- 피고인이 국민참여재판을 원치않을 경우 일반절차에 의하여 법관재판을 받게 함.

- 배심원의 수는 법정형이 사형 또는 무기징역·금고인 사건은 9인, 그 외의 사건은 7인, 공소사실의 주요부분을 자백하는 경우는 5인으로 할 수 있도록 정함.

- 배심원은 해당지방법원의 관할구역에 거주하는 국민으로부터 무작위로 선정하며, 주민등록 정보를 이용하여 배심원후보예정자명단이 작성되고, 검사와 변호인의 신문 및 기피절차를 거쳐 배심원을 최종적으로 선정함.

- 증거개시, 공판준비절차 등을 도입하고, 모두절차의 강화, 증거조사절차의 개선, 피고인신문의 순서의 변경 등 공판절차를 개선하도록 하였음.

- 평결의 합의방식은 배심적요소와 참심적 요소를 혼합하여 시행할 수 있도록 구성하였음. 즉, 재판장은 변론종결후 공소사실의 요지와 증거능력 등에 관한 사항을 설명하며, 배심원단은 재판장의 설명을 듣고 평의실로 이동하여 독자적으로 평의하고 만장일치로 평결하며, 만장일치에 이르지 못할 경우 법관과 함께 토의한 다음 다수결로 결정하고, 평결이 유죄인 경우 배심원이 법관과 함께 양형을 토의하도록 함.

- 배심원의 평결이 법관을 기속하지 않는 것으로 하였음

- 2012년 이후 전면적인 국민참여재판제도 실시를 대비하여 동 제도의 운영에 필요한 사항을 연구하기 위하여 대법원에 국민참여재판제도에 관한 연구를 하는 사법참여기획단을 구성하도록 함.

마. 법학전문대학원

대한민국의 법조인의 선발 및 양성제도는 응시자격의 제한이 없는 사법시험제도와 대학의 학부로 설치된 법학과와 대법원 산하의 사법연수원의 연수과정으로 이루어져 있었다. 그동안 사법시험 합격자수가 상대적으로 제한되어 있었고, 일부 명문대학의 졸업생들이 사법시험의 합격을 독점하며, 사법연수

원의 기수를 중심으로 경력제로 법관의 인사가 이루지다 보니 사법시험에 합격할 때까지 무한정 시험준비를 하는 시험준비생의 양산, 소수의 법조인들의 출신교별, 기수별 유착, 관료제 등의 문제들이 양산되었다. 이러한 문제점을 개선하고 법조일원화를 이루며, 다양한 전문성을 가진 법조인을 양성하기 위한 대책으로 법학전문대학원 제도를 도입하게 되었다. 법학전문대학원의 주요 내용은 다음과 같다.

- 법학전문대학원은 법학교육위원회의 심의 후 교육인적자원부장관의 인가에 따라 고등교육법에서 정한 4년제 대학 및 대학원 대학에 설치되며, 연합대학원(2개 이상의 대학이 연합하여 1개의 법학전문대학원을 두는 제도)는 인정하지 않음

- 법학전문대학원 설치대학은 법학에 관한 학사학위과정을 폐지해야 함

- 법학전문대학원의 입학정원은 교육인적자원부장관이 법원, 법무부, 대한변협, 법학교수회의 등의 협의를 거쳐 정하되, 개별 법학전문대학원의 정원은 법학교육위원회의 심의의견을 기초로 교육인적자원부 장관이 150명 이내로 제한하여 정함.

- 법학교육위원회는 교육인적자원부장관 소속의 심의기관이며, 법학교수 4, 판사 1, 검사 1, 변호사 2, 시민 2, 공무원 1 등 모두 11명으로 구성되고, 재적위원 3분의 2 이상의 찬성으로 의결하도록 함

- 교원 대 학생의 비율은 1대 12로 하고, 최소확보교원의 수는 20인으로 하며, 전체 교원의 5분의 1 이상은 5년 이상의 실무경험을 가진 변호사자격 보유자로 함.

- 법학전문대학원은 3년 이상의 석사학위과정이며, 최소수료학점은 90학점 이상임

- 입학생은 학사학위소지자를 대상으로 하고, 장애인이나 사회적 취약계층을 위한 특별전형절차를 두며, 학사학위과정의 성적과 적성시험결과는 필수적으로 반영하도록 하고, 기타 어학능력이나 사회활동 경력자료 등은 자율적으로 평가에 활용하되, 법학에 관한 지식평가시험 및 그 결과는 활용할 수

없도록 함.

- 법학전문대학원은 대한변협산하에 법학교수, 판사, 검사, 변호사 등 11명으로 설치된 법학전문대학원평가위원회의 정기 및 수시평가를 받게 됨.

바. 군사법제도

대한민국은 군의 특수성을 고려하여 민간인에 적용되는 사법체계와는 별도로 군사법원을 전제로 하는 독자적인 사법제도를 마련해 두고 있다. 군사법제도는 지휘관의 관여나 절차의 적정성의 흠결, 인권침해적 구금제도의 운용 등 많은 문제점이 노정되어 이의 개편이 불가피한 상황에 이르렀으므로 군사법제도에 대한 민간의 참여를 허용하고, 직업법관이 아닌 지휘관의 관여를 사실상 배제하는 등의 구체적인 개선안을 마련하였다.

- 중대장 이상의 지휘관이 징계위원회의 심의를 거쳐 사병에 대하여 15일 이내의 범위에서 처하는 징계영창처분의 공정성을 강화하고 인권침해의 소지를 없애기 위하여 각급 부대에 인권담당 법무관을 두고 이를 심사하게 함

- 군사법원의 조직을 국방부소속 고등군사법원과 지역의 지역군사법원으로 개편하고, 민간인 군판사를 충원하도록 하며, 전시가 아닌 경우 관할관 확인제도를 폐지하고, 재판과정에 장병이 참여할 수 있도록 함.

- 군검찰의 중립성을 강화하기 위하여 국방부장관이 군검찰에 대한 일반적인 지휘감독권을 갖도록 하고, 군검찰을 국방부 소속의 고등검찰단과 지역의 군검찰단으로 개편하며, 민간인 군검사를 임용하여 검찰권의 공정한 행사가 가능하도록 함.

- 군검찰은 군사법경찰에 대한 사법통제를 강화하여 주요범죄의 수사사항을 통보받도록 하고, 개별적인 수사지침을 통하여 수사를 통제하며, 군사법경찰에 대한 직무감찰을 하고 징계요구를 할 수 있도록 함.

사. 공판중심주의적 법정심리절차의 확립

공판중심주의적 법정심리절차를 마련하게 된 것은 현행의 형사재판절차가 검사가 수사과정에서 작성한 피의자신문조서와 참고인에 대한 진술조서를 공판정에 제출하고 법관이 이러한 서면을 별도로 검토하여 유무죄를 판단하는 과정을 위주로 이루어짐으로써 일반 국민들이 형사재판의 진행과정에서 배제되어 재판의 결과에 대한 불신이 누적되었으며, 수사과정에서 왜곡된 진실이 공판과정에서 바로잡혀질 가능성도 많지 않았으므로 이를 개선할 필요가 절실하였기 때문이다. 특히, 새롭게 도입된 국민참여재판제도는 공판정에서 구두변론을 통하여 사실을 다투고, 모든 증거 및 그 내용이 눈앞에 직접 현출되는 것을 그 내용으로 하는 것이므로 공판중심주의적 법정심리절차의 확보는 사법개혁의 중요한 내용이 되지 않을 수 없었다. 그 주요 내용은 다음과 같다.

- 수사과정의 투명화와 적법절차의 보장을 위하여 피의자에 대한 조사과정을 엄격한 기준에 따라 영상녹화하도록 하고, 피의자 또는 변호인의 요구에 따라 그 영상녹화물을 재생하여 시청하도록 하며, 그 내용에 의의가 있을 경우 그 취지를 서면에 기재하도록 함.

- 수사과정에서 진술거부권과 변호인의 조력을 받을 권리를 구체적으로 보장하기 위하여 미란다원칙의 고지내용과 절차를 법정화시킴. (미란다원칙의 고지후 고지의 내용이 된 피의자의 권리를 사용할 것인지 여부를 피의자에게 문의한 후 그 답변을 조서에 기재하도록 하고, 피의자가 권리행사를 포기하지 아니할 의사를 명시적으로 표시하기 전에는 피의자에 대한 조사에 들어갈 수 없도록 함)

- 피의자나 변호인이 신청하면 검사나 사법경찰관은 변호인의 접견을 허용하여야 하며, 신문에 참여한 변호인은 피의자의 요청에 따라 조언과 상담을 할 수 있고, 수사기관의 부당한 신문에 대하여 이의를 제기할 수 있도록 함.

- 검사 또는 사법경찰관은 피의자나 참고인이 조사장소에 도착한 시각, 조사를 시작하고 마친 시각 등 그 행적을 확인하기 위하여 필요한 사항을 기록하여 조서에 편철하도록 함(그 기록은 진술자의 진술이 임의적으로 이루어졌는지, 신뢰할 수 있는 상황에서 이루어진 것인지 여부를 판단하기 위한 자료가 됨).

- 검사가 작성한 피의자신문조서는 적법한 절차와 방법에 의하여 작성되고, 피고인이 진술한 내용과 동일하게 기재되었음이 피고인의 진술이나 영상녹화물 등 객관적인 방법으로 증명되며, 조서에 기재된 진술이 변호인의 참여하에 이루어지는 등 특히 신빙할 수 있는 상태하에서 행하여졌음이 증명된 때에 한하여 증거로 사용할 수 있게 됨

- 사법경찰관이 작성한 피의자신문조서는 피의자나 변호인이 그 내용을 인정한 경우에 한하여 증거로 사용할 수 있음. 다만, 피의자를 조사한 조사자가 증인으로 법정에 출석하여 피의자의 진술의 내용을 증언할 수 있도록 허용함.

- 피의자의 진술을 담은 영상녹화물은 피고인이 법정에서 검사나 사법경찰관 앞에서 일정한 진술을 한 사실을 인정하지 아니하고, 조사자의 진술 등 다른 방법으로도 이를 증명하기 어려운 때에 한하여 진술이 변호인의 참여하에 이루어지는 등 특히 신빙할 수 있는 상태하에 행하여졌음이 증명되는 등 엄격한 요건을 갖추어야 보충적인 증거로 사용할 수 있도록 함.

- 참고인 진술조서는 차고인이 증인으로 법정에 나와 자기가 알고 있는 바를 구체적으로 모두 증언한 다음 그 내용이 과거 수사기관에서 한 진술과 같은지 여부를 먼저 따지고, 참고인진술조서가 수사기관에서의 본인의 진술과 동일하게 작성되어 있음을 인정하는 때에 한하여 피고인 등의 반대신문권의 보장 및 특신상황의 증명을 요건으로 증거능력을 인정하도록 함

- 전문법칙을 엄격히 유지하여 공판준비 또는 공판기일에 진술을 해야 할 자가 사망, 질병, 외국거주, 행방불명, 기타 이에 준하는 사유로 인하여 진술할 수 없을 때에 한하여 수사기관의 조서 등을 증거로 사용할 수 있도록 함.

- 피고인의 공판과정에서의 방어권을 강화하기 위하여 피고인신문은 증거조사를 행한 이후로 미루며, 검사나 변호인이 법원에 피고인에 대한 신문을 요청하는 방식으로 진행하도록 하고, 피고인의 진술거부권을 강화하여 피고인의 침묵시 진술을 강요할 수 없도록 하며, 피고인에 대한 인정신문시 진술거부권을 고지하도록 하고, 모두절차를 강화하여 검사의 공소장낭독을 필수적인 절차로 함으로써 피고인이 기소사실의 요지를 명백히 인식하도록 하며, 증거조사에 들어가기 전 검사와 변호인이 공소사실 등의 증명과 관련된 주

장 및 입증계획 등을 진술할 수 있도록 함.

- 증거개시제도를 도입하여 공판전 피고인이 검사가 보관하고 있는 증거서류 등을 열람·등사할 수 있도록 하고, 수사기관으로 하여금 수사기록 등의 목록을 빠짐없이 작성하도록 한 다음 이 수사기록의 목록은 어떠한 경우이든 피고인 또는 변호인에게 제출되도록 함

- 집중심리의 원칙을 강화하여 심리에 2일 이상이 필요한 경우 매일 개정함을 원칙으로 하고, 부득이한 사정으로 매일 개정할 수 없을 경우 단기간 내에 다음 공판기일을 지정하도록 하며, 공판조서에 대한 변경청구나 이의제도를 강화하고, 증거서류의 조사방식은 원칙적으로 낭독의 방법으로 제한함.

아. 고등법원 상고부제

대한민국의 대법원은 지금까지 대부분 구체적인 권리구제를 위한 사후적 심리의 방법으로 사건을 처리해 왔으며, 법령해석이나 판례변경의 전제가 되는 정책판단의 기능은 제대로 발휘되지 못하였다. 이를 해소하기 위한 방안으로 강구된 것이 대법관의 정원을 늘리는 방안과 대법원은 정책법원으로 자리매김할 수 있도록 놔 두고 고법상고부를 만들어 대부분의 상고사건을 고법상고부에서 처리할 수 있도록 하는 방안이었다. 사법개혁위원회는 다수의견으로 고법상고부제를 채택하여 건의하였고, 사법제도개혁추진위원회도 이 안을 기준으로 개선법률안을 만들어 의결하였다.

- 대법원의 관할사건은 대법원에 직접 상고할 수 있는 일부 사건, 고등법원 상고부의 관할에 속하지만 사안의 중대성 등으로 인하여 대법원에 이송되는 사건, 고등법원 상고부의 판결에 대하여 판례의 통일을 위하여 예외적으로 허용되는 특별상고사건 등으로 제한함

- 직접상고사건은 소가 5억원 이상의 민사와 조세사건 및 원심에서 징역 3년 이상, 무기 또는 사형의 형이 선고된 형사사건과 일반행정사건 및 선거대형사건 등을 주축으로 함.

- 고등법원 상고부의 관할 사건은 대법원의 심판대상이 되지 아니하는 사건에 대한 상고사건으로 하며, 고등부판사에 해당하는 상당한 법조경력을 가진

3인의 법관이 대응하게 구성하고, 상고부법관의 보임기간을4일 동안으로 하며, 소수의견의 표시를 허용하고, 소수의견을 표시하도록 함.

3. 결론

우리나라의 사법제도개혁은 이제 정치나 사회분야에서의 단일한 요구에 머물러 있는 것이 아니므로 책임있는 국가기관과 시민단체가 함께 참여하여 소기의 가시적인 성과를 내어야 한다. 법학전문대학원의 도입, 국민참여재판, 수사과정에서의 인권의 보장 등 크고 중요한 부분에 있어 구체적인 제도의 개혁방향이 잡혔고, 이에 따른 입법절차의 주요한 부분도 업무의 진행이 종료된 상태이다. 사법제도의 개혁 방향은 민주적이며, 탈권위적이고, 실체적인 진실이 법정을 통하여 발견되도록 노력하는데 있다. 대한민국은 사법부와 정부간의 합의를 통하여 이러한 제도개혁의 방향과 과정상의 문제점을 공유하고 그 시정에 앞장서고 있는 것이므로 비록 미흡하지만 현재의 개혁을 통하여 사법제도의 본질적인 방향전환이 이루어지고 있다고 판단된다. 계속적인 개혁과 국민들의 감시와 적극적인 참여가 절실히 요구된다 하겠다.

What Happened to the Second Postwar 'Judicial Reform'?

Naoki Nakano, Attorney
June 28, 2005

I. Judicial reform just after the war

1. Judicial reform under the new constitution

The Constitution of the Empire of Japan stipulated, "The Judicature shall be exercised by the Courts of Law... in the name of the Emperor." Under this provision the courts were placed under the Ministry of Justice, and used the Public Order Maintenance Law and other repressive legislation to punish members of the public who spoke out against militarism. Among those sacrificed were many people of other Asian countries invaded by Japan. Lawyers who fought to help the victims of repression were themselves arrested on the grounds that their very activities as lawyers violated the Public Order Maintenance Law. They were punished by the courts and deprived of their qualifications as attorneys.

Out of contrition for this fascist judicial system, Japan's constitution includes provisions for guaranteeing basic human rights having well-provided substance. One explicit provision is "No person shall be denied the right of access to the courts." Courts have a responsibility as the ultimate protector of basic human rights, and for that purpose judges were given independence, and courts the authority to decide the constitutionality of laws and administrative actions.

Additionally judges, prosecutors, and lawyers must qualify for the same judicial examinations, and they undergo the same training at the Judicial Training Institute and get equivalent legal qualifications. The Attorneys-at-Law Act established a system for lawyer autonomy so that lawyers are not under the control of administrative authorities or the courts.

2. Privileged bureaucrats segue into the postwar era

Judges complicit in repression of the people by the imperial government and in aggression against Asia continued sitting on the bench in the postwar years without their war responsibility being questioned by anyone. The role these judges played during the postwar recovery period was, by issuing many decisions in line with US occupation policy, to repress the labor and citizen movements that had arisen and armed themselves with the new constitution's democracy and human rights.

3. The judicial backlash storm and control of bureaucratic judges by the Supreme Court

A surge in the popular movements after the 1960 struggle to stop the Japan-US Security Treaty revision induced a major change in citizen awareness which also affected the judicature. Some of the young judges who had trained under the new legal training system began writing decisions which advanced the rights of workers, such as handing down a verdict of innocent on the violation of the Public Office Election Law, in which it was judged unconstitutional to prohibit house-to-house canvassing, and putting the brakes on the total prohibition of labor dispute actions and political activities by public employees. Around 1970, there were conflicts even in the Supreme Court between conservative judges and those backing human rights, and the majority opinion began to rule. It looked as though the door had opened to an era in which the courts would extricate themselves from the prewar "public security" mentality and perform their originally intended role of human rights protector.

In 1969 the Liberal Democratic Party (LDP) sensed a crisis in this trend and launched

an intensive judicial personnel intervention. The LDP government sent conservatives to succeed human rights-minded Supreme Court judges, and it launched a "biased trials" attack against conscientious judges. In response to this, the Supreme Court assumed a hostile stance toward the Japan Young Lawyers Association, an organization that had been founded as "The Association to Defend Peace and Democracy" by young legal scholars and lawyers who felt the peace constitution faced a crisis when the Self-Defense Forces were created in 1954. Judges serving at that time also were openly active through judge membership groups. The Supreme Court started ideological witch hunts against such judges by, for example, refusing reappointment or pressuring them to quit.

From that time, the General Secretariat of the Supreme Court used personnel policy for raises, promotions, and transfers to reinforce bureaucrat control that infringed on judges' independence and conscience. Judges who consider human rights important, criticize the policies of the contemporary government, and write decisions pointing out unconstitutionality were subjected to heavy discrimination. Judges were severely deprived of their civil and political freedoms, and confined to official residences where they had no contact with civil society. In the social world of judges, they did not even dare join the Wild Bird Society out of fear that it would be viewed as political activity in opposition to environmental damage. In such a dispirited condition, it is hard for judges to work with a sense of civil justice and to write decisions which resolutely point out the illegality of actions by the corporations and those in power so as to redress human rights violations against society's weak, whose constitutional rights are infringed by the corporations and administrative authorities, and human rights violations against those who become criminal defendants due to false accusations stemming from police power.

The biggest problem of Japan's judicature is that Japan has not achieved real independence of judges, which has in the main kept the Japanese people from having the right to a fair and proper trial.

4. Supreme Court has hampered implementation of the constitution in society

Of course even under such harsh conditions affecting the judicature, the resolute efforts of the parties to actions, who are undaunted in their struggles, as well as the counsels that defend them and the supporters who stand by them, lead citizens to fight for saving innocent people from execution, to help the victims of pollution and drug-induced damage, and to eliminate these problems, as well as to rack up valuable gains such as victories against human rights violations and discrimination in the workplace. There are also conscientious judges who courageously handed down correct decisions. Yet, that did not become the mainstream of the courts.

The Japan-US security system, which was a continuation of the postwar US occupation, the breathtaking plunder and huge accumulation by corporations, the vested interests which gather around large public works projects like bees around flowers, and other distortions in Japanese society and suffering by the people are products of these anti-constitution power structures and social realities, for which the Supreme Court itself also bears serious responsibility.

II. Beginning of the second judicial reform

1. Business and LDP promote judicial reform

The Japan Federation of Bar Associations (JFBA) has consistently sought a far-reaching judicial reform to overcome the pathological condition of Japan's judiciary, but the Supreme Court and government have both blocked reform.

But from about 1994, business started asking for judicial reform as an important element of its deregulation program. The LDP responded by creating its in-party Research Commission on the Judicial System in 1997, and put "judicial reform" for accomplishing neoliberalism on the political agenda.

2. Our alternative

In view of the constitution's principles and the Japanese people's standpoint, the fundamental perspective should be the question of how to realize the right to a trial of the people who desire recovery of human rights. At its 1998 congress the Japan Lawyers Association for Freedom adopted "Recommendations for Judicial Democratization in the 21st Century (Draft)." This document offered a choice between "the judicial reform desired by business and the LDP, or democratization of the judiciary for the people." Instead of worrying about criticism, the Association worked out the following sturdy policy to achieve a judiciary for the people, and called for a citizens' movement to achieve it.

(1) Making the courts into bastions for protecting human rights

A. Have the General Secretariat of the Supreme Court stop controlling judges through the use of personnel management. Guarantee the true independence and civil liberties of judges. Establish a third-party agency with citizen participation for choosing judges.

Abolish the judge career system, and institute a system for centralized management of the judiciary with selections made from lawyers.

Bringing about citizen participation in trials

Institute a jury system in which the finding of fact in civil and criminal cases is left to a verdict by a jury chosen from the citizens.

(2) Guaranteeing procedural rights

A. Under current criminal procedure, an arrested suspect can be detained in jail for a maximum of 23 days without a guarantee of the right to counsel while police try to extract a confession. Thanks to this procedure, Japan's criminal cases have a 99.9% conviction rate, and in some cases the charges are false. The UN Commission on Human Rights has severely criticized Japan's criminal procedure as not conforming to international standards.

Democratizing these procedures requires abolishing the "substitute prison system," improving the "continued custody judicial process," providing for transparency of interrogations by audio and video recordings and other means, providing a court-appointed lawyer when a person becomes a suspect, and full disclosure of the evidence held by prosecutors.

B. In civil, labor, and administrative actions, the differences in social power dynamics produces a maldistribution of evidence. Quickly helping society's weak in court requires expanding their right to make the strong disclose their evidence.

(3) Economic guarantee of right to a trial, and substantially enlarging the judicial budget

To allow everyone a trial regardless of their financial means, the legal aid system must be substantially enhanced and expanded. The government subsidy for legal aid in Japan is so low that it is orders of magnitude smaller than in other developed nations. There should

be a substantial increase in the portion paid by the government.

(4) More attorneys and judges, and better distribution

Efforts are needed to substantially increase the number of lawyers and even out their distribution so that people have ready access to lawyers no matter where they live. It is essential to have far more judges and the court workers who support them, as judges are exhausted with dockets of 200 to 300 cases.

(5) Maintain the autonomy of lawyers, whose mission is to protect human rights.

3. Future judicial reform

(1) Overall trend

In June 1999 a Judicial System Reform Commission was created under Prime Minister Koizumi, and in June 2001 it released its "Final Report," which regarded current judicial reform as the "final linchpin" of a suite of national reorganization initiatives including political reform, administrative reform, and economic restructuring reforms such as deregulation.

Pursuant to the Judicial System Reform Promotion Law of November 2001, the government set up the Headquarters for Promoting Judicial System Reform, and through 11 committee meetings held until 2004 it designed individual institutions and submitted a bill.

Issues in committee meetings

A. Demands of business and LDP introduced as is: (1) Lift the ban on foreign lawyers hiring Japanese lawyers; (2) making provisions for intellectual property lawsuits; (3) relaxing requirements for lawyer qualification, deregulation of lawyer compensation, etc.; and (4) plan for instituting a system in which loser of a lawsuit pays lawyer fees.

B. Changes that clash with the Supreme Court and Ministry of Justice, which refuse far-reaching reforms: (1) Transparency and objectivity of judge appointment process and personnel evaluation system; (2) the form of public judicial participation; and (3) reform of criminal procedures and administrative courts.

C. Changes impossible without big increases in judicial budgets: (1) Large increases in numbers of judges, court employees, and prosecutors; (2) providing a court-appointed lawyer when a person becomes a suspect; and (3) increase in government budget for legal aid.

D. Far-reaching changes in the legal training system: 3,000 people with legal qualifications annually by means of law schools and a new legal testing system.

(3) Although these proceedings were released to the public more than those of other commissions, the initiatives toward major changes in the judicial system, both overall and fundamental, proceeded at a very fast pace in just two years. As a consequence, information did not reach many of the citizens and make it hard for them to keep up.

4. Several individual laws and institutions

(1) Speedy Trial Law

This law obligates the parties and their counsels to bring trials to a close as soon as possible within two years. In the case of lawsuits with many litigants, such as labor discrimination, pollution or drug-damage, or Hansen's disease, difficulty in showing proof due to a maldistribution of evidence, and lawsuits which demand the acquisition of specialized knowledge, it is generally hard to finish in two years, which would force the litigants into a hasty trial in which the necessary witness questioning is omitted. This could place constraints on their right to a proper trial.

(2) Judge reform: progress and problems

The Commission on Lower Court Judge Nomination was created under the Supreme Court. Eleven people were appointed to this central Commission: five from the legal profession and six from outside. Eight regional commissions were also granted their own authority, which created a judge appointment system with citizen participation. For the first time there is a possibility for citizen participation in the personnel management right, which has been used for judge control by the Supreme Court.

While the centralized judiciary management system which appoints all judges from among lawyers was not adopted, a system was created to enlarge the quota for appointment of lawyers to judges, and to have lawyers serve as part-time civil and domestic affairs conciliation committee members.

There are new Supreme Court rules on judge personnel evaluations. These made changes in the system, in which evaluations were heretofore hidden even to the judge being evaluated, resulting in: the consideration of information from outside the court, the introduction of a procedure for interviewing the judges being evaluated, a procedure to disclose evaluation documents upon a request from that judge, and a procedure for filing objections. Judges and citizens must now make good use of these procedures.

Establishment of labor arbitration and labor tribunal systems

The labor participation system envisioned was not achieved, especially because of strong Supreme Court opposition, but such a system was created in addition to labor arbitration. This is an intermediate system that for individual labor cases is neither a lawsuit nor arbitration. Under this system, when arbitration does not work, judgments are made on the basis of an accord between both sides with examiners and a chief examiner (judge).

(4) Many serious problems in the Panel on the Citizen Judge System and Criminal Procedure

There is now a "citizen judge system," in which for each case four people are chosen as citizen judges at random from the voting register. They form a collegiate body with three professional judges, and together decide on guilt and sentencing. Serious concerns were expressed over whether members of the public serving as citizen judges, who are one-time amateur judges, can function at trials on an equal footing with professional judges, and some forcefully advocated that citizen judges should number about three times professional judges, but this did not happen owing to vehement opposition from the Supreme Court. While this is not exactly the jury system that we have been seeking, the creation for the first time in the postwar era of an institution in which the public participates in criminal cases is a watershed event.

In criminal trial procedure, on the whole, deleterious changes have accorded precedence to benefiting the judger, while weakening the defense right of the judged. The government shelved reforms of the current system, which allows the police to detain people

in jail for a long period of time. Provisions were made to strengthen presiding power, as in court constraints on questioning by the counsel for the accused. Progress was made when a new system was created for disclosure of evidence that prosecutors have on hand, but as if in exchange for that, there is a new rule, with punitive provisions, that prohibits the use of disclosed evidence for other than the stated purpose, which violates the "open trial" principle. Further, citizen judges are saddled with a heavy secrecy obligation which makes them take what they know to the grave. There is a risk that these could present even greater difficulties to citizen criticism of courts and campaigns for change.

Efforts are still being made for reforming the interrogation process by making it visible, which is meeting with stubborn resistance from prosecutors and the police.

Defeat of bill for payment of legal fees by lawsuit loser

Japan has far fewer civil, labor, and administrative cases than Western countries. In a move which goes against judicial reforms meant to let the citizens use the courts more easily, there is a bill which would make lawsuit losers pay lawyer fees, unlike the present system in which each litigant pays his own fees regardless of the outcome. In response, citizens and lawyers' organizations backed JFBA in a tenacious campaign to oppose this bill's passage, and it was the only one of the judicial reform-related bills that was stopped.

We learned a lesson from this because people favoring and opposing judicial reform came together in their opposition to making lawsuit losers pay lawyer fees.

III. The constitution struggle

Laws were passed for the important institutions that will shape the judicature in the 21st century, and now they will be set into motion. In Japan the competition principle and self-responsibility are emphasized while the constitutional guarantee of social rights is ignored, and there is increasing danger that human rights will be sacrificed to military public benefit under contingency laws. There are also greater efforts to substantively amend the constitution.

Overall, these recent judicial reforms were advanced with the strategy of elites and business occupying the driver's seat, so the resulting institutions are toxic to the Japanese people. Yet, JFBA and citizens have presented alternatives and fought hard, achieving a number of important advances and laying the foundation for future struggle.

With their status provided by the Japanese constitution and a mandate from the citizens, lawyers have a professional duty to safeguard human rights and bring about social justice, and for that purpose they are guaranteed autonomy that is free of all control from state power. As efforts to impair the peace constitution intensify, the ruling elites are mounting stronger attacks on lawyer autonomy.

As we resolutely unite under JFBA and do everything possible to protect lawyer autonomy, we continue our struggle under the belief that stepwise advances for the judiciary not as an institution that maintains public order, but as an institution that truly helps people when their rights are violated, in a vital constitutional movement.

戦後二度目の「司法改革」はどうなったか

弁護士　中野直樹

第１　戦後直後の司法改革

１　新憲法による司法改革

大日本帝国憲法は、「司法権は天皇の名において」裁判所が行うと定めていた。このもとで、裁判所は司法省のもとにおかれ、治安維持法などの弾圧立法を駆使して、軍国主義に異をとなえる人民を処罰した。その犠牲者には、日本が侵略したアジアの国々の民衆も多く含まれていた。弾圧犠牲者の救済のためにたたかう弁護士が、その弁護活動自体が治安維持法違反として逮捕され、裁判所により処罰され、弁護士資格を剥奪された。

このファシズム司法を反省し、日本国憲法には、豊かな内容をもつ基本的人権保障規定がもうけられ、そのひとつとして、「何人も裁判所において裁判を受ける権利を奪われない」ことが明記された。裁判所は、基本的人権の最後の守り手としての責務を負い、そのために裁判官の独立、法令や行政行為の憲法適合性を決定する権限を付与された。

さらに裁判官・検察官・弁護士を、同じ司法試験合格と司法研修所における修習で同等の法曹資格とした。弁護士法は、行政や裁判所からの監督を受けることのない弁護士自治の制度を確立した。

２　戦後司法へ連続した特権官僚

天皇政府の人民抑圧とアジア侵略に加担した裁判官たちは、誰も戦争責任を問われないまま、戦後の裁判所の法廷に座った。彼らは、戦後復興期に、新しい憲法の民主主義と人権を武器に立ち上がった労働運動や国民運動を、アメリカの占領政策に沿った判決を乱発して抑圧する役割を果たした。

３　司法反動の嵐と最高裁による官僚的裁判官統制

１９６０年日米安保改訂阻止闘争を経て民衆の運動が格段に高揚し、これが国民意識に大きな変化をもたらし、それが司法界にも及んだ。新しい法曹養成システムで育った若い裁判官のなかから、戸別訪問禁止違憲判断など公職選挙法違反に無罪判決を言い渡したり、公務員の争議行為や政治活動の全面禁止に歯止めをかけたり、労働者の権利を前進させる内容の判決を書き始めた。そして１９７０年前後には最高裁内においても、人権派の裁判官たちが保守派の裁判官とせめぎ合い、多数意見をとるような状況となった。司法が戦前の治安司法から脱却して、憲法が求める人権の守り手としての本来の役割を果たす時代への扉が開いたかにみえた。

１９６９年、この流れに危機感をもった自民党が猛烈な司法人事への介入を開始した。自民党政権は、最高裁人権派の裁判官の後任に保守派を送り込んだ。自民党は良心的な裁判官に対する「偏向裁判」攻撃を開始した。これに呼応し、最高裁は、青年法律家協会を敵視する姿勢を打ち出した。青年法律家協会は、１９５４年に「自衛隊」がつくられたことに平和憲法の危機を感じ取った若い法学者や弁護士等が「平和と民主主義を守る会」として設立した。現職の裁判官も公然と裁判官部会をもって活動した。最高裁は、この会員裁判官に対する再任拒否、脱退強要などの「思想狩り」を行い始めた。

以後、最高裁事務総局は、昇進・昇給と配転の人事政策によって裁判官の独立と良心を侵害する官僚統制を強化した。人権を重視し時の政府の施策を批判したり、違憲判決を書いた裁判官は徹底して差別された。裁判官は極端に市民的・政治的自由を奪われ、市民社会と接触しないような館に閉じこめられている。「野鳥の会」への入会も、環境破壊に反対する政治活動だとみなされるかもしれないとおびえてしまう裁判官の社会。こんな萎縮した状態では、裁判官が市民的な正義感をもって、大企業や行政によって憲法上の権利を侵害されている社会的弱者、警察権力が生み出すえん罪によって刑事被告人とされた人々の権利救済のために、毅然と権力や大企業の行為の違法性を指摘する判決を書くことはたいへん困難なのである。

わが国の司法の最大の病理は、実質的に裁判官の独立を実現できていないために、全体として、国民が公正で適正な裁判を受ける権利の実現を阻まれてきたところにある。

４　憲法を社会に生かすことを阻害してきた最高裁

もちろん、このような厳しい司法状況のなかでも、不屈にたたかう当事者、それを弁護する弁護団、そしてそれを支える支援者たちの血のにじむような努力により、無実の罪による死刑台からの生還、公害・薬害の被害者の救済と根絶に向けたたたかい、職場における人権侵害・差別事件の勝利などの貴重な成果を勝ち取ってきている。勇気をもって正しい判決をした良心的な裁判官の存在もある。しかし、それは裁判所の大河となれなかった。

戦後のアメリカ占領と引き続く日米安保体制、大企業のすさまじい収奪と高蓄積、大型公共事業にむらがる利権構造…。いまに続く日本社会のゆがみと国民の苦しみ
をもたらしているこれらの反憲法的な権力構造と社会実態には、最高裁自身も根深い「罪」を負っているのである。

第２　二度めの司法改革の始まり

１　財界・自民党が「司法改革」を推進

日本弁護士連合会は、わが国の司法の病理状態を克服するための抜本的な司

法改革を一貫して求めてきたが、最高裁も政府も改革を阻んできた。

ところが１９９４年ころから財界が「規制緩和路線」の重要な柱としての「司法改革」を求め始めた。これに呼応して自民党は１９９７年に党内に「司法制度調査会」を設置し、新自由主義を貫徹するための「司法改革」を政治課題とした。

２　私たちのオルタナティブ

憲法の理念と国民の立場からするならば、人権回復を求める国民の裁判を受ける権利をどう実現していくかという視点が基本に据えられるべきである。自由法曹団は１９９８年の総会で、「二一世紀の司法の民主化のための提言(案)」を採択した。「提言（案)」は、「財界や自民党のめざす司法改革か、国民のための司法の民主化か」という視座を定め、批判に足をとどめる立場にたたず、国民のための司法をめざす次のような骨太の政策を打ち出し、その実現に向けた国民運動を呼びかけた。

（１）人権保障の砦にふさわしい裁判所にする。

①最高裁事務総局による人事を使った裁判官統制をやめさせ、裁判官の真の独立と市民的自由を保障する。裁判官人事に市民の参加も得た公正な第三者機関を設置する。

② 裁判官のキャリアシステムを廃止し、弁護士から選ぶ法曹一元制度を実現する。

③ 裁判への国民参加の実現

民事事件・刑事事件の事実認定を国民から選ばれた陪審員の評決にゆだねる陪審制を導入する。

（２）手続き的な権利の保障

①　現在の刑事手続きでは、逮捕された被疑者が、弁護人をつける権利を保障され
ないまま、警察の留置場で最大二三日間も身柄拘束され、自白の強要を受ける。この下で、わが国の刑事裁判は実に９９・９パーセントが有罪判決という実態となっている。このなかでえん罪がつくられる。こうしたわが国の刑事手続きについて、国連の国際人権規約委員会が「国際水準」に達していないと厳しく批判している。

手続きの民主化のために、「代用監獄」を廃止する、「身柄司法」を改善する、取調べ過程を録音・録画するなど可視化する、被疑者段階から国選弁護人をつける、検察官手持ち証拠を全面開示することが必要である。

②　民事、労働、行政裁判においては、社会的な力関係の違いが証拠の偏在となっている。社会的弱者が迅速に裁判で救済されるためには「強者」の保有する証拠を開示させる権利の拡張が必要である。

（３）　裁判を受ける権利の経済的な保障と司法予算の大幅な拡大

資力の有無にかかわらず、誰でも裁判を受けることができるように法律扶助制度を抜本的に拡充すべきである。わが国の法律扶助に対する国家補助金は、先進国に比べ、桁数が違う低さである。国庫負担金を抜本的に増やす。

（４）法曹人口の増加と適正な配置

全国どこで生活する国民も等しく、容易に弁護士にアクセスすることができるように弁護士人口の大幅増員と偏在解消のための努力が必要である。同時に、一人２００～３００件をかかえて疲弊しながら裁きをしている裁判官の大幅増員とこれを支える裁判所職員の大幅増員も不可欠である。

（５）人権擁護を使命とする弁護士の自治を堅持する。

３　今次司法改革の進行

（１）全体のながれ

１９９９年６月から小泉首相のもとに司法制度改革審議会が設置され、２００１年６月に「最終報告」が出された。「報告」は、今般の司法改革を、政治改革、行政改革、規制緩和等の経済構造改革など一連の国家改造の「最後のかなめ」と位置づけた。

２００１年１１月に成立した司法制度改革推進法にもとづき、司法制度改革推進本部がつくられ、２００４年まで、１１の検討会のもとで個別制度設計がなされ、法案提出された。

（２）検討会での攻防

Ａ　財界・自民党の要求がストレートに持ち込まれているもの（①「外国人弁護士による日本人弁護士の雇用」の解禁、②知的財産訴訟の整備、③弁護士資格要件の緩和、弁護士報酬の自由化など、④弁護士報酬敗訴者負担制度導入の企て）

Ｂ　抜本的改革を拒む最高裁・法務省と対決しているもの（①裁判官の任命過程・人事評価制度の透明化・客観化、②国民の司法参加のあり方、③刑事手続きや行政裁判の改革）

Ｃ　司法予算の飛躍的増加なしには実現できないもの（①裁判官・裁判所職員・検察官の大幅増員、②被疑者段階の国選弁護の実現③法律扶助における国家予算の増額）

Ｄ　法曹養成システムの抜本的な変化（法科大学院と新司法試験制度による年間３０００人の法曹資格者）

（３）これまでの政府審議会に比し議事録公開が徹底されたが、司法全般・根本にわたる制度を、わずか２年間で抜本的に変える動きがあまりに急テンポで進められ、実際には多くの国民に情報が伝わらず、理解が追いつくのに困難があった。

４　いくつかの個別法・制度について

（１）裁判迅速化法

すべての裁判を二年以内のできるだけ短い期間で終結させる責務を当事者・代理人に負わせる法律である。差別労働事件、公害・薬害裁判やハンセン裁判など多数当事者の訴訟、証拠の偏在のもとでの困難な立証活動、専門的な知見の習得等が求められる訴訟では、およそ２年以内に終えることは困難であり、当事者は必要な証人尋問を省略した拙速裁判を強いられ、適正な「裁判を受ける権利」を制約されるおそれがある。

（２）裁判官改革の前進と課題

最高裁のもとに下級裁判所裁判官指名諮問委員会が設置された。中央におかれた同諮問委員会は、法曹以外の者６名と法曹出身者５名の合計１１名が選任され、全国８カ所におかれた地方委員会でも、独自の権限が認められるなど、国民参加の下の裁判官任用システムができた。最高裁が裁判官統制の手段としてきた人事権に、はじめて国民参加の風穴をあける可能性が出てきた。

すべて裁判官を弁護士から任命する法曹一元制度は見送られたが、弁護士任官枠の増員、さらに弁護士が民事・家事調停委員をつとめる非常勤裁判官制度ができた。

裁判官人事評価について新しい最高裁規則ができた。これまで当の裁判官にもブラックボックスであった人事評価制度を変え、裁判所の外部からの情報の反映、裁判官本人との面談システムの導入、裁判官からの請求による評価書の開示制度、不服申立制度の創設を内容とする。今後、裁判官と国民がこの制度を生かす運用をしていかなければならない。

（３）労働調停制度と労働審判制度の創設

めざした労働参審制度は、とりわけ最高裁の抵抗が強く実現に至らなかったが、労働調停に加えて、労働審判制度がつくられた。これは、個別労働事件について訴訟でも調停でもない中間的制度で、労使団体から選出された審判員と審判官（裁判官）とともに、調停が成立しない場合に、両者の合意のもとに判断を下す制度である。

（４）重大問題の多い裁判員制度・刑事検討会

「裁判員制度」ができた。これは一つの事件ごとに、選挙人名簿から無作為抽出された国民４名が裁判員となり、職業裁判官３名と合議体をつくり、有罪無罪の判断及び量刑を行う。裁判員となる国民は、一回限りの素人裁判官であり、職業裁判官と対等に審理にあたることができるか強い懸念出され、裁判員の比率を裁判官の３倍程度にする案が強く主張されたが、最高裁の猛烈な抵抗に実現しなかった。私たちが求めてきた陪審制度とは似て非なるものであるが、戦後初めて国民が刑事裁判に参加する制度が出来たという点で画期である。

刑事裁判手続きでは、総体として、「裁く側の都合」を最優先し、「裁かれる側の防御権」を現状よりも後退させる「改悪」となった。警察の留置場に長期間の身柄拘束する現制度の改革は見送りとなった。裁判所による弁護人の尋問制限など訴訟指揮権の強化がはかられた。検察官の手持ち「証拠の開示」については新たな制度ができ前進したが、引き換えのように、「裁判の公開」原則に反し「開示された証拠の目的外使用の禁止」規定が罰則付きでもうけられた。さらに裁判員に墓場までの沈黙を強いる重い守秘義務を課した。これらは国民の裁判批判や要請運動を今よりも困難にする危険性がある。

焦眉の課題である「取調過程の可視化」については、現在も、頑迷に抵抗する検察・警察と厳しく対峙しながら、改革が追求されている。

（4）廃案を勝ち取った弁護士報酬敗訴者負担法案

わが国の民事事件、労働事件、行政事件などは欧米諸国に比べ極端に少ない。国民がより裁判を利用しやすくするための司法改革とは逆行する形で、現在は判決内容にかかわらず、原則各自負担となっている弁護士報酬を、敗訴者に負担させようとする法案がつくられた。これに対し、市民運動、法律家団体が日弁連を支えて「導入反対」の運動を粘り強く展開し、今次司法改革関連法案で、唯一成立を阻止した。

今次司法改革に賛成するものも反対するものも、「弁護士報酬敗訴者負担」反対で同じ方向を向き団結できたことが教訓である。

第3　憲法闘争として

２１世紀の司法の在り方を決める重要な制度の法律ができ、これから実施段階である。いま日本では、憲法の社会権保障を無視して競争原理・自己責任が強調され、有事法制のもとで人権が軍事的公共性の犠牲にされる危険が高まっている。そして明文改憲に向けた動きも強まっている。

今次司法改革は、全体として、支配層・財界の戦略が主導権をもって、推進されたため、国民にとって毒となるような制度もつくられた。しかし、日弁連・市民の側も、代案を提示して奮闘し、いくつかの重要な前進と今後のたたかいの礎となるものを残した。

弁護士は、日本国憲法上の地位を与えられ、国民の付託を受けて、人権を擁護し、社会正義を実現する職責にたずさわる。そのため、いかなる国家権力の監督を受けることのない弁護士自治を保障されている。いま、平和憲法改悪の動きが強まるなか、支配層はこの弁護士自治に対する攻撃を強めてきている。

私たちは、日弁連のもとにかたく団結し、弁護士自治を守り抜きながら、治安機関としての司法ではなく、真に権利救済機関としての司法を一歩二歩と前進させることを重要な憲法運動の一つと考え、たたかいを続けている。

Letter to Lawyers: The Campaign to Seek Compensation for Japan's Policy of Isolating Hansen's Disease Sufferers

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1. The Lawsuits' Beginning

It all began with a letter.

On September 1, 1995 Kyushu Federation of Bar Associations received a letter from a person named Hiroshi Shima. His letter said that preparations were in progress for new legislation to repeal the Leprosy Prevention law and the medical community was stating its views on the matter. The letter continued on a critical note saying that the legal community — which supposedly is most closely connected with human rights, was nevertheless maintaining an indifferent silence.

That November a Kyushu Federation of Bar Associations's fact-finding mission visited Hoshizuka Keiaien(National Sanatorium), a Hansen's disease sanatorium in Kagoshima Prefecture, to interview Mr. Shima. The sanatorium was like a town, with hospital facilities and residences like row houses, as well as a store, post office, and other facilities. One difference from ordinary towns, however, was the all-pervasive silence and the absence of children's voices.

Talking with Mr. Shima and sending questionnaires to hansen's disease sufferers live in sanatoriums in Kyushu revealed that the harm caused by the government's leprosy isolation policy was far beyond that imagined. There were leprosy patients who had fled into the mountains or were hiding in utility buildings in fear of isolation, but they were discovered by the police and taken to facilities. Sometimes they were forced into isolation facilities when police surrounded whole their colony, loaded patients onto trucks, and took them away. And once they were put into sanatoriums, it was extremely difficult to go out, and hard to get discharged. Further, inside the sanatoriums there was no treatment at all. Residents spent their days caring for the seriously ill patient, performing cooking, cleaning, and other chores, and even forced labor such as civil engineering work on sanatorium facilities. If patients fled or did not follow staff members' instructions, they were confined as an arbitrary punishment. Forced sterilization was a condition for marriage, and having children was not allowed, so abortion and infanticide were employed.

The more we heard about this, the more it seemed coldhearted for lawyers to do nothing about such grievous violations of human rights. Our lawsuits began in response to the desire of patients to call the government to account for its wrongdoing, and as atonement by lawyers.

2. The Lawsuits

On July 31, 1998 thirteen patients from sanatoriums in Kumamoto and Kagoshima filed suit in Kumamoto District Court seeking damages. The counsel's view was that generating public interest and solving this problem would require organizing many plaintiff groups. At

that time there were 4,900 patients in 13 national and two private sanatoriums, but it was not easy to find more plaintiffs because patients, who had long been subjected to discrimination and prejudice, feared that if they filed lawsuits as leprosy patients, their identities would become public, and that would make trouble for their families. They also feared that if they filed suit against the government even though being in government-run sanatoriums, they would be forced to leave (in fact, some high-ranking officials of sanatoriums and the Ministry of Health, Labor and Welfare (MHLW) made such statements). Patients felt considerable anxiety because they had nowhere else to live. At the outset patients endured much slander, including remarks such as "What do you mean by filing a lawsuit against the government when it's taking care of you?" and "You are just trying to get money." For these reasons it took time to find more plaintiffs.

The government's statements in court were distortions of historical fact, such as claiming that labor was performed by patients spontaneously, and that it had treatment-related significance because it was comforting; that patients were free to leave once there was no fear of contagion, and that they were in the sanatoriums because they themselves chose to be, not because they were forced. These statements caused anger to spread throughout the sanatoriums, and the number of plaintiffs gradually increased.

This lawsuit initiative expanded throughout the country. In March 1999 a lawsuit was filed in Tokyo District Court by 21 patients from Kanto-area sanatoriums, and in September 1999 another was filed in Okayama District Court by 11 patients from sanatoriums in the Setonai area. As of the end of 2000, we had over 500 plaintiffs nationwide.

3. Issues

The issues in the lawsuits were medical findings on whether isolation was necessary, and when it became unnecessary; and the extent of harm caused by the isolation policy, including whether patients were forced to enter facilities, if leaving was actually possible, what kind of treatment patients received, and how they lived in the sanatoriums. Legal arguments were the unconstitutionality of the Leprosy Prevention Law (the only way to seek compensation for measures taken under a law is to claim that the law itself is unconstitutional), responsibility for omission by the Diet, which did nothing to repeal the law (in Japan, the only situation when a legislative act by the Diet is subject to state compensation is a special exception such as a violation of a primary passage of the Constitution, and it has been thought nearly impossible to get courts to recognize payment of compensation for legislative omission; even now the only case of a final judgment in which responsibility for omission has been recognized is one case concerning Hansen's disease), and the exclusion period (under Article 724 of Japan's Civil Code, one cannot demand compensation after the elapse of 20 years after an unlawful act; Japan's Supreme Court rarely ever recognizes exceptions under the good faith principle, and unlike other countries, Japan has no exemption for serious violations of human rights).

May 11, 2001 is the date of an historic judgment which held not only that the forced isolation policy violates the freedom of residence, freedom of occupation, and other human rights in the catalog of individual human rights guaranteed by Japan's Constitution, but also that patients' lives were ruined because "all potentials for development that one naturally has in life as a person are seriously impaired, and the restrictions on human rights affect the whole of one's public life as a person." Further, the judgment stated that the Leprosy Prevention Law is unconstitutional, that this fact was clear in 1960, and that therefore MHLW's implementation of the isolation policy was illegal. The judgment recognized that

the Leprosy Prevention Act should have been amended in 1965, and that the Diet therefore had responsibility for omission. With respect to the exclusion period, the judgment said that until repeal of the Leprosy Prevention Law in 1996, harm continued to befall leprosy patients because of the isolation policy, and therefore there was no elapse of the exclusion period. The court established a number of brackets according to residence time in facilities, and ordered payment of compensation ranging between ¥8 million and ¥14 million.

The reasons for this historic decision were that during witness examination a former MHLW bureau director, who was also a physician, and doctors who were at that time working at sanatoriums spoke from their consciences as scientists and acknowledged the error of the government's position; and The counsel for the plaintiffs did a thorough job of presenting proof of harm. The counsel had the judge visit all sanatoriums where plaintiffs were residing to question the plaintiffs themselves about the harm they endured. It was an historic inspection of material evidence about past human rights violations.

4. Finalization of Decision

That the government would appeal a decision like this in common sense, but with the average age of the plaintiffs being over 70, most of them would be dead by the time their victory was finalized after an appeal and re-appeal. Justice that comes too late is not justice.

Although there was dissatisfaction about the compensation amount, we quickly consolidated the plaintiffs' intent to ask the government to give up on an appeal, instead of having them appeal over the amount. In a bid to make the government abandon an appeal, the plaintiffs and their supporters held sit-ins every day in front of the prime minister's official residence and sought a meeting with him. The counsel and plaintiff groups crowded into the Diet members' hall and lobbied a variety of relevant people. Further, after the decision we set to work on a large-scale lawsuit, and on May 21, 921 people filed suit simultaneously. Because we had plaintiff groups with about 800 people nationwide at the time of the decision, the fact that about half the parties were covered helped provide muscle to negotiate with the government.

Major factors behind the abandonment of the appeal were the character of the recently inaugurated Koizumi government, as well as the intention of the Minister of Health, Labor and Welfare, who was a physician, and who resolved to resign in order to contend that the government give up on an appeal, but meticulous preparation by the plaintiffs also helped much. Already in the autumn of 2000 they had begun approaching Diet members, and in February 2001 they visited the offices of all the more than 700 members to make their point. In April they created the nonpartisan "Diet Members Conference for the Final Resolution of the Hansen's Disease Issue," which included members of the ruling Liberal Democratic Party. Even before the decision, plaintiffs had focused on the campaign to stop an appeal by nationally organizing plaintiff groups, which had been divided into three regions, and creating a liaison group for the counsel. Negative opinions in the sanatoriums about the trial created great difficulty, but in April the National Association of Patients in Hansen's Disease Sanatoriums, a federation of self-government associations in all Japan's sanatoriums, consolidated opinion toward supporting the lawsuit.

On May 23 Prime Minister Koizumi met representatives of the plaintiff groups at his official residence, after which he announced that the government would not appeal. On May 25 the government issued a statement saying that it dissented on the matters of legislative omission and exclusion, but would institute measures to provide social security for sanatorium inpatients, a pension plan for discharged patients, and the provision of other

assistance, as well as setting up a venue for talks with plaintiff groups. The government also released a statement by the prime minister, who issued an apology and said the government would not appeal.

5. Initiative to Obtain Compensation for Individual Victims

As the court had recognized the payment of compensation for legislative omission, on June 7 and 8 both houses of the Diet adopted resolutions for an apology. On June 22 the Law on Payment of Compensation to Hansen's Disease Patients became effective. This law allows compensation also for people not mentioned by the Kumamoto District Court decision, such as patients in sanatoriums before 1960, patients in Okinawa under US administration, and patients in private sanatoriums. Owing to the lack of provisions on nationality and place of residence, compensation is also provided to Koreans in Japan, and victims currently living in Korea(including DPRK) and the US if they were formerly in Japanese sanatoriums.

These days there are hardly any new cases of leprosy in Japan, with most cases being students and migrant workers from Southeast Asian countries. Yet, those admitted to sanatoriums have communication problems and associate little with other patients. They soon return to their countries and are not heard from again. Leprosy patients who were placed in Japanese sanatoriums by 1996 are due compensation regardless of nationality and place of residence, so news of their whereabouts would be appreciated. Because payment of compensation under this law is limited to five years, people must apply by next June or lose their right to do so.

To provide a judicial solution for plaintiffs not covered by the decision, in July 2001 a basic agreement was reached on a settlement including not only monetary compensation but also an apology placed in publications. Settlement procedures were initiated in several courts.

Yet, despite much suffering, there are over 17,000 victims who regrettably have died in sanatoriums without knowing about this court decision. At issue is whether their survivors can receive compensation. There are also likely hundreds of victims who did not enter sanatoriums but passed their days enduring the discrimination and prejudice of society. Hard negotiating meant to win compensation for such people in a settlement led to a basic agreement in January 2002. As a result, they can receive compensation according to this settlement after bringing a case before a court and confirming their inheritance rights, or confirming that the victim had been diagnosed with leprosy. A number of cases have been filed, and now close to 1,000 cases are pending. The compensation law is limited to victims who were surviving , but that compensation can be requested by the survivors of sanatorium inpatients who died no more than 20 years previously. In this case as well, compensation can be received without regard to nationality or place of residence. But now the government's attitude has become inflexible owing to the influence of the Sorokdo lawsuit, mentioned below, and there is a deadlock in the settlement for only patients who entered sanatoriums before WWII. Because three years have passed since the basic agreement was reached, the government insists that prescription has taken effect, making a settlement difficult.

6. Permanent Measures

A meeting of the Hansen's Disease Response Council was held on the basis of the prime minister's media statement. The meeting was chaired by the vice-minister of Labor, Health and Welfare as the chairperson, and had the attendance of section chiefs and above from involved MHLW divisions, as well as some people from local governments. For this meeting the patients formed a combined negotiating group comprising plaintiffs, counsels, and the

National Association of Patients in Hansen's Disease Sanatoriums. Talks covered the four themes of an apology and recovery of honor, the return to society and assistance for living in society, security for sanatorium inpatients, and getting at the truth. A basic agreement was reached in December 2001.

With regard to apology and recovery of honor, the two sides agreed on publication of apologies in newspapers and the production and distribution of educational pamphlets for junior high school students. Additionally, it was agreed that an Inquiry Commission would be formed to elucidate the history and state of Hansen's disease policy and to make recommendations to prevent more abuses, and that the historical museum about hansen's disease would be enhanced and historical materials preserved. In relation to security for sanatorium patients, the parties affirmed that patients would be provided with healthcare and a living environment equal to those provided in society, and that patients would not be forced to leave a sanatorium or switch facilities against their will.

Incidentally, there was a serious problem in that despite the suffering that patients discharged from sanatoriums endure in society due to discrimination and prejudice, compensation amounts were reduced under the Compensation Law and under court settlements in accordance with the time since being discharged, and a lump sum was paid, showing that the extent of harm was not properly understood. We therefore sought permanent measures based primarily on the payment of pension benefits. As a result, beginning in April 2002 pension benefits were paid in the amount of ¥176,100 per person monthly for patients already discharged, and ¥264,100 per month to newly discharged patients (there are reductions such as when two or more dischargees live in the same household, reductions depend on income, also there are additions for spouses). However, residence in Japan is a condition for receiving this compensation. It was also agreed that a consultation office would be established.

Since that time the Hansen's Disease Response Council has met at least once a year.

Beginning in 2004, these changes have enhanced the system to support patients who desire to leave sanatoriums and live in society. Also, a lump-sum payment benefit was created to rectify the inequality between patients who left sanatoriums to live in society before the support system was established, and patients who can now receive support.

Patients who have never been in sanatoriums also suffer social discrimination and need livelihood assistance, so the combined negotiating group lobbied for the creation of a pension system which was finally set up in May 2005 after overcoming a variety of problems (unlike discharged patients, the monthly payment is only ¥48,500, and like discharged patients, residence in Japan is a condition for receiving benefits).

Owing to the need for a continuing public education project for the apology and recovery of honor, in 2005 MHLW sponsored a symposium to which the relevant personnel from local governments were invited. Planned for the future are public service advertising on the Internet, film showings, and other efforts to be sponsored by the Ministry of Justice.

7. Inquiry Commission

Based on the December 2001 basic agreement, in September 2002 MHLW commissioned the Japan Law Foundation to establish an Inquiry Commission on the Hansen's disease issue. Members included media people, medical scientists, people from communion, jurists, and cured leprosy patients. Specialized subcommittees were created to study the harm patients suffer, and caseworkers and others participated as volunteers. Nearly 1,000 cured leprosy patients were interviewed to determine what social harm they had suffered, and in

consideration of the patients' advanced age, it was the biggest and last fact-finding study for them. Commission members personally visited not only 13 government-operated sanatoriums and two private sanatoriums, but also other facilities including South Korea's Sorokdo Hospital and Taiwan's Lo-sheng sanatorium investigated places where human rights violations had occurred, and interviewed sanatorium patients. The Commission had government departments submit documents related to policy-making, and also studied the literature. In addition, the Commission performed analyses of fetus samples and other remaining items because the prohibition of childbirth in sanatoriums had resulted in abortions and infanticide.

In March 2005 the Inquiry Commission submitted its final report and was dissolved. It offered a wide variety of recommendations to prevent a repeat of abuses, such as legislating patient rights, a system to assure that the policy-making process is scientific and transparent, the creation of a human rights protection system (Japan has no domestic human rights protection agency based on the so-called Paris Principles), the dissemination of correct medical knowledge, and human rights education. The combined negotiating group is currently negotiating with MHLW on the creation of a "Road Map Committee" to consider ways to give concrete form to these recommendations. We think that if this Road Map Committee is set up and goes to work, it will have a major influence on not only Hansen's disease, but also a variety of other human rights issues in Japan.

8. Harm Suffered in South Korea and Taiwan

Japan took possession of Taiwan in 1895, while in 1905 it leased China's Northeast region, where in 1932 it founded the puppet state of Manchu. In 1910 it proclaimed the annexation of Korea. And in 1919 after WWI Japan received a mandate on the South Sea Islands from the League of Nations. Starting in 1937 Japan invaded all of China, and in 1940 extended its invasion to Southeast Asian countries.

As part of these events the leprosy isolation policy was expanded to colonies and occupied areas, and Japan established Sorokdo Koseien in Sorokdo in a place on the Korean Peninsula that is now Goheung Country in South Korea's Jeollanam-do Province, and a facility called Lo-sheng in Xinzhuang City on the outskirts of Taipei, Taiwan. Japan's forced isolation policy was implemented in these places. What is more, in tandem with colonial domination, people were forced to speak Japanese, and to adopt Japanese lifestyles and worship at Shinto shrines. Patients were controlled with violence not seen in Japan, and there was forced labor whose purpose was not to provide necessities for sanatorium livelihood, but to make products such as straw bags and bricks which were sold for a profit. In Manchuria Country Japan established a facility called Manchu Dokoin in Songshanbei, about two hours from Tieling, north of Mukden, and in the South Sea Islands sanatoriums were established on several islands, among them the present Saipan, Yap, and Palau. These sites are now in a dilapidated condition, and the current status of their inpatients is unknown. It is reported that in 1943 the 30-odd patients in a sanatorium on Nauru were put in a small boat that was towed out to sea and blown up, slaughtering them all. There are also reports that leprosy patients were abused in areas occupied by the Imperial Japanese Army in China and Southeast Asian countries.

Incidentally, there have been almost 100 lawsuits seeking compensation for the large numbers of Japanese military sex slaves and abducted workers in Korea, Taiwan, and other places, mass murders by the Japanese Army in China, and other offenses, but almost all the suits have been lost. Some of the problems in state compensation lawsuits are state immunity, the exclusion period, and the waiving of rights to seek compensation by the South Korean

governments under treaties. But the Compensation Law does not have these problems. It makes no issue of nationality or place of residence, and therefore as with application of the Atomic Bombing Survivors Support Law to atomic bombing victims in South Korea, 142 sanatorium inpatients in Taiwan and South Korea who had been in treatment since the days of Japanese rule filed lawsuits for compensation in 2004. A decision will be issued 25th October.

9. Remaining Challenges

Social prejudice and discrimination are still deeply rooted, thereby necessitating remedial measures. We plan to broaden activities to eliminate this discrimination and prejudice as part of our interchange with cured patients.

The UN Commission on Human Rights's Sub-Commission on the Promotion and Protection of Human Rights resolved in August 2004 to perform a study on the harm suffered by leprosy patients and their families because of discrimination, and to designate committee member Yozo Yokota as the rapporteur. Yokota has been on a fact-finding tour of South Africa, India, Brazil, and other countries, and this year submitted a preliminary working paper. I expect him to follow up examining the policies of various governments, and make recommendations on policy measures in his final report. I hope to incorporate an international perspective into our domestic campaign.

The number of sanatorium inpatients has decreased, with about 60 each in small facilities, and there are several sanatoriums where staff members outnumber inpatients, which will likely make it hard to maintain those institutions. Negotiations are therefore in progress on how sanatoriums should be run in the future to prevent a decline in the healthcare and living conditions of inpatients.

We have not been able to do enough either through lawsuits or compensation legislation for the harm suffered by families, and we are carefully considering what can be done.

In Taiwan the land on which Lo-sheng is built has been sold for the construction of a rail transit yard, and the inpatients will be forced to move to a hospital built on the adjoining lot. Inpatients were brought here against their will and cut off from their families, leaving them with no place to go. The sanatorium has become their whole world, making it unacceptable in humanitarian terms to compel their relocation. Further, their new residence is an ordinary hospital not at all built to accommodate long-term residents. While inpatients now can live as they choose, hospital residence will force them to adopt a certain lifestyle.

References

Note: I know of no comprehensive report in English on the lawsuits. .

References in Chinese

Association to Preserve Lo-sheng
http://blog.yam.com/losheng
At issue is the forced relocation of the facility.

Taiwan Association for Human Rights
http://www.tahr.org/tw/index.php/categories/tw/
This site has a Chinese translation of a summary of the Inquiry Commission report.

References in Japanese

Policy measures on Hansen's disease (MHLW website)
http://www.mhlw.go.jp/topics/bukyoku/kenkou/hansen/index.html

Kumamoto District Court decision on Hansen's disease, and the course of negotiations after the decision (website of a lawyer on the counsel)
http://www.lawyer-koga.jp/hansen.htm

Information on efforts to seek compensation for harm suffered in Taiwan and South Korea under Japanese rule (website of the counsel seeking compensation at the Hansen's disease sanatoriums Sorokdo Koseien in South Korea and Lo-sheng in Taiwan)
http://www15.ocn.ne.jp/~srkt/

About the Inquiry Commission for the Hansen's disease issue (Japan Law Foundation website)
http://www.jlf.or.jp/work/hansen_kaigi.shtml

About the course of the lawsuits
Hirakareta Tobira ("The Open Door," Kodansha Publishers, May 2003), a book by the Counsel for the Lawsuit Seeking State Compensation for the Unconstitutional Treatment of Hansen's Disease Patients

法律家への手紙～日本のハンセン病隔離政策に対する補償を求める運動について

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１　訴訟の始まり

それは、１通の手紙から始まった。

９５年９月１日、九州弁護士会連合会に島比呂志（しま・ひろし）と名乗る人物から１通の手紙が届いた。それは、らい予防法廃止に向けて新法作成の準備中であり、医療界の見解表明がある中で、人権にもっとも深い関係を持つはずの法曹界から何らの見解も発表せず、傍観の姿勢をとり続けていることを批判するものであった。

九州弁護士会連合会の調査団は、同年１１月、島から聞き取りをするため、ハンセン病療養所星塚敬愛園（鹿児島県所在）を訪れた。そこには、病院施設と長屋形式の住居棟の他に、売店、郵便局などが完備され一つの町のようであった。一つだけ普通の町と異なるのは静寂が支配し、子供の声が聞こえないことであった。

島から話を聞き、九州内の療養所でアンケート調査を行ったが、そこで明らかになったハンセン病隔離政策の被害は想像を絶するものであった。ある人は収容をおそれて山中を逃げ回りあるいは、物置に隠れて住んでいたが警察官に発見され収容された。ときにはハンセン病患者の住んでいる集落ごと警察官に取り囲まれ、トラックに乗せられ収容されるなどの強制収容があった。ひとたび入所すれば厳しい外出制限があり、退所も容易でなかった。療養所の中では何の治療もなく、重病者の介護、炊事洗濯などの作業の他、園内施設整備のための土木作業などの強制労働に明け暮れていた。逃走した場合や職員の指示に従わなかったとして恣意的に懲罰としての監禁がおこなわれ、結婚の条件としての断種が強制され、子供を産むことを許されず堕胎・嬰児殺が行われていた。

話を聞けば聞くほど、このような重大な人権侵害を放置していたことを、法律家として情けなく思うに至った。国の加害責任を問いたいという入所者の思いを受け止め、法律家の贖罪としてこの裁判は始まった。

２　提訴の経緯

９８年７月３１日　熊本地方裁判所に熊本、鹿児島の療養所入所者１３名が賠償をもとめて提訴した。弁護団では社会の関心を集めこの問題を解決するには、多数の原告団を組織する必要があると考えていた。当時、日本には国立１３園、私立２園に合計４９００名あまりの入所者がいたが容易には原告は増えなかった。差別偏見にさらされてきた入所者にとって、ハンセン病患者として提訴をすれば社会に知られ、家族に迷惑が及ぶのではないか恐れたのである。また、国立療養所に入所していながら国に対して訴訟を起こせば、

療養所から追い出されるのではないかと恐れ、（実際そのようなことを公言した療養所幹部や厚生労働省の幹部がいた。）療養所以外に生活の場所がない入所者にとってその不安は大きいものであった。当初は、国にお世話になっていながら訴訟を起こすことは何事だとか、金目当ての訴訟だなどと誹謗中傷も多かった。そのため、原告が拡大していくには時間を要した。

訴訟における国の答弁は、強制労働は患者が自発的に行ったもので、慰安として療養上意味があるとか、伝染のおそれがなくなれば退所を認めていたのであり療養所にとどまっているのは個人の選択の結果である、強制的に収容したのではないなどと歴史的事実を歪曲するもので、療養所内では怒りが広がった。徐々に、原告が増えていった。

この訴訟の動きは、全国に広まり、９９年３月には東京地裁で関東地区の療養所から２１名が提訴、９９年９月には岡山地裁に瀬戸内地区の療養所から１１名が提訴した。００年末には全国で５００名をこえる原告を擁するに至った。

３　訴訟での争点

訴訟では、隔離は必要であったか否か、不要となったのはいつからかという医学的知見、入所が強制であったか、実態として退所が可能であったのかどうか、療養所内の治療・生活状況の実態などの隔離政策の被害実態が争いになった。また、法律論としてはらい予防法の違憲性（法律に基づく措置が違法であり賠償を求めることができるというには、法律そのものの違憲性を主張するほかない。）らい予防法を廃止せずに放置した国会の不作為責任（日本では、国会の立法行為が国家賠償の対象になるためには、憲法の一義的文言に違反しているような特殊例外的な場合に限られるとされ、裁判所に立法不作為による損害賠償を認めさせるのはほとんど不可能であると考えられてきた。現在でも確定判決でこの不作為責任が認めれらたのは、ハンセン病に関する１例のみである。）除斥期間論であった。（日本民法７２４条では、不法行為のときから２０年を経過した場合には賠償請求をできないとされており、日本の最高裁判所は信義則による例外をほとんど認めないうえ、日本には、諸外国にみられるような、重大人権侵害にたいする適用除外などの法制はない。）

２００１年５月１１日、歴史的な判決が下された。強制隔離政策は、居住移転の自由、職業選択の自由など日本国憲法の保障する個々の人権カタログに掲載される人権を侵害しているのみならず、「人として当然に持っているはずの人生のあらゆる発展可能性が大きく損なわれるものであり、その人権の制限は、人としての社会生活全般に渡るものである」として人生被害としてとらえたのである。そして、らい予防法は違憲であり、そのことは１９６０年には明らかであり、厚生労働省はハンセン病隔離政策を遂行した違法がある。６５年には、らい予防法を改正すべきであったとして、国会の不作為責任を認めた。除斥期間の点については、らい予防法が廃止される９６年まで、隔離政策による加害行為は継続されており、除斥期間は進行しないとしたのである。そして、入所期間に応じていくつかのランクをもうけ、１４００万円から８００万円の賠償を命じた。

このような、歴史的判決をもたらした要因は、医師でもある元厚生労働省局長やハンセン病療養所で働く現役医師が、科学者としての良心から、国の主張の誤りを証人尋問で認めたこと、弁護団のした徹底した被害立証による。弁護団では、裁判官を原告のいるすべての療養所に出張させ、被害実態について原告本人尋問を重ね、かつての人権侵害が行われた歴史的事物の検証を行った。

４　判決の控訴断念による確定

このような判決内容に対して国が控訴しないということは常識的にはあり得なかった。しかし、原告の平均年齢は７０才を超えており、控訴審・上告審で闘っていたのでは、大半の原告は勝訴が確定するまでに亡くなってしまう。遅すぎる正義は正義ではない。

賠償額については不満があったが原告側は控訴せず、国に控訴断念を求めることでいち早く原告の意思を集約した。原告らが支援者とともに、控訴を断念させるべく連日首相官邸前に座り込んで、総理大臣への面談を求めた。弁護団と原告団は、国会議員会館に詰め様々な関係者にロビー活動を行った。また、判決後大量提訴運動に取り組み、５月２１日には９２１名が一斉提訴した。判決時には全国で８００名程度の原告団であったので、当事者の約半数を占めたことは国に対する交渉力の獲得に寄与した。

控訴断念に至ったのは、発足当初であった小泉政権の性格と、医師であり辞職を決意して控訴断念を主張した厚生労働大臣の意向によるところが大きいが、原告側の周到な準備があった。すでに２０００年秋頃から国会議員に対するアプローチを始め、０１年２月には７００名あまりいる国会議員全員の事務所に訪問し、この問題を訴えてきており、４月には与党の国会議員も含め超党派で「ハンセン病問題の最終解決を進める国会議員懇談会」を結成していた。控訴阻止運動を見据えて３地裁に分かれていた原告団の全国組織化と弁護団の連絡会も判決前に結成していた。裁判に関して療養所内では否定的な意見もみられており、困難を極めたが、全国の療養所の自治会の連合会である全国ハンセン病療養所入所者協議会も、４月には訴訟支持の意見集約をした。

５月２３日、小泉首相は原告団の代表と首相官邸で面談し、その後控訴を断念する旨表明した。５月２５日、政府声明で、立法不作為と除斥の点については政府としては異議があるとしたが、ハンセン病療養所入所者への保障、退所者への年金制度などの創設、原告団との協議の場を設定するとの対策を示し、謝罪を表明し控訴を断念する旨の内閣総理大臣談話を発表した。

５　被害者への個人補償の動き

６月７，８日には衆参両院で、立法不作為の損害賠償が認められたことをふまえ、謝罪決議がなされた。６月２２日に「ハンセン病療養所入所者等に対する補償金の支給等に関する法律」が施行された。同法では、熊本地裁判決ではふれられていない、６０年以前の入所者、米軍施政権下の沖縄での入所者、私立療養所の入所者などについても補償が認められている。国籍条項、居住地条項がないため、日本国内の療養所に入所していたもの

であれば、在日コリアンや現在韓国やアメリカ合衆国に居住している被害者も補償されている。

近時日本では新発患者がほとんどなく、多くは東南アジア諸国からの留学生や移住労働者であった。しかし、療養所に入所させられたものの言葉の問題もあり、他の入所者との交流が乏しく、いつの間にか帰国し、消息が不明になっているものも多い。

９６年までに日本国内の療養所で収容された経験のあるハンセン病患者は、国籍居住地に関わりなく補償されるので、そのような人がいれば教えていただきたい。なお、この法律による補償金の支給は５年間に限られており、来年６月までに申請をしなければ権利を喪失する。

７月には、判決を受けていない原告について司法上の解決をするために、金銭賠償のみならず謝罪広告も含め和解の基本合意がなされ、各裁判所で和解手続きが進められた。

しかしながら、幾多の苦難を受けながら、この判決を目にすることがなく療養所で無念のうちに亡くなった１７０００余の被害者がいる。この遺族は補償を受けられないのか問題になった。また、療養所には入所しなかったものの社会での差別偏見を耐えて過ごした被害者も百名単位で存在するはずである。そこで、これらの人に対する補償を和解で勝ち取るべく、厳しい交渉が続けられ、０２年１月基本合意に達し、裁判所に提訴し相続関係を確認しあるいは、ハンセン病の診断を受けていることを確認した後和解により補償がされることになった。順次提訴があり、現在でも、全国で１０００名近い原告が継続中である。補償法は、被害者本人が申請時に生存している場合に限られているところ、この請求は過去２０年内に死亡した入所者の遺族すべてが請求することができる。これも国籍居住地に関係なく補償が受けられる。しかしながら、現在、後述のソロクト訴訟の影響を受け国が態度を硬化し、戦前のみの入所者の和解が膠着し、基本合意から３年が経過しているため、新規提訴については国が時効の主張をしており、和解は困難な状況にある。

6　恒久対策について

内閣総理大臣談話に基づき、ハンセン病問題対策協議会が開かれた。厚生労働副大臣を座長とし、厚生省の関係部署から課長級以上が出席し、地方自治体関係者も出席した。患者側は原告団、弁護団、全国ハンセン病療養所入所者協議会で統一交渉団を結成し対応した。謝罪名誉回復、社会復帰・社会生活支援、在園保障、真相究明の４テーマで協議を重ね、０１年１２月に基本合意に達した。

謝罪名誉回復では、謝罪広告の新聞紙における掲載、中学生向けの啓発パンフレットの作成配布について合意した。在園保障では社会内で生活するのと遜色のない水準での医療・生活環境を保障し、入所者の意志に反して退所転園させないことを確認した。謝罪名誉回復では、ハンセ病政策の歴史と実態を明らかにし、再発防止の提言を行うため検証会議を設置すること、資料館の充実・歴史的資料の保存について合意した。

ところで、療養所を退所した者は、差別偏見の中で社会内で苦労を重ねたにもかかわらず、補償法・訴訟上の和解では退所期間として減額されて一時金が支給されることになり、その被害が正当に評価されていないという大問題があった。そこで、年金支給を軸とした恒久対策を求めた。その結果０２年４月から、既退所者月額１人１７万６１００円、新規退所者月額１人２６万４１００円（配偶者加算や同一世帯に複数の退所者がいる場合の減額、所得に応じた減額等がある。）の年金が支給されることとなった。ただし、この補償金は日本国内に居住していることが受給の要件である。そのほか、相談窓口の設置なども合意された。

その後、毎年１回以上、ハンセン病問題対策会議は開催され、現在に至っている。

その結果、０４年には、療養所を出て社会で暮らしたいと望む入所者のための支援制度が拡充された。また、支援制度のない時代に療養所から出て社会内で生活した人と、現在支援が受けられる人との不均衡を是正するため一時金の支給が定められた。

また、非入所者についても同じく社会内で、差別を受け苦しんできており、その生活支援が必要であることから、統一交渉団では年金制度の創設を働きかけていたが、実現までには紆余曲折があったが、０５年４月より制度発足に至った。（退所者と異なり基本額は月額４８５００円と低額にとどまっている。退所者と同様日本国内に居住していることが受給の要件である）

謝罪名誉回復のためには継続的な啓発事業が必要であることから、０５年には厚生労働省主催で、各自治体の担当者をまねいてシンポジウムが行われた。今後、法務省主催でもネット上での広告や映画の上映会などが計画されている。

7　検証会議

０１年１２月の基本合意に基づき、０２年９月、日弁連法務研究財団が厚生労働省から委託をうけて、ハンセン病問題に関する検証会議を設置した。マスコミ関係者、医学者、宗教者、法律家、当事者であるハンセン病回復者が加わり組織され、被害実態調査のために専門部会も設置された。ケースワーカーなどがボランティアで参加し、１０００名近いハンセン病回復者に面談して被害実態の聞き取り調査をしており、被害者が高齢であることを考えれば、最大にして最後の実態調査になっている。

検証会議自ら、国立１３園私立２園のみならず、韓国ソロクト病院、台湾楽生療養所なども訪問し、過去の人権侵害があった場所を検証し、入園者からの聞き取り調査を行った。政府部内の政策決定に関する書類を提出させ、文献調査も行っている。そのほか、療養所内では出産が禁止されており堕胎や嬰児殺が行われており、残されている胎児標本などの分析も行った。

０５年３月に最終報告を提出し検証会議は解散した。再発防止の提言では、患者の権利の法制化、政策決定過程の科学性・透明性の確保のためのシステム、人権擁護システムの整備（日本では、いわゆるパリ原則に基づく国内人権擁護機関が存在しない。）正しい医学知識の普及、人権教育など多岐に渡る提言をしている。これを具体化するための方策を検討する「ロードマップ委員会」の設立を巡って、統一交渉団は厚生労働省と現在交渉中である。この機関が設置され検討が進めば、ハンセン病のみならず、日本における様々な

人権課題に及ぼす影響は大きいと考えている。

8　韓国・台湾での被害

日本は、１８９５年台湾を領有し、１９０５年以降中国東北部を租借し、３２年には傀儡政権である満州国を建国した。また、１９１０年日韓併合を宣言した。さらに、第一次世界大戦後の１９１９年以降国際連盟から南洋諸島の委任統治をゆだねられている。また、１９３７年以降中国全土に侵略を行い、４０年以降東南アジア諸国にも侵略をしている。

このような中で、ハンセン病隔離政策も植民地・占領地に拡大され、朝鮮半島には現在の韓国全羅南道（チョルラナンド）高興郡（コフングン）に小鹿島更生園（ソロクトこうせいえん）、台湾には、台北市近郊の新荘市（シンチャンシ）に楽生院を設立し、強制隔離政策を実行した。のみならず、植民地支配と相まって、日本語・日本式生活様式の強要・神社参拝の強要・日本ではみられないような暴力による患者支配、園内の生活の必要を満たすための労働ではなく、生産物を売却し収益を売るためのわらの袋やレンガづくりなどの強制労働が行われた。満州国には奉天の北、鉄嶺から車で２時間ほど行った松山背に満州同康院が設立され、南洋諸島には現在のサイパン島、ヤップ島、パラオ島などに療養所が作られていた。これらの療養所跡地は荒廃しており入所者の現状は不明である。ナウル島については、療養所に収容された患者３０数名を１９４３年小さなボートに乗せ沖合に曳航して爆破して、全員虐殺したと報告されている。また中国大陸や東南アジア諸国の日本軍占領地では、ハンセン病患者に対する虐待の例が報告されている。

ところで、韓国台湾をはじめとした多数の日本軍生奴隷や強制連行、日本軍による中国大陸での集団虐殺などについて、損害賠償訴訟が１００件近く起こされているが、ほとんど敗訴している。国家賠償訴訟では、国家無答責原則、除斥期間論、韓国政府との条約による請求権放棄などが問題となっている。しかし、前述の補償法は、このような問題がない。国籍・居住地を問わないので、被爆者援護法の在韓被爆者への適用と同様、補償の可能性があると考え、台湾韓国の日本統治時代からの療養所入所者１４２名が０４年、補償を求めて提訴した。本年１０月２５日に判決がなされる予定である。

9　残された課題

未だに社会内の偏見差別は強く残っており、その対策が必要である。ハンセン病回復者と交流していく中で、差別偏見を除去する活動を広めていきたい。

国連人権委員会（ＣＨＲ）人権保護促進小委員会は、０４年８月ハンセン病患者及びその家族に対する差別被害について調査をすること、報告者に横田洋三委員を指名することを議決した。横田委員は、南アフリカ、インド、ブラジルなどで実態調査をし、本年はプレリミナリーワーキングペーパーを提出している。各国の政策を検討し、施策に対する提言を最終報告ではすることを期待する。国内での運動とともに、国際的視点からも取り組んでいきたい。

療養所の入所者は減少してきており、小さな園では６０名程度になっており、また入所者よりも職員の方が多い園がいくつもあり、施設の維持が今後困難になってくると思われ、入所者の医療・生活環境を維持するための療養所の将来のあり方を巡って、交渉が行われている。

家族の被害については、訴訟においても補償立法においても十分にくみ取れなかったところであり、いかなる方策が可能であるのか、慎重に検討している。

台湾楽生院では、ＭＲＴの車両基地建設のため、敷地が売却され、入所者が隣接地に建設された病院に強制移転されようとしている。強制的につれてこられ、家族との関係を絶たれている入所者は行くところがない。まさに療養所が第二のふるさとであって、さらなる移転を強制することは人道上許されない。また、移転先は、長期間の生活を全く考慮していない、一般的な病院の構造をしており、入所者は現在自由に居住しているが、病院に入院させられることで、一定の生活様式を強要されるなどの問題がある。

参考文献

＊訴訟に関するまとまった英語の報告は当職の知る限りない。

中文資料

楽生院保留自救会
http://blog.yam.com/losheng
←療養所の立ち退きが問題が問題となっている

台湾人権促進会
http://www.tahr.org.tw/index.php/categories/tw/
←検証会議の報告書要約の中文翻訳をみることができる

日本語資料

ハンセン病に関する各種施策について（厚生労働省ウェブサイト）
http://www.mhlw.go.jp/topics/bukyoku/kenkou/hansen/index.html

ハンセン病熊本地裁判決・判決後の交渉経緯（弁護団の一員の弁護士のウェブサイト）
http://www.lawyer-koga.jp/hansen.htm

台湾・韓国での日本統治下の被害の補償を求める動きについて
（ハンセン病ソロクト更生園・台湾楽生院補償請求弁護団ウェブサイト）
http://www15.ocn.ne.jp/~srkt/

ハンセン病問題に関する検証会議について（日弁連法務研究財団ウェブサイト）
http://www.jlf.or.jp/work/hansen_kaigi.shtml

訴訟の経過については

「開かれた扉」ハンセン病違憲国賠償訴訟弁護団　講談社２００３年５月

Long Working Hours, Unpaid Overtime, Death from Overwork, and Efforts to Remove Restrictions on Working Hours in Japan

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1. Introduction

Japan has the longest working hours and shortest vacation time of all the industrialized countries, and the numbers of overwork-related problems such as death, suicide, and mental illness are increasing rapidly. To Japanese workers, shortening their long working hours and limiting them to a decent length is a matter of vital and urgent importance. Since the collapse of the 1980s economic bubble, Japanese companies have substantially reduced their workforces and restructured their businesses as the long recession drags on. This has precipitated a sharp reduction in companies' so-called regular employees, and a corresponding rapid increase in nonregular employees such as temporary workers, part-timers, and contract workers. At present nonregular employment makes up over 30% of the corporate workforce and the trend continues. For their regular employees, companies have instituted performance-based wage systems that demand much work from few people and they work their employees hard for long hours, thereby spurring the change to longer hours. Meanwhile, nonregular workers suffer because of unstable status and low wages. This is creating a bipolar structure in Japanese business.

Next on the agenda of government and business is further relaxing and eliminating regulations on working hours. The Ministry of Health, Labor and Welfare's (MHLW) "Research Panel on the Future Working Hours System," which was launched this April, is exploring the matter. The ultimate aim of the government and business is dismantling laws on working hours so as to substantially increase the number of workers who need not be paid overtime no matter how many hours they work, as in the US "white-collar exemption."

There are concerns that instituting such a system will further aggravate the problems of long working hours and death from overwork, and it is possible that it will legalize unpaid overtime, which under current conditions violates the Labor Standards Act. What is more, the lowering of Japan's labor standards in the midst of economic globalization could have a considerably deleterious effect on the workers of other Asian countries.

2. Working hours in Japan

The following items characterize workplaces in Japan.

(1) Unpaid overtime is widely practiced in nearly all industries and job types, in companies of all sizes.

(2) Working hours are very long by international comparison.

(3) Death, suicide, and mental illness from overwork are common due to long working hours.

Over the last few years actual yearly working hours in Japan have remained steady, and statistically have not fallen below 1,800 hours, but this average includes workers with short working hours, so the working hours of general employees (regular employees) still exceed 2,000 hours. Moreover, because MHLW statistics are based on companies' paid working hours, unpaid overtime is not included. Actual working hours are thought to average 2,200 to 2,300 hours.

An ILO study found that Japan had the largest percentage of workers, at 28.1%, who work 50 or more hours per week (it is only 15.5% in Britain, said to have the longest working hours in Europe, and just 1.4% in the Netherlands). In Japan, at least 20% of midlevel employees in their 30s and 40s work 60 or more hours a week. Meanwhile, whereas Europeans are granted and almost completely take paid vacations of 25 to 30 days, in Japan 18.0 days are granted while the time taken declines year by year, and in 2003 recorded the lowest level ever at 47.4%.

Labor Standards Inspection Offices throughout Japan guide companies to rectify unpaid overtime, and from April 2003 to March 2004 total compensation of ¥23.9 billion was paid by 1,184 companies to 190,000 workers. There were a number of huge payments, including ¥1.4 billion by Tokyo Electric Power, ¥6.5 billion by Chubu Electric Power, and 3.9 billion by Takefuji, a consumer loan company, yet these are the tip of the iceberg. High levels are found in 2003 also for certified cases of death from overwork at 157 cases and 40 suicides from overwork, both the second-highest ever for a one-year period, while the 108 cases of mental disorders induced by overwork was the highest number ever. One of the death from overwork cases was that of a Toyota Motors design section manager.

3. Consultation Case Examples

The LLAJ is an association of lawyers working to protect worker rights. It currently has about 1,400 members. In addition to offering consultation by telephone throughout the nation twice a year in June and December, we offer the same free service twice a week at our Tokyo headquarters.

In December 2002 when we offered our first nationwide hotline with "overtime" as the theme, we got more than the anticipated number of calls on overtime and long working hours, and for the first time cases of unpaid wages outnumbered those of dismissals, which until then had been the most numerous. This reversal of positions surprised us. For this reason, on the occasion of our June 2003 nationwide telephone hotline we again had "overtime" as a theme, and we took statistics with two new categories: "unpaid overtime" and "working hours (overwork, etc.)." Out of a total 263 cases of unpaid wages, 154 were unpaid overtime, which was the single biggest type and more numerous than the 138 dismissal cases. This trend has grown progressively more marked in subsequent hotlines. Following are some case examples.

(1) Long-term "killer overtime"

A 36-year-old male working as an assistant section manager for development planning at a major telephone company told this story of insanely long working hours: "My supervisor's incredible work directives had me working 500 hours a month for over two years. On two weekdays each week I would work all night, and on the other three weekdays until 3:00 a.m. I worked 10 hours each on Saturday and Sunday. I asked my supervisor to do something about this, but he wouldn't listen to me at all. I suffered depression and I'm now on a leave of absence."

(2) Grueling work by a small number of regular employees

This account came from the father of a 26-year-old male working for a major coffee shop chain. "Day after day he would go to work at 5:00 a.m. and come home after 1:00 a.m. He was working 16 hours a day, and over 240 hours a month even if one excludes holiday work. The only two regular employees were my son and the manager. All the other workers

were part-timers. The manager and my son were the only employees who filled in holes in the rotation schedule, and there were no breaks during work. My son ruined his health and has a bloody stool. He can become a manager after two or three years at the company, but employees are expendable and they all quit because the work is so punishing. In spite of the long hours of overtime work, my son has been paid no overtime wages at all." This person too is one step short of death from overwork due to long working hours.

(3) Failed marriage attempts and overtime

This account is from the mother of a 40-year-old male engineer working at an engineering firm: "On weekdays he would work until midnight or 1:00 a.m., and working on Saturdays and Sundays has been the usual thing for the last 10 years. Even if he catches cold he can't find time to see the doctor, so the only way to get to the hospital is collapse and be taken there in an ambulance. Even if we find potential marriage partners, he always goes to sleep during dates. Talks have broken off numerous times, and he can't get married. If he complains to his company, his supervisor says, 'We can't find another engineer to help you. If you don't like that, you can just quit.' So he's still in a situation where he can't say anything."

(4) Neglect in keeping track of hours worked; fixed-rate overtime pay

From the wife of a 39-year-old male regular employee of a toy wholesaler with under 10 employees, who is a driver and performs deliveries: My husband quit his job several months ago but has yet to receive overtime pay. He worked at least 100 hours overtime a month, and by his own calculations pay for two years is about ¥4.6 million. But the company has paid only fixed-rate monthly overtime of ¥67,000. Even though the company makes its employees work so much overtime, it neglects to keep track of employees' hours worked, and there are not even any time cards.

(5) Restructuring-induced overtime by middle-aged and senior workers

From the wife of a 51-year-old male regular employee of a papermaking company: My husband performed factory work until last year when he was switched to an administrative job which requires the use of computers. Since he never used a computer before, every day he works overtime, comes home about 9:00 p.m., and gets up at 2:00 a.m. to do the work he's brought home. He goes to work every morning at 6:30 p.m., and he works on Saturdays, too. He can't keep this up, and says he wants to quit. At work everybody is watching and his supervisor berates him for being slow. He can't even take a noon break. Can't something be done?

(6) Long hours of overwork due to insufficient staff

From the wife of a 41-year-old regular employee of a gas supply company, who drives extra-large vehicles: My husband covers a whole prefecture himself, visiting at least 200 apartments and other dwellings in a month, and the number is increasing. He says there is no way he can do all this himself and asks for more drivers, but the company won't budge. He leaves for work at 6:30 every morning and comes home at 9:00 or 10:00 p.m., and he says he's always tired and sleepy. He works Saturdays, too. In three months he lost 10 kg. He's always irritable and in poor health, and I'm afraid he'll have an accident or collapse from overwork. What can I do to get him off these long working hours?

(7) Dismissed for reporting unpaid overtime

From a 56-year-old male at a Tokyo-based transport company with 40 employees: Delivery personnel received no overtime pay at all, so eight of us reported it to the Labor Standards Inspection Office. I gave my own name as representative. The president summoned me and told me I was fired for having reported the unpaid overtime.

Another example is a male at a computer company with 7,000 employees: The company has a discretionary work system in which hours are deemed to be 8:30 a.m. to 5:15 p.m., but actually there are over 100 hours of overtime a month. Because a performance-based pay system requires assessments for bonuses and wages, employees have no choice but to do the work, and willy-nilly work long hours. Can't something be done about this?

(8) Increasing seriousness of long working hours for women

Personnel cuts are making long working hours increasingly serious, and there are more consultations by women on long working hours. Many women say they are exhausted from working every day: One woman has no days off and takes the last train home every night; another works every day from 7:30 in the morning until late at night. There are also increasing cases in which women ruin their health due to continued long working hours: Some women say they have no time to visit the rest room, and have headaches and other health problems from overwork; one women says she ruined her health by staying at the company for days on end and working.

An appalling case is a women who has to respond to customers around the clock with a company-issued mobile phone even after working hours. Hence even after going home she is not completely released from work due to this slave-like employment which ties her to the company and her job during personal hours while eating, spending time with her family, and sleeping.

4. Dangerous trend toward gutting legal controls on working hours

(1) Efforts in Japan to relax restrictions on working hours

Japan's Labor Standards Act stipulates in principle eight hours a day and 40 hours a week, and as a rule it is illegal to have people work more than that. Punishment for doing so is imprisonment with labor for not more than six months, and a fine of not more than ¥300,000. However, it is permitted to have people work longer hours if labor and management enter into an agreement and submit it to the local Labor Standards Inspection Office, although employers must pay a higher wage with a premium rate that is usually 125%.

Since the second half of the 1980s the Labor Standards Act has been amended a number of times to add provisions for exceptions such as flex-time systems, variational working hours systems, discretionary work systems, and others, which has made working hours more flexible. But business dislikes the strict procedural requirements of these systems, such as entering into labor-management agreements, and it has demanded the introduction of an arrangement allowing companies to more freely work employees long overtime hours and not have to pay overtime wages.

(2) Report by the "Panel on Reconciling Work and Personal Life"

Restrictions on working hours are being relaxed, as in the easing of requirements for instituting discretionary work systems by the 2003 amendment of the Labor Standards Act.

As these changes proceed, there have been conspicuous efforts to further gut restrictions on working hours. One is the report by MHLW's Panel on Reconciling Work and Personal Life, which offers a bold proposal for changes in working hours.

Under the heading "Working without Being Bound by Restrictions on Hours Worked," the report recommends instituting a system under which an upper limit on working hours is unnecessary for certain categories of workers if the workers themselves so desire. It observes that such a system would be able to elicit workers' ambition and abilities to the maximum.

The main features of this recommendation are (1) create a system making it possible to eliminate quantitative restrictions on working hours, and (2) make it a system that incorporates the will (consent) of the workers. This is an attempt to introduce work patterns with no quantitative restrictions and no need to keep track of hours worked, assuming worker consent. In that this system would completely eliminate restrictions on hours worked by certain workers, it is similar to the so-called white collar exemption of the US. What's different is the requirement to observe what workers say they want and consent to.

At first blush the requirement for worker consent seems reasonable. The argument is, "What's the problem if the workers themselves desire this?" But restricting working hours was originally intended to be an official way to prevent overwork. It does not mean employers can work people as much as they like if the workers have consented.

Moreover, it is quite possible that "consent" will be coerced in Japanese workplaces. Britain is the only EU country with an opt-out system under which working hour restrictions are not applied if there is worker consent, as many as 30% of the workers have consented, but Britain is criticized within the EU because it is alleged that many workers were virtually forced to consent.

(3) Efforts to introduce the US white collar exemption

America's Fair Labor Standards Act (FLSA) has provisions to exempt a broad swath of workers, mainly white collar workers, from restrictions on working hours, and last August the Bush administration made a rule change that deprived still more workers of their overtime pay. This system made nearly 30% of employees ineligible for overtime pay and for protection under labor law.

The AFL-CIO and many labor unions and unorganized workers mounted a campaign opposing these changes.

Japan's government and business are scheming to import this American system into Japan. Since the 1970s they have been arguing that working hour restrictions under the Labor Standards Act should be eliminated for a certain category of workers.

A director of the business organization Nippon Keidanren testified in the Diet as an unsworn witness and said, "In terms of reinforcing competitiveness, we have to apply the [white collar] exemption to the category of workers that would make it possible for the required human resources to work enough, and to be cost effective enough to make companies internationally competitive."

This April MHLW launched the Research Panel on the Future Working Hours System, which started legislative work on expanding exemptions to restrictions on working hours.

If working hour restrictions are relaxed under present circumstances, we will see the entrenchment of long working hours, increases in death, suicide, and mental illness from overwork, and widespread nonpayment of overtime, which would cause incalculable harm to Japanese workers and their families. Further, the concentration of tasks in a few workers will

doubtless have the opposite effect of worksharing and will result in the loss of employment.

5. Conclusion

Efforts are rapidly building to weaken the restrictions imposed by labor laws and to legalize current illegal practices, instead of rectifying long working hours and unpaid overtime.

What we must envision are decent working hour regulations like those coming about in European countries. From now on we intend to put up stiff opposition to the efforts of the government and business, and to implement a campaign to develop proper working hour regulations.

日本における長時間労働、不払残業、過労死の現状と労働時間規制撤廃に向けた動き

日本労働弁護団　弁護士　小川英郎（おがわ・ひでお）

1　はじめに

日本は、先進工業国の中で最も労働時間が長い国であり、休暇は少なく、働きすぎによる過労死、過労自殺、精神障害などが急増している。長時間労働を改善し、時短を進めるとともに人間らしい労働時間規制を実現することがわが国の労働者にとっては重要かつ切迫した課題となっている。1980 年代のバブル経済の崩壊以降、長期不況に陥った経済環境のもとで、わが国の企業は、大幅な人員削減・リストラを進めた。この結果、企業内のいわゆる正社員が激減し、派遣社員、パート、契約社員など非正規雇用の労働者が急増した。現在、非正規雇用の占める割合は 3 割を超えており、今後も増加する傾向にある。企業は、正社員に対しては、少ない人員でより多くの成果を求める「成果主義賃金」制度を導入して、社員を長時間酷使し、長時間労働化に拍車を掛けている一方、非正規雇用の労働者は不安定な身分と低賃金にあえぐ、二極構造が進んでいる。

政府・経済界が目論んでいる次のステップが、さらなる労働時間規制の緩和・撤廃であり、現在、厚生労働省の「今後の労働時間制度に関する研究会」が今年 4 月に発足、検討作業を進めている。政府・財界の究極の狙いは、アメリカのように何時間働いても時間外手当を支給しなくてよい労働者（ホワイトカラー・イグゼンプション）を大幅に増やす方向での労働時間法の解体である。

このような制度が導入されると、長時間労働や過労死の問題はさらに悪化することが危惧され、また現状では労働基準法違反とされるサービス残業（賃金不払残業）が合法化されることになりかねない。また、経済のグローバル化の進展に伴い、わが国におけ

る労働条件の切り下げが、アジアの他の諸国の労働者にとっても無視できない悪影響を与えることが懸念される。

2　わが国の労働時間の現状

わが国の労働現場の特徴として、次の点をあげることができる。①ほとんどの業種・職種にわたる広範なサービス残業の存在（大企業、中小企業を問わない）、②国際的にみて非常に長い労働時間、③長時間労働による過労死、過労自殺、精神障害の多発

わが国の年間総実労働時間は近年、横ばい状態であり、統計上、1800時間を下回ったことはない。しかし、この平均は短時間勤務者も含めており、一般労働者（正社員）の労働時間は相変わらず2000時間を超えたままである。しかも、厚生労働省の統計は企業の支払労働時間に基づいて集計されているため、ここには不払残業は含まれていない。実際の労働時間は、平均で 2200 時間ないし2300時間に上ると見られている。

ILOの調査によれば、週に50時間以上働く労働者の割合は、日本が28．1%と最も多い（欧州で最も長時間労働とされるイギリスでも15．5%にすぎない。オランダはわずか1．4%である）。日本では、30代から40代の中堅労働者で週60時間以上働く者が20%以上も存在する。他方、欧州では25～30日の付与に対してほぼ完全に取得される。有給休暇については、付与日数18．0日に対し、取得率は年々低下を続け、47．4%（2003年）と過去最低を記録している。

全国の労働基準監督署がサービス残業の是正を指導して、100万円以上を支払わせたケースは、2003 年 4 月から 2004 年 3 月までで、1184 企業 19 万人、支払総額は、239 億円に上っている。東京電力が 14 億円、中部電力 65 億円、消費者金融の武富士が 39 億円など巨額の未払い残業代を支払わされるケースも相次いでいるが、これらは氷山の一角である。2003 年度の過労死の認定件数は、年間 157 件（過去 2 番目）、過労自殺が 40 件（過去 2 番目）、働きすぎが原因として認定された精神疾患も108件（過去

最高）と高水準で推移している。この中には、トヨタの設計課長が過労死したケースも含まれている。

3　相談事例から

日本労働弁護団は、労働者の権利を擁護するために活動している法律家団体であり、現在約 1400 人の弁護士が加入している。年 2 回、6 月と 12 月に全国一斉の電話相談活動を行っているほか、東京の本部では週 2 回の定例電話相談をいずれも無料で受けつけている。

2002 年 12 月初めて全国一斉110番のテーマとして「残業」を掲げたところ、予想外に残業・長時間労働の相談が寄せられ、初めて賃金未払いの相談件数が解雇の件数をはるかに上回った。それまでは常に解雇の相談件数がトップであったのに、逆転したのである。この解雇との逆転現象は驚きであった。そこで、03年6月の全国一斉110番でも、引き続き「残業」をテーマに入れて実施し、統計の取り方も「残業代不払い」と「労働時間（過重労働等）」の項目を新設して集計することにした。そうしたところ、賃金不払いの相談が計263件でそのうち残業代不払いが154件と相談種類の中で単独1位を占めた。解雇の相談が計138件であるから、それを上回ったのである。 その後の全国一斉110番でもますますこの相談傾向は強くなっている。

以下、相談事例を紹介する。

①　長時間「殺人的残業」

大手電話会社の開発企画業務係長を勤める男性（３６歳）からの相談で、「上司の異常な業務指示により、月５００時間の労働時間が２年以上続いた。平日のうち２日は徹夜で勤務し、残りの３日は深夜３時までの勤務をし、土曜と日曜にはそれぞれ１０時間勤務であった。上司に改善を訴えても全く取り合ってもらえず、うつ病になってしまって、現在休職中である。」というすさまじい長時間労働の相談があった。

② チェーン店少数正社員過酷労働

大手珈琲ショップチェーン勤務の２６歳男性の父親からの相談で、「連日午前５時に出社し、深夜１時過ぎに帰宅する。労働時間は１日１６時間で、休日出勤を除いても一月２４０時間を越える勤務している。正社員は店長と自分の２名しかおらず、あとはアルバイトしかいない。ローテーション勤務体制の穴埋めは全て店長と息子がしなければならず、休憩時間もなく働きづめである。体調を壊して下血している。入社後２、３年で店長になれるが、使い捨てのようなもので、皆あまりの仕事のきつさに辞めてしまう。こんなに長時間の残業をさせられているのに残業代は一切支払われていない。」こちらも同じように過労死寸前の長時間労働である。

③ 破談残業

エンジニアリングの会社に勤務する技術職の男性（４０歳）の母親からの相談で、「平日は深夜０時か１時まで仕事をして、１０年前から土日にも出勤するのが当たり前の生活を続けている。風邪を引いても医者に行く時間すら作れず、倒れて救急車で運ばれてやっと病院に行けるという実態。縁談をしても、絶えず睡眠不足でデート中に居眠りをしてしまって何回も破談になり、結婚もできない。息子が会社に苦情を言うと、「代わりの技術者を補充することはできない。嫌なら辞めてもらうしかないな。」と上司に脅されて、それ以降は何も文句をいえない状態が続いている。

④ 労働時間管理懈怠、定額残業代

従業員十名未満の玩具卸問屋勤務、運転手・荷物配送係りの正社員男性（３９歳）の妻からの相談。数ヶ月前に退職したが、残業代が支払われておらず、毎月１００時間以上の残業で、自分で計算すると２年間約４６０万円になる。ところが、会社は月額６万７０００円の固定残業代しか支払っていない。こんなに残業させているのに、会社は従業員の労働時間の管理を怠っており、タイムカードもない。

⑤ 中高年のリストラ残業

製紙会社正社員男性（５１歳）の妻からの相談。昨年それまでの工場勤務から事務職へ配転されたことで、パソコンを使用する業務となった。今までパソコンなど使ったことがないので、毎日残業続きで、夜９時ころ帰宅し、午前２時に起きて、持ち帰り残業をやっている。毎朝出勤は６時半。土日も出勤している。とても体がもたないので、夫は仕事をやめたいと言っている。上司からは、衆人環視の元で、仕事が遅いと責められる。お昼休みも取らせてもらえない状態であり、何とかならないか。

⑥ 人員不足の長時間過重労働

ガス供給事業会社勤務、特殊大型車両運転手正社員労働者（４１歳）の妻からの相談。一県全域を一人でカバーし、アパートや住宅など一月に２００箇所以上回っており、件数が増えている。一人ではとても対応できないので、運転手を増員してほしいといっても認めてくれない。毎朝６時半に自宅を出て、夜９時から１０時に帰宅して、いつも疲れて眠いと言っている。土曜日も出勤している。３ヶ月で１０キロも痩せた。いつもイライラして体調不良であり、事故を起こしたり、過労で倒れるのが心配である。長時間労働を止めさせるためには、どうすればよいか。

⑦ 申告したら解雇された事例

運送会社（東京）、従業員４０名、５６才男性からの相談。配送員に残業代が一切支払われないので、８人で労基署に申告した。代表者として自分が氏名を挙げた。社長に呼び出されて、解雇通告を受けた。理由は、残業代の申告をしたことだと言われた。

⑧ コンピューター会社、７０００人、男性。裁量労働制が採用されていて８時３０分から午後５時１５分までとみなされている。実際には、毎月１００時間を超える残業になっている。成果主義賃金制度のもとでボーナスや賃金の査定があり、仕事をやらざるを得ない。否応なく長時間労働を強制されている。この状態をなんとか改善できないか。

⑨ 女性の長時間労働の深刻化

人員削減による長時間労働化が深刻であり、女性労働者からの長時間労働の相談例が増えている。休日もなく連日終電という相談例や午前７時３０分から深夜まで連日勤務で、毎日くたくたになるまで働いているといった例は多い。また、トイレに立つ暇もなく、過労で頭痛など健康不良を訴えるとか、会社に連日泊まり込んで勤務して体を壊したという例など長時間連続勤務で体調を壊したという相談が増加している。

酷いのは、２４時間顧客に対応するということで、会社貸与の携帯電話で終業後も電話で対応するよう指示されているという相談例があるが、これは会社での勤務が終わって帰宅しても、仕事から完全に解放されず、食事時間も、家族との団らんも眠る時間もすべての生活時間が仕事と会社に拘束されているという奴隷のような就労形態である。

4 労働時間法解体へ向けた危険な動き

(1) わが国の労働時間規制緩和の動き

日本の労働基準法の原則は、1日8時間、週40時間労働であり、これを超えて働かせることは原則として違法となり、処罰の対象とされる(懲役6ヶ月以下、30万円以下の罰金)。しかし、例外として、労使協定を締結して所轄の労働基準監督署に届け出ることによって、この規制を超えて働かせることが許容される。ただし、この場合は、使用者は割増賃金を支払わなければならない(割増率は通常125%)。

1980年代後半以降、労働基準法は相次いで改正され、フレックスタイム制、変形労働時間性、裁量労働制などの例外規定が設けられ、労働時間の弾力化が進められた。しかし、経済界は、これらの制度について労使協定の締結などの手続要件が厳格であることを嫌って、もっと自由に長時間残業をさせて、しかも残業代を支払わなくてもすむ制度を導入するよう要求してきた。

(2) 仕事と生活の調和に関する検討会報告について

２００３年度の労基法改正によって裁量労働制の導入要件の緩和がなされるなど、労働時間規制の緩和が進められる中、労働時間規制をさらに骨抜きにしようとする動きが目立ってきた。その一つが、厚生労働省が設置した「仕事と生活の調和に関する検討会」の報告であり、労働時間のあり方について、大胆な改革案を打ち出している。

報告書は、「労働時間規制にとらわれない働き方等について」として、一定層の労働者にたいしては、本人が希望するならば、労働時間の上限規制は必要がないとする制度を導入すべきであると提言した。そうすることによって、働く者の意欲・能力を最大限に発揮させることができると指摘する。

上記提言のポイントは、まず、①労働時間の「量的規制」を撤廃することを可能とした制度を構築し、②そこに労働者の意思（同意）を反映させる制度を作るという点にある。労働者の同意を前提として、量的規制を受けず、しかも労働時間管理も不要な働き方を模索するというものである。これは、一定の労働者に対して労働時間規制を完全に外してしまうという点で、いわゆるアメリカのホワイトカラー・イグゼンプション類似の制度といえる。ただし、労働者の希望や同意を要件とする点がアメリカの制度とは異なっている。

労働者の同意という要件は一見、合理的に見える。「本人が希望するならいいではないか」という議論である。しかし、労働時間規制は、本来、労働者の働きすぎを防止するという公的な規制でもあり、本人が同意したからいくら働かせてもよいということにはならない。

しかも日本の労働現場では、「同意」が強制される可能性は高い。ＥＵで唯一、同意によって労働時間規制の適用を受けないオプト・アウトという制度を採用している英国では、３０％もの労働者が同意をしているが、そのうちの多くが事実上強制されたものであるとして、ＥＵ内部で批判を浴びている。

(３) アメリカのホワイトカラー・イグゼンプション導入に向けた動き

アメリカの公正労働基準法（ＦＬＳＡ）は、ホワイトカラー労働者を中心に広範な労働者を労働時間の適用除外とする規定を設けており、ブッシュ政権は昨年８月、さらに多くの労働者から残業代を奪う規則改正を行った。この制度のもとでは、被用者の3割近くが残業代の支払い対象からはずされ、労働法の保護を受けることができない。

これらの動きに対しては、ＡＦＬ－ＣＩＯをはじめ、多くの労働組合や未組織の労働者が反対運動を展開した。

日本の政府・経済界は、このアメリカの制度を日本に輸入しようと目論んでおり、1,970年代から一定層の労働者に対しては、労働基準法の労働時間規制を撤廃すべきであるとうい主張がなされてきた。

日本経団連のある理事は、国会で参考人として発言し、「競争力強化という面から、必要な人材が十分に働けて、かつそれが国際的に競争できる、コスト面で見合うような範囲、そういう層までエグゼンプション制度の対象とすべき」と述べている。

そして、今年の4月に厚生労働省は、ついに「今後の労働時間制度に関する研究会」を立ち上げ、適用除外の拡大に向けた立法作業に本格的に着手した。

もし、現状のままで労働時間規制が緩められるならば、長時間労働の固定化、過労死、過労自殺、精神障害の増加、不払残業の蔓延がさらに進み、わが国の労働者とその家族に計り知れないダメージを与えることになるだろう。また、一部の労働者に業務が集中することによって、ワークシェアとは逆の効果を生み、雇用自体も失われていくに違いない。

5　最後に

わが国の労働現場における長時間労働、不払い残業の実態を改善することなく、単に労働時間法の規制を緩和して、違法な現状を合法化しようとする動きが急速に強まっている。

わたしたちは、むしろ、欧州各国で実現しつつある人間らしい労働時間規制をこそ展望すべきであり、今後、政府・財界の動きに強く反対するとともに、あるべき労働時間規制を構築するべく運動を展開していくつもりである。

Oppression on Labor Unions in Japan

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Japan Confederation of Railway Workers' Unions

The world is changing drastically after September 11, 2001. The U.S. President George W. Bush has continued murder and destruction in Iraq saying "War on Terrorism", and oppressed human rights and labor rights all over the world. We have the same situation here in Japan under the Koizumi Administration. Here we disclose the reality of the oppression on human rights and labor rights in Japan and call on all the people to fight together in order to preserve peace, democracy and human rights.

1 JR Urawa Electric Depot incident

On Nov.1, 2002, the Tokyo Metropolitan Police Department (hereinafter referred to as MPD) Public Safety Bureau suddenly arrested seven union members who belong to JR Urawa Electric Depot in the capital sphere and are members of the Japan Confederation of Railway Workers' Unions (hereinafter referred to as JRU). The seven members fell under suspicion of "compulsion". They allegedly threw their co-worker from JRU and forced him out of work.

The MPD, then, searched 65 places of union offices and union officers' residences, and seized 1096 items. Items seized included many totally unrelated goods such as name lists of union members, union account books, mobile phones, books and magazines, etc.

The seven members were indicted and detained for 344 days. They were restricted to see their family in the early several months of detention. After 344 days in jail, they were finally bailed out. They kept refusing to admit to the crimes of which they knew nothing. They gave priority to solidarity as unionists instead of personal interest.

Two years and a half have passed since trial started, and the court marked the 33rd trial as of today. It is projected to take one more year before closing the case because of interference of the prosecutors. The seven members unable to return to work have been fighting in the court supported by JRU members.

2 Tokyo Station incident

On Jun.12, 2003, when three officers of JRU were distributing leaflets at Tokyo Station to protest unreasonable conversion of work position by the management, the managers came to watch it. The MPD searched 18 union offices and union officers' residences and seized 538 items for alleged violence against the managers. The three members were not arrested, but they were called out to the MPD for questioning many times over two years.

The indictment was waived on Mar. 16, 2005. The MPD and the Tokyo District Public Prosecutors' Office avowed that was not a violent case. However, the MPD hasn't returned 22 of the confiscated items in this case, and reseized them on the previous day of their decision on waiving the indictment without clarifying the reasons.

3 Trespass case

On Jun.12, 2003, five members of JRU were arrested during putting union-made flyers into the mailboxes of the complex housing, and were hauled to the police office. After investigation they were released. But three months after this, union offices and union officers' residences were searched and 1211 items were seized. The five members have not been indicted.

4 Background of the oppression

After 9.11, on Oct.7 2001, the U.S. President George W. Bush launched the "retaliatory war" against Afghanistan, and then he started military invasion of Iraq, in March, 2003, because "It possesses mass destruction weapons." In response to the United States, Japan dispatched the Japan's Self-Defense Forces(SDF) to the combat area for the first time after World War II. The SDF is stationed in the Middle East at present. This is not only a violation of Japan's Constitution that bans military operation but also a deviation from geographical constraints stipulated in the Japan-U.S. Security Treaty

JRU has called on other labor unions and citizen groups to fight together against both war and terrorism, and provide assistance to Afghan refugees. A series of oppression aims destruction of a labor union that stands opposed to war.

5 ILO recommendation and Warning Letter by the Japan Federation of Bar Associations (hereinafter referred to as JFBA)

In addition to appeal to the public, JRU filed a complaint to the Committee on Freedom of Association of ILO and JFBA, Human Right Protection Committee. We

also launched a legal action for State Liability for Compensation.

In consequence ILO issued recommendations (ref. Exhibit 1) in November, 2004 that told the Government to abstain from oppression on JRU. Then JFBA issued a warning letter (ref. Exhibit 2) to the Commissioner of Police of the Metropolis writing "it is highly probable that this search and seizure constituted a breach of Article 35 of the Constitution (ref. note 1) and Article 17-1 of the International Covenant on Civil and Political Rights (ref. note 2)."

6 To create solidarity seeking "Peace, Human Rights and Co-existence" in Asia-Pacific region

Greedy globalization is widening the gap of North and South and that of rich and poor, and leads to destruction of peace, human rights and environment. I wish we can create solidarity for "Peace, Human Rights and Co-existence" in Asia-Pacific region by sharing challenges through discussion in this conference.

note 1 "Article 35 of the Constitution"

The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33. 2) Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

***note 2** "The United Nations, International Covenant on Civil and Political Rights Article 17-1"

1, No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Exhibit 1

CASE NO. 2304
REPORT IN WHICH THE COMMITTEE REQUESTS TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Japan presented by the Japan Confederation of Railway Workers' Unions (JRU)

Allegations: The complainant alleges that on the pretext of certain minor incidents, the police conducted massive operations against the complainant and its affiliates, including the arrest of seven trade union officers and members and their detention for ten months, searches of 134 trade union premises and residences of trade union leaders, and confiscations of 2,757 items of trade union property, thus seriously impeding the complainants activities and undermining its image to society

C. The Committee's conclusions

1010. The Committee notes that this case concerns allegations that on the pretext of certain minor incidents, the police conducted massive operations against the complainant and its affiliates, including the arrest of seven trade union officers and members and their detention for ten months, searches of 134 trade union premises and residences of trade union leaders, and confiscations of 2,757 items of trade union property, thus seriously impeding the complainant.s activities and undermining its image to society.

1011. The Committee observes that one trade union officer and six members of the JREU which is an affiliate of the complainant (Kunio Yanaji, a full-time union worker, and Satoru Yamada, Jyun-ichi Uehara, Shuichi Saito, Kakunori Oguro, Tomio Yatsuda, Keiitsu Ohma who are trade union members), have been indicted for the crime of coercion on the ground that, from 21 January until around the end of June 2001, they intimidated a member of their union 14 times, thus making him secede from the union on 28 February 2001 and resign from his job in the East Japan Railway Company on 31 July of the same year. According to the Government, the victim submitted an incident report to the Metropolitan Police Department (MPD) with regard to the alleged coercion on 11 February 2002. The MPD arrested the defendants on 1 November 2002. The

arrest was based on a judicial warrant. According to the Government, there was a need to arrest the defendants in that they had committed such an organizational, cunning and atrocious crime that there was a reasonable cause to strongly suspect that they might destroy, conceal or alter evidence unless they were arrested.

1012. The Committee also observes that the defendants were arrested on 1 November 2002, detained on 3 November 2002 and released on 10 October 2003; thus, they remained in detention more than 11 months. Requests for bail were dismissed on the grounds of the possibility of destruction of evidence and escape. The Committee notes that according to the Government, preventive detention is subject to a general two-month limit established by law. Any extension beyond the two-month limit must be accorded every month on the basis of a court decision stating the concrete reasons thereof. The Committee notes that the reasons put forward in this case for extending the detention for an additional nine months were according to the Government, the connection between the position of the defendants and the persons involved in the case, the substance of the court hearings and the attitude of the defendants in response to this case. In particular, the Government emphasized that if the defendants were released on bail at the stage when the examination of the chief and deputy chief of the Urawa Train Depot was scheduled, there was a reasonable cause to suspect that the defendants would conspire or exert influence upon the persons related to the case in order to destroy or alter evidence. The Committee notes that, apparently for the same reasons, the seven defendants were prohibited from communicating with anyone except their family members and their attorneys, so that they could not have any contact with other trade union officers and members. The Committee further notes that the trial of the seven defendants is currently under way at the Tokyo District Court. The complainant seeks their acquittal by arguing that the crime of coercion does not apply to the facts of their case.

1013. The Committee recalls that, in general, measures of preventive detention may involve a serious interference with trade union activities which can only be justified by the existence of a serious situation or emergency and which would be open to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period [see Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 85]. The Committee notes that in this case, even though the preventive detention exceeded the general two-month limit established by law, each extension was decided in the framework of a judicial procedure. The Committee takes

note of the fact that the seven trade union officers and members accused of coercion have now been released while their trial is under way at the Tokyo District Court. It requests the Government to keep it informed of the progress of the judicial proceedings and to communicate the final judgement once rendered.

1014. The Committee takes note of the Government's statement that, in order to investigate this crime after the seven defendants were arrested and detained, 72 trade union premises and residences of trade union members and officers were searched and 1,870 items were seized, in accordance with warrants issued by the Courts. The Committee observes that the searches continued in 2003 in response to two incidents. On 12 June 2003, the police searched, according to the Government, 35 premises including the residences of the complainant.s president, two vice-presidents and the secretary-general, and seized 1,039 items. This action was taken in order to investigate an incident which had taken place one year earlier, on 21 June 2002, and which was prosecuted on the basis of the Law on Punishment against Violent and Other Acts. The Committee takes note of the information provided by the Government concerning the incident between members of the JR Toukai Union and a supervisory employee of the JR Toukai Company. Moreover, the Committee notes that in September-October 2003, the police searched 63 premises and seized 1,251 items in the process of investigating a case of trespass which, according to the Government itself, involved very small damage. The incident concerned 11 trade union members who left fliers calling for the release of the seven defendants in the mailboxes of apartment buildings in Tokyo without the permission of the residents or janitors.

1015. The Committee notes that according to the complainant, the searches were conducted on the basis of judicial warrants which were overly comprehensive, ordering the seizure of all sorts of items concerning the formation, history, principles, doctrine, policy, organizational structure, activities and finance of the JRU, items which according to the complainant were totally unrelated to the allegations. The items seized allegedly included lists of union members, accounting books, documents related to trials, legal action documents, computers, mobile phones, pocketbooks, files, books and magazines. The seizure of these items had, according to the complainant, a negative impact on its daily trade union activities. In particular, the confiscation of trial-related materials hindered its efforts to defend its members in court. According to the Government, the wide range of places and items listed in the warrants were justified by the fact that the law enforcement agencies had to rely on statements of a limited number

of eyewitnesses and find facts by carefully and widely collecting evidence and examining it closely. All searches and seizures were conducted after a strict judicial examination by a judge in accordance with the related prescriptions of the Code of Criminal Procedure and were completely legitimate and proper while the MPD returned promptly the seized items to their original possessors when they turned out to be less related to the case and less necessary for proving the case than the MPD initially believed. The Committee also notes that with regard to the case of trespass, the Government indicates that the seized items still in custody are to be returned soon, as their examination has been completed.

1016. While taking due note of the fact that the searches took place on the basis of a judicial warrant, the Committee notes that the Government has not specified the grounds on the basis of which the Courts ordered the search of premises other than the domicile of those accused of the crime of coercion, thus ordering the search of a large number of trade union offices and residences of trade union officers and members who were not indicted. The Government has also not indicated the reasons why the seizure concerned not simply items related to the offences under investigation, but also anything related to the internal functioning of the complainant trade union (JRU). The Committee recalls that the defendant in this case is not the JRU but seven of its officers and members who are, moreover, accused on the basis of ordinary criminal law. The Committee recalls that any sentences passed on trade unionists on the basis of the ordinary criminal law should not cause the authorities to adopt a negative attitude towards the organization of which these persons and others are members [see Digest, op. cit., para. 66]. This is all the more so in this case where sentences have not been pronounced yet and the procedure is still at the stage of the examination of evidence. Moreover, the Committee recalls that it has drawn attention to the importance of the principle that the property of trade unions should enjoy adequate protection. With regard to searches of trade union premises, it is stated in the resolution on trade union rights and their relation to civil liberties, adopted by the International Labour Conference at its 54th Session (1970), that the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights [see Digest, op. cit., paras. 184 and 204]. Noting that the searches and confiscations against the complainant trade union and its members have apparently ceased, the Committee requests the Government to take all necessary measures in order to ensure that any remaining confiscated items which do not have a direct connection to the facts of the case are immediately returned to the complainant and to keep it informed in this

respect. It also requests the Government to ensure that the judicial procedures under way do not interfere in the free exercise of trade union activities.

1017. The Committee further notes that according to the complainant, the police caused great damage to its social reputation by making a one-sided announcement to the media in which it mentioned the involvement of extremists in the union, an accusation which is not even mentioned in the bill of indictment. The Committee notes that in answer to this allegation, the Government indicates that: (1) according to the indictment, the seven trade union officers and members are accused of having made verbal threats by using, among other things, the phrase .I am a member of the Kakumaru sect.; (2) this sect is the most powerful of all the ultra-leftist violent groups in Japan and gave rise to a number of terrorism and guerrilla incidents in the past; (3) at present, the sect has deeply infiltrated the complainant and its affiliate JREU while one of the defendants in this case is a member of the sect; (4) the abovementioned announcement is not illegal as it related to matters of public interest and the police had reasonable cause to believe it true even if it does not prove to be true in the end; (5) the relationship between the complainant, the JREU and the Kakumaru sect has been publicly known from the investigation of past cases and had already been revealed in statements by the Director of Security Bureau, National Police Agency in the Diet in November 2000 and February 2001; and (6) several newspapers had reported the content of former government statements on this issue in December 2000.

1018. With regard to the Government's comments, the Committee observes that the alleged infiltration of the complainant by the Kakumaru sect is not included among the accusations contained in the indictment and that therefore, the Court is not requested to pronounce itself on this issue. The Committee considers that the police should abstain from any declaration which might damage the reputation of a trade union as long as the matters in question have not been confirmed by the judicial authorities.

The Committee's recommendations

1019. In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:

(a) The Committee takes note of the fact that the seven trade union officers and members accused of coercion have been released while their trial is pending at the Tokyo District Court. It requests the Government to keep it informed of the progress of the judicial proceedings and to communicate the final judgement once rendered.

(b) Noting that the searches and confiscations against the complainant trade union and its members have apparently ceased, the Committee requests the Government to take all necessary measures in order to ensure that any remaining confiscated items which do not have a direct connection to the facts of the case are immediately returned to the complainant and to keep it informed in this respect. It also requests the Government to ensure that the judicial procedures under way do not interfere in the free exercise of trade union activities.

(c) The Committee considers that the police should abstain from any declaration which might damage the reputation of a trade union as long as the matters in question have not been confirmed by the judicial authorities.

Exhibit 2

Go Kajitani
President
Japan Federation of Bar Associations

Ref: No114

28 March 2005

Warning Letter

Masuo Okumura
Commissioner
Tokyo Metropolitan Police Department

Consequent upon our examination into a complaint of human rights violation presented by the Japan Confederation of Railway Workers' Unions (hereinafter referred to as JRU), the Japan Federation of Bar Associations issues the following warning to your department.

(1) Content of the warning

Regarding the case of alleged coercion by the seven suspects including Kunio Yanaji, which occurred at JR Urawa Electric Train Depot of East Japan Railway Company (hereinafter referred to as JR-East), your department carried out domiciliary searches at a total of 64 spots in six prefectures of Kanto and confiscated a total of 1094 items there on 1, 6, 9, 12, 14 and 17 November, 2002. Though this case took place at a union facility in JR Urawa Electric Train Depot, the 64 searched locations included not only the East Japan Railway Union (hereinafter referred to as JREU) Omiya District Headquarters to which above-referenced suspects belong and its sub-branches, but also 7 JREU offices in Tokyo, Yokohama and Odawara, 3 company facilities including a conductors' depot, and residences, bodies and lockers of officers belonging to the Central Headquarters and Tokyo District Headquarters of JREU. The 1094 items included 14 accounting documents, 96 lists of JREU officers, 11 documents related to the Peace Constitution League (Kyujoren), 22 documents related to the monthly magazine *Shizen to ningen* (Humans and nature), and 33 items such as videotapes and documents relating to QC activity and OJT. However, it seems that searches of the Omiya District Headquarters of JREU and its sub-branches, and the above-mentioned 14 JREU accounting documents that were seized, had little relevance to the alleged coercion, and it can be surmised that this search and seizure aimed not to establish the allegations but rather to investigate the complainant trade union's organization and gain an understanding of its activities. Thus, it is highly probable that this search and seizure constituted a breach of Article 35 of the Constitution and Article17-1 of the International Covenant on Civil and Political Rights.

Therefore we warn your department not to infringe upon fundamental human rights by conducting searches and seizures in breach of the above-mentioned Article 35 of the Constitution and Article17-1 of the International Covenant on Civil and Political Rights.

(2) Reasons for the warning

Described in the enclosed report.

Exhibit 3 Opinion from an academic

The bonds of fellowship withstanding crackdown on the union

Abridgement of the comment on the Urawa Electric Train Depot Incident

Makoto Kumazawa(*1)

Point 1:

Through reading the document and the record of round-table talk by detained seven union members, I got the impression that this case is nothing but a repression on the trade union activities under the pretext of violation of criminal code. This is the essence, I think.

Long ago in 1871 the Trade Union Act was enacted in England, which settled the immunity deal of restraint on bargaining in labor market. But at the same time, the authorities revised the criminal code in order to prohibit the union from dealing with those who didn't participate in union activities... Trade unions started a protest movement, and at last in 1875 they succeeded in amendment. In the new legislation, the first principle that "When one person is acquitted of a criminal charge, unions or groups are also acquitted" was approved. This is the fundamental rule of the immunity from prosecution for trade union activities.

From this view point this case is a backlash that ignored this 130-year-old fundamental rule. This case can therefore only be called a repression on the trade union activities.

Point 2:

No one doubts Compulsion (*2) can not be applied to this 'incident'. I think it is obvious in this case. The accused seven workers didn't hit or kick, did nothing like what could be called 'assault' at all.

To see the matter a little more specifically, the trial record shows the 'victim', Mr. Yoshida was free to walk off from the meeting held to pursue the issue. The meeting was considered polite enough to have some workers among the participants freely make speeches in defense of Mr. Yoshida. I don't think the 'incident' constitutes a crime of Intimidation or Compulsion...

We know workers are coerced into retirement in a cruel way like a bullying by the management which is now promoting restructuring. In West Japan Railway many workers have been pushed to suicide by bullying, and one such case is now being fought in court...

Point 3:

Criminal Procedure Law of Japan has been criticized in that, unlike Western and other countries, it has insufficient regard for human rights. I am an outsider of regarding law, however, I cannot help but be angry about the disregard for human rights in this 'incident' after reading the document and the record of round-table talk. Arrest on such a trivial charges, expanded domiciliary search and long interrogation is a method often used by "special political police"(*3). (I heard it is a matter of common knowledge in advanced nations that interrogation is limited to one or two hours at one time at the longest.) In addition, the visiting rights were denied over long periods, and the seven members were detained in jail for 344 days. Could we say this is normal? I thought we should appeal to public opinion, especially to judicial circles at least about this legal status. It is a big problem that this cruel treatment is ignored and left unresolved by lawyers and judicial circles.

Point 4:

Relevant to the fabrication of the 'crime', the next problem is government side propaganda such as "JRU is KAKUMARU(*4)". Maybe prosecutors know it is difficult to apply the crime of Compulsion to this case. So to back up this they are using propaganda. They stir up such superficial 'public sentiment' as "KAKUMARU is a violent extremist, hence every possible means including rough treatment can be mobilized to control them". With the aid of the 'public sentiment' like this, the authorities have fabricated the 'incident'. This is the most disgusting of all.

Since this 'incident' was not covered in Kansai area(*5), I don't know whether the media take an unbiased and objective stance or not. But I can say that the attitude of media who pass over the political repression using the superficial 'public sentiment' undermines democracy.

In short, there is no doubt that all the process of this 'incident' is a kind of trap. Everyone gets suspicious why the 'incident' was investigated by the Public Safety Bureau of the Tokyo Metropolitan Police Department (*6), not by Saitama Prefectural Police Department under the jurisdiction, or if Mr. Yoshida filed a suit of his own free will. In addition, as is emphasized again and again in this book (*7), the Public Safety Bureau started investigation before Mr. Yoshida's complaint was filed...

Point 5:

When I read the record of the round-table talk, I could understand JRU keeps a tradition to cultivate equal and democratic relationship between workers, and a warm

camaraderie has grown on that.

Unionized workers of any country always tell their workmates "Not to betray your fellows." Workers in general were not born with class consciousness. When they can't make a living, they instinctually wish to enjoy the favor of Capital and the power to maintain their lives. So workers have organized unions, and made appeals to each other at all times: "Don't betray your fellows" or "Let's protect our lives and rights".

A typical example was the case of workers in England. The idea: "A scab is much worse than a thief" was built up. Miners in England staged a strike for one year from 1984 till 1985. (It was not reported in Japan. At that time labor movement in Japan started to deteriorate.) Miners said in their workplaces: "Going beyond the picket line means going beyond the borderline of the class"...

* * *

This is the historical incident for the seven workers. Seven workers, you all are tellers of the hard-to-find experience. Please live your life in solidarity with your union fellows in your workplace. And if the seven workers were pronounced guilty, and if they were subject to punishment of the management, or dismissed in disgrace, your union should be energized and ready to launch a counterattack with a strike. This is my opinion.

*1 **Makoto Kumazawa:** A professor of Konan University. Japan's most insightful contemporary labor analyst. An author of *"Portraits of the Japanese Workplaces: Labor Movement, Workers and Managers"* (translated by Andrew Gordon and Mikiso Mane, Lightning Source Inc 1996)

*2 **crime of Compulsion:** "Those who threaten a person through a notification of imposing harms to one's life, body, freedom, honor or property, or force a person to do non-obligatory matters or hinder a person from exercising one's right through violent means shall be sentenced to prison to no more than three years (Criminal Law, Article 223)

*3 **special political police:** In Japanese, TOKKO. Political police organized in the era of Empire of Japan based on Maintenance of Public Order Law. Union or party leaders, academics or journalists who opposed the aggressive war were detained, tortured and executed by the police.

*4 **KAKUMARU or Japan Revolutionary Communist League- Revolutionary Marxist Faction:** A leftist group of Trotskyist in Japan. In the era of Japan National Railways it used to have a certain degree of leverage over railway workers. But now it has carried no weight among them. Japanese government has repeated KAKUMARU is infiltrating into JRU in its campaign, and tried to justify oppression on the union saying

this is a regulation for the extremist group.

*5 **Kansai area:** Western area of Japan. Prof. Kumazawa lives in Kansai area.

*6 **Second Public Security Division:** One section of security police in the Tokyo Metropolitan Police Department that takes charge of trade unions. JR Urawa Electric Train Depot is not in Tokyo, but next to it, in Saitama prefecture.

*7 **this book**: Shujiro Yanagihara ed. *Seven Railway Workers detained 344 days* (Hakujunsha 2004); This comment is included in this book.

미발표논문

Karoshi(deash from overwork) and Karojisatsu(suicide from overwork)

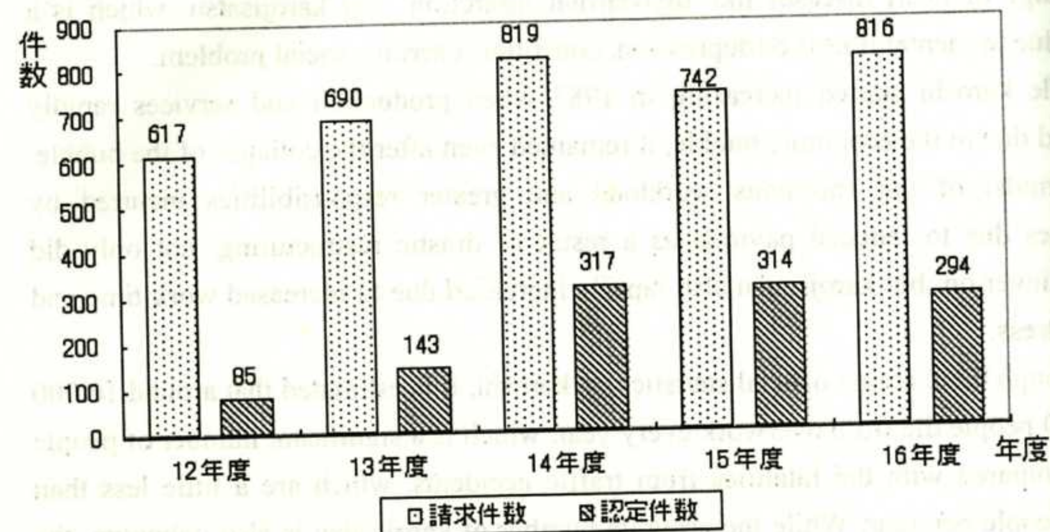
Lawyer Yutaka Iwaki

1 Current State of Karoshi (death from overwork) and Karojisatsu (suicide from overwork) in Japan

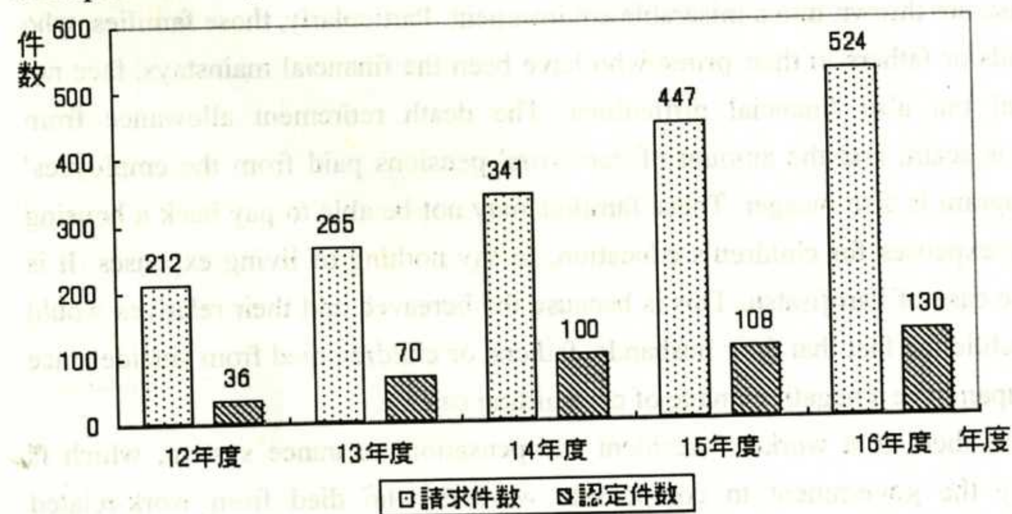
(1) In Japan, karoshi, which is death from cerebrovascular diseases like subarachnoid hemorrhage or heart diseases like myocardial infarction, and karojisatsu, which is a suicide due to mental illness or depression, constitute a serious social problem.
(2) While karoshi started increasing in 1987 when production and services rapidly expanded due to the economic bubble, it remained even after the collapse of the bubble. In the midst of the enormous workload and greater responsibilities incurred by employees due to reduced payrolls as a result of drastic restructuring, not only did karoshi linger on, but karojisatsu also rapidly increased due to increased work time and mental stress.
(3) Although there are no official statistics on karoshi, it is estimated that around 10,000 to 20,000 people die from overwork every year, which is a significant number of people when compared with the fatalities from traffic accidents, which are a little less than 10,000 people per year. While the accurate number of karojisatsu is also unknown, the number of suicides consecutively marked over 30,000 in the past six years in Japan, and it is estimated that there must be 2,000 to 3,000 karojisatsu, considering the reasons for these suicides, such as economic problems, and the number of suicides committed in the workplace.
(4) The surviving families that suddenly lost beloved husbands or fathers due to karoshi or karojisatsu are thrown into a miserable environment. Particularly, those families, who lost husbands or fathers in their prime who have been the financial mainstays, face not only mental but also financial difficulties. The death retirement allowance from companies is scant, and the amount of survivors' pensions paid from the employees' pension program is also meager. These families may not be able to pay back a housing loan or pay expenses for children's education, to say nothing of living expenses. It is worse in the case of karojisatsu. This is because the bereaved and their relatives would not make public the fact that their husbands, fathers, or children died from suicide since people in Japan have a negative image of committing suicide.
(5) In Japan, there is a workers' accident compensation insurance system, which is managed by the government to compensate workers who died from work-related

accidents. Although the government compensates karoshi and karojisatsu as work-related accidents, if these cases fulfill the predetermined certification criteria, not many bereaved families apply for it. Nevertheless, the number of applications and certifications is increasing as the figures below show.

<Figure 1> Changes in the number of work-related compensation applications and certifications involving cerebral and heart diseases (including those not culminating in death)



<Figure 2> Changes in the number of work-related compensation applications and certifications involving mental disorders (including onsets of a mental disease and attempted suicides)



2 Background of Karoshi and Karojisatsu

Reasons for the drastic increase in karoshi and karojisatsu are as follows:

1. As mentioned above, the work environment surrounding workers is deteriorating due to the current lingering recession;

2. The influence and leadership of labor unions that are supposed to protect the working conditions of workers are declining due to decreasing union membership;

and 3. Failure to fully observe the Labor Standards Law since the law that specified the minimum work conditions for workers has been relaxed and unpaid overtime work cases, the so-called service overtime work, have been left unattended.

3 Efforts on the Part of Lawyers

Lawyers in Japan have supported the bereaved victims of karoshi and karojisatsu with their applications for the workmen's compensation by establishing a karoshi hotline and the National Defense Council for Victims of Karoshi in 1988. Moreover, we have filed administrative lawsuits, such as a suit against the head of the relevant labor standards supervision office for not certifying karoshi as work-related accidents, damage suits against companies responsible for karoshi, and criminal complaints and indictments against companies for the violation of the Labor Standards Law. These efforts have led to an increase in the winning of cases at district and high courts, and finally in March 2000, the Supreme Court made an unprecedented ruling on the Dentsu case, where a 24-year-old young man committed suicide at his workplace after long hours of work, as follows: "Since it is widely known that if workers accumulate excessive fatigue or mental stress due to continued long hours of work, it may damage their physical and mental health, when employers assign duties to employees and manage them, they are obliged to ensure that the excessive accumulation of fatigue and mental stress associated with work will not damage the physical and mental health of workers." The court decision clearly showed the legal conscience of Japan. Drawing on this court ruling, we, Japanese lawyers, intend to further intensify our efforts toward the relief and prevention of karoshi and karojisatsu.

과로사・과로 자살문제에 대하여

1 일본에 있어서 과로사・과로 자살의 현상

(1) 일본에서는 지나치게 일을 해서 뇌동맥류 파열 등 뇌혈관 질환이나 심근경새 등 심장 질환을 발증하여 사망하는 「과로사」, 우울증 등의 정신 질환을 발증하여 자살하고 마는 「과로 자살」의 두 가지 현상이 큰 사회문제로 되어 있습니다.

(2) 과로사는 거품 경제가 되어 생산이나 서비스가 팽창한 1987년쯤부터 증가하기 시작했습니다. 그런데 거품 경제가 붕괴하여도 과로사는 없어지지 않아 도리어 구조조정에 의하여 적어진 노동자들이 다대한 노르마와 책임을 받게 되어서 그들에게 주어진 노동 시간의 증가에 따라 커진 정신적 스트레스로 과로사뿐만 아니라 과로 자살도 격증하였습니다.

(3) 과로로 죽은 사람의 수에 대해서 공식적인 통계는 없지만 1 ~ 2만명은 있을 것 같다고 말합니다. 교통사고의 사망자 수가 매년 1만명 빠듯이라서 과로로 죽은 사람들은 그것을 훨씬 넘는 수라고 할 수 있습니다.

과로 자살에 대해서도 정확한 수는 모르지만 일본에서 최근 6년 연속으로 자살자가 해마다 3만명을 넘었는데 그 자살자 중 「경제 문제」가 자살의 원인・동기로 된 사람이나 직장에서 자살한 사람의 수 등을 경찰의 통계에 의하여 고려하면 과로 자살로 사망한 사람은 2000 ~ 3000명은 있지 않을까 싶습니다.

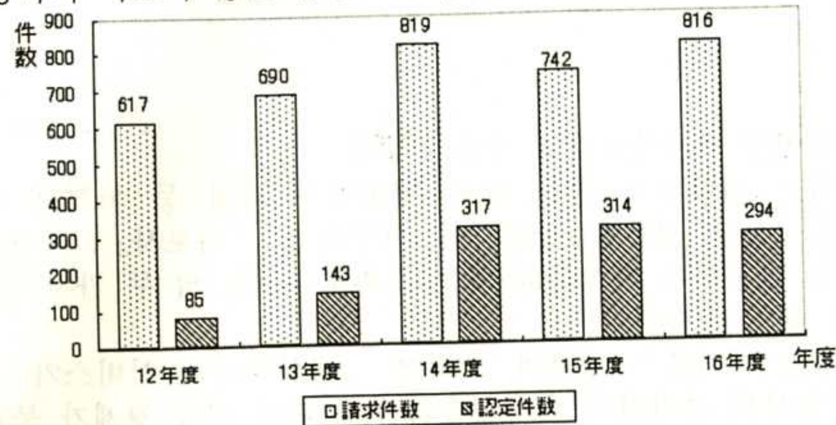
(4) 사랑하는 사람을 과로사나 과로 자살로 갑자기 잃은 유족은 금세 비참한 상황에 두게 됩니다. 특히 한창 일할 때 남편・아버지를 잃은 유족은 정신적 쇼크 뿐만 아니라 경제적으로도 심각한 사태가 됩니다. 회사에서는 조금만한 사망퇴직금 밖에 받을 수 없고 후생 연금인 유족 연금의 금액은 지극히 적습니다. 나날의 생활비는 물론 주택의 할부나 아이들의 교육비도 지불하지 못하게 됩니다.

과로 자살의 경우는 더욱 심각합니다. 일본에서는 자살에 대하여 부정적인 이미지가 있어서 유족도 친족도 남편이나 아버지, 자식들이 자살로 죽었다는 사실을 공표하고 싶지 않기 때문입니다.

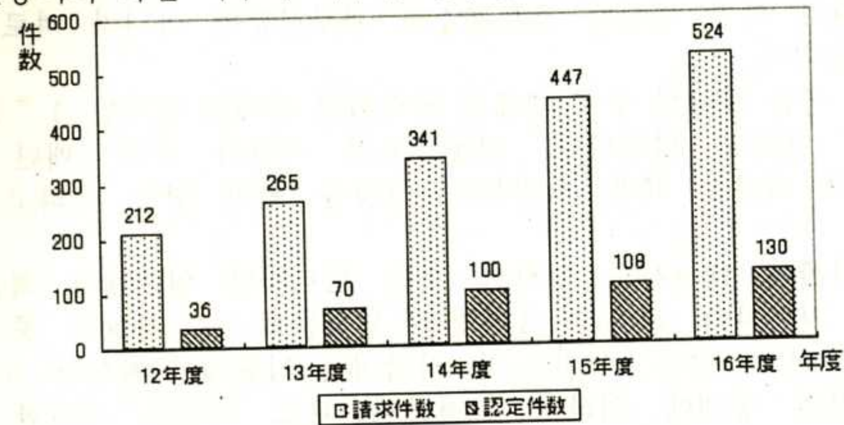
(5) 일본에서는 노동 재해로 사망하거나 다친 경우에 나라가 운영하는 보험으로 보상하는 「노동자 재해 보상 보험」이 있습니다. 그러므로 과로사나 과로 자살에 대해서도 「인정 기준」을 정해서 이것에 해당하는 경우 노동 재해로 인정하여 보상하는 것으로 되어 있지만 노동 재해 신청을 하는 유족은 결코 많지 않습니다.

그렇다고 하여도 신청 건수와 인정 건수는 하기의 표와 같이 증가하고 있습니다.

【표 1】 뇌 · 심장 질환에 의한 노동 재해 청구 · 인정 건수의 추이 (사망까지 이르지 않는 경우도 포함함)



【표 2】 정신 장해 등에 의한 노동 재해 청구 · 인정 건수의 추이 (정신 장해의 발증이나 자살 미수에 머무른 경우를 포함함)



2 과로사 · 과로 자살의 배경

이렇게 과로사 · 과로 자살이 격증하는 원인으로서 ①전술한 것과 같이 불경기하에서 노동자를 둘러싼 노동환경이 악화되었다는 점②노동자의 노동조건을 지켜냐 하는 노동조합이 조직률을 내려 영향력을 잃었다는 점 ③노동자에게 최저한의 노동기준을 정한 노동기준법 등의 규칙이 완화되었다든지 「서비스 잔업」이라는 임금 미불 잔업이 방임되었다 등 노동기준법이 지켜 있지 않는 점을 들을 수 있습니다.

3 법률가의 대처

일본의 변호사들은 １９８８년 이후 「과로사 １１０」이라는 전화 상담을 개설하고 또 같은 해에 「과로사 변호단 전국 연락회의」를 결성해서 과로사 · 과로 자살로 사망한 사람의 유족들에게 노동 재해 신청을 지원해 왔습니다. 또 과로사를 노동 재해로 인정하지 않았던 노동기준감독서장을 피고로 하여 불지급 처분 취소를 요구하는 행정 소송이나 과로사 하게 한 기업에 대한 손해배상청구소송, 더욱은 노동기준법 위반을 이유로 한 형사고소 · 고발등의 대처를 해왔습니다.

그 결과 유족측이 각지의 지방재판소 · 고등재판소에서 승소하는 사례가 많아져 드디어 ２０００년 ３월, ２４살의 청년 노동자가 장시간 노동

끝에 직장에서 자살한 「덴츠우(電通) 사건」에 대하여 최고 재판소는 「노동자가 노동일에 장시간에 걸쳐서 업무에 종사하는 상황이 계속되어 피로나 심리적 부하 등이 과도히 축적되면 노동자의 몸과 마음의 건강을 잃을 위험이 있다는 것은 주지의 일」이므로 「사용자는 그 고용한 노동자에게 종사시키는 업무를 정하여 이것을 관리하는 즈음에서 업무 수행에 동반하는 피로나 심리적 부하 등이 과도히 축적되어 노동자의 몸과 마음의 건강을 잃지 않도록 주의하는 의무가 있다」는 획기적인 판결을 내렸습니다. 이 판결은 일본 사법의 양심을 제시한 것입니다.

우리 일본의 법률가는 이 판결을 활용해서 과로사 · 과로 자살을 구제 · 예방하는 대처를 더욱 더 강화하고 싶다고 생각합니다.

過労死・過労自殺問題について

岩城　穣（いわき・ゆたか）

1　日本における過労死・過労自殺の現状

(1) 日本では、働きすぎによってクモ膜下出血等の脳血管疾患や、心筋梗塞等の心臓疾患を発症して死亡する「過労死」、うつ病等の精神疾患を発症して自殺してしまう「過労自殺」が、大きな社会問題となっています。

(2) 過労死は、バブル経済で生産やサービスが膨張した１９８７年ころから増え始めましたが、バブル経済が崩壊しても過労死はなくならず、かえって、リストラによって少なくなった労働者が多大なノルマと責任がのしかかる中で、労働時間はより増え、精神的ストレスも大きくなったことから、過労死のみならず、過労自殺が激増しました。

(3) 過労死する人の数について、公式の統計はありませんが、１～２万人はいるのではないかといわれています。交通事故の死者が毎年１万人弱ですから、それをはるかに上回る数です。

過労自殺についても、正確な数字はわかりませんが、日本ではここ最近６年連続で自殺者が３万人を超えており、警察の統計で自殺の原因・動機が「経済問題」であったり、職場で自殺した人の数等から考えると、２０００～３０００人はいるのではないかと思われます。

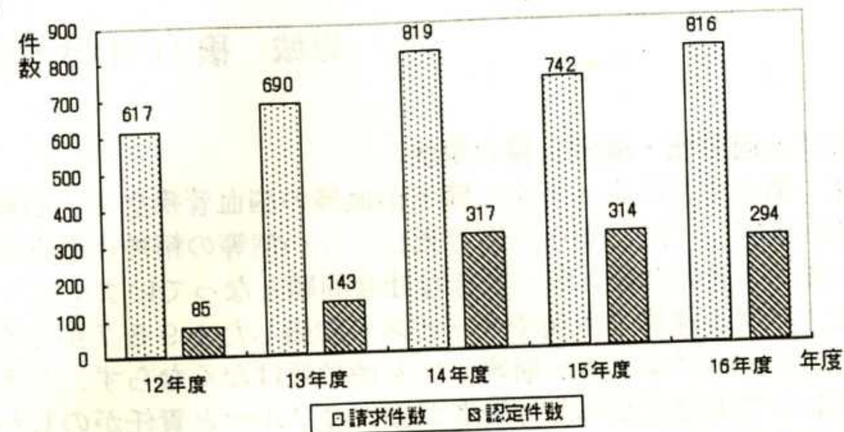
(4) 過労死や過労自殺で愛する人を突然失った遺族は、たちまち悲惨な状況に置かれます。特に働き盛りの夫・父を失った遺族は、精神的ショックのみならず、経済的にも深刻な事態となります。会社からはわずかな死亡退職金しかもらえず、厚生年金の遺族年金の金額はごくわずかです。日々の生活費はもちろん、住宅ローンや子どもの教育費も払えなくなります。

過労自殺の場合は、いっそう深刻です。日本では自殺に対して否定的なイメージがあり、遺族も親族も、夫や父や子どもが自殺で亡くなったということを公表したがらないからです。

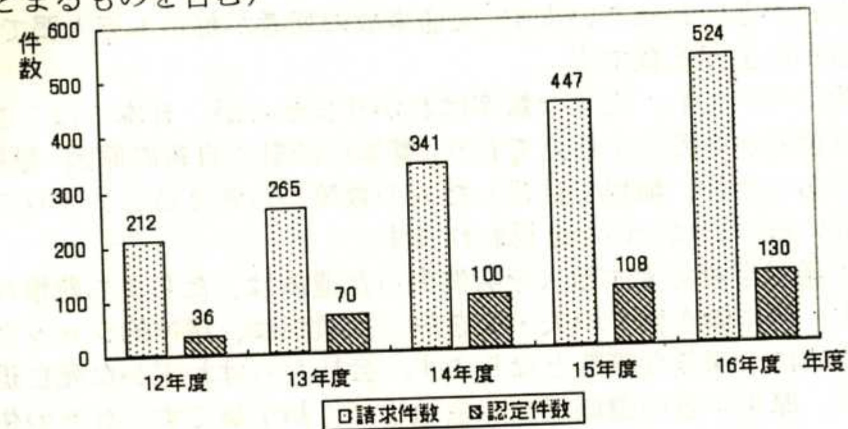
(5) 日本には、労働災害で死亡したり怪我をした場合に、国が運営する保険で補償する「労働者災害補償保険」があり、過労死や過労自殺についても、「認定基準」を設けて、これに該当する場合は労働災害と認めて補償を行うことになっていますが、労災申請を行う遺族は決して多くありません。

それでも、申請件数と認定件数は、下記の表のように増加しています。

【図１】　脳・心臓疾患に係る労災請求・認定件数の推移（死亡に至らないものを含む）



【図２】精神障害等に係る労災請求・認定件数の推移（精神障害の発症や自殺未遂にとどまるものを含む）



２　過労死・過労自殺の背景

このように過労死・過労自殺が激増している原因として、①前述したように、不況下で労働者をめぐる労働環境が悪化していること、②労働者の労働条件を守るべき労働組合の組織率が下がり、影響力を失ってきていること、③労働者の最低限の労働基準を定める労働基準法等の規制が緩和され、また、「サービス残業」といわれる賃金不払い残業が放任されるなど、労働基準法が守られていないこと、が挙げられます。

３　法律家の取り組み

日本の弁護士たちは、１９８８年以降「過労死１１０番」という電話相談を開設し、また同年「過労死弁護団全国連絡会議」を結成し、過労死・過労自殺した遺族の労災申請を支援してきました。また、過労死を労働災害と認めなかった労働基準監督署長を被告とする不支給処分取消しを求める行政訴訟や、過労死させた企業に対する損害賠償請求訴訟、さらには労働基準法違反を理由とする刑事告訴・告発等の取り組みを行ってきました。

その結果、各地の地方裁判所・高等裁判所で遺族側が勝訴する事例が増え、ついに２０００年３月、２４歳の青年労働者が長時間労働の末に職場で自殺した「電通事件」で最高裁判所は、「労働者が労働日に長時間にわたり業務に従事する状況が継続するなどして、疲労や心理的負荷等が過度に蓄積すると、労働者の心身の健康を損なう危険のあることは、周知のところである」から、「使用者は、その雇用する労働者に従事させる業務を定めてこれを管理するに際し、業務の遂行に伴う疲労や心理的負荷等が過度に蓄積して労働者の心身の健康を損なうことがないよう注意する義務を負う」という、画期的な判決を下しました。この判決は、日本の司法の良心を示したものです。

私たち日本の法律家は、この判決も活用して、過労死・過労自殺を救済・予防する取り組みを、いっそう強めていきたいと考えています。