Effective Criminal Defence in Japan (1)

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https://doi.org/10.15017/4061281

出版情報：法政研究. 87 (1), pp.126-73, 2020-07-21. 九州大学法政学会
バージョン：
権利関係：

Note

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Koji Tabuchi (1)

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(1) This report summarises the results of two years of research conducted from May 2018 to February 2020 by the research project team of Kyushu University with financial support from the Open Society Foundations and methodological advice from the Open Society Justice Initiative. The research was conducted by the following members:
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In preparing this report, we would like to express my gratitude to the following individuals for their valuable advice:
Ed Lloyd-Cape (Emeritus Professor at the University of the West of England)
Zaza Namoradze (Director of the Berlin Office, Open Society Justice Initiative)
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PREFACE

The overarching goal of this research report is to contribute to the effective implementation of the rights of suspects and defendants—especially those who are indigent—to ensure potent and effective defence in Japan, thereby putting the idea of right to fair trial into practice. By exploring access to effective criminal defence in Japan, the report aims to advance the rights of suspects and defendants in criminal proceedings by providing policymakers and practitioners with evidence on how the rights operate in practice, and by offering recommendations for reforms to promote their implementation.

The project in Japan was inspired by a similar project conducted in the European Union, culminating in the publication of a book *Effective Criminal Defence in Europe* in 2010. This marked a major development in comparative criminal law in Europe, and has been an important resource supporting reforms across the region. Subsequent studies were produced on *Effective Criminal Defence in Eastern Europe* in 2012 and *Effective Criminal Defence in Latin America* in 2014. Like the original research project, the current study places the suspect and the defendant at the centre of the enquiry and examines the question of access to effective criminal defence from their perspective. We consider that procedural safeguards and effective criminal defence are not only essential to fair trial as an outcome but are also essential to fair trial when

considered in terms of process. Effective criminal defence has a wider meaning than simply competent legal assistance. Even if superior legal assistance is provided, it will not guarantee fair trial if the other essential elements of a fair trial process are missing. Thus, for criminal defence to be effective, there must be an appropriate constitutional and legislative structure, an adequate institutional framework, political commitment to effective criminal defence, and legal and professional cultures which facilitate it.

We hope that this research report, like the original study, will contribute to a deeper knowledge and understanding of the factors that influence the access to effective criminal defence. Our aim is for this report to be a source of inspiration for national policymakers and practitioners to make access to effective criminal defence available to all who need it.

Ⅰ. INTRODUCTION

1.1. The state of criminal detention in Japan

The population of Japan on 1 December 2019 was 126,144 thousand of which Japanese nationals accounted for approximately 123,646 thousand (98.0%). The breakdown of the total population by age group shows a society with a declining birth-rate and aging population: 12.0% is aged less than 15 years, 59.5% between 15 and 64 years, and 28.5% 65 years or more.[(2)] Against the background of the aging population, crime in Japan has decreased in recent years and the number of detainees in penal institutions and police detention facilities is also decreasing. The sum of the daily number of detainees in penal institutions throughout Japan in 1 year peaked at 29,449,745 in 2007, and then drastically decreased to 18,960,511 in 2018.[(3)] The sum of the daily number of detainees in police detention facilities throughout Japan in one year also decreased from 4,381,166 in 2009 to 3,077,896 in 2018.[(4)]

(2) Population Census of the Statistics Bureau.
(3) Statistics on the Correction of the Ministry of Justice.
(4) White Paper on Police 2019, 215.

Table 1 shows the average daily number of detainees in penal institutions and police detention facilities throughout Japan over the past five years. Both numbers continue to decline. The average daily number in 2018 was 46,314 (less than 0.4% per capita) for penal institutions for sentenced persons, 5,628 for penal institutions for suspects (persons under investigation before prosecution) and defendants (prosecuted persons), and 8,433 for police detention facilities (mainly suspects under police investigation are detained). In terms of population ratio, 1 in approximately 2,100 people in the population was being held in a penal institution or police detention facility on any 1 day in 2018.

Table 1 Average daily number of detainees in penal institutions and police detention facilities throughout Japan

Year	Penal institutions				Police detention facilities
	Total	Sentenced persons	Suspects and Defendants	Others	
2014	61,768	55,094	6,669	4	9,529
2015	59,670	53,127	6,539	4	9,540
2016	57,369	51,138	6,227	4	9,087
2017	54,876	49,002	5,869	4	8,559
2018	51,947	46,314	5,628	4	8,433

Note: 1. 'Sentenced persons' includes inmates sentenced to imprisonment or penal detention, persons sentenced to death and placed in detention, and detainees in a workhouse in lieu of the payment of fines.
Source: Correction statistics of the Ministry of Justice 2018, Table 18-00-22 and The White Paper on Police 2019, Table 7-16.

1.2. Nature of Japanese criminal justice

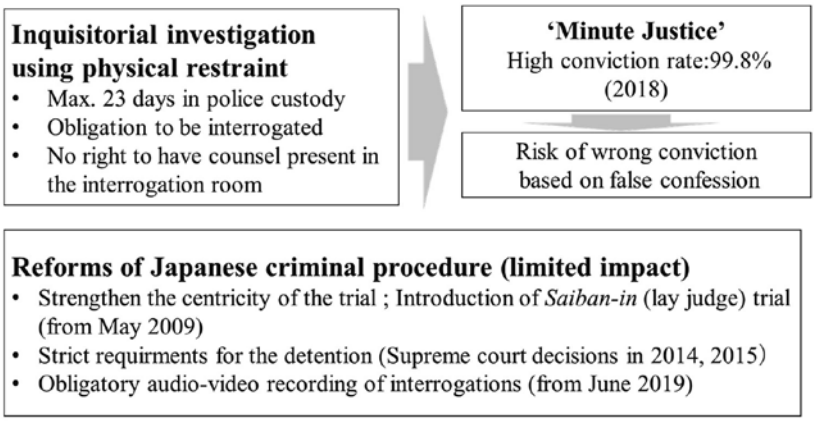
1.2.1. Overview

The Japanese government's modernisation of the justice system was strongly influenced by German law. However, after Japan's defeat in World War II, Anglo-American law strongly influenced the reconstruction of the current criminal justice system. As a result, the structure of Japanese criminal procedure changed from an inquisitorial to adversarial system. However, it differs much

from the Anglo-American type of criminal procedure. From a viewpoint of the legal system, investigations are designed to proceed on the base of voluntary cooperation of related persons. A warrant issued by a judge is indispensable in principle to apply the compulsory dispositions such as an arrest, a search and seizure. Decisions to prosecute a case or not are done by the public prosecutor as a representative of the public interest. The investigation and the trial are completely divided, and investigation records are not sent to the trial court as itself. Judges must face trials without any prejudices and find a fact just on evidence examined at the trial. Whereas, in operation of the system, criminal justice in Japan is traditionally characterised by an extremely high conviction rate, because an investigation is accompanied by lengthy interrogation of suspects in police custody who are obliged to participate in the interrogation (inquisitorial investigation), broad discretion of the public prosecutor in prosecution, and detailed fact-finding by judges using written statements recorded by investigation officers. Thus, while the proportion of cases in which confessions are obtained before prosecution keeps high level, the credibility of these confessions has always constituted an important issue in the trial. These characteristics of Japanese criminal justice are rather positively presented as 'minute justice'.[5] On the other hand, the minute justice theory has been criticised as an idea that abandons the reform of the due process model.[6] The 2004 reform of criminal procedure centred on introducing the saiban-in (lay judge) system, which was implemented under the slogan 'from minute' justice to 'core justice' (the trial which does not depend on written statements too much).[7] However, the concept of 'core justice' also does not require drastic strengthening of due process,[8] and the effect of reform is currently limited.

(5) Matsuo (1994), 1249; Matsuo (2012), 30-31.
(6) Odanaka (1995), 306-307; Shiratori (2012), 46.
(7) Hirano (1999), 2; Matsumoto (2004), 82.
(8) Odanaka (2006), 281.

Figure 1　Typical characteristics of Japanese criminal procedure



1.2.2. Outline of arrest and detention

(1) Period of arrest and detention

Arrests are carried out on a warrant issued by a judge in principle. When a judicial police officer has arrested a suspect, he or she must follow procedure and refer the person to a prosecutor within 48 hours of the suspect being placed under physical restraint, unless he or she releases the suspect of his or her own volition (Code of Criminal Procedure [CCP], Art. 203). Furthermore, the police have the power to dispose of petty offences designated by a prosecutor (CCP, Art. 246) or refer to a family court a case involving a juvenile who is as a result of the investigation of the case, suspected of committing a crime punishable by a fine or lighter punishment (Juvenile Act, Art. 41).

When a prosecutor receives a suspect from the police officer, he or she must request detention or institute prosecution with a judge within 24 hours and within 72 hours from when the suspect was arrested, unless releasing the suspect of their own volition (CCP, Art. 205). If a prosecutor has arrested a suspect, he or she must request detention or institute prosecution within 48 hours from the

suspect being placed under physical restraint, unless releasing the suspect of their own volition (CCP, Art. 204). Based on the above, a suspect arrested by a police officer will be brought before a judge for a detention hearing within 72 hours from the arrest in principle, unless he or she is released or prosecuted.

Detention is carried out after a judge's detention hearing (CPP, Arts. 207(1), 61). Counsel has no right to be present at the judicial inquiry for detention under Art. 207 and Art. 61. Therefore, in practice, before the judicial inquiry for detention, counsel submits a written opinion and materials to the judge or is in contact with the judge if needed.[(9)] If a detention warrant is issued after arrest, the detention period for the suspect is generally ten days from the date when detention was requested. If it is found that there are unavoidable circumstances for the investigation, the detention period may be extended up to ten days (Art. 208). In cases involving crimes provided for in Part II, Chapters II to IV or VIII of the Penal Code (crimes related to insurrection, foreign aggression and foreign relations, and crimes of disturbance), a further extension of five days is possible (Art. 208-2). If a prosecutor does not institute prosecution within the permitted detention period, the suspect must be released immediately.

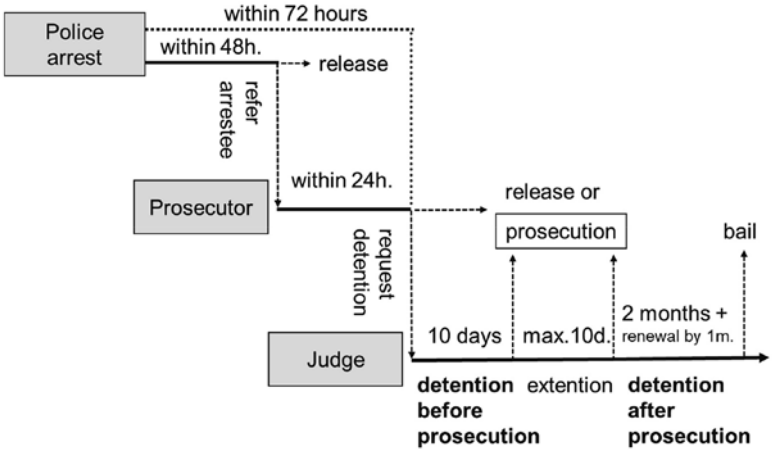
A repeat arrest and detention for the same suspected offence is not permitted in principle. It is possible to repeat arrest and detention of the same person based on suspicion of another offence, unless it is a pretext to exceed the limit of the physical restraint period. Therefore, physical restraint prior to the prosecution of the same person can continue for several months by repeatedly arresting and detaining him or her for each suspicion. There is no legislative limit on repeating arrests and detentions serially on different causes.

If a defendant must be detained for a prosecuted case, the court or a judge may issue a detention warrant ex officio. In principle, the detention period for a defendant is two months from the prosecution, and it may be renewed for one-

(9) Tokyo Bar Association, Kiseikai (2006), 31; Koma & Serizawa (2012), 160 (Inayoshi Daisuke); Keiji-bengo Beginners (2014), 60.

month periods if detention is to continue. However, an extension is only allowed once, except as otherwise prescribed in Article 89, items (i)[the defendant has allegedly committed a crime which is punishable by the death penalty, life imprisonment with or without work or a sentence of imprisonment with or without work whose minimum term of imprisonment is one year or more], (iii) [the defendant was previously found guilty of a crime punishable by the death penalty, life imprisonment with or without work or a sentence of imprisonment with or without work whose maximum term of imprisonment was in excess of ten years], (iv) [there is probable cause to suspect that the defendant may conceal or destroy evidence], and (vi) [the name or residence of the defendant is unknown] (CCP, Art. 60 (2)). In this regard, paragraph 38 of the Human Rights Committee General Comment No. 35 states that if the length of time the defendant has been detained is the longest sentence that could be imposed for the crimes charged, the defendant should be released. Accordingly, if the detention of the defendant is renewed repeatedly because of procedural delay and the length of detention would exceed the maximum sentence possible, it must be considered an inappropriately long detention.

Figure 2　Outline of arrest and detention in the case of police arrest



(2)　Places of detention

While police arrestees are placed under police custody, the CCP designates the place of detention as the penal institution (Art 64(1)). However, the Act on Penal Detention Facilities allows a police detention facility to be used as an alternative to the penal institution (Art. 15 (1)). In fact, police detention facilities are most often substituted as places of detention to maintain the efficiency of a police investigation (so-called 'substitute prison system'). Here, Article 9.3 of the International Convention on Civil and Political Rights (ICCPR) requires that suspects are promptly brought before a judge. The Human Rights Committee also states in paragraph 36 of its General Comment No. 35 that '[i]n the view of the Committee, detention on remand should not involve a return to police custody, but rather to a separate facility under different authority, where risks to the rights of the detainee can be more easily mitigated'. Against this opinion, the National Police Agency of Japan explains that to safeguard the rights of detainees in police facilities, investigators are prohibited from controlling the treatment of those held in the detention facility and they are in the hands of the general affairs (administration)

division, which is not responsible for the investigation (implemented in 1980). This separation of investigation and detention has for some time been rigidly enforced. Moreover, the legislation of the Penal and Detention Facilities Act in 2016, in which Article 16 Paragraph 3 clearly stipulates the principle of the separation of investigation and detention, has strengthened the checking functions related to this separation.[10] However, the detention officer, for example, does not have the authority or obligation to stop the investigation from continuing until midnight, and the functional separation of investigation and detention in police organisations is insufficient.[11] Thus, the substitute detention system of the Japanese police is not aligned with the purpose of Article 9.3 of the ICCPR.

1.2.3. Current situation of arrest and detention

No statistics are available on the number of those arrested for all criminal offences. **Table 2** shows the number of persons arrested by police for Penal Code offences excluding negligent driving offences causing death or injury, and the rate of referral to a prosecutor in the past five years. In total, 91–92% of persons arrested by police are referred to a prosecutor. While the referral rate of ordinary arrests is 96–97%, that of on-the-spot arrests is more than 10% lower than other types of arrests.

Table 3 shows the measures taken after transfer to a prosecutor or arrest by a prosecutor in the past five years excluding negligent driving offences causing death or injury and violations related to road traffic. The proportion of suspects whose detention was permitted has decreased from approximately 91% to 87% over the past 5 years. On the other hand, the proportion of suspects released without detention is increasing. Recently, the Supreme Court rendered judgments requiring an examination of how realistic the possibility of concealing or destroying evidence or fleeing is given concrete circumstances when considering the

(10) The National Agency of Police, Police detention system in Japan 2017, 11-13 (https://www.npa.go.jp/about/overview/ryuchi/Detention_house-J_080415-3.pdf).
(11) Kuzuno (2007), 127; Sato M (2013), 134-137.

conditions for detention.[12] This is believed to have affected the recent increase in the number of people for whom a detention request was dismissed.

Table 4 shows the number of days suspects spent in detention before prosecution in the past five years excluding negligent driving offences causing death or injury and violations related to road traffic. Detentions of 16 to 20 days account for the majority (58–61%), followed by those of 6 to 10 days (33–36%).

Table 5 shows the length of detention after prosecution in the first instance (district courts and summary courts) in ordinary cases (excluding summary-order cases and retrial cases) in the past five years. The most defendants were detained for between more than one month and within three months. The proportion of these defendants decreased from 62% to 56%. Although the detention period in the first instance is decreasing, the number of defendants detained over one year remains more than 1% of all those detained.

Table 2　Number of persons arrested by police for Penal Code offences and the rate of referral to a prosecutor

Year	Total number		Ordinary arrest		Emergency arrest		On-the-spot arrest	
	Arrested persons	Referral rate	Arrested persons	Referral rate	Arrested persons	Referral rate	Arrested persons	Referral rate
2014	79,671	91.8%	42,637	96.9%	4,389	95.7%	32,645	84.7%
2015	78,688	92.1%	42,383	97.0%	4,141	95.6%	32,164	85.1%
2016	76,848	91.5%	41,008	96.8%	3,974	94.7%	31,866	84.2%
2017	74,087	91.0%	39,353	96.3%	3,905	95.3%	30,829	83.7%
2018	71,381	90.5%	37,847	96.3%	3,493	94.4%	30,041	82.7%

Notes: 1. The number of arrested persons for Penal Code offences excluding negligent driving offences causing death or injury.
2. About details of each category of arrest, see para. 3.1.2.
Source: Statistics of the National Police Agency, Crime of years, Table 31 for each year.

[12] Supreme Court (hereunder SC) ruling of 17 November 2014, HJ 2245-129=HT 1409-129; SC ruling of 22 October 2015, CT 1638-2.

Table 3 Measures taken after transfer to a prosecutor or arrest by a prosecutor

Year	Total	Detention		Release	Others
		Permit	Reject		
2014	117,628	106,806	2,452	5,735	2,635
	100.0%	90.8%	2.1%	4.9%	2.2%
2015	118,456	106,979	2,866	6,301	2,310
	100.0%	90.3%	2.4%	5.3%	2.0%
2016	114,493	102,089	3,580	6,859	1,965
	100.0%	89.2%	3.1%	6.0%	1.7%
2017	110,576	97,357	3,901	7,539	1,779
	100.0%	88.0%	3.5%	6.8%	1.6%
2018	108,885	95,079	4,888	7,259	1,659
	100.0%	87.3%	4.5%	6.7%	1.5%

Notes: 1. Negligent driving offences causing death or injury and road traffic-related violations are excluded.
2. The lower row is the percentage of each measure against the total.
3. 'Others' includes 'Referral of a juvenile to a juvenile classification home (permitted and rejected)', 'Observation and protection of a family court probation officer (permitted and rejected)', 'Request for a trial', "Request for a summary order procedure', and 'Referral to family courts' during arrest.

Source: Statistics on the Prosecution of the Ministry of Justice for each year, Table 18-00-39.

Table 4 Length of detention before prosecution

Year	Total	Detained days					
		Within 5 days	Within 10 days	Within 15 days	Within 20 days	Within 25 days	Over 25 days
2014	106,825	1,106	38,715	4,941	61,942	19	102
	100.0%	1.0%	36.2%	4.6%	58.0%	0.0%	0.1%
2015	106,993	1,233	38,660	5,192	61,766	17	125
	100.0%	1.2%	36.1%	4.9%	57.7%	0.0%	0.1%
2016	102,107	1,199	36,281	4,836	59,713	15	63
	100.0%	1.2%	35.5%	4.7%	58.5%	0.0%	0.1%
2017	97,372	1,305	33,496	4,775	57,703	7	86
	100%	1.3%	34.4%	4.9%	59.3%	0.0%	0.1%
2018	95,098	1,307	31,269	4,533	57,882	19	88
	100%	1.4%	32.9%	4.8%	60.9%	0.0%	0.1%

Notes: 1. Negligent driving offences causing death or injury and road traffic-related violations are excluded.
2. The lower row is the percentage of each measure.
3. Detained days are summed up when the same person is detained several times.

Source: Statistics on the Prosecution of the Ministry of Justice, Table18-00-40.

Table 5　Length of detention in the first instance in ordinary cases

Year	Detained person	Length of detention						
		Within 15 days	Within 1 mon.	Within 2 mon.	Within 3 mon.	Within 6 mon.	Within 1 year	Over 1 year
2014	47,032	6,066	2,595	18,407	10,000	6,647	2,791	526
	100.0%	12.9%	5.5%	39.1%	21.3%	14.1%	5.9%	1.1%
2015	46,815	6,459	2,708	17,567	10,334	6,488	2,723	536
	100.0%	13.8%	5.8%	37.5%	22.1%	13.9%	5.8%	1.1%
2016	44,761	6,270	2,729	15,865	9,801	6,264	2,764	669
	100.0%	14.0%	6.1%	35.4%	21.9%	14.0%	6.2%	1.5%
2017	41,975	6,942	2,563	14,549	8,872	5,787	2,630	632
	100.0%	16.5%	6.1%	34.7%	21.1%	13.8%	6.3%	1.5%
2018	40,582	6,678	2,578	13,810	8,806	5,579	2,498	633
	100.0%	16.5%	6.4%	34.0%	21.7%	13.7%	6.2%	1.6%

Note: The lower row is the percentage against the total detained persons.
Source: Annual Report of Judicial Statistics for each year, Table 32.

1.2.4. Lengthy interrogation in physical restraint cases

Relatively lengthy interrogations of suspects are conducted in investigations, especially in physical restraint cases. No periodical statistics are available on the length of interrogations by investigation agencies. In 2011, the Ministry of Justice conducted a survey on 8,233 physical restraint cases of suspects processed by the district or ward prosecutors' offices in September 2010.[13] Based on that, the average interrogation time by police and prosecutors in a physical restraint case was 21 hours 35 minutes. Delineated according to whether the suspects were prosecuted or not, interrogations in prosecuted cases took 23 hours and those not prosecuted 16 hours 56 minutes. Based on type of offence, interrogations in bribery cases were the longest on average at 130 hours 28 minutes, followed by offences against the Public Office Election Act (69 hours 36 minutes) and injury causing death (63 hours 24 minutes).

Table 6 shows the average interrogation time in physical restraint cases

[13] The Ministry of Justice, Report of the domestic survey on interrogations, Aug. 2011, Table 1, Table 2, and Table 3 (http://www.moj.go.jp/content/000079391.pdf).

according to suspects' attitudes at the beginning of the arrest and end of the investigation. In 78.9% of the cases, a confession was obtained at the beginning of the arrest, and the average interrogation time in these cases was the shortest at 19 hours 57 minutes. However, the longest interrogation was also for a case in which a confession was obtained. On the other hand, the average interrogation time of cases in which suspects changed from providing a confession to denial was the longest at 33 hours 51 minutes, although this only occurred in 0.6% of cases. The average interrogation time of cases in which suspects changed from a confession to denial or from denial to confession was 27 hours. Regarding the average interrogation time for prosecutors, the proportion was slightly larger in cases where suspects did not admit to the charges in the final stage of the investigation. This suggests that prosecutors are also interested in obtaining confessions before processing cases.

Table 6 Average interrogation time in physical restraint cases according to a suspect's attitude

Suspect's attitudes at the beginning and end	Number of cases (Percentage)	Total interrogation time (Interrogation time by prosecutors)	
		Average	Longest
Confession to Confession	6,495 (78.9%)	19 h 57 m (2 h 25 m)	249 h 00 m (29 h 36 m)
Confession to Denial	46 (0.6%)	33 h 51 m (6 h 34 m)	88 h 18 m (49 h 23 m)
Denial to Confession	861 (10.5%)	27 h 14 m (3 h 49 m)	140 h 12 m (27 h 38 m)
Denial to Denial	831 (10.1%)	27 h 53 m (4 h 14 m)	151 h 23 m (6 h 14 m)

Source: The Ministry of Justice, Domestic survey report on interrogations, Table 4.

The National Police Agency also conducted a survey on interrogations by the police in physical restraint cases in 2011.[14] The results indicate that the

[14] The National Police Agency, On the realities of the interrogation of suspects by the police, October 2011, Table 1 (https://www.npa.go.jp/sousa/kikaku/20111020_kekka.pdf).

interrogations of the 397 suspects in ordinary physical restraint cases at the 36 police stations selected from across Japan took place over an average of 5.7 days, and took an average of 15 hours 15 minute. Furthermore, a study of 86 suspects in special investigation cases resolved in 2010 (cases for which special investigation headquarters were set up to quickly solve the case and arrest the criminal when a brutal and serious crime occurs) showed that the interrogations took place over an average of 17.6 days and took an average of 65 hours 31 minutes

Table 7 shows the average interrogation time by police in physical restraint cases according to a suspect's attitude. The interrogation of those suspects who denied the charges took much longer on average than when confessions were initially obtained. Furthermore, the statistics indicate that the average interrogation time of suspects who did not confess at all was shorter than in cases where suspects confessed during the interrogation. This suggests that the length of an interrogation could be affected by the possibility of obtaining a confession.

Table 7　Average interrogation time by police in physical restraint cases according to a suspect's attitude

	Number of suspects	Average time of interrogation
Ordinary cases	397	15 h 15 m
Confession cases	340	14 h 49 m
On the first day	279	13 h 24 m
After the second day	61	21 h 13 m
Denial or remained silent	57	17 h 51 m
Investigation headquarters cases	86	65 h 31 m
Confession cases	57	64 h 41 m
On the first day	48	61 h 24 m
After the second day	9	82 h 11 m
Denial or remained silent	29	67 h 10 m

Source: The National Police Agency, On the realities of the interrogation of suspects by the police, Table 5.

The legal basis that allows lengthy interrogations of suspects who are arrested and detained is the so-called 'theory of the obligation to be interrogated'. The proviso to Art. 198 para. 1 of the CCP provides that 'the suspect may, except in cases where he or she is under arrest or detention, refuse to appear or after he or she has appeared, may withdraw at any time'. In practice in an investigation in Japan, an obligation to appear and remain for the investigation (also known as the 'obligation to be interrogated') is imposed on arrested or detained suspects based on this provision. For interrogations pertaining to an arrest and detention, many precedents have approved the obligation to appear and remain for the interrogation.[15] The Supreme Court maintains that regarding the suspect in physical custody as having the obligation to appear and remain for the interrogation does not directly take away that suspect's freedom to refuse to testify involuntarily.[16] Academic opinions on this investigation practice are divided: some reject the obligation to appear and remain for interrogation;[17] others affirm it;[18] and some argue that even if a suspect who has been arrested or is in detention is obliged to appear and stay in the interrogation room, lengthy persuasion to make him or her rescind the refusal to be interrogated should not be permitted because it infringes on the freedom of a statement.[19]

Suspects are not granted the right to have a lawyer present in the interrogation. Furthermore, court precedents highlight that even if a suspect in custody asks to consult a lawyer during the interrogation, the interrogation may be allowed to take precedence.[20] The Supreme Court permits this constitutional restriction on the grounds that the rights to investigate and to defence must be balanced, because

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(15) Tokyo District Court (hereunder DC) ruling of 9 December 1974, CrM 6-12-1270; Urawa DC judgement of 12 October 1990, HJ 1376-24=HT 743-69; Saga DC ruling of 16 September 2004, HJ 1947-3.
(16) SC judgement of 24 March 1999, CiR 53-3-514.
(17) Goto (2001), 151; Takada (2003), 98; Toyosaki (2013), 127; Kawasaki & Shiratori ed. (2015), 192 (Fuchino, Takao); Takauchi (2016), 304; Abe (2019), 376.
(18) Dai-konmentâru, 190 (Watanabe, Sakiko); Matsuo (1999), 67; Osawa (2015), 94.
(19) Tada (1999), 203; Sakamaki (2015), 94; Sato T (2019), 353; Saito (2019), 190-191.
(20) SC judgement of 10 July 1978, CiR 32-5-820; SC judgement of 10 May 1989, CiR 45-5-919; SC judgement of 31 May 1989, LM 38-2-298.

Japanese laws limit the period a suspect may be under arrest and detention to no more than 23 days in ordinary cases.[21] Thus, in Japanese criminal procedure, the suspect has a position as the defence subject and interrogation object, especially in physical restraint cases. Furthermore, suspects in custody are not guaranteed the right to defence in a form that would inhibit the purpose of the interrogation. Therefore, especially strengthening the right to defence for the suspect is recognised as key in changing the inquisitorial structure of Japanese investigation.[22]

The CCP, revised in 2016 (implemented in June 2019), mandates the recording of the entire process of interrogation of a suspect under arrest and detention with audio-visual technologies to increase the transparency thereof and prevent undue interrogation coercing the suspects into confession. However, the legal obligation to record is limited to interrogations in the crimes punishable with death penalty or imprisonment for life, which are subject to saiban-in trials and to cases in which prosecutors initiate the investigation. Furthermore, the practice guidelines of the National Police Agency and Supreme Prosecution Offices make it mandatory to audio-visually record the interrogations of suspects with a mental or intellectual disability. Both investigation agencies have tried to record their interrogations ahead of the implementation of the law. According to a release from the Supreme Public Prosecutors Office in June 2019, the interrogations in 102,154 cases were recorded by prosecutors countrywide from April 2018 to March 2019. Of these, only 2,718 (2.7%) were two types of cases mandated by law to be recorded, and 4,840 (4.7%) were four types of cases mandated by law and practice guidelines to be recorded.[23] Therefore, in most cases, investigators still decide whether or what part of interrogation to record audio-visually. The defence is entitled to a copy of audio-visual records through disclosure proceedings of evidence, and both parties can use the records as evidence at trial.

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[21] SC judgement of 24 March 1999, CiR 53-3-514.
[22] Tamiya (1971), 400; Wakamatsu (1987), 7-8; Ishikawa (1993), 5; Ode (2019), 188-189.
[23] The Supreme Public Prosecutors Office, the State of the Audio-visual Recording of Interrogation (from April 2018 to March 2019).

1.2.5. Broad discretion of the prosecutor and high conviction rate

The public prosecutor plays an important role in processing criminal cases. The authority to prosecute a case is held exclusively by the prosecutor (CCP, Art. 247). The prosecutor supposedly chooses not to prosecute unless evidence indicating the strong possibility of a guilty verdict can be gathered. Actually, the conviction rate in prosecuted cases is extremely high. Maintaining this high conviction rate is often used to justify the need for a lengthy interrogation. Furthermore, the prosecutor has the broad discretion to suspend prosecution in any case depending on circumstances. Exceptionally, since the Juvenile Act prioritises the investigation and hearing in a family court, a prosecutor must refer to a family court cases involving juveniles who are as a result of the investigation of the case suspected of committing a crime. To decide whether to grant a suspension of prosecution, the public prosecutor must be aware of the criminal's character, age, and environment, as well as the gravity and circumstances of the offense and situation following it (CCP, Art. 248). This is explained as another reason for the time taken in an investigation. Investigation officers have to use time also to investigate these factors in order that the prosecutor can decide about suspicion. The suspension of a prosecution is a final disposition with no penalty nor forcible conditions. However, when the circumstances are changed significantly and grounds to suspend disappear, it is construed possible to re-commence prosecution of the suspended persons without breaching the Constitution of Japan, Article 39, which prohibit double jeopardy.[24]

Table 8 shows the prosecution rate in all cases and conviction rate in the first instance over the past five years, excluding retrials and summary trials. While the prosecution rate remained at around 33%, the conviction rate stayed high at 99.8%–99.9%.

Table 9 shows the breakdown of suspects not prosecuted in the previous five

[24] SC judgement of 24 May 1949, CrR 11-5-1540; SC judgement of 11 December 1964, HJ 399-56.

years according to reason, excluding negligent driving offences causing death or injury and violations related to road traffic. Non-prosecution because of the suspension of prosecution accounts for approximately 70% of the total every year. Next, insufficient evidence accounts for about 20% of the total every year.

Furthermore, **Table 10** shows the acquittal rate of denial cases in the first instance over the past five years, excluding retrials and summary trials. As shown, around 9% of all defendants sentenced denied their accusation, indicating a high confession rate. The percentage of defendants found not guilty on all or part of the counts was between 2.8% and 3.6% of the total denial cases.

Table 8　Prosecution and conviction rates in the first instance

Year	Prosecuted (a)	Not Prosecuted (b)	Prosecution Rate a/(a+b)	Convicted (c)	Acquitted (d)	Conviction Rate c/(c+d)
2014	377,539	772,221	32.8%	58,231	122	99.8%
2015	371,459	733,937	33.4%	59,375	76	99.9%
2016	352,669	701,719	33.4%	57,578	107	99.8%
2017	329,517	671,694	32.9%	54,543	116	99.8%
2018	308,721	632,323	32.8%	53,257	109	99.8%

Notes: 1. 'Prosecuted' and 'Not Prosecuted' are number of persons processed by the prosecutor at the end of investigation.
2. 'Convicted' in this table includes persons found guilty on all or part of the counts.
Source: Public prosecution statistics of the Ministry of Justice: Table 18-00-05 and Annual Report of Judiciary Statistics: Tables 9 and 12.

Table 9　Persons not prosecuted—by reason

Year	Total	Suspension of prosecution	Insufficient evidence	Withdrawal of complaint etc.	Insanity	Others
2014	166,192	114,053	35,515	7,597	589	8,438
2015	163,248	113,130	31,712	8,046	551	9,809
2016	160,226	112,809	31,668	7,478	507	7,764
2017	158,780	112,263	32,169	6,657	501	7,190
2018	159,262	114,014	31,481	6,102	453	7,212

Notes: 1. Negligent driving offences causing death or injury and road traffic-related violations are excluded.
2. 'Others' includes the expiration of the statute of limitations, death of the suspect, etc.
Source: Public prosecution statistics of the Ministry of Justice: Table 18-00-08.

Table 10 Acquittal rate in denial cases in the ordinary first instance

Year	Sentenced persons		Persons sentenced not guilty		Acquittal rate in denial cases (b/a)
	Total	Denial (a)	Total	Denial (b)	
2014	58,353	5,143	173	165	3.2%
2015	59,451	5,127	148	146	2.8%
2016	57,685	5,281	180	180	3.4%
2017	54,659	5,185	179	177	3.4%
2018	53,384	4,757	172	171	3.6%

Notes: 1. Retrial cases are not included in numbers.
2. 'Not guilty' in this table includes persons found not guilty on part of the counts.
Source: Overview of Criminal Cases 2018 Part I, Table 96.

If a victim or similar is dissatisfied with the prosecutor's non-prosecution processing, he or she may file an examination with the Committee for the Inquest of Prosecution. The Committee for the Inquest of Prosecution is a system for democratic control over the prosecutor's prosecuting power. It consists of 11 people selected through a random lottery among those with the right to vote for members of the House of Representatives. The Act on the Committee for the Inquest of Prosecution was revised in 2004 to grant the committee the authority to force prosecution under certain circumstances. There have been discussions that this revision will lead to a review of the prosecution standard for prosecutors,[25] or that the prosecuting criteria will be relaxed because it is becoming increasingly difficult to obtain detailed confessions in an investigation.[26]

1.2.6. Emphasis on written statements as evidence

In Japanese criminal procedure, written records of statements made before an investigator play an important role as evidence. Statements by a suspect or witness before an investigator are recorded by the investigator as a written record of statement. Usually, the questions and direct answers

[25] Mitsui (2005), 86.
[26] Mitsui et al. ed., Vol. 2. (2017), 16 (Okamoto Akira).

are not literally recorded. Rather, the statement describes the results of the interrogation in narrative form. Given this, the public prosecutor has been able to efficiently confirm facts using the written record of a statement made before an investigator. It had been standard practice for judges to admit the written record of statements claimed by the public prosecutor as evidence of hearsay exceptions and then form an impression of the case by carefully considering the contents of the record in their chambers. Correspondingly, the focus of defence activities was now on agreeing to use the written record as evidence and then examining the deponent and disputing the truth of the statement written in the record if needed. Consequently, criminal trials in Japan became known as a 'trial by written statement'[(27)]. Under the saiban-in system implemented in 2009, the criminal court in Japan has been trying to move away from its excessive reliance on written records of statements.

Table 11 shows statistics regarding the examination of evidence in the saiban-in trials in 2009 and 2018. In total, the average trial time accounted for by the average time for witness examination and defendant questioning in 2009 was 39.2% for all cases, 34.1% for confession cases, and 39.6% for denial cases. In 2018, it had increased to 62.7% in all cases, 58.4% in confession cases, and 62.9% in denial cases. These figures show that oral evidence is increasingly required in both confession and denial cases in saiban-in trials. However, some associated with the public prosecutor's office believe that the evidence in the written records of statements provided before an investigator increase the speed and efficiency of procedures[(28)]. In addition, the way statements are recorded is also being reconsidered to bring about improvements to ensure judges can easily understand contents even if the written record of statement is read at the trial[(29)]. Therefore, it is unclear whether the recent move towards focusing on oral evidence will change the inquisitorial structure of an investigation.

(27) Hirano (1985), 418.; Watanabe et. (1992), 551; Ishimatsu (1993), 2.
(28) Mitsui et al. ed. (2017), 13 (Watanabe Kazuhiro).
(29) Kiyono (2016), 34.

Table 11 Examination of evidence in saiban-in trials

	2009			2018		
	All	Confession cases	Denial cases	All	Confession cases	Denial cases
Average number of witnesses, evidential documents and tangible objects examined	23.8	23.4	25.3	23.0	18.7	27.0
Average number of examined witnesses	1.6	1.4	2.4	3.1	1.8	4.4
Average trial time in min. (a)	526.9	482.5	701.3	640.3	424.0	842.5
Average time of witness examination in min. (b)	92.1	79.6	129.6	228.7	103.3	331.1
Average time of defendant questioning in min. (c)	114.5	105.9	148.4	172.5	144.5	198.6
Percentage ((b+c)/a)	39.2%	34.1%	39.6%	62.7%	58.4%	62.9%

Source: The Supreme Court, General Secretariat, The State of the Saiban-in Trial system, Tables 45,46-2, and 54 of 2009 and 2018; Tables 49,50, and 55 of 2018.

Ⅱ. LEGAL AID FOR THE SUSPECT/DEFENDANT

2.1. Court-appointed counsel system

2.1.1. Operating entity

Equivalent to the system of public legal aid in criminal cases are the systems of the court-appointed counsel for a suspect and defendant, and of the court-appointed attendant for a juvenile in the family court procedure (below, 'court-appointed counsel, etc.'). The Japan Legal Support Centre (JLSC) nominates candidates for the court-appointed counsel, etc. to courts and is responsible for the payment of remuneration and expenses of the court-appointed counsel, etc. JLSC is a unique corporation using the framework of an independent administrative agency for which the Minister of Justice is responsible. Attorneys who wish to be nominated as a candidate for the court-appointed counsel, etc. must contract with the JLSC to provide these legal services in advance. If

court-appointed counsel breaches the court-appointed counsel agreement with the JLSC, the JLSC can take measures to suspend the court-appointed counsel agreement for a certain period or suspend appointments of the attorney as court-appointed counsel (Contract on Court-Appointed Counsel Business, Art. 34 (2)).

Nominations of candidates for the court-appointed counsel, etc. are made in accordance with the list of nominated candidates with the consent of a contracting attorney. The compilation of the contract application forms for the JLSC and preparation of the list of nomination candidates are conducted according to the law with the cooperation of bar associations. These two systems are important in ensuring the quality of court-appointed counsel, etc. and independence of defence activities from the JLSC and other national agencies.[30] According to the White Paper on Attorneys 2019, the number of contract attorneys with JLSC was 28,737 (70.2% of all attorneys) as of December 31, 2018.

Table 12 shows the total remuneration and expenses paid to the court-appointed counsel, etc. and number of cases accepted by the JLSC in the previous five years. The total paid to the court-appointed counsel, etc. was 12.2—13.2 billion of JPY (1 JPY is about 0.0091 US$) in these 5 years. The number of accepted cases was 78,780 for suspects, 53,862 for defendants, and 3,489 for juveniles in the family court procedure. The large increase in the number of accepted cases for suspects in 2018 is due to the extension of the court-appointed counsel system to all detained suspects from June 2018. Until then, the court-appointed counsel system for a suspect was restricted to the suspect with regard to a case punishable by the death penalty, life imprisonment, life imprisonment without work, or imprisonment or imprisonment without work whose maximum term is more than three years. Since the revision in June 2014 expanded the court-appointed attendant system for a juvenile to the same level as for the court-appointed counsel system for a suspect, the number of accepted cases for youth increased significantly from 445 cases in 2013.

[30] Kawazoe (2016), 77.

Table 12 Total remuneration and expenses for court-appointed counsel, etc. and number of cases accepted by the JLSC

Fiscal year		2014	2015	2016	2017	2018
Total amount (millions of JPY)		12,928	13,221	12,510	12,205	13,243
Number of accepted cases	Court-appointed counsel for a suspect	70,939	70,393	66,579	63,839	78,780
	Court-appointed counsel for a defendant	59,816	59,504	56,388	53,655	53,862
	Court-appointed attendant for a juvenile	2,955	3,698	3,427	3,417	3,489

Source: Japan Legal Support Centre, Business report in each fiscal year

Besides that, JLSC employs stuff lawyers and they are also nominated as a candidate for the court-appointed counsel. The salaries and activity expenses of the stuff lawyers are not included in the total amount of compensation in Table 12. According to the White Paper on JLSC fiscal year 2018, 198 stuff lawyers are assigned to 88 offices nationwide, as of 31 March 2019. They are engaged in all kind of legal services and do not specialise criminal defence.

2.1.2. Remuneration standards

The remuneration and expenses paid to a court-appointed counsel is calculated under the Remuneration and Expenses Computation Standards provided for in the court-appointed counsel contract terms. Remuneration is calculated separately as (a) basic remuneration, (b) remuneration commensurate with labour, and (c) remuneration commensurate with results. The remuneration in the court of second instance and final appeal court is calculated in a similar way to the above standards for the court of first instance. Expenses include (a) copy costs; (b) long-distance travel expenses and accommodation fees for interviewing a suspect or defendant; (c) travel expenses, daily allowances, and accommodation fees; (d) interpreter expenses; and (e) litigation preparation expenses (max. ¥ 30,000). However, copy costs are not paid to the court-appointed counsel for a suspect as an expense. The copy cost for a defendant is deducted from the expenses of the court-appointed counsel for 200 pages. The JLSC has received complaints

from contract lawyers and taken steps to amend the calculation standards as necessary. However, to revise the contract terms, the approval of the Minister of Justice is ultimately required, and the financial constraints of the state budget must be considered. Since the operation began in 2006, the calculation standards have been revised six times. The latest version was implemented on 1 June 2018, stipulating the points shown below. In addition, the Computation Standards details the items of payment, their requirements, and each amount to systematically eliminate the possibility that individual defence activities are evaluated arbitrarily by the JLSC and to protect its independence.

Remuneration Computation Standards for the Court-Appointed Counsel (2018 version)

(i) Remuneration for the court-appointed counsel for a suspect

(a) The basic remuneration is computed according to the base number of interviews (fixed according to the defence period in days: e.g. one interview to 4 days, 5 interviews to 17–20 days) and the total points for interviews (1 point for one interview, 0.5 points for one telephone interview, 0.5 points for one quasi interview). Several interviews in one day are calculated as one interview. If the total points for an interview etc. are less than the base number of interviews, the basic remuneration is ¥ 20,000 × number of interviews + ¥ 10,000 × number of telephone interviews and quasi interviews. If the total points for interviews etc. is not less than the base number of interviews, the basic remuneration is ¥ 20,000) × (base number of interviews - 1) + ¥ 264,000.

(b) For remuneration commensurate with labour, if the total points of interviews etc. exceeds the base number of interviews, supplementary remuneration is added according to the difference between them (e.g. ¥ 10,000 to 1 point over, ¥ 16,000 to 2 points over). In addition, for activities that cannot be fully assessed from the number of interviews alone, such as cases requiring long-distance travel, separate criteria are established for assessing labour (¥ 4,000 if 25 km or longer; ¥ 8,000 if 50 km or longer).

(c) Remuneration commensurate with results is ¥ 50,000, payable if the suspect is released from physical custody. If out-of-court discussions with the victims or others result in a settlement, supplementary payments are made according to the number of victims and the results.

(ii) Remuneration for the court-appointed counsel for a defendant
(a) The base remuneration is set according to the type of case, whether pre-trial arrangement proceedings are held, and number of counsel members (see Tables A and B).

(b) As remuneration commensurate with labour, the trial addition is calculated from an assessment of activities at the trial (number of hearings and the length of time in attendance) by basic indexes. The remuneration standards are classified based on indexes representing the seriousness and complexity of the matter, according to the type of case, and whether pre-trial arrangement proceedings are held. The highest is in a case eligible for a saiban-in trial: the supplementary remuneration is ¥ 123,300 for the first trial proceedings and ¥ 146,100 for the second and further trial proceedings if the hearings last longer than 5 hours and 30 minutes. In a case before a single judge in the district court, the supplementary remuneration is ¥ 40,600 for the first trial proceedings and ¥ 47,700 for the second and further trial proceedings if the hearings last longer than 5 hours and 30 minutes.

(c) Remuneration commensurate with results is an additional 100% of the ordinary remuneration (to a maximum of ¥ 500,000) if an acquittal verdict is rendered, or an additional 30% of the ordinary remuneration (to a maximum of ¥ 200,000) if facts for a lesser offence than that charged are found.

Table A Basic remuneration for cases requiring a court-appointed counsel for a defendant (excluding cases eligible for saiban-in trials)

Type of Court	Without pre-trial arrangement proceedings	With pre-trial arrangement proceedings
Summary court	¥ 66,000	¥ 70,000
District court, single judge	¥ 77,000	¥ 80,000
District court, collegiate panel (ordinary)	¥ 88,000	¥ 90,000
District court, collegiate panel (serious)	¥ 99,000	¥ 100,000

Table B Basic remuneration for cases eligible for *α* saiban-in trial

Days of proceedings	Two or more counsel	One counsel
1–4 pre-trial arrangement proceedings	¥ 190,000	¥ 240,000
5–7 pre-trial arrangement proceedings (and 3 or more days of trial proceedings)	¥ 240,000	¥ 300,000
8–10 pre-trial arrangement proceedings (and 3 or more days of trial proceedings)	¥ 300,000	¥ 380,000
11 or more pre-trial arrangement proceedings (and 4 or more days of trial proceedings)	¥ 400,000	¥ 500,000

2.2. Voluntary services by bar associations

In addition to work relating to court appointments, the JLSC also engages in assistance enterprises under commission from the Japan Federation of Bar Associations (JFBA). JFBA-commissioned assistance enterprises are mainly funded by membership fees received from attorneys and do not receive public funding. JFBA-commissioned assistance enterprises include criminal suspect aid for criminal cases and juvenile aid for juvenile protection cases. Criminal suspect aid is a system that pays attorneys' fees on behalf of the client to attorneys who provide general criminal defence activities for suspects in custody. It is not available to those eligible for the court-appointed counsel system. Juvenile aid is a system that pays attorneys' fees on behalf of the client to attorneys who provide attendant activities for a juvenile referred to the family court. Again, it is not available if a court-appointed attendant is selected. Both systems are subject to conditions that the suspect lacks financial resources and that it is necessary and appropriate that an attorney be engaged. According to the JLSC, criminal suspect aid was accepted in 6,789 cases for approximately US$ 2.9 million, and juvenile aid was accepted in 1,860 cases for approximately US$ 1.9 million in FY2018.[31] Because all suspects under detention have become eligible for the court-appointed counsel system since June 2018, the amount of the criminal suspect aid enterprise has decreased significantly from around US$ 7.6 million. Expenses for the juvenile aid enterprise also continue to decrease rapidly with the expansion of the court-appointed attendant system to the same range as the court-appointed counsel system at the investigative stage from June 2014.

In addition, local bar associations have operated a duty lawyer system since 1990. The duty lawyer system was created with reference to the United Kingdom's duty solicitors. Upon request by an arrested suspect or their family, the lawyer on duty that day immediately heads to the police station or prison

[31] White Paper on Houterasu fiscal year 2018, 80.

where the suspect is located for a meeting and provides legal advice without charge for the first time only. Expenses for the operation of the service are paid for by the local bar association out of membership fees and payments from attorneys. Since the court-appointed counsel system is not available during the arrest stage, the duty lawyer system is essential in substantially guaranteeing all arrestees the right to counsel as demanded by article 34 of the Constitution. To operate the duty lawyer system in a stable way, it is necessary to strengthen the financial bases of this system by national funds.

Table 13 shows the operation of the duty lawyer system in these five years. In total, 17,214 lawyers were registered as duty lawyers on 1 February 2018, a registration rate of 45%. Around 50% of suspects who contacted the duty lawyer appointed him or her as counsel. This clearly confirms suspects' need for advice or the assistance of a lawyer from the time of their arrest.

Table 13　Operation of the duty lawyer system

Year	Registered lawyers	Registration rate	Accepted cases	Appointed cases	Appointment rate
2014	16,590	47%	48,210	21,554	48%
2015	16,840	46%	50,705	22,858	49%
2016	17,744	47%	51,370	25,382	53%
2017	18,266	45%	52,980	24,363	50%
2018	17,214	43%	47,264	21,636	50%

Notes: 1. The numbers are as of 1 February each year.
2. 'Appointment rate' is the percentage of the number of appointed cases in the number of accepted cases except cancelled cases, unknown cases, and unreported cases.
Source: White Paper on Attorneys 2019, Data 2-1-1-3.

Ⅲ. LEGAL RIGHTS AND THEIR IMPLEMENTATION

3.1. The right to information

3.1.1. Duty to notice rights

(1) Notice of the right to silence

The investigator must notify suspects of their right to keep silent (i.e. the right to silence) before conducting an interrogation (CCP, Art. 198 (2)). The court must notify defendants of their right to silence at the commencement of trial proceedings (CCP, Art. 291 (4)). The notification is done orally. There is no special mechanism for verifying that the suspect was notified the right to silence in fact. However, the form of the written record of a statement before a public officer for suspects has printed on it a statement that the interrogation was conducted after the suspect was notified of the charge and right to silence. For the legal effect of a breach of the duty to notify of the right to silence, the Supreme Court of Japan take the stance that the admissibility of a statement acquired through an interrogation breaching the duty to notify will not immediately be denied because notice of the right to silence is not guaranteed by the Constitution of Japan (CJ).[32] However, a court precedent finds that in cases where it was suspected that the police officers did not notify the suspect of the right to silence at any time during the interrogation, the fact make the voluntariness of a confession doubtful.[33]

(2) Notice of the right to appoint counsel

When the police arrest a suspect, they must: (a) notify the suspect of the right to appoint counsel, (b) inform him or her of the procedures for appointing counsel, and (c) inform him or her of the right to request court-appointed counsel if detention has been requested (CCP, Art. 203 (1)–(3)). The same applies when the public prosecutor arrests a suspect (CCP, Art. 204 (1)–(3)). Furthermore,

[32] SC judgement of 14 July 1948, CrR 2-8-846; SC judgement of 9 February 1949, CrR 3-2-146; SC judgement of 21 November 1950, CrR 4-11-2359; SC judgement of 27 March 1952, CrR 6-3-520; SC judgement of 2 April 1953, CrR 7-4-745; SC judgement of 27 March 1984, CrR 38-5-2037.
[33] Urawa DC judgement of 25 March 1991, HT 760-261.

the circular notice of the National Police Agency of 26 March 2019 directs police to inform a suspect at the time of giving the suspect an opportunity for explanation after the arrest that if he or she asks to contact a lawyer during the investigation, the request is immediately transmitted to the lawyer.[34]

This notification and informing are also done orally. There is no mechanism for verifying that the suspect was notified the right to appoint counsel in fact. However, omission of the notice of this right has been hardly heard. The form of the written record of explanation prepared after an arrest has printed on it a statement that the explanation was recorded after notifying the suspect of the rights to not make a statement and to appoint counsel. When a police officer receives a request from an arrested suspect to appoint counsel and notifies the relevant lawyer, etc. of this request, the fact will be stated in the notification book for the appointment of counsel (Police Code of Criminal Investigation, Art. 132). As the duty lawyer system is not a public system, police inform arrested suspects of the system as a measure of judicial police officer based on the Art. 131 (1) of Police Code of Criminal Investigation only when asked about it.[35]

Judges must notify defendants of the right to appoint counsel and right to request court-appointed counsel at the detention hearing and inform them of procedures to appoint counsel and request court-appointed counsel (CCP, Art. 207(2)-(4)). Furthermore, once the court has accepted prosecution, it must without delay notify the defendant of the rights to appoint counsel and to request court-appointed counsel, and when doing so, must inform the defendant of procedures related to the court-appointed counsel system (CCP, Art. 272 (1), (2)). Notice to the defendant of the right to appoint counsel and other information is provided in writing.

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[34] The National Police Agency, Criminal Affairs Bureau, Planning Division No. 62, "Further considerations for interviews between suspects in arrest and detention and defence counsel to ensure proper investigation (Circular notice by order)" (26 March 2019).

[35] Answer from the Metropolitan Police Department to the questionnaire of our research members.

3.1.2. Duty to notice the grounds

(1) Notice of the grounds of arrest

The methods of noticing the grounds of arrest differ according to the type of arrest. There are three types of arrest: (a) ordinary arrest (CCP, Art. 199), (b) emergency arrest (CCP, Art. 210), and (c) on-the-spot arrest (CCP, Art. 212). Ordinary arrest is an arrest under a warrant issued by the judge. This arrest warrant can be issued when there is probable cause to suspect that the suspect has committed a crime and arrest is considered necessary because of the flight risk posed by the suspect or risk of evidence being concealed or destroyed (CCP, Arts. 199 (1), (2); Rules of Criminal Procedure (RCP), Art. 143-3). Emergency arrest occurs when there is no time to obtain a warrant in advance. The arresting investigator has to request a warrant immediately after arrest. Emergency arrest is only available for crimes with statutory penalties greater than a certain level. Furthermore, there must be probable cause to suspect that the suspect committed a crime. On-the-spot arrest is possible without an arrest warrant against a person who is caught in the act of committing or is caught having just committed an offense (CCP, Art.199 (1)) or where any person who falls under one of the following items is clearly found to have committed an offense a short time beforehand: (i) a person being engaged in fresh pursuit; (ii) a person carrying property obtained through a property crime, or carrying a dangerous weapon or other things which are believed to have been used in the commission of a criminal act; (iii) a person with visible traces of the offense on said person's body or clothing; (iv) a person who attempts to run away when challenged (CCP, Art.199 (2)).

The arrest warrant describes the charged offense forming the grounds for arrest and an outline of the alleged facts among other information (CCP, Art. 200 (1)). In the case of an ordinary arrest, the arrest warrant should be shown to the suspect at the time of arrest (CCP, Art. 201 (1)). However, it is not necessary to read out the outline of the alleged facts or allow the suspect to peruse the warrant when showing the arrest warrant. In the case of an emergency arrest,

the suspect may be arrested after notifying him or her of the grounds of arrest (the fact that the situation is urgent and an outline of the alleged facts) (CCP, Art. 210 (1)). When an arrest warrant is issued after an emergency arrest, it must be shown to the suspect. In contrast, in the case of an on-the-spot arrest, the suspect does not need to be notified of the grounds of arrest when he or she is arrested. For each arrest procedure, the arrested suspect must be notified of the essential facts of the suspected crime (all essential facts, not just an outline of essential facts) immediately after being taken into custody and given an opportunity to explain (CCP, Arts. 203 (1), 204 (1), 211, 216). The suspect is not given a copy of the arrest warrant, and he or she does not have the right to request to be given one. Because of this, counsel cannot directly confirm the outline of the alleged facts described in the arrest warrant before prosecution.

The International Covenant on Civil and Political Rights (ICCPR), Article 9, Para. 2 demands that a notice of the grounds of arrest be given to the arrestee at the time of arrest. In addition, the Human Rights Committee states in para. 30 of General Comment No. 35 that the reasons for arrest must be given in a language understood by the arrested person. In this regard, innovative steps are apparently being taken in investigation practice in Japan, such as having an interpreter available when conducting an arrest to read the matters written on the arrest warrant, and attaching a translation if possible.[36] However, it is unclear in how many cases such measures are possible.

(2) Notice of the grounds of detention

Detention procedures differ for the detention before or after prosecution. The suspect is detained before prosecution by the public prosecutor requesting a judge for detention. The defendant is detained by the trial court ex officio after prosecution has been initiated (however until the first hearing date, a different judge who does not belong to the trial court presides). The judge who

[36] Fujinaga et al. ed. (2007), 96.

has been asked for detention by the prosecutor has the same authority as a court or presiding judge regarding the disposition thereof (namely provisions of detention after prosecution are applied correspondingly to the detention before prosecution); provided however, that this does not apply to bail (CCP, Art. 207(1)).

The court may detain a defendant if: (a) it is found that there are reasonable grounds to suspect that the defendant committed a crime; and (b) it is found that the defendant has no fixed address, there are reasonable grounds to suspect that the defendant may conceal or destroy evidence, or the defendant has fled or there are reasonable grounds to suspect that the defendant may flee (CCP, Art. 60 (1)). Even if these grounds of detention are found, the defendant may not be detained unless (c) detention is necessary (see CCP, Art. 87 (1)). In this case, the 'necessity of detention' is generally considered a merit having considered the seriousness of the case, degree of risk of concealment or destruction of evidence or flight, and degree of social disadvantage the suspect would suffer from being in detention.[37] Note that for cases punishable by a fine of not more than ¥ 300,000, a misdemeanour detention, or petty fine, the defendant can be detained only if he or she has no fixed address (CCP, Art. 60 (3)). For juvenile suspects, the public prosecutor can file a request with the family court for measures for observation and protection in lieu of a request for detention (Juvenile Act, Art. 43 (1)). Juvenile suspects cannot be detained unless it is 'unavoidable' (Juvenile Act, Art. 48).

Regarding the detention procedure, the defendant must not be detained until he or she has been notified of the facts of the case and a statement taken from him or her in relation to them, unless the defendant has fled (CCP, Art. 61). The detention warrant must describe the name and address of the defendant, crime, an outline of charged facts, and place where the defendant is to be brought or the penal institution where he or she is to be detained, among other information (CCP, Art. 64 (1)). The detention warrant must be shown to the defendant when

[37] Jôkai, 147; Dai-konmentâru Vol. 2, 36 (Takuichi Kawakami); Chikujô jitsumu, 136; Shin-konmentâru, 162 (Midori Daisuke).

executing it (CCP, Art. 73 (2)). The defendant can request a transcript to be delivered of the detention warrant (RCP, Art. 74).

A defendant who has been detained can request that the grounds of detention be disclosed in an open court (CJ, Art. 34; CCP, Art. 82 (1)). If disclosure of the grounds of detention is requested, the court must disclose the charged facts that form the bases for and grounds of detention (CCP, Art. 84 (1)). However, major opinions in practice consider it unnecessary to explain the evidence on which the court or judge accepted the grounds of detention.[38] Therefore, requests for the disclosure of the grounds of detention are not often used. In 2018, detention warrants were issued to 98,544 persons, while 453 suspects and 56 defendants used this procedure.[39]

(3) Notice of the grounds of prosecution

When prosecution has been instituted, the court shall serve a transcript of the charging sheet (CCP, Art. 256 (2)) on the defendant without delay (CCP, Art. 271 (1)). If the transcript of the charging sheet is not served within two months after the date of the institution of prosecution, the prosecution loses its effect retroactively (Art. 271 (2)). The transcript of the charging sheet describes: (a) the name of the defendant and other particulars sufficient to identify him or her, (b) the charged facts, and (c) the charged offences. If the public prosecutor adds, withdraws, or revises the counts or applicable penal statutes described in the charging sheet, they must notify the defendant about the relevant parts (CCP, Art. 312 (3)). Furthermore, when the case is put into pre-trial arrangement proceedings, the public prosecutor must send documents describing the facts the public prosecutor plans to prove to the defendant (CCP, Art. 316-13 (1)).

Furthermore, according to a precedent, the transcript of the charging sheet need not be translated and served, even if the defendant cannot understand Japanese. In this regard, the precedent takes the position that when the transcript of a charging

[38] Jôkai, 182; Dai-konmentâru Vol. 2, 141 (Takuichi Kawakami).
[39] Annual Report of Judiciary Statistics for 2018, Table 15 and Table 17.

sheet is served, even if the defendant cannot immediately understand the nature of the facts about which the prosecution is being instituted against them, as long as he or she can realise through the trial procedure that the facts of the prosecution against them have been clearly notified and they have been given an opportunity for defence against these, the procedures do not breach the guarantee of fair procedure in CJ, Article 31.[40] Furthermore, in a case where the meaning of ICCPR, Article 14, Paragraph 3 (a) was at issue, the court took the position that because 'promptly' in subparagraph (a) of that paragraph is an instructive expression of comparatively lax immediacy, its requirement is considered fulfilled as a minimum by the charging sheet being read out and interpreted in a language the defendant understands at the latest at the opening of the trial proceedings, which is the place for making 'a ruling on the criminal offence' of the defendant.[41] However, on this point, paragraph 31 of the Human Rights Committee General Comment No. 32 states that '[t]he right to be informed of the charge "promptly" requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such'. Therefore, the interpretation of this clause by the aforementioned Japanese court does not comply with international standards.

3.1.3. Inspection of judicial records and disclosure of evidence

At the stage of investigation, the secrecy thereof is emphasised (CCP, Art. 196) and the suspect has no right before prosecution to view records related to judicial procedures of arrest or detention or to ask investigation agencies to disclose evidentiary materials that form the basis of the alleged facts. Because of this, the suspect and his or her counsel cannot obtain an accurate understanding of the evidence investigation agencies have gathered, unless such is voluntarily disclosed to the suspect or his or her counsel. After the institution of prosecution, a defendant's

(40) Tokyo High Court (hereunder HC) judgement of 29 November 1990, HCrR 43-3-202.
(41) Tokyo HC judgement of 18 September 1991, HCrR 44-3-187.

counsel may inspect and copy documents and articles of evidence relating to the trial in the court (CCP, Art. 40(1)). However, because the CCP of Japan forbids the prosecutor from attaching documents or other articles that may prejudice the judge to the charging sheet or refer to them in the charging sheet, no investigation records and evidence are transferred to the court at the time prosecution is instituted. Therefore, it is not possible to view investigation records and evidence without the prosecutor disclosing procedure. As an exception, the arrest and detention warrant are promptly submitted to a judge of the court with which prosecution has been instituted (RCP, Art. 167(1)) so that counsel can inspect them in court after prosecution. (On disclosure of evidence after prosecution, see para. 3.4.2.)

3.2. The right to defence

3.2.1. The right to defend oneself

The Japanese CCP is based on the principle of the adversarial system, and suspects and the defendant are allowed the right to defend themselves in view of their position under the CCP. However, restrictions of the suspect's right to defence at the investigation stage have been justified, because the principle of coordination with the efficiency of the investigation works[42] and the suspect is both an object of the investigation and the subject of defence.[43] Furthermore, defence activities through counsel are all that is permitted when it would be inappropriate for the suspect or defendant to directly exercise his or her rights. For example, (a) the right to view documents and material evidence relating to the trial is allowed only to counsel to prevent the destruction or damage of records and evidence (CCP, Art. 40). Defendants without counsel are granted only the right to view the trial record (CCP, Art. 49). (b) When disclosing the names and addresses of persons the public prosecutor plans to call as witnesses, if witness protection is considered necessary, names and addresses may be disclosed to counsel on the condition that it does not inform the defendant

(42) Atsumi (1979), 18.
(43) Shiibashi (1994), 46.

(CCP, Art. 299-4 (1)). (c) The court may, when finding that a witness is unable to testify sufficiently owing to the pressure of being in the presence of the defendant, have the defendant leave the courtroom on the condition that counsel is present (CCP, Art. 304-2). In addition, arguments in appeal trials must be made through counsel (CCP, Arts. 388, 414). Furthermore, counsel has the right to attend procedures to appoint saiban-in, etc., but the defendant does not (Saiban-in Act, Art. 32). Besides these, if there are reasonable grounds to suspect that a suspect or defendant in detention may flee or conceal or destroy evidence, he or she may be prohibited from having an interview with or giving or receiving documents and articles to or from any person other than counsel (CCP, Art. 81). In cases where interviews are prohibited, it is almost impossible to prepare defence without going through counsel.

3.2.2. The right to counsel

(1) Constitutional guarantee

The first section of CJ, Article 34 provides that '[n]o person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel'. Furthermore, Article 37 (3) provides that '[a]t all times the accused shall have the assistance of competent counsel who shall, if the defendant is unable to secure the same by his own efforts, be assigned to his use by the State'. The Supreme Court regards these provisions as going further than merely guaranteeing the right to appoint counsel, substantially guaranteeing the opportunity to receive the assistance of counsel,[44] and they have become an important criterion for interpreting laws that restrict the opportunity to receive the assistance of counsel. In addition, there is a theoretical view that Article 37 (3) of CJ is a provision to guarantee the defendant's right to receive the effective assistance of counsel.[45] A Supreme Court case also reviewed the procedure from this legal point,[46] but few cases exist that relieved a defendant on the ground that

(44) SC judgement of 24 March 1999, CrR 53-3-514.
(45) Okada (2001), 316; Muraoka (2013),367; Tagusari (2017), 418.
(46) SC ruling of 29 November 2005, CrR 59-9-1847.

he or she was not given effective assistance from his or her counsel.[47]

(2) The right to appoint counsel

All suspects and defendants can appoint counsel (CCP, Art. 30 (1)). When a defendant is unable to appoint counsel because of indigence or other reasons, the defendant may file a request to the court to have counsel appointed for him or her (CCP, Art. 36). In contrast, a suspect cannot request court-appointed counsel unless he or she has been detained (CCP, Art. 37-2 (2)). The defendant can also appoint counsel for requests for retrial against a final and binding judgment (CCP, Art. 440 (1)). There is no court-appointed counsel system for requests for the retrial. The defendant under detention may request the court or penal institution warden (or his or her deputy) to appoint counsel, specifying an attorney, legal professional corporation, or bar association. The court or other body receiving such a request must immediately notify the specified attorney, etc. accordingly (CCP, Art. 78). A suspect under arrest or detention may make the same kind of request to the chief of the investigative authority or penal institution or his or her deputy. The investigative authority or other body that receives such a request is similarly obligated to notify (CCP, Art. 209). It is illegal for an investigative authority to continue an investigation without giving notice of the request to appoint counsel or using the defendant or suspect's position in custody, and any evidence obtained thereby could be excluded.[48]

When there are special circumstances, the court may limit the number of members of the defence counsel to three persons for each defendant (RCP, Art. 26 (1)). Furthermore, the number of members on the defence counsel for a suspect may in principle not exceed three persons for each suspect (Rules of Criminal Procedure, Art. 27 (1)). As a general rule, the court appoints only one counsel. However, it has become common practice to appoint several (at least two) court-appointed counsels for cases eligible for a saiban-in trial. In 2018,

[47] Tokyo HC judgement of 12 April 2011, HT 1399-375.
[48] Osaka HC judgement of 26 May 1960, ICrR 2-5/6-676; Fukuoka HC judgement of 31 October 2002, HCrB (2002)-174.

80.9% of such cases had multiple counsels appointed.[49] Regarding the suspect, a judge may appoint the second counsel only if a case is punishable with the death penalty or life imprisonment if the judge finds it necessary (CCP, Art. 37-5).

Court-appointed counsel cannot resign of its own volition. The court may dismiss court-appointed counsel ex officio if it is inappropriate to have the counsel continue its duties because of assault or intimidation by the defendant or some other cause imputable to the defendant (CCP, Art. 38-3 (1) (v)).

(3) Mandatory counsel cases

When the case is punishable with the death penalty, life imprisonment, or imprisonment with or without work for more than three years, the trial may not be convened without the attendance of counsel (CCP, Art. 289 (1)). When prosecution has been instituted in a case requiring counsel, if the defendant has not appointed counsel, the court must without delay confirm with the defendant whether he or she will appoint counsel (RCP, Art. 178 (1)). If the defendant does not appoint counsel within a certain period, the presiding judge must immediately appoint counsel for the defendant (Rules of Criminal Procedure, Art. 178 (3)). Other situations requiring the appointment of counsel include the situation in which a case is put to pre-trial arrangement proceedings (or inter-trial arrangement proceedings) (CCP, Arts. 316-4, 316-29) and the situation under a speedy trial procedure (CCP, Art. 316-23).

If the counsel in a mandatory counsel case is dismissed, the court must appoint new counsel. However, the Supreme Court has construed that if (a) notwithstanding that the court has taken every possible measure to ensure that counsel attends, (b) the defendant inhibits counsel's attendance at hearing dates or otherwise causes a situation where a trial examination cannot be conducted in the presence of counsel, and (c) it is extremely difficult to resolve the situation, then the CCP, Article 289 (1) does not apply to that hearing date.[50]

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[49] White Paper on Attorneys 2019, 110.
[50] SC ruling of 27 March 1995, CrR 49-3-525.

(4) Current situation of appointing counsels

The state of the appointment of counsel in ordinary first-instance trials (district and summary courts) in the past five years is shown in **Table 14**. Of the defendants whose cases concluded, 99.4–99.5% of defendants obtained counsel. Of these, 18–20% had private counsel, while 85–86% had court-appointed counsel. Around 67–69% of these defendants had counsel from the suspect stage, and more than 30% appointed counsel just after being prosecuted.

Table 14 Appointment rate of counsel in ordinary first-instance trials

Year	Concluded defendants	Defendants who had counsel			
		Appointment rate	Private counsel	Court-appointed counsel	From the suspect stage
2014	59,667	59,353 (99.5%)	10,788 (18.1%)	50,997 (85.5%)	41,216 (69.1%)
2015	60,887	60,536 (99.4%)	11,506 (18.9%)	51,653 (84.8%)	41,452 (68.1%)
2016	59,103	58,787 (99.5%)	11,456 (19.4%)	49,963 (84.5%)	39,870 (67.5%)
2017	56,115	55,806 (99.4%)	11,076 (19.7%)	47,450 (84.6%)	37,754 (67.3%)
2018	54,862	54,610 (99.5%)	9,944 (18.1%)	46,725 (85.2%)	37,461 (68.3%)

Source: Annual Report of Judiciary Statistics for each year, Table 23 and Table 24.

3.2.3. The right to interview and communicate with counsel

(1) Guarantee of freedom and secrecy to communicate with counsel

The defendant or suspect in custody may without any official present have an interview with or send to or receive documents or articles from counsel or prospective counsel upon the request of a person entitled to appoint counsel (CCP, Art. 39 (1)). This right originates from the right to engage counsel guaranteed by CJ, Article 34.[51] Moreover, the right to communicate between the suspect or defendant and counsel

[51] SC judgement of 10 July 1978, CiR 32-5-820; SC judgement of 10 May 1989, CiR 45-5-919; SC judgement of 31 May 1989, LM 38-2-2981; SC judgement of 24 March 1999, CiR 53-3-514.

is the original right of counsel. Investigation agencies are obliged to refrain from questioning a suspect or defendant about the contents of interviews with his or her counsel in a way that would interfere with the purpose of Article 39 (1) of the CCP.[52]

(2) Restriction by laws and regulations

Regarding the interview or the sending or receiving of documents or articles prescribed in Art. 39 (1), such measures may be provided by laws and regulations as necessary to prevent the flight of the accused or suspect, concealment or destruction of evidence, or sending or receiving of articles that may hinder safe custody (Art. 39 (2)). Interviews are conducted in an interview room at the detention facility. In the interview room, the suspect or defendant and counsel are separated by a clear acrylic panel so that they cannot freely exchange documents or articles. If a detainee awaiting a judicial decision or counsel commits an act detrimental to discipline and order during an interview, the detention facility may restrain the action, or suspend or terminate the visit (Act on Penal Detention Facilities, Arts. 117, 113 (1) (i)). A circular notice by the order of the Ministry of Justice requires prior permission for a counsel to bring recording equipment, video players, and computers into the interview room, and prohibits any photography equipment and mobile phones from being brought in, because they are necessary to prevent discipline and order violations.[53] Precedents also dictate that for counsel to photograph the interview with the suspect or defendant would be an act detrimental to discipline and order.[54]

The guarantees of the privacy of documents or articles sent and received by the suspect or defendant and counsel are imperfect. Letters sent by counsel to a detainee awaiting a judicial decision may not be examined in terms of content, but only to determine whether they fall under a relevant item (Act on Penal Detention Facilities, Arts. 135 (2), 222 (3)). However, the practical

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[52] Fukuoka HC judgement of 1 July 2011, LM 64-7-991.
[53] The Ministry of Justice, Correction Bureau, No 3350, "Operation of the instruction on external transportation of inmates (Circular notice by order)" (30 May 2007).
[54] Tokyo HC judgement of 9 July 2015, LM 62-4-517, Fukuoka HC judgement of 20 July 2017, LM 64-7-1041, Fukuoka HC judgement of 13 October 2017, LM 64-7-991.

understanding is that it is not prohibited to inspect the letters by opening them for this examination.[55] Documents other than letters sent by counsel are classified as books, etc. and all subject to examination. The contents of letters sent by detainees awaiting a judicial decision may be checked, even if addressed to counsel. Although it is argued that checking the contents of letters addressed to counsel is unconstitutional,[56] the precedent denies this argument.[57]

In this respect, Article 14 (3) (b) of the ICCPR provides that the defendant must be able to prepare a defence and communicate with a counsel of his or her own choosing. On the meaning of this right, paragraph 34 of General Comment No. 32 by the Human Rights Committee states that '[c]ounsel should be able to meet their clients in private and to communicate with the defendant in conditions that fully respect the confidentiality of their communications'. This comment indicates that it is seriously problematic that the Act on Penal Detention Facilities only partially considers the confidentiality of letters exchanged between counsel and the defendant in detention.

(3) Designation by investigation agencies

If investigation is necessary, the investigating organisation may designate the date, place, and time of the interview or the sending or receiving of documents or articles between counsel and the suspect only before the institution of prosecution (CCP, Art. 39 (3)). A court precedent states that 'necessary for investigation' in Article 39 (3) means it must be limited to cases where allowing an interview, etc. will markedly impair the investigation through the interruption of an interrogation or similar. This is such in the case where the investigative authority is interrogating the suspect or having the suspect attend an on-the-scene investigation or examination, etc. when they receive a request for an interview, etc. from counsel, etc. Another example is when they definitely intend to conduct

[55] Chikujô-kaisetsu, 691.
[56] Kuzuno (2016), 240; Kuzuno & Ishida (2018), 112 (Takahiro Nakagawa)
[57] Osaka HC judgement of 12 October 2012 (LEX/DB25483106)

the above interrogation, etc. in the near future and allow an interview, etc. as requested by counsel, etc., which risks preventing the interrogation, etc. from commencing as planned (the marked impairment theory)[58]. Furthermore, regarding the method of specifying the interview, if the above requirements are satisfied, failure by the investigative authority to discuss with counsel, etc. a time and date for the interview, etc. as promptly as possible and to take measures allowing the suspect to prepare a defence with counsel, etc. is illegal[59]. According to the circular notices of the Supreme Public Prosecutors Office and National Police Agency, if counsel requests an interview during an investigation, they should be given the opportunity as soon as possible or at the time of the next meal or break[60].

(4) Physical presence of a counsel at interrogation

Law does not prohibit counsel from being present at the interrogation of a suspect or defendant. However, the physical presence of counsel at the interrogation is denied in practice. Even if the interrogation is voluntary (when the client is not in custody), counsel is almost always refused permission to be present at the site of the interrogation. This is in contrast to the new interpretation of article 6 para. 3(c) of the European Convention of Human Rights, also referred to as the 'Salduz doctrine' by the ECtHR[61]. According to the Salduz doctrine, even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made

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[58] SC judgement of 10 July 1978, CrR 32-5-820; SC judgement of 10 May 1989, CiR 45-5-919; SC judgement of 31 May 1989, LM 38-2-2981; SC judgement of 24 March 1999, CiR 53-3-514; SC judgement of 24 March 1999, CiR 53-3-514.

[59] As illegal cases: Sapporo DC judgement of 23 June 1988, LM 35-3-379; Nagoya DC judgement of 29 January 1993, HJ 1473-106=HT 824-145.

[60] The Supreme Public Prosecutor's Office No. 206, "Further considerations for the interview between the suspect in arrest and detention and his/her counsel, etc. to ensure proper investigation (Circular notice by order)" (1 May 2008), the National Police Agency, Criminal Affairs Bureau, Planning Division No. 62, "Further considerations for interviews between suspects in arrest and detention and defence counsel to ensure proper investigation (Circular notice by order)" (26 March 2019).

[61] ECtHR, Grand Chamber, 27 November 2008, Salduz v. Turkey, No. 36391/02, § 54-55 and ECtHR 11 December 2008, Panovits v. Cyprus, No. 4268/04, § 66 and 70-73.

during police interrogation without access to a lawyer are used for a conviction. Some Japanese scholars also argue that the suspect under arrest or detention should be guaranteed the right to have counsel present at the interrogation based on constitutional provisions such as Article 34, which guarantees the privilege of counsel for the arrestee and detainee, and Article 38 Paragraph 1, which guarantees privilege against self-discrimination.[62]

(To be continued in the next volume)

Ⅶ. BIBLIOGRAPHY

*** Bold is notation of a quotation.**

【Statistics, White Papers, Official Reports and Materials, UN Documents (URL)】

Population Census of the Statistics Bureau (http://www.stat.go.jp/ data/jinsui/index.html)

Criminal Statistics of the National Police Agency (https://www.npa.go.jp/publications/statistics/sousa/statistics.html)

Statistics on the Prosecution of the Ministry of Justice (http://www.moj.go.jp/housei/toukei/toukei_ichiran_kensatsu.html)

Statistics on the Correction of the Ministry of Justice (http://www.moj.go.jp/housei/toukei/toukei_ichiran_kousei.html)

The Supreme Court, General Secretariat, Annual Report of Judiciary Statistics, Vol. 2 Criminal Cases

The National Police Agency, White Paper on Police 2019 (https://www.npa.go.jp/hakusyo/r01/pdf/pdfindex.html)

Japan Legal Support Centre, White Paper on Houterasu fiscal year 2018 (https://www.houterasu.or.jp/houterasu_gaiyou/kouhou/kankoubutsu/

[62] Watanabe (1992), 216; Watanabe (1995), 250-252.; Takezawa et al. (1994), 99-100 [Takano Takashi]; Kobayakawa (1995), 360; Takada (2003), 100; Kuzuno (2013), 199; Abe (2019), 391.

hakusyo/2018hakusho.files/zentaiteisei.pdf)

Japan Federation of Bar Associations, White Paper on Attorneys 2019 (https://www.nichibenren.or.jp/document/statistics/fundamental_statistics2019.html)

The Supreme Court, General Secretariat, *Heisei 30-nen ni okeru keiji-jiken no gaikyô (jyô)* [Overview of Criminal Cases 2018 Part I], Hôsô-jihô 72-2.

The Supreme Public Prosecutors Office, *Rokuon rokuga no jisshi-jyôkyô (H27.4-H31.3)* [The State of Audio-visual Recording of Interrogation (from April 2018 to March 2019)] (http://www.kensatsu.go.jp/kakuchou/supreme/rokuonrokuga.html)

The Supreme Court, General Secretariat, *Saiban-in seido no jisshi-jyôkyô ni kansuru shiryô* [The State of the Saiban-in Trial] (http://www.saibanin.courts.go.jp/topics/ 09_12_05-10jissi_jyoukyou.html)

Japan Legal Support Center, *Jigyô houkoku-sho* [Business Report] (https://www.houterasu.or.jp/houterasu_gaiyou/kouhyou_jikou/ jouhoukoukai/zaimu_shohyo.html)

Human Rights Committee, **General Comment No. 32**, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 translated by the JFBA (https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/ treaty/data/HRC_GC_32j.pdf)

Human Rights Committee, **General Comment No. 35**, Article 9 (Liberty and security of a person), CCPR/C/GC/35 translated by the JFBA (https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/ treaty/data/HRC_GC_32j.pdf)

【Case materials】

Saikô-saibansho keiji-hanrei-syû [The Supreme Court, **Cr**iminal Case **R**eporter]

Saikô-saibansho minji-hanrei-syû [The Supreme Court, **Ci**vil Case **R**eporter]

Saikô-saibansho saiban-syû keiji [The Supreme Court **R**eporter, **Cr**iminal Case]

Saibansho-jihô [The Supreme **C**ourt **T**imes]

Kôtô-saibansho keiji-hanrei-syû [**H**igh Courts, **Cr**iminal Case **R**eporter]

Tôkyo kôtô-saibansho hanketsu-jihô (keiji) [**T**okyo **H**igh Court **T**imes, **Cr**iminal Case]

Kôtô-saibansho keiji-saiban-sokuhô [**H**igh Courts **Cr**iminal Case **B**ulletin]

Kakyû-saibansho keiji-saibanrei-syû [Inferior Courts, **Cr**iminal Case **R**eporter]

Keiji-saiban-geppô [**Cr**iminal Court **M**onthly Report]

Shomu-geppô [**L**itigation Affairs **M**onthly Report]

***H**anrei-jihô*

***H**anrei-**t**imes*

【Commentaries】

KAWAKAMI Kazuo et al. ed., ***Dai-konmentâru*** *keiji-soshô-hô* [Grand Commentary on the Code of Criminal Procedure], 2_{nd} ed., Seirin-shoin

MATSUO Koya supervision, ***Jôkai*** *keiji-soshô-hô* [Annotations on the Code of Criminal Procedure], 4_{th} augmented ed., Koubundou, 2016.

GOTO Akira & SHIRATORI Yuji ed., ***Shin-konmentâru*** *keiji-soshô-hô* [New Commentary on the Code of Criminal Procedure] 3_{rd} ed., Nippon-hyoron-sha, 2018.

ITAMI Toshihiko & GODA Etsuzo ed., ***Chikujô jitsumu*** *keiji-soshô-hô* [Practice Annotations on the Code of Criminal Procedure], Tachibana-shobo, 2018.

HAYASHI Makoto et al., ***Chikujô-kaisetsu*** *keiji-syuyô-shisetsu-hô* [Annotations on the Act on Penal Detention Facilities], Yuhikaku, 2017.

Japan Federation of Bar Associations, Research Office ed., *Jôkai bengoshi-hô* [Annotations on the Attorney Act], 5_{th} ed., Koubundou, 2019.

Japan Federation of Bar Associations, Committee of Attorney's Ethics, ***Kaisetsu bengoshi****-shokumu-kihon-kitei* [Annotations on the Basic Rules of Attorney's Duties], 3_{rd} ed., 2017.

【Books and Articles】

ABE Shota, *Higisha-torishirabe no kenpô-teki-kisei* [Constitutional Regulations of Interrogation of the Suspect], Nippon-hyoron-sha, **2019**.

ATSUMI *Toyo, Sôsa no genri* [Principles of Criminal Investigation], Yuhikaku, **1979**.

FUCHINO Takao, *Tekisei na keiji-tetsuzuki no hoshô to masu-media*" [Guarantee of the Due Criminal Procedure and Mass Media], Gendai-jinbun-sha, **2007**.

FUJINAGA Yukiharu et al. ed., *Kokusai/gaikoku-jin hanzai* [Trans-border and Foreigners' Crimes], Tokyo-horei, **2007.**

GOTO Akira, "*Sôsa-hô no ronri*" [The Logic of Investigation Law], Iwanami-shoten, **2001**.

HIRANO Ryuichi, *Keiji-soshô-hô no shindan* [Diagnosis of Criminal Procedural Law], in *DANDO Shigemitsu-hakase Koki-shukuga-ronbun-syû*" (Festschrift for the 70_{th} Birthday of Prof. Dr. DANDO Shigemitsu), Yuhikaku, **1985**.

HIRANO Ryuichi, *Sanshin-sei no saiyo niyoru 'kakushin-shiho' o—keiji-shihô-kaikaku no ugoki to hôkô* [Towards 'Core Justice' by Adopting a Lay-judge System—Movement and Direction of Criminal Justice Reform], Jurist vol. 1148 **(1999)**.

ISHIKAWA Wazaaki, *Sôsa ni okeru bengo no kinô* [Functions of the Criminal Defence at Investigation], Nippon-hyoron-sha, **1993**.

IBUSUKI Makoto, *Torishirabe no kashika!* [Towards Visible Interrogation!], Nippon-hyoron-sha, 2011.

IBUSUKI Makoto, *Shôko-kaiji to kôsei na saiban* [Disclosure of Evidence and Fair Trial], Gendai-jinbun-sha, **2014**.

ISHIMATSU Takeo, *Keij-saiban no kûdô-ka: kaikaku eno michi-shirube* [Cavitation of Criminal Trials: Guidepost for Reform], Keisô-shobô, **1993**.

Japan Federation of Bar Associations ed., *Daiyô-kangoku no haishi to keiji-shiô-kaikaku eno teigen* [The Daiyo Kangoku [Substitute Prison) System of Police Custody in Japan], Akashi-shoten, **1995**.

Japan Federation of Bar Associations, Research Office for Criminal Justice, *Kiso-zen/kôhan-zen-seiri/saiban-in-ssaiban no bengo-jitsumu* [Defence Practices before Prosecution, in Pre-trial procedure and Saiban-in Trial], Nippon-hyoron-sha, **2019**.

KADONO Hiroshi, *Mokuhi-ken no koshi to jijitsu-nintei* [Guarantee of the Right to Silence and Rules of Fact-finding] in KITANI Akir ed., *Jijitsu-nintei no kihon-mondai* [Fundamental Issues of the Fact-finding in Criminal Cases, 3_{rd} ed.], Seibundoh, **2015**.

KAWAIDE Toshihiro, *Bekken-taiho/kôryu no kenkyu* (Study of Arrest and Detention on Collateral Suspicions), Tokyo University Press, 1998.

KAWASAKI Hideaki, *Keiji-shihô-kaikaku to keiji-soshô-hôgaku no kadai* [Problems of Criminal Justice Reform and Legal Science of Criminal Procedure], Nippon-hyoron-sha, **2017**.

KAWASAKI Hideaki **& SHRATORI** Yuji ed., *Keiji-soshô-hô-riron no tankyû* [Exploring Theories of Criminal Procedural Law], Nippon-hyoron-sha, **2015**.

KAWASAKI Hideaki & MISHIMA Satoshi, *Keiji-shihô-kaikaku towa nanika* [What is the Criminal Justice Reform?], Gendai-jinbun-sha, 2014.

KAWASAKI Hideaki et al. ed, *2016-nen kaisei-keiji-soshô-hô/tsuushin-bôjyu-hô jyôbun-kaiseki* [Analysis of 2016 Revisions of the Code of Criminal Procedure and the Act on Wiretapping for Criminal Investigation], Nippon-hyoron-sha, 2017.

KAWAZOE Masatoshi, *Kokusen-bengo-seido to nihon-shihô-shien-sentâ* [Court-appointed counsel system and Japan Legal Support Centre], in *MINAGAWA Shigeaki & UEDA Kunihiro-sensei koki-syukuga-ronbun-syû* [Festschrift for the 70_{th} Birthday of MINAGAWA Shigeaki and UEDA Kunihiro], Gendai-jinbun-sha, **2016**.

Keiji-rippô-kenkyu-kai, *Daiyô kangoku/kôchi-sho-kaikaku no uukue: kangoku-hô-kaisei o megutte* [Future of Reforms of the Substitute Detention System and Detention Facilities: Amendments to the Prison Law], Gendai-jinbun-sha, **2005**.

KIYONO Kenichi, *Saiban-in-saiban ga keisatsu-sôsa ni ataeru eikyô ni tsuite— torishirabe oyobi kôjyutsu-chôsho sakusei no arikata o chûshin to shite* [About the Impact of *Saiban-in* trials on Police Investigations— Focusing on Ways of Interrogation and Preparation of Written Statements], Keisatsu-gaku-ronsyû 69-12 **(2016)**.

KOBAYAKAWA Yoshinori, *Miranda to higisha-torishirabe* [Miranda Rule and Interrogation of the Suspect], Seibundoh, **1995**.

KOSAKAI Hisashi, *Torishirabe no kashika-ron no genzai* [Status quo of the Theory of Interrogation Visualization], Gendai-jinbun-sha, 2009.

KOSAKAI Hisashi, *Torishirabe no kashika-ron no genkai* [Limit of the Theory of Interrogation Visualization], Gendai-jinbun-sha, 2013.

KOMA Kunihiko **& SERIZAWA** Masaharu, *Reijyô ni kansuru riron to jitsumu I* [Theories and Practice of Warrants], Hanrei-times-sha, **2012**.

KUZUNO Hiroyuki, *Keiji-tetsuzuki to keiji-kôkin* [Police Custody, Criminal Imprisonment and Criminal Justice], Gendai-jinbun-sha, **2007**.

KUZUNO Hiroyuki, *Miketsu-kôkin-hô to jinken* [Pre-sentencing Detention Law and Human Rights], Gendai-jinbun-sha, **2013**.

KUZUNO Hiroyuki, *Keiji-shihô-kaikaku to keiji-bengo* [Criminal Justice Reform and Criminal Defence], Gendai-jinbun-sha, **2016**.

KUZUNO Hiroyuki & ISHIDA, Tomonobu ed., *Sekken-kôtsu-ken no riron to jitsumu* [Theories and Practice of the Right to Interview and Communicate with Counsel], Gendai-jinbun-sha, **2018**.

KYO Akira, *You-shien-higisha no kyojutsu no jiyu* [Freedom of Statement of Vulnerable Suspects], Kansseigakuin Univ. Press, 2013.

MATSUMOTO Yoshiki, *Saiban-in-seido no moto ni okeru shinri/hanketsu no arikat*a [How to Conduct Hearings and Judgments under the Saiban-in System], Jurist 1268 **(2004)**.

MATSUO Koya, *Keiji soshô no nihon-teki tokuchô* [The Nature of Japanese Criminal Procedure], Hôsô-jihô 46-7 **(1994)**.

MATSUO Koya, *Keiji-soshô no riron* [Theories of Criminal Procedure], Yuhikaku, **2012**.

MIZUTANI Norio, *Miketsu-kôkin to sono daitai-shobun* [Pre-sentenced Detention and its Alternative Disposition], Nippon-hyoron-sha, **2017**.

MITSUI Makoto, *Kensatu-shinsa-kai-seido no kongo* [Future of the Committee for the Inquest of the Prosecution], Gendai-keiji-hô 69 **(2005).**

MITSUI Makoto **et al. ed.**, *Keiji-tetsuzuki no shin-tenkai, jyo/ge-kan* [New Developments in Criminal Procedure, vol. 1/2], Seibundoh, **2017**.

MIZUNO Kaoru **& TSUDA** Mamoru, ed., *Saiban-in-jidai no hôtei-tsûyaku* [Court

Interpreter in the Era of *Saiban-in* Trial], Osaka University Press, **2016**.

MIZUNO Makiko, *Nihon no shihô-tsûyaku no genjyô to kadai* [The Status quo and Problems of Court Interpreters in Japan], in GOTO Akira, et al. ed., *Keiji-shihô o ninau hitobito* [Players of Criminal Justice], Iwanami-shoten, **2017**.

MIZUNO Yoichi, *Kosei na saiban gensoku no kenkyu* [Study on the Principle of Fair Trial], Seibundoh, 2019.

MORISHITA Hiroshi, *Bengo-nin no yakuwari-ron—shutoshite 'jyun-shiho-kikan' -setsu no tachiba kara* [Roles of the Criminal Counsel: From the Standpoint of 'Quasi-judicial Organ' Theory] in URA Isao ed., *Shin-jidai no keiji Bengo* [Criminal Defence in the New Era], Seibundoh, **2017**.

MURAOKA Keiichi, *Bengo-nin no seijitsu-gimu to shinjitsu-gimu* [Obligations of Good Faith and Truth of the Criminal Counsel], in Japan Federal Bar Associations, *Heisei 8-nen-ban nichibenren-kensyû-sôsho gendai-hôritsu-jitsumu no sho-mondai* [JFBA Seminar Series 1996: Problems of Current Legal Practice], Daiichi-hoki, **1997**.

MURAOKA Keiichi, *Bengo no shitsu no hoshô* [Quality Control of Criminal Defence], in GOTO Akira, et al. ed., *Bengo-nin no yakuwari* [Roles of the Counsel], Dai-ichi-hôki, **2013**.

NIWAYAMA Hideo & IGARASHI Futaba, *Daiyo-kangoku-seido to shimin-teki-jiyû* (Substitute Prison System of Police and Civil Liberty), Seibundo, **1981**.

NIWAYAMA Hideo et al. ed., *Sekai ni towareru nippon no keiji-shihô—sho-gaikoku wa dou miteiruka* (Criminal Justice of Japan: Viewpoints of the World), Gendai-jinbun-sha, **1997**.

ODANAKA Toshiki, *Keiji-soshô-hô no hendô to kenpô-teki-shisô* (Changes in Criminal Procedural Law and Constitutional Thinking), Nippon-hyoron-sha, **2006**.

ODE Yoshitomo, *Keiji-gengo no tenkai to keiji-soshô* [Development of Criminal Defence and Criminal Procedure], Gendai-jinbun-sha, **2019**.

OHKI Kazuhiro **et al.**, *Gaikoku-jin-gengo manyuaru* [Manual of Criminal Defence

for Foreigners], 3rd ed., Gendai-jinbun-sha, **2014**.

OKADA Etsunori, *Higisha-bengo no kenkyû* [Study of Criminal Defence for the Suspect], Nippon-hyoron-sha, **2001**.

Osaka Bengo-gawa Risshô Kenkyu-kai ed., *Jissen Bengo-gawa Risshô* [Practice! Denfence Proof], Seibundo, **2017**.

Osaka Bar Association, Osaka Head Quarter for Visualizing Interrogation, ed., *Konmentâru kashika-hô* [Commentary on the Interrogation Visualization Law], Gendai-jinbun-sha, **2017**.

OSAWA Yutaka, *Shouko-kaiji-seido* [Disclosure of Evidence], Hôritsu-jihô 86-10 **(2014)**.

OSAWA Yutaka, *Hô-seibi no kadai: higisha/hikoku-nin no migara-kôsoku no arikata—iwayuru chûkan-shobun o chûshin ni* [Problems of Development of Laws: Detention System of the Suspect/Defendant, especially Intermediate Disposition], Ronsô-jurisit 12 **(2015)**.

SAITO Tsukasa, *Keiji-soshô no shikô-purosesu* [Thinking Process of Criminal Procedure], Nippon-hyoron-sha, **2019**.

SAKAMAKI Tadashi, *Keiji-soshô-hô* [Criminal Procedural Law], Yuhikaku, **2015**.

SATO Motoharu, *Keisatsu-kokin-seido to higisha-torishirabe no arikata* [Police Custody System and Methods to Interrogate Suspects], Ryukoku Corrections and Rehabilitation Center Journal, 3 **(2013)**.

SATO Takayuki, *Rokuon-rokuga-seido no moto niokeru higisha no torishirabe* [Interrogation of Suspects under Audio-video Recording System], in INOUE Masahito-sensei koki-syukuga-ronbun-shû [Festschrift for the 70th Birthday of Prof. INOUE Masahito], Yuhikaku, **2019**.

SATO Hiroshi, *Keiji-bengo no gijyutsu to rinri* [Skills and Ethics of Criminal Defence], Yuhikaku, **2007**.

SHIIBASHI Takayuki, *Keiji-bengo/Sôsa no riron* [Theories of Criminal Defence and Investigation], Shinzan-sha, **1994**.

SHIRATORI Yuji, *Keiji-soshô no riron to jitsumu* [Theories and Practice of Criminal Procedure], Nippon-hyoron-sha, **2012**.

TADA Tatsuya, *Higisha-torishirabe no tekisei-ka* [Improvement of Interrogation of Suspects], Seibundoh, **1999**.

TAKADA Akimasa, *Higisha no jiko-kettei to bengo* [Self-determination by a Suspect and Criminal Defence], Gendai-jinbun-sha, **2003**.

TAKAUCHI Toshio, *Kôhan-shinri kara mita sôsa—yoshin-teki-shiten no sai-hyôka* [Investigation from the Trial Perspective: Re-evaluation of the Preliminary examination], Seibundoh, **2016**.

TAKEZAWA Tetsuo et al. ed., *Keiji-bengo no gijyutsu (jyô)* [Techniques of Criminal Defence, vol. 1], Daiichi-hôki, **1994**.

TAMIYA Hiroshi, *Sôsa no kôzô* [The Structure of Criminal Investigation], Yuhikaku, **1971**.

TAMIYA Hiroshi, Henkaku *no nakano keiji-hô* (Criminal Law is Changing), Yuhikaku, **2000**.

Tokyo Bar Association, Kiseikai, Akarui Keiji Bengo Kenkyu-kai, *Hoshaku o mezasu bengo—kôryû karano kaihô* [Criminal Defence for Bail—Release from Detention], Gendai-jinbun-sha, **2006**.

TOYOSAKI Nanae, *Torishirabe-jyunin-gimu hitei-setsu no riron-teki-kiso: shintai-kôdô no jiyû tono kankei* [Theoretical Bases for Denying the Obligation to be Interrogated: Relationship with the Freedom of Body and Action), in *FUKUI Atsushi-sensei koki-shukuga-ronbun-shû* [Festschrift for the 70_{th} Birthday of Prof. *FUKUI Atsushi]*, Hôritsu-bunka-sha, **2013**.

TSUJI Hiroyuki, *Shihô-seido-kaikaku gaisetsu 6: ssaiban-in-hô/keiji-soshô-hô* [Summaries on Reform of Justice Systems 6: Act of Saiban-in Trial and Code of Criminal Procedure], Shoji-homu, **2005**.

TSUJIMOTO Norio, *Keiji-bengo no riron* (Theories of Criminal Defence), Seibundoh, **2017**.

UEDA Kunihiro, *Keiji-bengo-sentâ to shihô-kaikaku* [Criminal Defence Centre and Justice Reform], Jiyû to seigi 43-2 **(1992)**.

WAKAMATSU Yoshiya *Sekken-kôtsu-ken no kenkyu* [Study of the Interview and

Communication with Counsel], Nippon-hyoron-sha, **1987**.

WAKAMATSU Yoshiya, *Sekken to keiji-bengo* [Interview and Communication with Counsel and Criminal Defence], Nippon-hyoron-sha, **1990**.

WATANABE, Osamu, *Higisha-torishirabe no hô-teki-kisei* [Legal Regulations of the Interrogation of the Suspect], Sanseido, **1992**.

WATANABE Osamu, *Sôsa to bôgyo* [Investigation and Defence], Sanseido, **1995**.

WATANABE Osamu, *Keiji Saiban to Bôgyo* [Criminal Trial and Defence], Nippon-hyoron-sha, 1998.

WATANABE Osamu **et al.**, *Keiji Bengo to 'Chôsho Saiban'* [Criminal Defence and 'the Trial by written statements'], Keihô-zasshi 32-4 **(1992)**.

YAGINUMA Hachiro & WAKAMATSU Yoshiya, *Sekken-kôtsû-ken no gendai-teki-kadai* [Current Issues on the Right to Interview and Communicate with Counsel], Nippon-hyoron-sha, 1992.

YAGINUMA Hachiro & WAKAMATSU Yoshiya, *Shin sekken-kôtsû-ken no gendai-teki-kadai: Saikô-sai-hanketsu o koete* (New Current Issues on the Right to Interview and Communicate with Counsel: Beyond Precedents of the Supreme Court), Nippon-hyoron-sha, 2001.