Effective Criminal Defence in Japan (2)

Tabuchi, Koji
九州大学大学院法学研究院 : 教授

https://doi.org/10.15017/4102270

出版情報：法政研究. 87 (2), pp.156-108, 2020-10-15. 九州大学法政学会
バージョン：
権利関係：

Note

Effective Criminal Defence in Japan (2)

Koji Tabuchi

【Contents】

3.3. Procedural rights of the suspect/defendant

3.3.1. The right to release from custody

(1) Legal means to dispute unfair arrest and detention

If a defendant objects to a judicial decision concerning detention, he or she may request a rescission of the decision through a *kōkoku* or quasi-*kōkoku* appeal (CCP, Arts. 420, 429 (1) (ii)). In contrast, judicial decisions concerning arrest are not eligible for a quasi-*kōkoku* appeal. Furthermore, precedent dictates that the application mutatis mutandis of provisions concerning detention is not allowed.[62] In relation to legal means against arrest, the Human Rights Council states in paragraph 42 of its General Comment No. 35 that in relation to the right to bring the proceedings to be released from unlawful or arbitrary detention guaranteed by Article 9.4 of the ICCPR, '[t]he right to bring proceedings applies in principle from the moment of arrest and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible'. Therefore, it is against international law that the arrestee has not been given legal means to directly dispute the illegality of arrest.

To combat detention, besides a quasi-*kōkoku* appeal, the defendant, etc. or ex officio can request the rescission of detention through a request because the grounds of necessity for detention no longer exist (CCP, Art. 87). In addition, when the confinement of detention has been unduly long, the court shall upon the request of a person with the right to request bail or ex officio, rescind the detention or grant bail (CCP, Art. 91). Despite this, in 2018, the detention of only 108 suspects and 139 defendants was rescinded under Article 87 before litigation concluded.[63]

(2) The right to bail

No system accommodates bail for detention before prosecution is instituted. Regarding the detention of the defendant, the second sentence of Article 9,

---

[62] SC ruling of 13 February 1979, RCr 214-55; SC ruling of 27 August 1982, CrR 36-6-726.
[63] Judiciary Statistics 2017, Table 16.

Paragraph 3 of the ICCPR provides that '[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgement'. In paragraph 38 of its General Comment No. 35, the Human Rights Committee states that the sentence applies after the defendant has been charged. However, a similar requirement prior to charging results from the prohibition of arbitrary detention in Article 9, Paragraph 1. If the lack of a bail system for release from detention before prosecution has caused the detention of suspects to become the general rule, this must be considered as infringing Article 9, Paragraph 1 of the ICCPR.

Bail may be requested for release from detention after institution of prosecution (CCP, Art. 88). If bail is requested, it must be granted, subject to the exceptions stipulated in the following items in CCP, Article 89 (mandatory bail): (1) 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. (2) 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. (3) The defendant allegedly habitually committed a crime punishable by imprisonment with or without work whose maximum term of imprisonment was in excess of three years. (4) There is probable cause to suspect that the defendant may conceal or destroy evidence. (5) There is probable cause to suspect that the defendant may harm or threaten the body or property of the victim or any other person who is deemed to have essential knowledge for the trial of the case or the relatives of such persons. (6) The name or residence of the defendant is unknown. Of the causes in these items, the wording 'probable cause to suspect that the defendant may conceal or destroy evidence' in item (4) is abstract and risks being broadly interpreted as though it applies to cases

in which the defendant denies the allegations against him or her. Even if mandatory bail does not apply, the court may grant bail ex officio if it finds it appropriate, considering the degree of risk of the defendant fleeing or destroying or concealing evidence if he or she is released on bail; degree of the detriment to the defendant of his or her health, finances, social life, and defence preparation if physical custody continues; and other circumstances (CCP, Art. 90: discretionary or ex officio bail). Even for discretionary bail, the Supreme Court demands to determine whether bail is appropriate, considering the concrete possibility and feasibility of acts by the defendant to conceal or destroy evidence in the case.[64]

Bail screening is conducted by checking documents without personal appearance of the defendant before a judge. Counsel can interview with the judge in charge if the need is expressed at the time of the bail request.[65] When making a ruling to grant or dismiss bail, the court must hear the opinion of the public prosecutor (CCP., Art. 92 (1)). To grant bail, the court must set the amount of the bail bond (CCP, Art. 93 (1)). The amount of the bail bond must be set at a sufficient level to ensure the appearance of the defendant considering the nature and circumstances of the crime, probative value of the evidence, and character and property of the defendant (ibid., para. (2)). Furthermore, the court may specify the residence of the defendant or add other appropriate conditions to the bail (ibid., para. (3)). It is common to add conditions prohibiting contact with accomplices or victims. The ruling of release on bail may not be executed before payment of the bail bond (CCP, Art. 94 (1)). The court may permit a person other than the person requesting bail to pay the bail bond or permit the bail bond to be paid in securities or with a written guarantee issued by an appropriate person other than the defendant in place of cash (ibid., paras. (2), (3)). It is usual to request bail bonds.

Table 15 shows the detention rate and bail rate for concluded persons in

[64] SC ruling of 18 November 2014, CrR 68-9-1020; SC ruling of 15 April 2015, CT 1626-1.
[65] Tokyo Bar Association, Kiseikai (2006), 39; Keiji-bengo Beginners 2 (2014), 142; Oka & Kamiyama (2015), 52.

the first instance (district courts and summary courts) for ordinary cases in the past five years. While defendants' detention rate decreased from around 79% to 75%, the bail rate of detained persons increased from about 22% to 29%. However, according to the same judicial statistics, still 12,969 defendants were removed from detention without bail after sentences in 2018. As such, numerous defendants remain detained until the end of the trial, even if their sentences are lighter than imprisonment without suspension of execution.

Table 15　Detention rate and bail rate among concluded persons in the first instance

Year	Concluded person (a)	Measures after prosecution			
		Detained (b)	Detention rate (b/a)	Bailed (c)	Bail rate (c/b)
2014	59,667	47,032	78.8%	10,438	22.2%
2015	60,887	46,815	76.9%	11,464	24.5%
2016	59,103	44,761	75.7%	12,283	27.4%
2017	56,115	41,975	74.8%	12,218	29.1%
2018	54,862	40,582	74.0%	11,946	29.4%

Source: Annual Report of Judicial Statistics for each year, Table 32.

3.3.2. The right to be tried in their presence

The defendant's appearance at trial is his or her duty and right, and as a general rule, the trial may not be held in the absence of the defendant. The following are permitted as extensions: (a) The attendance of a representative if the defendant is a corporation (CCP, Art. 283), (b) exemption from the duty to attend trial dates except for the date of the pronouncement of judgement in minor cases (CCP, Arts. 284, 284 (1)), and (c) exemption from the duty to attend trial dates except for the opening proceedings and date of pronouncement of judgement in cases with lesser statutory penalties (CCP, Art. 284 (2)). Furthermore, to prevent defendants from abusing their right to attend and delay the litigation, (d) when the court cannot be convened without the appearance of

the defendant, the defendant under detention has been summoned to the trial but refuses to appear without justifiable reason, and it is extremely difficult for officials of the penal institution to bring the defendant to the court, the court may commence the proceedings of the trial without the appearance of the defendant (CCP, Art. 286-2).

A defendant who has appeared may not leave the court without the permission of the presiding judge (Art. 288 (1)). On the other hand, if needed to maintain the order of the court, the presiding judge may order the defendant to leave the court (see Art. 288 (2); RCP, Art. 71). In addition, if it is found that the witness is unable to testify sufficiently owing to the pressure of being in the presence of the defendant, the judge can have the defendant leave the courtroom, but only when counsel is present (Art. 304-2). When the defendant leaves the court without permission or is ordered to leave the court by the presiding judge to maintain order, the court may render a judgment without hearing his or her statement (CCP, Art. 341).

3.3.3. The right to be presumed innocent

While not an explicit provision, the Japanese CCP applies the notion that the defendant is presumed innocent until he or she is proven guilty. Furthermore, ICCPR Article 14, Paragraph 2, which defines the right to be presumed innocent, has a direct legal effect on the interpretation of domestic laws. However, a shared understanding of the meaning of the 'presumption of innocence' has not necessarily been formed. First, the presumption of innocence is construed as the legal basis for putting the burden on the public prosecutor to prove guilt. Second, executing a sentence before a guilty verdict is finalised is understood to breach the presumption of innocence.

On the meaning of the right to be presumed innocent provided in ICCPR, Article 14, Paragraph 2, the Human Rights Council's General Comment No. 32, Paragraph 30 notes, 'Defendants should normally not be shackled or kept in

cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence'. Related to this statement, the Japanese CCP explicitly provides that the defendant shall not be subject to restraints during the trial (CCP, Art. 287). However, in practice, defendants held in detention are brought to court in handcuffs with a rope around their waist, both of which are removed directly before the court comes into session. Furthermore, in relation to crime reporting, the National Association of Commercial Broadcasters in Japan (NAB) Reporting Guidelines (2003 amendment) explicitly states: '[W]hen reporting crimes, respect the principle of the presumption of innocence and lend an ear to the arguments by the suspect's side as well'. If there is problematic reporting, the committees of the Broadcasting Ethics & Program Improvement Organization (BPO) are to investigate whether the reporting was problematic and whether human rights were infringed and publish their findings. In reality, the decision on whether to make efforts to avoid 'presumed guilty' news is left to the voluntary decision of the media. Procedural countermeasures in the case of a violation of the defendant's right to a fair trial through the presumed guilty news are also argued in Japan[(66)], although few cases take such countermeasures.

3.3.4. The right to silence

Article 38(1) of the CJ guarantees citizens the right to not be compelled to testify against oneself. This privilege includes: (a) prohibitions against imposing an obligation to testify by criminal punishment or other sanctions, and (b) prohibitions against de facto compulsory testimony. However, as mentioned in para. **1.2.4.**, the Supreme Court maintains that regarding a suspect in physical custody as having the obligation to appear and remain for the interrogation does

(66) See, Fuchino (2007), 240f.

not directly take away the suspect's freedom to refuse to testify involuntarily.

Given the CJ, Article 38 (1), the CCP guarantees the right of suspects and defendants to silence (see **3.1.1.(1)**). The defendant may remain silent at all times or may refuse to answer particular questions (CCP, Art. 311(1)). The defendant is not requested to waive the right to silence, even when he/she chooses to make a statement at the trial. Furthermore, common opinion and precedents also show that silence must not be construed to the suspect or defendant's disadvantage.[67] However, when a defendant answers the counsel's main questions, it does not constitute a violation of the right to silence to mistrust the defendant's statement on the grounds that he/she did not answer the prosecutor's questions.[68] In addition, silence itself, to the defendant's disadvantage, must not be considered a factor in sentencing; conversely, it is thought permissible and usual in practice to recognise the confession as a sign of reflection and regret, and treat it advantageously in sentencing.[69]

3.3.5. The right to reasoned decisions

Decisions must be accompanied by the reasons therefor, except ruling and orders against which no appeal can be filed (CCP, Art. 44 (1) (2)). When pronouncing a sentence, the court must describe as the reasons: (a) the facts constituting the crime, (b) the list of evidence, and (c) the application of laws and regulations (CCP, Art. 335 (1)). When a reason to preclude establishment of the crime by act or grounds for aggravation or reduction of the punishment have been argued, the court shall render an opinion on it as well (Art. 335 (2)). In addition, in practice, explanations of the factual or legal issues and the reason for the sentence are described if important for related persons pursuant to the purpose of CCP, Article 44. For the 'list of evidence', it is sufficient if the evidence

[67] Jôkai, 680; Dai-konmentâru vol.6, 378 (Takahashi Shogo); Chikujô jitsumu, 726; Sapporo HC ruling of 19 March 2002, HJ 1803-147=HT 1095-287.
[68] Kadono (2015), 251-255.
[69] Dai-konmentâru vol.6, 378 (Takahashi Shogo).

used as materials for fact-finding is listed, and neither the reasons for selecting the evidence nor the fact-finding process is required.[70] However, since the examination of fact-finding errors in the appeal court extends to the rationality of selecting and inferring facts from the evidence, the process of finding facts in the evidence is explained in the reason of decision to ensure objective rationality in cases where the assessment of evidence is divided.[71] If the judgment was groundless or there was a discrepancy regarding the grounds, grounds for the appeal are admitted (CCP, Art. 378, Sentence 5).

3.3.6. The right to appeal

Since Japan's judicial system adopts the system of three instances, two-stage appeals against a judgment are possible: the appeal to the court of second instance (CCP, Art. 372) and final appeal to the Supreme Court (CCP, Art. 405). The right to appeal is granted to the prosecutor and defendant (CCP, Art. 351(1)). The counsel in the former instance may also appeal for the defendant independently, although this may not be filed contrary to the intent the defendant has indicated (CCP, Arts. 355, 356).

The appeal to the court of second instance is possible on grounds including violation of laws, the erroneous finding of facts, and unreasonable sentencing (CCP, Arts. 372, 377–384). When an appeal is filed on the grounds of the erroneous finding of facts, the decision on whether to conduct a new examination of the disputed facts in the second instance is left to the discretion of the court. The exception is for facts that can be proven with evidence, the examination of which could not be requested before oral arguments were concluded in the court of the first instance because of unavoidable circumstances (CCP, Art. 393 (1)). According to the Annual Report of Judicial Statistics for 2018, 1,573 defendants and 14 prosecutors filed appeals on the ground of the erroneous finding of facts in the

[70] SC ruling of 24 November 1959, CrR 13-12-3089.
[71] Jôkai, 935; Chikujô jitsumu, 939.

same year, and the appeals of 1,077 (68.5%) defendants and 8 (57.1%) prosecutors were dismissed without a new examination of facts.

The final appeal to the Supreme Court is possible against a judgement of the court of second instance (CCP, Art. 405). Grounds for the final appeal are restricted to a violation of the constitution and conflicts with a precedent. However, the Supreme Court may also reverse a judgement of the court of former instance ex officio on the grounds of an error in the application of laws and regulations, erroneous finding of facts, and an unreasonable sentence when it deems that not doing so would clearly be contrary to justice (CCP, Art. 411).

Table 16 shows the reversal rates in the second instance in the past five years. While around 10% of appeals by the defendant's side were successful, around 60% of those by prosecutors succeeded, except in 2017.

Table 16　Reversal rate in the second instance

Year	Appeal by the defendant's side		Appeal by the prosecutor	
	Appellants	Reversing rate	Appellants	Reversal rate
2014	5,788	8.6%	115	60.0%
2015	6,000	9.0%	95	65.3%
2016	5,289	10.6%	95	66.3%
2017	6,001	9.1%	124	41.9%
2018	5,641	9.5%	83	61.4%

Source: Annual Report of Judicial Statistics for each year, Table 58, 69.

Table 17 shows the number of reversals in the final appeal instance in the past five years. Around 2,000 appellants were finalised in the final appeal instance each year, but the number of reversed cases remains in the single digits. In 2018, in five of the six cases, decisions of acquittal were reversed, but the decision of conviction was only reversed for one appellant, who was acquitted.

Table 17　Number of reversals in the final appeal instance

Year	Persons disposed at courts	Reversal
2014	1,974	9
2015	1,891	0
2016	1,957	2
2017	2,106	1
2018	1,993	6

Source: Annual Report of Judicial Statistics for each year, Table 76.

3.3.7. No double jeopardy and the right to retrial

The Constitution of Japan, Article 39 provides that no person shall be held criminally liable for an act for which he or she has already been acquitted, nor shall he or she be placed in double jeopardy, thus prohibiting retrial of the defendant to his or her disadvantage. However, the Supreme Court stipulates that an appeal by the prosecutor against an acquittal does not breach the Constitution on the grounds that the same risk continues until the acquittal is finalised.[72] In contrast, the unconstitutionality of the prosecutor's appeal or its abuse is strongly argued.[73]

Even after a conviction has been finalised and is binding, a retrial is possible in the interests of the person found guilty when one of the grounds in Article 435 of CCP is evident. Article 435 item (vi) provides as a ground of retrial: 'Clear evidence has been found which should make the court render an acquittal to the person who has been sentenced'. After the Supreme Court admitted the application of the principle of '*in dubio pro reo*', even if determining whether it falls under clear evidence based on which the acquittal should make the court render an acquittal,[74] the possibility of retrial relief for false convictions has widened. However, some barriers remain in the current law that prevent the retrial system from properly functioning, including the lack of a court-appointed

[72] SC judgement of 27 September 1950, CrR 4-9-1805.
[73] Shiratori (2012), 322.
[74] SC judgement of 20 May 1975, CrR 50-5-177; SC judgement of 12 October 1976, CrR 30-9-1673.

counsel system for retrial requests, lack of rules of disclosure of evidence for retrial requests, lack of concrete provisions on how the court of retrial request hearing should progress, and granting the right to appeal against a ruling to commence a retrial to the public prosecutor. The inadequacy of these retrial provisions should not be ignored, especially because Japan applies the death penalty.

Table 18 shows the status of the retrial requests processed in the past five years. In total, 24 (2.0%) persons of the 1,188 processed cases were granted a retrial including those revised in the upper instance in the last five years.

Table 18 Status of processing retrial requests

Year	Persons disposed at courts	Persons granted a retrial
2014	217	4
2015	268	6
2016	252	6
2017	228	5
2018	223	3

Source: Annual Report of Judicial Statistics for each year, Tables 2, 5, 8, 11.

3.4. Rights relating to effective defence

3.4.1. Counsel's investigation

The criminal procedure of Japan adopts the adversary system, and it is the responsibility of both parties to investigate cases and gather the necessary evidence (RCP, Art. 178-2). Therefore, counsels should actively conduct investigation activities and gather evidence.[75] However, there is a de facto limit to the counsel's own investigation.

When conducting an investigation for a client, lawyers can use the system whereby bar associations survey or inquire about necessary matters to

[75] Keiji-bengo Beginners 2 (2016), 80; Osaka Bengo-gawa Risshô Kenkyu-kai ed. (2017), 3; Japan Federation of Bar Associations, Research Office for Criminal Justice (2019), 48.

government agencies, enterprises, and other groups under the Attorney Act, Article 23-2 at his or her own cost. Furthermore, the defendant or their counsel may request the court to ask public offices or public or private organisations for reports on matters needed for the trial in preparation therefor (CCP, Art. 279). It is also possible to request to have case records sent from another court. If expert evidence is necessary, counsel can file a request with the court, but whether it will be ordered is entrusted to the discretion of the court. If counsel directly requests an expert to provide expert evidence, the costs are borne by the suspect or defendant. These costs are not covered by public legal aid.

The defendant's side may not use its own enforcement measures to investigate the case. The suspect or defendant or counsel may only request a judge for a disposition on the seizure, search, inspection, witness examination, or expert evidence before the first trial date when circumstances suggest it will be difficult to use the evidence unless it is preserved in advance (CCP, Art. 179). However, evidence preservation procedures cannot be used for the purpose of discovering evidence, it is stipulated that the preservation of evidence collected or held by investigation agencies will not be allowed without exceptional circumstances.[76]

3.4.2. Adequate time and facilities for the preparation of defence

(1) Specification of the trial date

When prosecution has been instituted, the court must serve a transcript of the charging sheet on the defendant without delay (CCP, Art. 271 (1)). When specifying the first trial date, trial preparations to be made by the persons concerned in the case prior to said date shall be considered (RCP, Art. 178-4). A period of suspension specified in the Rules of Court (five days) shall be set between the first trial date and service of the writ of summons on the defendant (CCP, Art. 275; RCP, Art. 179 (2)). The court may change the trial dates upon the

[76] SC ruling of 25 November 2005, CrR 59-9-1836.

request of the public prosecutor, defendant or their counsel, or ex officio (CCP, Art. 276 (1)). The court shall, in advance, hear the opinion of the public prosecutor, and the defendant or his or her counsel pursuant to the Rules of Court to change the trial dates, provided that this shall not apply in a case requiring urgency (id, (2)). If the proviso applies, the court shall give the public prosecutor and the defendant or their counsel an opportunity to raise an objection at the commencement of the trial (id, (3)). When a court has changed a trial date in abuse of its powers, the persons concerned in the case may request the taking of judicial administrative measures pursuant to the Rules or Instructions of the Court (CCP, Art. 277). As shown, the court cannot specify or change trial dates unilaterally without considering the defendant's preparations.

(2) Disclosure of evidence

When requesting to examine a witness, expert witness, interpreter, or translator, the public prosecutor, defendant or his or her counsel shall give his or her opponent an opportunity to know the name and address of that person in advance. In addition, when requesting to examine documentary or material evidence, the public prosecutor, defendant or his or her counsel shall give his or her opponent an opportunity to inspect the evidence in advance (CCP, Art. 299 (1)). Regardless, the CCP allows the prosecutor to impose upon counsel the condition that the names and addresses of witnesses and others not be made known to the defendant or to designate the timing and method of making them known to the defendant when disclosing evidence that the prosecutor plans to request for examination of evidence if there is a risk of harm, threat, or confusion to the witnesses and others (CCP, Art. 299-4 (1), (3)). Furthermore, if there is a risk that this will still not prevent harm to the witnesses and others, it is possible to conceal the witnesses' names and addresses, even from counsel. In this case, the prosecutor must provide counsel with the opportunity to know a pseudonym as a substitute for the name and contact information as a substitute for the address (CCP, Art. 299-4 (2), (4)). A request for disposition is planned as a response to

breaches of protective measures by counsel (CCP, Art. 299-7).

No general provisions impose an obligation to disclose evidence that the public prosecutor does not plan to request. Given this, precedent shows that the court, pursuant to its power to control a trial, can at the stage when examination of evidence has commenced order the disclosure of reasonable evidence counsel has identified individually, and request such considering the degree of importance, necessity, damage, etc.[77] Nevertheless, partly because of the application of the principle of the exclusion of preconception, the evidence disclosure order using the court's power to control a trial is issued after the examination of evidence has commenced in normal cases.

Article 14, Paragraph 3 (b) of the ICCPR provides that the defendant must be provided adequate time and facilities to prepare a defence. On the meaning of 'adequate facilities', the Human Rights Committee states in paragraph 33 of its General Comment No. 32 that it 'must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the defendant or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence, but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary)'. Therefore, it is seriously problematic that the current CCP does not have general provisions obliging the public prosecutor to disclose exculpatory material. In addition, the absence of provisions obliging investigation agencies to retain evidence restricts the possibility for the defendant to access evidence that may be to their advantage and should be reconsidered.[78]

The defendant can enjoy greater disclosure of evidence in cases put to pre-trial or inter-trial (hereinafter omitted) arrangement proceedings. If a case is put to pre-trial arrangement proceedings, first, the evidence offered by the public prosecutor is disclosed to the defendant's side, and if requested by the

(77) SC ruling of 25 Apr. 1969, CrR 23-4-275.
(78) See, Ibusuki (2014), 301.

defendant's side, a list of evidence held by the public prosecutor is delivered (CCP, Art. 316-14). This list describes the minimum items needed to identify evidence but does not include outlines of evidence. The defendant's side should also disclose their evidence to the prosecutor (CCP, Art. 316-18). After the prosecutor's disclosing of evidence procedure, the defendant's side can request the prosecutor to disclose further evidence in two stages.

The first stage is a request for the categorical disclosure of evidence listed in the provision (CCP, Art. 316-15). The purpose of the categorical disclosure is to disclose the types of evidence considered important to judge the credibility of the evidence offered by the public prosecutor and to enable the defendant and counsel to develop a defence strategy against the public prosecutor's arguments and proof. The request is admitted when it is appropriate considering the degree of importance, other necessities for disclosure to prepare for the defence of the accused, and the contents and extent of any possible harmful effects of the disclosure.

The second stage is a request for the disclosure of evidence connected to the allegation that the defendant plans to make at trial (CCP, Art. 316-20). The purpose of this disclosure is to enable the defendant to prepare an aggressive defence and to further organise the points at issue by clarifying the arguments the defendant plans to make at trial and then disclosing the evidence relating to those arguments. To obtain a disclosure of evidence connected to the allegation, the defendant's side must first clarify the arguments they plan to make at trial to the public prosecutor. The request is admitted when it is appropriate considering the extent of the connection, other necessities for disclosure to prepare for the defence of the accused, and the contents and extent of any possible harmful effects of disclosure. The reason the disclosure of evidence occurs in two stages is that the discovery system in the pre-trial arrangement procedure was designed to promote the arrangement of issues between both parties.[(79)]

When the court deems that the prosecutor has not disclosed the evidence that

was to be disclosed pursuant to the aforementioned articles, it shall upon the request of the defendant's side, order the disclosure of evidence on a ruling (CCP, Art. 316-26(1)). The court may then order the public prosecutor to present a list of evidence he or she holds that falls within the range specified by the court when it deems it necessary in making a ruling for the request. However, in this case, the court shall not let anyone including counsel inspect or copy the list (CCP, Art. 316-27(2) to prevent information leaks through disclosing the list, which includes outlines of the evidence needed for the ruling.

For the defendant, having the case put in pre-trial or inter-trial arrangement proceedings makes it possible to use the extended disclosure of evidence system. Given this, the 2016 amendment of the CCP granted the right to request pre-trial or inter-trial arrangement proceedings to parties (Art. 316-2(1)). In addition, when there is a dispute over voluntary disclosure of evidence between the prosecutor and defendant, it is considered preferable to resolve according to the disclosure system specified by the pre-trial arrangement procedure.[80] However, on the provision, courts need not put a case to pre-trial arrangement proceedings, unless it deems it necessary in conducting the proceedings of a trial consecutively, systematically, and speedily. Furthermore, it is not possible for the parties to file an appeal against the decision even when the request is rejected. Therefore, the deficiencies in the general rules for discovery have not yet been completely overcome.

Table 19 shows the status of the pre-trial or inter-trial proceedings in the first instance for ordinary cases in the past five years. The percentage of defendants put to the arrangement proceedings moves between 2.5% to 2.7% of the total persons disposed at courts and no significant change happens after the 2016 amendment.

---

[79] Tsuji (2005), 203-204.
[80] Osawa (2014), 48.

Table 19 The Status of the pre-trial of inter-trial arrangement proceedings in the first instance

Year	Total persons disposed at courts (a)	Defendants put to the pre-trial arrangement proceeding (b)	Defendants put to the inter-trial arrangement proceeding (c)	Arrangement proceedings rate (b+c)/a
2014	59,667	1,428	210	2.7%
2015	60,887	1,366	166	2.5%
2016	59,103	1,327	204	2.6%
2017	56,115	1,174	184	2.4%
2018	54,862	1,255	209	2.7%

Source: Annual Report of Judicial Statistics for each year, Tables 39.

3.4.3. Equality of arms in examining witnesses

The Constitution of Japan, Article 37(2) guarantees that the defendant will be permitted full opportunity to examine all witnesses and have the right of a compulsory process to obtain witnesses on his or her behalf at the public expense. The first part is intended to guarantee the right to be permitted full opportunity to face the witnesses for the public prosecutor in court and challenge their credibility through cross-examination. The second part is intended to guarantee the right to have the court compulsorily summon the witnesses the defendant requests and to examine them. To guarantee the right to examine witnesses, CCP, Article 320 adopts the hearsay rule, although the CCP also incorporates exceptions to hearsay in Articles 321 to 328. On the relationship between CJ, Article 37(2) and the hearsay exception provisions, early precedents of the Supreme Court held that the provisions intend to require giving the proper opportunity to cross-examine a witness summoned by the court ex officio or by request of a party to the litigation. They are not provisions that absolutely prohibit including as evidence a document recording statements by a witness for whom no opportunity to cross-examine will be given.[81] However, current

[81] SC judgement of 18 May 1949, CrR 3-6-789; SC ruling of 4 October 1950, CrR 4-10-1866; SC judgement of 9 April 1952, CrR 6-4-584.

precedent interprets the hearsay exception provisions restrictively based on the purport of CJ, Article 37 (2).[82]

Regarding the problematic hearsay exceptions from the viewpoint of defendant's right to examine witnesses, the first section of Article 321 (1) (ii) allows a written record of a statement given before the public prosecutor as an exception to hearsay if the deponent is unable to testify at the trial or in the trial preparation (due to death, a mental or physical disorder, their whereabouts being unknown or being out of the country or any other causes difficult to remove). Even if it were possible to grant the suspect or defendant the opportunity for advance cross-examination by filing a request for witness examination by the judge before the commencement of trial, taking such measures is not included as a condition. Furthermore, the second section of Article 321 (1) (ii) allows a written record of a statement given before the public prosecutor as an exception if the contents of the testimony by the deponent contradict the contents of the written record of the statement given before the public prosecutor. If the latter is found to be testimony in circumstances rendering it more credible than the former, the latter will be allowed as substantial evidence in the exception to hearsay. In this case, although the defendant is granted the opportunity for cross-examination at trial, if the earlier testimony is determined to have been given in circumstances that render it more credible, it will not be sufficient to challenge the trial testimony of the witness for the public prosecutor, and the defendant will need to challenge the statements written in the written record of the statement given before the public prosecutor.

ICCPR, Article 14, Paragraph 3 (e) guarantees the defendant's right to examine or have examined the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. On the purpose of this provision, the Human

[82] SC judgement of 20 June 1995, CrR 49-6-741.

Rights Committee states in paragraph 39 of its General Comment No. 32 that '[a]s an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the defendant and their counsel and thus guarantees the defendant the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution'. 'It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the defendant or their counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings'. However, the current CCP, Article 321 (1) designates written records of statements given before the public prosecutor the status of a special document similar to the written records of statements given before a judge. Consideration for the defendant's rights is also not sufficient, both in the sense of 'the same legal powers as the public prosecutor vis-à-vis the opportunity to examine or cross-examine witnesses' and of 'the right to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings'.

3.4.4. Free interpretation and translation

(1) The right to interpretation

The language to be used in courts in Japan is defined as Japanese (Courts Act, Art. 74). When the court has a person who is not proficient in Japanese make a statement, it shall have an interpreter interpret for them (CCP, Art. 175). Furthermore, when the court has a person who is unable to hear or speak make a statement, it may have an interpreter interpret for them (CCP, Art. 176). The appointment of an interpreter is made in accordance with the procedures for appointing expert witnesses (CCP, Art. 175). Interpretation is provided in the mother tongue or first language. However, precedent stipulates that if an interpreter for the defendant's mother tongue cannot be secured, substituting

this with interpreting in another language the defendant can understand does not breach ICCPR, Article 14, Paragraphs 3 (a) and (f) and is legal.[83]

Interpreters can claim interpreting fees as well as travel expenses, daily allowances, and accommodation charges (CCP, Arts. 175, 173). The costs incurred for interpretation when the court engages the interpreter are included in the calculation of court costs. Article 181 of the CCP provides: 'When the court renders punishment, it must have the defendant bear all or part of the court costs; provided however, that this shall not apply when it is clear that the defendants cannot afford the court costs because of indigence'. If this provision is applied formally, the defendant may be made to bear all or part of the interpreting costs if convicted. Nevertheless, precedent takes the standpoint that international human rights covenants can be applied directly in domestic trials, and holds that the guarantee 'to have the free assistance of an interpreter' provided for by ICCPR, Article 14, Paragraph 3 (f) is absolute and unconditional, and even if a defendant should be convicted at trial and punishment rendered against them, the court is not permitted to order the defendant to bear the costs incurred for interpretation under the body of CCP, Article 181 (1).[84] Therefore, the cost of the interpreter appointed by the court is not actually calculated by including the court costs.

If interpretation is necessary for investigation (which is determined by the investigating organisation, although there are no formal criteria for judging necessity), it is requested by the investigating organisation (Art. 223 (1)), which bears the costs of the interpreter engaged for the investigation. The suspect does not have the right to demand an interpreter for the investigation. To have an investigator who can speak the foreign language also act as the interpreter is undesirable in terms of the impartiality of the interpretation, but not illegal.[85]

[83] Tokyo HC judgement of 26 December 1960, ICrR 2-11=12-1369; Tokyo HC judgement of 8 April 1992, THTCr 43-1～12-34.
[84] Tokyo HC judgement of 3 February 1993, THTCr 44-1～12-11.
[85] Osaka DC judgement of 28 January 1983, HJ 1089-159.

Regarding interpreters in investigations, issues to consider include (a) the stage of investigation in which the interpreter was introduced; (b) whether the interpreting is in the interpreter's first language; (c) the skill of the interpreter; and (d) the impartiality, neutrality, etc. of the interpreter.[86] In some cases, the probative value of the written records of statements prepared during the interrogation by investigating organisations were denied on the grounds that the necessary interpretation was not conducted or was inaccurate at the interrogation.[87] However, the interpretation at the interrogation is usually not recorded, meaning it may not always be possible to confirm after the fact the accuracy thereof in the investigative stage. Furthermore, from the post-check viewpoint, appointing the interpreter who worked in the investigative stage as the court interpreter is not desirable, but not illegal if an interpreter cannot be easily secured.[88]

An interpreter for the defence must be arranged by counsel. In the case of a court-appointed counsel, an interpreter can be introduced through the JLSC. If counsel engages an interpreter for defence activities, it must conclude a contract with the interpreter. In the case of court-appointed counsel, interpretation costs are paid by the JLSC to a certain limit. Issues mentioned specific to interpretation for the defence include (a) securing suitable interpreters, (b) the response of investigating organisations and penal institutions when having an interpreter accompany counsel at interviews, (c) burden of interpreting costs, and (d) how to respond when an interpreter cannot be arranged.[89]

(2) The right to translation

Domestic law does not have a provision that defines a right to have documents or evidence translated without charge if the suspect or defendant cannot understand the Japanese written in them. CCP, Article 177 provides that '[t]he

---

[86] Ohki et al. (2014), 74.
[87] Sapporo DC judgement of 29 March 1999, HT 1020-284.
[88] Osaka HC judgement of 19 November 1999, HJ 1436-143.
[89] Ohki et al. (2014), 68.

court may have letters or marks written in languages other than the national language translated'. If an interpreter has been appointed, it is usual to have the interpreter interpret after translating the court documents and evidence into Japanese. It is the responsibility of counsel to request the translation of the documents it sends and receives. The burden of costs incurred by the court, investigating organisation, or counsel for translation is the same as the rules for the burden of costs incurred for interpretation.

In relation to preparing written records of statements given before a public officer during interrogation, CCP, Article 198 (4) provides that the written record of a statement before a public officer must be inspected by the suspect or read to him or her for verification. If they make a motion for any addition, removal, or alteration, their remarks must be entered in the written record. Furthermore, paragraph (5) of that article provides that if the suspect affirms that the contents of the written record are correct, they may be asked to attach their signature and seal to it. Given this, the legality of having a suspect attach their signature and seal to a written record of a statement before a public officer in Japanese without preparing a translation thereof is an issue. In this regard, precedent specifies that 'if it can be found that in the present case, at the investigation where the defendant's statements were recorded in each of the written records of statements before a public officer above, when the interpreter interpreted each of them in English that the defendant could understand, the contents of the recorded written records were interpreted accurately and were understood by the defendant before they were signed and sealed, the written record is legal even if it is not signed and sealed having had a written translation prepared'.[(90)]

(3) Capacity of interpreters

There are no national qualifications or public accreditation systems for judicial interpreters. The status quo is that the police in each prefecture, district public

(90) Tokyo HC judgement of 24 November 1976, HCrR 29-4-639.

prosecutor's offices, high courts, local bar associations, and the JLSC have each prepared their own rolls of interpreters and provide training for their registered interpreters. However, it is pointed out that sufficient training opportunities are scarce.[91] According to the court's public relations brochure, as of 1 April 2017, 3,823 people in 68 languages were registered as court interpreter candidates throughout Japan.[92] In addition, the Japan Law Interpreter Association has been formed as a civilian group aiming to improve the skills and status of judicial (law) interpreters. It holds judicial interpretation training sessions and conducts judicial interpreter skill assessment examinations. In addition, the Japan Law Interpreter Association also introduces interpreters who have passed a judicial interpreter skills assessment and are assured of having a certain level of skill, and provides translation services by judicial interpreters assured of having a certain level of technical ability, as requested by courts, lawyers, and others. According to a survey of 101 court interpreters conducted by a group at Shizuoka Prefectural University in 2012, there is a great sense of burden for interpreters, especially those who have experienced lay judge trials, and it is desirable to develop court interpreters as a professional field.[93]

Ⅳ. PROFESIONAL CULTURE OF CRIMINAL DEFENCE

4.1. Attorney system

Attorneys must in principle be appointed as counsel (CCP, Art. 31 (1)). Accordingly, the professional culture of criminal defence reflects ideas about the mission and role, professional ethics, and specialisation of attorneys. A person who has passed the national examination and completed the legal training course is qualified to become an 'attorney' in principle (Attorney Act (AA), Art. 4). To become an attorney, a person must have his or her name registered in

[91] Mizuno (2017), 199-201.
[92] http://www.courts.go.jp/vcms_lf/h31.1ban-gozonji.pdf.
[93] Mizuno & Tsuda (2016), 64 (Takahata Sachi).

the roll held with the Japan Federation of Bar Associations through the bar association to which he or she intends to be admitted anew (AA, Arts. 8, 9). The Japan Federation of Bar Associations (JFBA) is a corporation incorporated under the AA on 1 September 1949. Its members are the 52 bar associations throughout Japan, attorneys, and legal professional corporations. AA, Article 45 (2) defines the purpose of the JFBA as 'be[ing], in view of the mission and duties of attorneys and Legal Professional Corporations, to manage matters relating to the guidance, liaison, and supervision of attorneys, Legal Professional Corporations, and bar associations, in order to maintain the dignity and improve and advance the work of attorneys and Legal Professional Corporations'. Attorneys are not under the supervision of the State, and bar associations hold the right to punish attorneys as part of attorney self-governance. Thus, under the attorney system in Japan, attorneys do not hold back from fulfilling their professional duties for fear of punishment by the State. According to the Attorney's White Paper 2019, the number of attorneys in Japan was 41,118 as of March 31, 2019, more than double in the last 15 years.

4.2. Ethics of the attorney

This mission and professional ethics or code of conduct of attorneys is defined by the AA and the Basic Rules of Attorney's Duties enacted by the JFBA. AA, Article 1 defines an attorney's mission as protecting fundamental human rights and achieving social justice, and lists as three behavioural targets to carry out that mission the performance of duties in good faith (obligation of good faith), maintenance of order in society, and improving the legal system. There are opposing views on the obligation of good faith defined by AA, Article 1, namely whether it is defined as a legal obligation accompanied by liability for damages or merely an ethical duty. Here, the first theory carries more weight.[(94)] Furthermore,

(94) Jôkai Bengoshi, 13.

attorneys bear an obligation of confidentiality in their duties (AA, Art. 23), which is also important in the code of conduct for criminal defence. It can be said that the attorney's responsibility as a criminal counsel to the public is believed to hold only by keeping his obligation of good faith and providing the best defence for the suspect or defendant.[95] There has been a case in which counsel conducted defence activities that breached the obligation of good faith to perform litigation activities for the benefit of the defendant, substantially infringing the defendant's rights to defence and to appoint counsel, and was thus illegal. An appeal to the court of second instance was allowed on the grounds that the court's control of the trial ignored this, and it was concluded that the trial breached the law.[96]

The AA, Article 1 (2), the Basic Rules of Attorney's Duties, Article 5 provides that '[an] attorney shall carry out his or her duties with respect for the truth and complying with deliberations in fairness and good faith'. This article includes the added commentary that it is not intended to oblige an attorney in a criminal case to actively cooperate in the discovery of the truth.[97] In contrast, the attorney is prohibited to induce a false statement or submit false evidence (BRAD, Art. 75). Therefore, the attorney's obligation for the truth is argued as a 'passive truth obligation'; that is, whether the attorney might base arguments upon statements by a defendant the attorney knows to be false. The JFBA has not presented a unified view to prevail when the obligations of passive truth and good faith for the client are in opposition.[98] In this regard, competing views exist, namely the view that approves the passive truth obligation,[99] view that denies the attorney any obligation to reveal the truth even against the defendant's wishes ('hired gun' theory),[100] and view that denies the true obligation in any sense but affirms a public obligation not limited to the obligation of good faith to the client.[101] In any

[95] Goto, et al. ed. (2013), 28 (Ura Isao).
[96] Tokyo HC judgement of 12 April 2011, HT 1399-375.
[97] Kaisetsu Bengoshi, 12.
[98] Kaisetsu Bengoshi, 14, 16.
[99] Sato, H (2007), 32.
[100] Muraoka (1997), 713, Oka & Kamiyama (2015), 235.
[101] See, Morishita (2017), 584f.

case, there is a strong view that arguing a case of not guilty when defending a substitute criminal who pleads guilty for the true criminal is not contrary to the obligation of good faith on the grounds that counsel's duty is to defend the defendant's 'legitimate interests'.[102]

The Basic Rules of Attorney's Duties also specifically stipulate the disciplines in criminal defence. The rules state that the attorney shall endeavour to ensure the best defence activities (Article 46) to secure an interview with the suspect/defendant in custody and release from physical restraint (Article 47). Furthermore, it is necessary to explain defence rights to the suspect/defendant and take countermeasures against unfair restrictions (Article 48). In addition, it is prohibited to receive remuneration from the suspect/defendant or other persons concerned, or to approach them about appointment as private counsel when he or she is appointed as counsel by the court (Article 49).

Attorneys and legal professional corporations will be subject to disciplinary action if they violate the AA and rules of the bar association they belong to or the JFBA, damage the order or reputation of that bar association, or otherwise 'misbehave in a manner impairing their own integrity', whether in the conduct of their professional activities or not (AA, Art. 56). Disciplinary action is carried out by the bar association to which the Legal Service Provider belongs under a decision of the Disciplinary Actions Committee. The four types of disciplinary action for attorneys are: (a) admonition, (b) suspension for not more than two years, (c) order to withdraw from the bar association, and (d) disbarment (AA, Art. 57 (1)). When a bar association or the JFBA disciplines a Legal Service Provider, the JFBA announces it in the government gazette and *Jiyū to seigi* (Liberty & Justice), the JFBA's bulletin, along with an outline of the grounds for the disciplinary action.

[102] Ueda (2000), 35; Morishita (2000), 42; Oka & Kamiyama (2015), 17; Tsujimoto (2017), 74.

4.3. Professionality of criminal defence

Attorneys generally spend most of their time on civil cases and undertake criminal cases using their remaining capacity, and few attorneys specialise in criminal cases like the public prosecutor does. Furthermore, almost all prosecuted cases result in a conviction; thus, in criminal defence, interest tends to be directed towards reaching a private settlement with the victim, having the defendant present an attitude of self-reflection, and the question of how to best turn sentencing to the defendant's advantage, rather than arguing for an acquittal. Therefore, until the end of the 1980s, it was generally thought that criminal defence did not require advanced specialist knowledge or capabilities, except for cases where the attorney would seriously argue for an acquittal, cases eligible for the death penalty, and other special cases.

However, this state of affairs changed upon entering the 1990s. In 1990, the JFBA established the Center for Criminal Defence with the purpose and duty of seeking to comprehensively review criminal procedures in Japan and to revise the system and amend its operation, as well as supporting attorneys to enrich defence activities and in conjunction with these, seeking to obtain the understanding and participation of the people in criminal trials. The Center proposed reinforcing the structure for defence before prosecution as its primary focus for activities to begin with, and decided to commence a movement to establish a court-appointed counsel system for suspects and extend the duty attorney system throughout the country as a feasible model.[103] Then, in 1992, the duty attorney system was expanded to all unit bar associations in Japan. Criminal defence committees were established in all unit bar associations in Japan as organisations to operate the system. This has increased efforts to improve the quality of criminal defence, and a periodical journal specialising in criminal defence and many practical guides thereon have been published.

[103] Ueda (1992), 39.

An interview-based survey by the JFBA Center for Criminal Defence found that they are now also working vigorously on various training programs aimed at qualitative improvements in criminal defence. Furthermore, to investigate strategies and other measures for establishing a responsive attitude to the court-appointed counsel system for suspects and saiban-in trials, such as securing the attorneys who will handle these services, the JFBA established the 'Headquarters for Promoting the Establishment of a Responsive Attitude to Court-Appointed Counsel' in 2007, renaming it the 'Headquarters for the Court-appointed Counsel' in April 2011. Thus, it is continuing efforts to establish a responsive attitude to the court-appointed counsel system and improve the specialisation of court-appointed counsel. All attorneys are obliged to receive the general training held by individual bar associations when they have his or her name registered in the roll. However, there is no special compulsory training for registration to the lists of nominated candidates for the court-appointed counsel.

Ⅴ. POLITICAL COMMITMENT TO EFFECTIVE CRIMINAL DEFENCE

5.1. Legislative activities for effective criminal defence

The current CCP was enacted in the midst of the political task of reforming the pre-war criminal judicature that supported militarism to create a new criminal judicature that conformed to the Constitution of Japan under the slogan of respect for basic human rights. However, the government's aim was 'to establish a new Code of Criminal Procedure by perfectly combining the continental law-style criminal procedures familiar from long practice and the Anglo-American criminal procedures manifested in the new constitution'.[(104)] The legislators of the current law thought that the position of the suspect and defendant based in Anglo-American law should be adjusted to fit the continental

(104) Explanation of reasons for proposal of the bill by the government at the 2nd Diet, the House of Representatives, Committee of Justice (28 May 1948).

law way of thinking, which emphasised the discovery of the substantive truth. After the current law was enacted in 1948, no amendments to strengthen the right of the suspect and defendant to defence were enacted for many years.

In the 1970s, the Supreme Court presented several judgments that were important from the perspective of strengthening due process and relief from misjudgements, such as ending procedures on the grounds of a breach of a speedy trial,[105] relaxation of the requirements for commencing retrial,[106] strictly interpreting the conditions for designating interviews,[107] and approving the exclusion rule of illegally obtained evidence.[108] These precedents played an important role in strengthening due process through interpretation of the law, but no amendments have been made to incorporate these precedents' doctrines into statute until now. In the 1980s, while acquittals were handed down on retrials in four consecutive cases where the death penalty had been finalised,[109] the amendment of the Prisons Act became a legislative issue. Then, a movement to abolish the substitute prison system (see, para. 1.2.2.(2)), which had been criticised as 'a hotbed for false accusations', emerged with the JFBA at its centre.[110] However, the Japanese government enacted the new Act on Penal Detention Facilities in 2005, which retained the substitute prison system.

On the other hand, once the beginning of the 1990s, the start of practical efforts to enrich criminal defence, including the development of the duty lawyer system in bar associations nationally, led to later amendments of the law. When reform of the justice system arose as part of Japan's structural reform at the end of the 20_{th} century, the demand to strengthen the procedural rights of the suspect and defendant had become a matter the government could no longer

---

(105) SC judgement of 20 December 1962, CrR 25-10-631.
(106) SC ruling of 20 May 1975, CrR 29-5-177 (*Shiratori* case).
(107) SC judgement of 10 June 1978, CiR 32-5-820.
(108) SC judgement of 7 September 1978, CrR 32-6-1672.
(109) Menda case (15 July 1983), Saitagawa case (12 March 1984), Matsuyama case (11 July 1984), Shimada case (31 Jan. 1989).
(110) See, Niwayama & Igarashi (1981); Nichibenren ed. (1995); Niwayama et al. (1997); Keij Rippô Kenkyu-kai ed. (2005).

disregard. In 1999, the government formed the Justice System Reform Council under the Cabinet and commenced reforms of the Japanese justice system as a whole, including criminal justice. The 2004 legal amendments that resulted from that (a) created pre-trial arrangement proceedings accompanied by a new disclosure of evidence system, (b) created a court-appointed counsel system for suspects, (c) made decisions on the institution of prosecution by the Committee for the Inquest of the Prosecution binding, and (d) created the saiban-in system. However, strongly opposing opinions on the reform of investigations emerged, and it remains an issue for future consideration.

Despite this, triggered by the false charge case in 2009 as well as the concealment and destruction of evidence by a public prosecutor in the special investigation department and the change from a conservative to liberal government in the same year, there was a period when political interest was directed towards the reform of criminal procedures including how interrogations should be conducted. The Ministry of Justice then established the 'Council to Consider the State of Criminal Investigation' in November 2010, which summarised its advice in March 2011, stating that '[i]n order to radically review the state of investigations and trials, which rely excessively on interrogation and written records of statements before a public officer, and build a new criminal judicial system that includes visible interrogation as a system, we should immediately provide a venue for proper consideration while reflecting the opinions of the people and the knowledge of experts including relevant authorities, and commence consideration'.[(111)]

Besides these movements, investigation methods have developed in response to organised and cross-border crimes and progress of the information society, and revision of the investigation law came to be recognised as important legislative issues. 'The Act on Wiretapping for Criminal Investigation' was enacted in 1999,

(111)　"Towards the recovery of the prosecution" (30 March 2011).

and new investigative measures to seize electromagnetic records as evidence were legislated in 2011. The introduction of new investigation methods was positioned as a necessary 'double issue' that cannot be avoided in order to break away from inquisitorial investigation by perpetuating the principles of modern law in criminal procedure. As such, the importance of advancing both needs at the same time in a well-balanced manner has become emphasised.[112]

Based on this idea, in June 2011, the 'Special Subcommittee on a Criminal Justice System for a New Era' was established under the Legislative Council of the Ministry of Justice and given the task of proposing various strategies to improve the interrogatory culture within the broader scope of regulating means to gather evidence and further enriching trial examination. This resulted in the 2016 amendment, which was built on the pillars of (a) imposing an obligation to record sound and images from all processes in the interrogation of suspects under arrest or detention of the crimes which are subject to saiban-in trials and of cases in which prosecutors initiate the investigation, (b) expanding the court-appointed counsel system for suspects to all detention cases, (c) rationalising and improving the efficiency of wiretapping, (d) introducing the formal justice bargaining system, and (e) expanding systems to protect victims and witnesses. However, though the 2016 amendment was triggered by political attention on preventing a disproportionate emphasis on interrogation, the revisions were achieved by tying this in with increases in investigative powers. As mentioned in the introduction, as the 2016 amendment cannot be assessed in terms of whether it has drastically reformed the inquisitorial investigation structure, evaluations thereof are divided.[113]

The background explaining politicians' low interest in problems pertaining to the rights of suspects and defendants in criminal justice is based on the fact that the public had little interest in issues regarding guaranteeing human

(112) Tamiya (2000), 357; Matsuo (2012), 374.
(113) See, Kawasaki (2017), 172-173.

rights for suspects and defendants, or if they did, it was temporary when a false charge case was reported. In the 'Opinion Survey on the Basic Legal System' conducted by the Cabinet Office in December 2004, the following question was asked: 'Do you think that the rights of people suspected of being a criminal in a crime investigation and criminal trial procedures in Japan are respected or not?' In response, 37.7% indicated that 'they are sufficiently respected' or 'they are more respected than not'. Furthermore, 40.5% stated that 'they are not respected much' or 'hardly respected at all', showing that a greater proportion thought rights were not respected.[114] In contrast, when asked whether they thought the rights of victims were respected in a crime investigation and criminal trial procedures in Japan, 15.9% believed 'they are respected' and 70.6% that 'they are not respected'. This indicates that an extremely high proportion of the public felt that victims' human rights are not respected. Partly based on this increase in problem awareness in public opinion, the act to protect the rights and interest of the crime victim was enacted in 2007, creating the victim participation system and information protection system for names and other details of the victim and others.

The government still conducts the 'Opinion Survey on the Basic Legal System' every five years, but the question items are changed each time to highlight reasons for affirming or denying the need for legislative measures on issues of interest to the government. Since the 2004 survey, no questions have been asked about whether the rights of the suspect and defendant are believed to be respected. On the other hand, questions about the pros and cons of the death penalty are consistently asked, and the fact that 80% of the nation (2014 survey: 80.3% and 2019 survey: 80.8%) accepts the death penalty has been used as a reason not to abolish it.

[114] https://survey.gov-online.go.jp/h16/h16-houseido/index.html

5.2. Government's commitment to international human rights standards

In the past, the Japanese government has repeatedly received recommendations from international human rights organisations to guarantee human rights in criminal justice. Specifically, the United Nations Human Rights Committee has repeatedly recommended that the Japanese government improve the police detention system, lengthy interrogations during arrest and detention of the suspect, and so on in their 1993, 1998, 2008, and 2014 reports. The United Nations Committee against Torture also asked the Japanese government to resolve these problems in their 2007 and 2013 reports.[115]

For example, the concluding observations on the sixth periodic report of Japan by the Human Rights Committee recommends the following points in paragraph 18.[116]

The State party should take all measures to abolish the substitute detention system or ensure that it is fully compliant with all guarantees in articles 9 and 14 of the Covenant, inter alia, by guaranteeing:

(a) That alternatives to detention, such as bail, are duly considered during pre-indictment detention;

(b) That all suspects are guaranteed the right to counsel from the moment of apprehension and that defence counsel is present during interrogations;

(c) Legislative measures setting strict time limits for the duration and methods of interrogation, which should be entirely video-recorded;

(d) A complaint review mechanism that is independent of the prefectural public safety commissions and has the authority to promptly, impartially, and effectively investigate allegations of torture and ill treatment during interrogation.

Paragraph 13 relating to the death penalty system also mentions the following.

---

[115] These documents and their translations are available through the JFBA homepage (https://www.nichibenren.or.jp/activity/international/library/human_rights.html#torture) See also, Mizutani (2017), 73f.

[116] Human Rights Committee, Concluding observations on the sixth periodic report of Japan (CCPR/C/JPN/CO/6).

The State party should:

(c) Immediately strengthen the legal safeguards against wrongful sentencing to death, inter alia, by guaranteeing to the defence full access to all prosecution materials and ensuring that confessions obtained by torture or ill treatment are not invoked as evidence.

(d) In light of the Committee's previous concluding observations (see CCPR/C/JPN/CO/5, para. 17), establish a mandatory and effective system of review in capital cases, with requests for retrial or pardon having a suspensive effect, and guaranteeing the strict confidentiality of all meetings between death row inmates and their lawyers concerning requests for retrial.

In the 'List of issues prior to submission of the seventh periodic report of Japan'[(117)] of 2017, the Human Rights Committee also asks the Japanese government to report on measures taken to meet each recommendation with reference to the previous concluding observations (para. 13) and Committee's evaluation of the follow-up replies of the State party (see CCPR/C/116/2 and CCPR/C/120/2). Therefore, similar recommendations will likely be repeated in the future on issues for which the Japanese government has not taken any concrete measures. Despite these repeated recommendations, since state parties are not legally obliged to follow them, the Japanese government has only partially revised the criminal justice system, citing financial constraints and the need for efficient investigation as reasons therefor. Unfortunately, the Japanese government has no intention of actively contributing to the formation and development of international human rights standards in the field of criminal justice as a member of the international community.

(117) Human Rights Committee, List of issues prior to submission of the seventh periodic report of Japan (CCPR/C/JPN/QPR/7).

Ⅵ. CONCLUSITONS AND RECOMMENDATIONS

Because the Japanese CCP adopts the adversary system, the defendant and public prosecutor formally have equal positions as parties to the action. However, it is difficult to say that equality of arms is guaranteed in relation to the means of supporting each side's litigation activities. Furthermore, the interrogation of suspects under arrest or detention is inquisitorial, and there are limitations on effective exercise of procedural defence rights, rendering it difficult for suspects to deal with the interrogation on an equal footing as investigation agencies, even though the right to silence is granted. In this regard, criminal defence should be improved in Japan with a focus on the following aspects.

(1) Expanding and improving legal aid for the suspect

The CCP does not afford the right to court-appointed counsel to suspects in police custody under arrest. To supplement this deficiency, bar associations have operated the duty lawyer system for arrested suspects and legal aid system for suspects who cannot use court-appointed counsel. However, they are funded by membership fee income from the bar associations and similar sources, which is unstable. Measures should be taken to provide public financial resources for operating the duty lawyer system.

(2) Reforming inquisitorial interrogation

Suspects under arrest or detention are interrogated under the obligation to be interrogated. It should theoretically be clarified that the purpose of arrest and detention is not to obtain a confession. Mandatory recordings should be expanded to all interrogations to prevent coercion and induction of confessions through unjust interrogation. Detention authorities should be separate entities from investigation agencies and ensure that the detention system is not misused as a means to obtain a confession. Police custody and interrogation should be more closely regulated, particularly in respect of the length of interrogations, and the overall length of detention at the investigative stage be significantly reduced.

(3) Ensuring a right to a counsel at interrogations

Interrogation is also an opportunity for the suspect to tell investigators the facts in his favour. However, counsel is not afforded the right to be present at an interrogation. If suspects are not able to decide whether to remain silent or answer questions during the interrogation, they will not be receiving the effective assistance of their counsel. In this regard, to substantially guarantee the opportunity to receive assistance from counsel, the law should be reviewed to grant suspects the right to have counsel present at the interrogation.

(4) Expanding and improving the right to bail

Although the detention rate has tended to decline in recent years, the lack of a bail system in the suspect stage causes suspects' detention to continue, which could be avoided if a bail system was in place. Furthermore, 'probable cause to suspect that the defendant may conceal or destroy evidence' is a reason for excluding mandatory bail, which leads to the kind of abuse in which probable cause is found, even if the defendant denies it. Given this, the current act should be reviewed to enable bail from the stages before charging and to add the suspicion of concrete actions to conceal or destroy evidence to the conditions for excluding mandatory bail.

(5) Expanding the right to access evidence

No system exists for disclosing evidence and other materials at the suspect stage, which inhibits early defence activities. Furthermore, the disclosure of evidence to the defendant after charging depends on voluntary disclosure by the public prosecutor in most cases not put to pre-trial arrangement proceedings. In addition, even in pre-trial arrangement proceedings, evidence advantageous to the defendant could be buried when the defendant is not aware of its existence. Given this, the system of disclosure of evidence under the current act should be further expanded from the perspective of the principle of evidence sharing. In addition, a new provision should be established that requires investigation agencies to keep evidence to ensure the discovery system works effectively.

(6) Improving the right to equality of arms in examining witnesses

While the Constitution of Japan, Article 37(2) guarantees the defendant's right to examine witnesses for the public prosecutor, and CCP, Article 320 adopts the hearsay rule, Article 321(1) (ii) allows the public prosecutor to preserve as evidence a statement by a person planned to be led as a witness by having the planned witness prepare a written record of a statement before a public prosecutor. Given this, the hearsay exception provisions of the CCP, Article 321(1) (ii) should be revised to enable fair and equal trials in line with the intent of CJ, Article 37 (2).

(7) Reform of retrial proceedings

Even if examinations of erroneous findings of fact are possible in the courts of second instance and final appeal under the current law, procedures to request a retrial after a conviction is finalised do not lose importance. Specifically, the execution of a wrong sentence in a death penalty case should not cost a life. The law should be reformed to ensure that the current retrial request procedures function with stability as procedures for relief from misjudgement.

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/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-***j***ihô*

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, 3rd 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 70th 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 arikata* [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 70th 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.