are asking a judicial examination and decision on a concrete matter that concerns the very foundations of their life and procedural guarantees, as to whether or not they have a concrete right to be obliged to accept the execution of the hanging sentence. If this is not a legal dispute, despite the fact that they are asking the judiciary to hear and decide on the issue, it is nothing less than a denial of judicial power. The life of the plaintiff and the guarantee of due process are rights derived from Articles 31, 32, 13, etc. of the Constitution. The death penalty is a life sentence, and once it is carried out, it is irreversible.

Therefore, at this point, the execution of the hanging sentence against the plaintiff should be examined by the court as a violation of international human rights law (violation of the Covenant on Civil Liberties). Since the execution of the hanging sentence has already been fixed by a final and binding judgment, a dispute over the method of execution can be said to be an actual dispute over the existence or non-existence of concrete rights and obligations or legal relations between the parties, and constitutes a legal dispute (Article 3, Paragraph 1 of the Court Act).

3 Benefit of confirmation

In preventing future adverse dispositions, the absence of the obligation that is a precondition for the adverse disposition is also subject to confirmation (see the case of request for confirmation of the absence of the obligation to sing the national anthem, February 9, 2012 (Heisei 24), Minshu, Vol. 66, No. 2, p. 183). Since there is a concrete dispute between the parties regarding the fact that the hanging is a violation of international human rights law and the Constitution, it is effective and appropriate to determine the existence or non-existence of the obligation to accept the hanging in order to resolve the concrete dispute between the parties, and this case is an appropriate subject for confirmation.

The judgment sentencing the plaintiff to death has become final and binding, and there exists a risk and anxiety about the execution of the hanging sentence. In order to eliminate the risk, it is necessary and appropriate to issue a confirmatory judgment on the existence or non-existence of the obligation to comply with the execution of the hanging sentence, and the ripeness of the lawsuit (practical necessity of immediate confirmation) is also recognized. In light of the above, this lawsuit has the benefit of an action for confirmation.

4 Replenishment

Even in cases where an injunction suit and a substantive party suit are filed concurrently, supplementarity is not denied if they have mutually independent interests (see the case of request for confirmation of non-existence of obligation to sing the national anthem, February 9, 2012, Civil Vol. 66, No. 2, p. 183, Supreme Court) In addition, since there is no practical means to dispute the method of execution of the death penalty under the Code of Criminal Procedure, the scope of the 1961 decision does not extend to this case. Therefore, the supplemental nature of the substantive party action is not denied in this case.

5 Court Decisions Holding Substantial Party Actions is Legal with Respect to the Absence of an Obligation to Accept Execution of Death Penalty

In the past, the Tokyo District Court ruled on September 28, 1960 (Kou-C12) that a party in fact could file a lawsuit against the death penalty with detailed reasons given. In the case of a request for confirmation of the non-existence of an obligation to accept the death penalty, the Tokyo District Court recognized the validity of a request by a person sentenced to death to the government to confirm that he/she is not obligated to be executed under the current execution method (a request for confirmation of obligation under public law), and rejected the defendant's defense that the defendant should file an appeal under Article 502 of the Code of Criminal Procedure. The court then made a decision on the main case.

Even if it is possible to conceive of an opportunity after the order and before the execution, it is clear that the execution of the death penalty is very different from the execution of other sentences, according to the existing laws and regulations and the results of this court's examination. The execution of the death penalty is carried out by order of the Minister of Justice, and the execution must be carried out within five days of the order. It is not until the morning of the day of execution that the warden is officially informed of the order, and it is not until shortly afterwards that the prisoner is informed of the order by the warden, and in the altar room of the prison to which he is led, just prior to the execution. At such a point in time and under such circumstances, no one can be sure that an objection to the right to command the death penalty can be sufficiently filed. In such a case, it is clear that it would be extremely inappropriate to limit the method of appeal against the execution of the death penalty by a person sentenced to death to the method of objection provided for in Article 502 of the Code of Criminal Procedure, and that a rightly convicted person may, to the extent that other

methods exist for the execution of the death penalty, seek relief by that method before the court. Therefore, it should be understood that rightful convicts may substantially challenge the execution of the death penalty to the court and seek relief by that method, as long as other methods of execution exist. In addition, it is reasonable to conclude that it is permissible to assert the non-existence of a public law obligation, such as the obligation to execute the death penalty, and to file an action to confirm the non-existence of such obligation when there is no other adequate remedy for a serious legal interest and such action is unavoidable. Therefore, this action is lawful, and there is no reason for the defendant's argument.

(Kou-C12, pp. 535 to 536)

Based on the foregoing, the filing of the substantive party action by the plaintiffs is lawful. The substantive party action is merged with the injunction claim.

3 Lawsuits for State Compensation

1 Breach of duty by the defendant public official

The execution of Defendant by hanging is illegal. The plaintiffs are obliged to accept the death penalty, but they are not obliged to accept the illegal execution of the death penalty by hanging. The Chief Public Prosecutor of the Osaka District Public Prosecutor's Office, to which the prosecutor supervising the execution belongs, submits a request for the execution to the Minister of Justice (Article 472 of the Code of Criminal Procedure and Article 9 of the Execution Administration Rules), the Minister of Justice issues an execution order (Article 475, Paragraph 1 of the Code of Criminal Procedure), and the prosecutor supervising the execution directs the warden of the Osaka Detention Center to execute the death penalty based on the execution order (Article 475, Paragraph 1 of the Code of Criminal Procedure). The public prosecutor directs the warden of the Osaka Detention Center to carry out the execution based on the death penalty execution order (Article 10, Paragraph 1 of the Rules of Execution).

The Chief Public Prosecutor of the Osaka District Public Prosecutors Office, the Public Prosecutor in charge of execution, the Superintendent of the Osaka Detention Center, and other public officials have a duty not to execute a person sentenced to death by hanging, which is an illegal means of execution (duty of inaction). The fact that these public officials have maintained the execution of death penalty by hanging in violation of this duty of omission constitutes an unlawful act against the plaintiffs.

The illegality of executions has been pointed out by the Japan Federation of Bar Associations (JFBA) in resolutions passed by its Board of Directors 20 years ago in November 2002 (Kou-C8), by the Human Rights Congress in 2004 and 2011 (Kou-C9), and by the Human Rights Congress in 2016 (Kou- C10) calling for the abolition of the death penalty, by local bar associations through resolutions, and by the JFBA through notifications (executions) to defendants, and by public officials involved in executions.

2 Compensation Amount

(1) Compensation for plaintiffs' pain and suffering: 10,000,000 yen each

The death-penalty convicts have spent their days filled with pain, anguish, and anxiety, helplessly facing the execution of the death penalty, which they were not originally obliged to accept. Until the filing of this lawsuit, plaintiff A has been suffering for about 17 years, plaintiff B for about 15 years, and plaintiff C for about 10 years. The pain and suffering of the plaintiffs continues to this day and will continue until the defendants cease the illegal execution of the death penalty by hanging. Such illegal application of the death penalty by the defendant is a tort against the plaintiffs, and the amount of compensation for this mental anguish is not less than 10 million yen for each plaintiff.

(2) Attorney's Fees: 1,000,000 yen each

Since the plaintiffs had no choice but to entrust an attorney to file this lawsuit, 1,000,000 yen each for the attorney's fee is also a tort damage caused by the defendant.

(3) Late payment of damages: 3 percent per annum

For each of the above-mentioned damages, a claim for delay damages (at the rate of 3% per annum) shall be made as prescribed by the Civil Code (Article 4 of the National Compensation Law and Article 722 of the Civil Code).

3 Short summary

Therefore, each plaintiff is entitled to 11,000,000 yen in damages against the defendant under the Law Concerning Lawsuits for National Claims for Compensation.

X. Conclusion - Why Keep Hanging Executions Secret?

1 Concealing the Execution of the Hanged Man

Defendants do not reveal anything about the death penalty, particularly how executions by hanging are carried out and what kind of death awaits the condemned.

In the Meiji and Taisho eras, information on executions was made public. However, from the beginning of the Showa period, information on all executions (hangings) was withheld from the public and the media. The report of the Investigation Commission on the Execution System from the Taisho and Showa eras was the main reason for the non-disclosure of information on the death penalty, including hangings.

2 The Investigation Commission on the Execution System and the Execution of Death Penalty (Hanging)

1 Study on Method of Execution of Death Penalty

The Japanese government once considered the method of execution of the death penalty, as examined by the Investigation Commission on the Execution System which was established in 1922 (hereafter referred to as the "Commission"). According to an instruction by Justice Minister Ohki at the first meeting of the Commission, the system of execution at that time was based on the concept of retribution for crimes, and protection nature was not regarded to the system. The government asked the Commission to consult on 15 items, including the method of execution. This process is detailed in the Fuse paper (Kou-F1-1).

2 Recommendations of Subcommittee I

The first subcommittee examined methods of executing the death penalty. At the third meeting of the Committee, Judge Kikunosuke Makino, the chairman of the First Subcommittee, made the following four recommendations to the First Subcommittee in his report entitled "The Course of Proceedings and the Results of the Investigation into the Pros and Cons of Strangulation, Slashing, Shooting, and Electrocutation Practiced in Japan and in European and American Countries.

- (i) That the execution of the death penalty may be carried out by strangulation in the end, and that the method of execution be improved so that the pain of the sentenced person may be lessened and the horrors of the moment of death may not be seen.
- (ii) The Supplementary Provisions of the former Penal Code, which were to be notified to the sentenced person at the time of execution, shall continue to be notified as before, even though they have been repealed.
- (iii) The circumstances of the execution of the death penalty shall be kept secret, but the fact of the identification and execution of the crime shall be made public for encouraging good behavior and discouraging bad behavior.
- (iv) That the execution of the death penalty may not be delayed for more than a few days, as this would cause too much mental anguish to the offender, and that the execution may therefore be carried out as quickly as possible.

3 The First Subcommittee recognized the cruelty of hanging.

What is clear from this recommendation is that the First Subcommittee acknowledged the suffering and subjective cruelty of the condemned by stating that "the suffering of the condemned (those who are hanged) should be reduced. It also acknowledged the "misery at the moment of death," that is, the misery up to the moment of death, its gruesomeness, and objective cruelty. However, the First Subcommittee recommended that to the effect the cruelty " be made invisible and that the methods of execution be improved by way of change". In other words, it was a recommendation to "cover up

the stink". In response to the first recommendation, the third recommendation states that the circumstances of executions should be kept secret from the public.

4 Report of the Investigation Commission on the Execution System and the Government's Non-disclosure of Information on the Death Penalty

The report on the investigation of the penal system (I) (Kou-F7), prepared between 1923 and 1924, contained the following four recommendations regarding the method of execution of the death penalty in response to the aforementioned recommendations of the First Subcommittee.

Execution of the Death Penalty

- (i) The death penalty may be imposed by strangulation, and I wish to improve the current method of execution.
- (ii) Execution of the death penalty shall be announced to the person to be executed at the time of execution.
- (iii) The method and circumstances of execution of the death penalty shall be kept secret. For encouraging good behavior and discouraging bad behavior, it is requested that the summary of the crime committed by the sentenced person and the execution shall be made public as appropriate.
- (iv) Execution of the death penalty shall be carried out as soon as possible after the judgment becomes final and binding.

The Commission approved the recommendations of the First Subcommittee as recommended. It was, that although subjectively and objectively cruel, the method be improved in a way that the execution would not be seen.

In light of the above, the government "improved" hanging by keeping the execution (hanging) secret, even though it had been painful and horrific and in need of improvement since 1923 to 24 (Taisho 12 to 13).

The third paragraph of the report stated that "the method and circumstances of execution of the death penalty shall be kept secret", and the government's policy of withholding all information on death penalty as well as its executions began to be closed to the public. The government's policy was to keep all information on the death penalty secret (non-public), including mass media reports. After the war, even after the new constitution was enacted, there was no change in this policy.

3 How were executions carried out under the secrecy of death penalty information?

The following shows the number of executions since 1925 (Taisho 14), when the report was submitted. The following table is based on the Annual Report of Prosecutorial Statistics.

Year	Number of people
1925 (Taisho 14)	19
1926 (Taisho 15/Showa 1)	29
1927 (Showa 2)	12
1928 (Showa 3)	21
1929 (Showa 4)	13
1930 (Showa 5)	13
1931 (Showa 6)	19
1932 (Showa 7)	22
1933 (Showa 8)	28
1934 (Showa 9)	35
1935 (Showa 10)	14
1936 (Showa 12)	11
1937 (Showa 13)	23
1938 (Showa 14)	15
1939 (Showa 15)	14
1940 (Showa 16)	20
1941 (Showa 17)	22
1942 (Showa 18)	11
1943 (Showa 19)	15
1944 (Showa 10)	25
1945 (Showa 20)	9
1946 (Showa 21)	11
1947 (Showa 22)	12
1948 (Showa 23)	33
1949 (Showa 24)	33
1950 (Showa 25)	31
1951 (Showa 26)	24
1952 (Showa 27)	18
1953 (Showa 28)	24
1954 (Showa 29)	30
1955 (Showa 30)	32
1956 (Showa 31)	11
1957 (Showa 32)	39
1958 (Showa 33)	7
1959 (Showa 34)	30
1960 (Showa 35)	39
1961 (Showa 36)	6
1962 (Showa 37)	26
1963 (Showa 38)	12
1964 (Showa 39)	0

1965 (Showa 40)	4
1966 (Showa 41)	4
1967 (Showa 42)	23
1968 (Showa 43)	0
1969 (Showa 44)	18
1970 (Showa 45)	26
1971 (Showa 46)	17
1972 (Showa 47)	7
1973 (Showa 48)	3
1974 (Showa 49)	4
1975 (Showa 50)	17
1976 (Showa 51)	12
1977 (Showa 52)	4
1978 (Showa 53)	3
1979 (Showa 54)	1
1980 (Showa 55)	1
1981 (Showa 56)	1
1982 (Showa 57)	1
1983 (Showa 58)	1
1984 (Showa 59)	1
1985 (Showa 60)	3
1986 (Showa 61)	2
1987 (Showa 62)	2
1988 (Showa 63)	2
1989 (Heisei 1)	1
1990 (Heisei 2) to March 1993 (Heisei 5)	0
1993 (Heisei 5)	7
1994 (Heisei 6)	2
1995 (Heisei 7)	6
1997 (Heisei 9)	4
1998 (Heisei 10)	6
1999 (Heisei 11)	6
2000 (Heisei 12)	3
2001 (Heisei 13)	2
2002 (Heisei 14)	2
2003 (Heisei 15)	1
2004 (Heisei 16)	2
2005 (Heisei 17)	1
2006 (Heisei 18)	4
2007 (Heisei 19)	9
2008 (Heisei 20)	15
2009 (Heisei 21)	7
2010 (Heisei 22)	2

2011 (Heisei 23)	0
2012 (Heisei 24)	7
2013 (Heisei 25)	8
2014 (Heisei 26)	3
2015 (Heisei 27)	3
2016 (Heisei 28)	3
2017 (Heisei 29)	4
2018 (Heisei 30)	15
2019 (Heisei 31/Reiwa 1)	3
2020 (Reiwa 2)	0
2021 (Reiwa 3)	3
2022 (Reiwa 4)	1

(Total 1095)

In the 1945 to 1955 (Showa 20's) and 1955 to 1965 (Showa 30's), the number of executions reached double digits, and although it finally reached single digits in the 1965 to 1975 (Showa 40's), executions by hanging continued to be carried out every year. However, this information was never disclosed to the public by the government (Ministry of Justice).

In November 1998 (Heisei 10), the Ministry of Justice announced only the fact of the execution and the number of those executed on the day of execution (after the execution).

This was approximately 75 years after the aforementioned Report on the death penalty execution system No 1. Since October 2007, approximately nine years later, the Ministry of Justice has only disclosed the name, date of birth, crime, and place of execution of death penalty inmates who have been executed.

Executions by hanging have been carried out in secret since the Showa period, and information was never made public until the limited public disclosure mentioned above. This is because hangings are cruel. As the Investigation Commission of Execution System described it as " the horrors of the moment of death may not be seen," it is not something that can be shown to the public. It is not something that can be made public.

Over the past 97 years, a total of 1,095 death sentences have been carried out; more than 1,000 death sentences have been carried out in secret for nearly 100 years, i.e., the defendants have killed them.

4 the people involved in the hanging.

There are many people involved in the secret executions of more than 1,000 people, including prison guards, chaplains, prosecutors, and others who are involved in the execution. The number is believed to exceed 10,000. This case is a trial to question the cruelty of hanging. Hanging is a cruel punishment even to the prison guards and chaplains who are present.

1 Prison Officer

Keiko Horikawa states in her "Life under Judgment - Letter from a Prisoner on Death Row" (Kou-F13), in "Prologue to the Collection".

Although it is the court that passes the death sentence, it is the prison guards who actually carry out the execution. The work is the horrendous task of binding and hanging condemned prisoners with their own hands, and disposing of the bodies with blood and excrement flowing. The suffering of these prison guards, who are the parents of children and ordinary citizens when they take off their uniforms, cannot be fully described in a few words.

(Kou-F13, p. 437)

The same point is also stated in the aforementioned Osamu Aoki, "Hanged" (Kou-D1).

2 Chaplain

Keiko Horikawa, while following the life of Fuso Watanabe, a Jodo Shinshu chaplain, wrote the following words of Watanabe in her book "Chaplain" (Kou-F14), which was published after his death.

An ordinary diligent person cannot be a chaplain. If you think too serious about it, you will end up being crazy yourself....

When it came time to say farewell to the person you had spent so much time with, you had to send him or her off with a ritual you yourself called "murder". This contradictory act exhausted him both physically and mentally.... I guessed that it was not his brain but his heart... that was paralysed by alcohol. When I confronted him with this assumption, Watanabe laughed silently and neither affirmed nor denied it. In any case, Watanabe was finally hospitalized (treatment for alcoholism, according to the plaintiff's attorneys' notes).

... he was discharged from the hospital after a little more than two months. Since then, he has not had a drop of alcohol in his mouth.

(Kou-F14, p. 258)

By following the life of one person, Watanabe reveals how the job of a chaplain is a burden physically and mentally, and the anguish it causes.

3 Prosecutor

In " Life under Judgment - Letter from a Prisoner on Death Row " (Kou-F13), describing Takeshi Tsuchimoto, a former prosecutor of the Supreme Public Prosecutors Office, who himself had sought the death penalty as a witness prosecutor and had received seven letters from the convict and corresponded with him, Ms. Horikawa describes how, after receiving the last letter (before his execution), the prosecutor was so distressed that he asked his superior for a pardon for the convict, including his own statement (Kou-F13, pp. 304-307). In the "Prologue to the Collection" of the above book, Horikawa introduced Tsuchimoto's testimony as a defense witness in the Konohana pachinko parlor arson case, in which he stated that he thought the death penalty was constitutional but the hanging penalty was unconstitutional, based on his experience witnessing executions, as follows

Mr. Tsuchimoto said, "it was unbearable to watch the scene of a person who had just been alive being tied up and hung so that he could not resist, and then being shaken like a puppet, swinging around the neck on its axis. Before witnessing the execution, he had read through the entire record of the case and told himself that "the maximum punishment was inevitable. However, he said that the sites they saw in reality did not seem very much like places where 'justice' was being achieved.

At the end of his testimony, Mr. Tsuchimoto looked squarely at the presiding judge and summed up his testimony as follows. The death penalty, which takes the life of a criminal, is an act at the very limits of what the state is allowed to do, and if it is cruel, it exceeds the limits of what the state nation is allowed to do. Whatever the atrocity with which a criminal kills, the state must never do the same thing, and it must punish him in a humane way that is not cruel, which is the pride of the state." (pp. 436 to 437)

Aoki states at the end of "Hanged" (Kou-D1, pp. 325 and 332).

The execution of a sentence that forcibly takes a life cannot be anything but gruesome. Again, all those surrounding the "death penalty" stand in hesitation and anguish.

Hanging has caused anguish and pain not only to those who are sentenced to death, but also to many others involved.

5 The defendant should reveal the reality of the death penalty.

Even today, almost 100 years after the report of the Investigation Commission on the Execution System, information on executions remains hidden in the secrecy veil. The reason for this is the cruelty of hanging.

Hanging is cruel, inhumane, unbearable to watch, and unforgivable to look at. Showing this to the public should instantly reveal society's awareness that such barbaric executions cannot be carried out.

This is why the defendants have no choice but to keep the hanging a secret, and they are doing so in secrecy. The people behind the secrecy are forced to suffer.

If the defendant claims that hanging is a safe and humane means of execution that is not cruel and abnormal in the current methods of execution, the defendant should and can reveal the true state in the judicial arena. The public is not informed of the reality of hangings. They do not even know that the death penalty is carried out by barbaric hanging, and they do not know how hanging is carried out. The same applies to the judiciary. In the five Supreme Court decisions up to 1956, no evidence of what hanging actually looks like, not even pictures of actual hangings, let alone pictures of actual hangings, was ever presented. The defendant only described hanging theoretically, but the actual reality of hanging has never been proven by the defendants.

Hanging, as a legal system, is cruel and inhumane and cannot continue in the present time. Such inhumane and barbaric acts cannot be allowed to continue in Japan, which claims to be a nation of human rights. Based on the above, the plaintiffs have decided to file this lawsuit.

(Annexures)

Plaintiff's list

1-2-5 Tomobuchi-cho, Miyakojima-ku, Osaka 534-8585, Japan Osaka Detention Center

Plaintiff

Plaintiff A

Same address

Plaintiff

Plaintiff B

Same address

Plaintiff

Plaintiff C

End