

## JAPAN AND CAPITAL PUNISHMENT

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On March 26, 1993, three executions took place simultaneously in Japan, two in Osaka, one in Sapporo. This news stirred the attention of both media and people, and the problems of capital punishment has since then become one of country's often discussed issues of the public opinion.

One of the most discussed themes in the Japan mass media in the years 1993 and 1994 was capital punishment. The attention of the public was attracted when information on the execution of three prisoners in two prisons at the same time appeared: two in the city of Osaka and one in Sendai on March 26, 1993. In the autumn of the same year the people directed their attention towards the more pressing political, social, and economic problems; but at that time, the news about the preparation of further executions emerged, and, on November 26, the executions were carried out. Four prisoners sentenced to death were executed, two in Osaka, one in Tokyo, and one in Sapporo. The Ministry of Justice refused to comment on the reports concerning the executions and the official data were released by the Government as late as in 1993 in Criminal Statistics Annual (Keiji tōkei nenpō) published by the Ministry of Justice in July 1994. The executions took place after a 3 years and 4 months' pause (the last one was on November 10, 1989). The year 1993 was the record year in the past 17 years (usually 1–3 persons per year)\* and the fact that three to four persons were executed in a day was shocking too. Four executions on one day have no analogy in the history of post-war Japan. The news that among the executed persons there was a person with suspected mental illness, a 71-year-old convict, and a prisoner who had been preparing an appeal for the re-opening of the trial met with a resolute resistance of lawyers, scientists, and the public. The fact that executions should have taken place in secret without informing the public also raised objections. The punishments included planned and multiple robbery murders, committed in the 1970s and sentenced in the first half of the eighties. An unexpected manifestation of state power was a great blow to the movement campaigning for the abolition of capital punishment and its members were deprived of the hope of the expected gradual stop to executions.

The year 1993 can be denoted as a milestone in modern history of Japan for several reasons. At the political level we have in mind the end of the autocracy of the conservative Liberal-democratic Party (Jiyū minshutō) lasting from 1955 and its replacement by the broad coalition from younger conservative to left wing forces after the spectacular summer parliament elections. The political changes were caused by the disclosure of a chain of corrupt machinations of the representatives of the former ruling party (Sagawa kyūbin, Zenekon, etc.) as well as by the stagnation of the Japanese economy conditioned by the world depression and strengthened by the consequences of the specific Japanese so-called bubble effect (land – object of excessive capital investment, critical reduction of the purchasing power of people) towards the end of the eighties.

In the socio-economic sphere, traditional employer – employee relationships, such as the system of lifelong employment, with remuneration and promotion through seniority, were disturbed as a result of the efforts to overcome the economic crisis by restructuring of production. The dismissals reached record dimensions in those years even in comparison with the period of the oil crisis. Although unemployment in Japan (about 3%) does not reach the values of e.g. West European countries, their comparability is questionable because of the so-called hidden unemployment, of women, in particular. The difficulties with the job search of girls leaving middle schools and female university graduates, when most firms usually look for male employees, which is also mostly a condition for interviews, the data about the dismissal of women who usually work only part-time or on a one-year basis can serve as evidence.

The year 1993 is also characterized by the record number of bankruptcies, particularly of small and medium-sized firms. The economic crisis and the absence of a prospective way out, unclear political orientation of the possibly too broad coalition, apprehension about the expected ageing society, external pressures in the region of the vital foreign trade as well as questions of the participation in and position of Japan on the international power chessboard are stressful for various areas of the life of society. Therefore the great efforts at reforms in policy, in the social security system, reorganization of the school or tax systems, are combined with insufficient conceptions, nervousness and impetuosity and with a provisional character of resolutions. The unexpected executions mentioned above can also be one of the manifestations of the overall destabilization and frustration of society.

By December 31, 1993, the materials of Amnesty International reported that 87 countries had abolished capital punishment. In 52 of them it was abolished completely, 16 countries abolished it in civil law, in 19 countries there had been no executions for more than 10 years and its abolition is expected soon. Most Latin American and some Asian countries, like Cambodia, Nepal, Hong Kong, Bhutan, Sri Lanka, and under President Aquino temporarily also Philippines renounced capital punishment, although in many of them killing is practiced during coups and dictatorships by the state as a body of violence. The capital punishment existed by

the same date in 103 states; from among industrial countries only Japan and 37 US states belonged to this category. In Europe it still exists only in Albania, Bulgaria and in the countries of former USSR. In the future, it will probably be preserved mainly in Asian and African Islamic countries. During 1992 there were legally executed 1,708 persons in 35 states, of them the highest number in China (1,079) and in Iran (325). From 1976, the statistics of Amnesty International have recorded the increasing number of countries which had abolished capital punishment, two countries yearly on average.

Japan criminal law contains 18 kinds of felonies. These are divided into crimes endangering the state security and crimes against individuals or society. The second category separately reported murder of parents, while murder of one's own children, which is relatively frequent in Japan, is not mentioned there. This is what Japan has in common with other Asian countries with strong traditions of Confucianism: China, Taiwan, South Korea, where the killing of one's own parents is also classified separately. The number of persons sentenced to death from 1946 to December 1993 in Japan was 686; 583 of them were executed by that date. The capital sentences are decreasing, today it makes up only 0.3% cases of all committed crimes declared as felonies by law. The death sentence is passed exclusively for multiple, planned, robbery or exceptionally bestial murders, murders for insurance, kidnapping and demanding a ransom followed by murder, rape and murder, etc. Executions take place in specially equipped prisons. There are seven prisons of that sort in Japan: in Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, and Sapporo. The convicts sentenced to death are imprisoned there. Fifty-nine such convicts were in prisons by August 18, 1994, 13 of them appealed to the Court for a new trial. After many years spent in prison, four prisoners sentenced to capital punishment have been recognized as innocent since the end of the Second World War.

Japan criminal law does not define the way of execution, but in practice it is by hanging. The presence of the prosecutor and his assistant, prison director or their deputies is necessary. The prison doctor and the prison priest are usually also present. The clergyman does not have to be of the prisoner's religion. The execution is carried out by several prison staff members by their simultaneous pressing particular knobs. One of the switches opens a pit where the prisoner is standing fettered, with a rope around his neck, and his eyes covered. On opening of the pit he is throttled. Below the opening there are the prison doctor and prison staff waiting and after the elapse of 5 minutes they release the noose and declare the death. The prosecutor's assistant makes a report about the execution, the prosecutor and prison director confirm its correctness by their seals. The director informs the relatives about the time and reason of the death. If nobody reacts within 24 hours, his body can be cremated, given to a hospital, or school, or otherwise disposed of.

No executions are carried out on public holidays and they usually take place on working days in the morning.

The order to carry out the execution has to be confirmed by the Minister of Justice six months after the final sentence, i.e. from the day when all appealing trials have been finished, and the execution must be carried out within five days of the order being given. In the case of severe mental disorder or pregnancy, the execution is postponed and to carry it out, a new order is necessary. The period of six months is not upheld in practice and in the last ten years, in individual cases an average of 8 years passed from the time of passing the sentence to the execution. Neither the relatives nor the prisoner are informed about the execution. In the morning when the execution should take place, the felon is brought to the prison director who announces to him the order and that is the beginning of the execution itself. The whole execution from that time until the confirmation of the report about the execution lasts one and a half hour. The execution is kept secret because of the "protection of the felon's privacy" and to avoid a negative influence on other prisoners waiting for death although the prisoners can listen to radio and read (little censored) newspapers in their cells.

The increasing protest of intellectuals, scientists, civic initiatives, and churches against the right of the state to deprive a person of life led to the establishment of a number of international norms all over the world in the 1960s and then to gradual limitation and final elimination of the death penalty from criminal law practice in individual countries. The attitude of Japan to them has been very reserved from the very beginning. The Sixth Protocol of the International Covenant on Human Rights B adopted at the 21st UN General Assembly on December 16, 1966 deals with the need to abolish capital punishment. The protocol entered into force in 1976 and Japan signed some of its parts that year, viz. the Covenant on Social Rights (right to work, education, etc.) and the Covenant on the Right to Freedom. The signed parts were ratified in Japan and became valid in 1979. In spite of it Japanese laws do not respect the norms adopted by these Covenants on a sufficient basis and in the process of investigation and criminal prosecutions in general they lag far behind the practice of other industrial countries.

Paragraph 6 of the Covenant on the Right to Freedom guarantees the right of the convict sentenced to death to lodge an appeal for amnesty or remission of the sentence. The Japan laws do not guarantee the right to amnesty, they only recognize petition for amnesty and limit the possibilities to achieve it. The application for amnesty can be submitted only once a year and it is not considered to be a reason to postpone carrying out of the sentence. The amnesty is granted only exceptionally to convicts sentenced to death; the last government amnesty including the capital punishment was declared in 1952. Since then it has not related to the prisoners sentenced to death. The last individual amnesty have been granted in 1975 and only three convicts were granted amnesty since 1946.

Paragraph 7 of the Covenant prohibits any inhuman treatment which would attack the human dignity of anyone; this in itself meant denial of the death as a possible punishment. The decision to guarantee protection of everyone under pain of

death accepted by the UNO Council for economic and social matters in 1984 prohibits execution during the process of appeal, processing of the petition for amnesty, remission, reopening of the process or any other process in the interest of the convict's protection. This condition is not, as has already been said, observed by Japanese laws. The decision prohibits execution of women taking care of preschool-age children, while Japanese laws guarantee only postponement of execution for six months after childbirth. Everybody sentenced to death has all guarantees necessary for his defence at every stage of the administrative procedure or trial which is also extended and specified in the Decision of the UN General Assembly No 44/162 of December 15, 1989. It contains the right for special defence and advantages, for instance by providing sufficient time for the preparation of defence at every stage of criminal proceedings. The Decision anchors the necessity of establishing the maximum age for carrying out capital punishment and its execution: elimination of the application of the capital punishment to mentally sick or physically severely handicapped persons. It contains requests to publish information on the application of the capital punishment, about the cases in which the capital punishment sentence was passed, the number of persons waiting for execution, about the cases in which the capital punishment was remitted on appeal, whether the convict was found not guilty, the number of amnesties, information on the application of internationally accepted norms, etc.

Japan law guarantees the right to have the assistance of a state counsel for defence only at the trial; this deprives persons without material means of the possibility to have the assistance of the counsel for their defence during the investigation of the crime, during custody, or after the passing of the sentence, which means neither in the case of the reopening of the trial nor under the threat of the execution of punishment, etc. The convict in Japan is deprived of the possibility of any personal contact with the exception of the closest relatives as well as of the right to secret contact with the defence counsel. Decision about visits within these regulations, correspondence, and presents is made by the director of the prison, which is allegedly done in the interests of the 'preservation of the peace of mind of the convict, providing him with the opportunity for penance and preparation for death'. No right is guaranteed either to the convict or to his closest relatives to learn about the order to perform the execution, there is no possibility of the last wish of saying goodbye to anybody.

No necessity of appeal is anchored in Japanese laws; the death sentence is not considered to be a sufficient reason for an appeal. They limit the right to appeal for the reopening of the trial, they recognize as a sufficient reason only new evidence, which could lead to the verdict of not-guilty or to remission. Japanese laws do not anchor the highest age limit beyond which the sentence of death is not passed or executed any more and mental capability of the convict is assessed only at the time the crime is committed. Mental disorder during the pronouncement of the verdict and later is not a hindrance to the death sentence and in some cases neither to the

execution. These facts show that Japanese laws are at variance with the content of the UNO norms as mentioned above.

Thanks to the long-lasting efforts to conclude an international covenant on the abolition of the capital punishment launched by an initiative seven countries led by the former FGR at the UNO in 1980, a decision No 44/128 was adopted at the UN General Assembly on December 15, 1989 entitled International Covenant on the abolition of capital punishment which entered into effect on July 10, 1991. Japan's attitude was negative; both during the approval and during the individual stages of its formation Japan voted against it. The reasons given by particular bodies at the international forum and in the Japanese parliament can be summarized as follows: a) it is a problem which should be decided by each country separately according to the will of its population, state of criminality, etc.; b) the international opinion is not unequivocally for the idea; c) supposition that the world is mature enough to abolish the death punishment is hasty and unreal; d) the proposal of the Covenant has not been negotiated on a sufficient basis. The Japanese side recognized the danger of the existence of capital punishment but in spite of that it argued that the approval of the international covenant was inadequate and it cannot be upheld all over the world; it insisted on the death penalty as an effective means for the prevention of criminality.

The Decision of European Parliament on the issues of capital punishment of March 12, 1992 about the extradition of criminals caused great problems in Japan. The member state can deliver up a person on demand of another country only in case of a sufficient guarantee that the extradited person will not be sentenced to death in that country. The Decision was created on the basis of the laws of the countries with the abolished capital punishment, e.g. in Sweden, where it had been valid since 1972.

In April 1993 a woman was murdered in Tokyo (case 'sutairisuto satsujin jiken'). A foreigner was accused of the murder. He left Japan in a short time and the Japanese police declared an international search for him. He was detained in Sweden for falsifying a travelling document, the Swedish government refused to extradite him by virtue of the above-mentioned norm until the Japanese government would guarantee that the accused would not be under the threat of the death sentence. Japanese laws do not include such a possibility and therefore the accused cannot be put on trial in Japan.

There is another part of the above Decision which is not pleasant for Japan, viz. that the member states should impose the maximum pressure in the political, diplomatic, etc. areas on the states where the capital punishment had been abolished only partially (in Europe Cyprus, Malta, Switzerland, Turkey, Poland) or where it has not been abolished so far (Bulgaria, USA, CIS, Yugoslavia, Lithuania, Latvia, Estonia, Albania). The importance of the struggle for the limitation of the application of capital punishment as an important preparation for its abolition is also emphasized.

On November 5, 1993 the UN Human Rights Committee visited Japan on the challenge of Japanese civic initiatives for the abolition of the death penalty in order

to control the upholding of UN norms. The result of the inspection was the Committee of the “Council” demanding that Japan adopt measures directed towards the abolition of capital punishment. As the nearest aim it advised limitation of death sentences, making more thorough analyses of the circumstances of the crime and improving the system of the protection of prisoners against inhuman treatment. In spite of this, only about three weeks after the inspection, another four convicts were executed, as has been said above.

The followers of the idea of the preservation of capital punishment in Japan use the results of the public opinion polls according to which the majority of population supports its preservation. A survey conducted by the Prime Minister’s office in 1989 showed that 66.5% of answers were for preservation and only 15.7% for its abolition. Civic movements demanding the abolition of capital punishment pointed to the manipulative character of questions (e.g. “Do you agree to abolish capital punishment in present-day Japan under any circumstances?”) and analysed also other causes of the results obtained. Ninety per cent of respondents wrongly thought that the number of capital crimes had been increasing and 80% were afraid that their number would increase as a result of the abolition of this punishment.

The opinion poll of the supporters of the abolition of capital punishment conducted in 1992 yielded substantially different results: 35.1 % against and 38.8 % for the abolition of the punishment. According to a survey carried out by the daily Yomiuri shinbun (a paper oriented more to the right) in May 1993 63.91 % respondents were for the preservation of capital punishment and 28.3 % for abolition. The greatest resistance against the preservation of capital punishment was found among lawyers. For instance, in 1991 47.5 % of the respondents – members of The Japan Association of Advocates (Nihon bengoshikai) – were for and 45.8 % against the preservation of the capital punishment.

The UN Human Rights Committee instructed the Japanese government that the capital punishment cannot be abolished on the basis of the consensus of the public. It can only be realized thanks to the sincere efforts of the government and only after its abolition the government should try to achieve the understanding of the people. Such are the experiences of the states where capital punishment was abolished. This also happened in Great Britain in 1969, when according to the public opinion poll 71 % of population was for the preservation and only 19 % for the abolition of the capital punishment. Similarly in France in 1981 (62 % against and 33 % for the abolition) as well as in Germany, Canada, Australia, etc.

If we compare the criminality in Japan in the years 1972 and 1991, we shall see an increasing trend of the total number of crimes (by 39.5 %) on the one hand and a decreasing number of capital crimes (by 32.8 %) on the other\*\*. These results confute the erroneous public opinions about the state of criminality in Japan today and with the above mentioned tendency to impose fewer capital sentences even in the case of capital crimes and the decreasing number of executions, they also disprove the theory of the necessity of preserving capital punishment as a means of prevent-

ing criminality. If we compare the incidence of murders per 100,000 inhabitants in individual countries, e.g. in 1990, we have for Japan 1; Korea 1.6; Great Britain 3.9; in former FRG 4.5; USA 9.4. This indicates a relatively high level of security in Japan.

One of the causes of the resentment of part of society against the abolition of capital punishment is compassion for the families of the killed victims or the need of making satisfaction for the tragic loss. A role of the capital punishment as a sort of vengeance comes evidently to the fore. Traditional Japanese religious visions and their world views play an important role here. The Japanese are known for their great tolerance and indifference in religious matters on the one hand but, on the other hand, there is almost comical superstitiousness from the perspective of sceptic Europeans. Belief in ghosts based on traditional animism prevents the public from expressing their opinions about capital punishment. The Christian vision of untouchability and divine origin of human life is not widespread in Japan. The teaching of Shintoist – Buddhist origin about the persistence of the soul of the dead in the world of the living as long as there endures a strong emotion, e.g. unrevenged wrong-doing is professed here. According to traditional visions such a soul suffers, takes revenge for its suffering and attracts the attention of the living so that they can liberate it from its suffering. If nothing helps, its route to the heaven is closed and it cannot start its pilgrimage of gradual transformation into God. Under normal conditions, the souls of the dead allegedly start such a pilgrimage thanks to the ceremonies for the dead executed by the survivors. For the Japanese capital punishment is a tax for redemption of the peace of the soul of the killed victim, a means of satisfaction.

By the side of such irrational causes of the preservation of capital punishment there are also more prosaic reasons which might be removed by appropriate government measures, charitable activities, churches, etc. It also concerns the insufficiency of the system of payment of compensation to the survivors of the victim, the absence of the guidance rescue network for people suffering due to the loss of their beloved person, etc. The existing system of compensation to the victim's family as a single 'financial aid' from the state is imperfect. For instance, in 1993, the sum allocated for this purpose was maximum 9 million yens, which is the average month's salary of a 40-year-old man. There are, however, many limitations on the sum awarded; it is only allotted in certain circumstances and its height varies with those circumstances. Moreover, the system of compensation is little known and is therefore little used in practice. In the case of a casualty in a car accident, where the driver who had caused the accident escaped from the scene of action, the state provides a similar compensation to the victim's survivors but the sum can reach as much as 30 million yen.

The tragedy of survivors is strengthened by the loss of the original life style, and existing interpersonal bonds, etc., which leads, in the situation without a systematic rescue network, from the feeling of injustice to the asocialization of the afflicted.



In spite of the present state described, the idea of the abolition of the capital punishment in Japan is not new. There is a period of 347 years in the era Heian (794–1192) when the capital sentence was not pronounced. After the Meidzi revolution (1868) intense discussions on the idea of the abolition of the capital punishment were launched by the initiative of liberal-humanistic intellectuals like Emori Ueki (1857–1892) or Takuzō Hanai (1868–1931); between 1898 and 1910 bills on this issue were presented in the Parliament 4 times. As a consequence of the detection of the alleged preparation of the assassination of the Emperor by socialistically and anarchically orientated people in 1910, negotiations about capital punishment stopped and, after the execution of the accused without evidences and in the militarizing period that followed, the application of capital punishment was even extended.

A new movement against the capital punishment was created after the Second World War as part of the democratization of society. It began with the proposal of the constitution of 1946, which, mainly thanks to the Japanese Communist Party (Nihon kyōsanto), contained the abolition of the capital punishment in §19, and it culminated in 1956 when 46 parliament members introduced a bill in Parliament. It was neither accepted nor sufficiently debated. A group of intellectuals (Union for the improvement of criminal practice and society – Keibatsu to shakai kaizen no kai) were initiators of the movement. It has never turned into a civic movement and after the death of the leading man, the well-known attorney Tōru Masaki, it vanished. In 1975 an organization of lawyers, the Japanese Board for criminal and anti-social activities (Hanzai to hikō ni kansuru zenkoku kyōgikai) JCCD was established, which has been active in the field of the abolition of capital punishment since 1979. Kuniyuki Yagi, Kōichi Kikuta, and Yoshio Tsujimoto became its leaders. In 1977 a Group for the abolition of capital punishment (Shikei haishi gurūpu) was established as part of the Japanese branch of Amnesty International.

The activities of these groups encouraged the establishment of other civic initiatives with the same aim: in 1980 it was a Union for the abolition of capital punishment (Shikei haishi no kai) and the Japanese association of the prisoners under sentence of death “Mugi no kai” (Nihon shikeishu kaigi “Mugi no kai”). The Women’s union for the abolition of capital penalty (Shikei wo nakusuru onna no kai) established in 1981 is led by Chiharu Nakayama and Yukiko Maruyama. A Union of Advocates was founded in 1983 pleading the cases with capital punishment (Shikeijiken tantō bengoshi no kai), later re-named as the Union of Advocates Studying the Issues of Capital Punishment (Shikei wo kangaeru bengoshi no kai). The movement was later joined by organizations of people of various Buddhist and Christian denominations as the Information Union of Christians for the Abolition of Capital Punishment (Shikei haishi kurisutoshu renrakukai), the Association of Buddhists for Peace and Human Rights (Heiwa to jinken bukkyōsha nettovāku) and many others.

In 1988 the representatives of individual associations agreed on the coordination of the movement and established an umbrella Information Congress for the Cases

of Executions (Shikei shikkō renraku kaigi). The aim of the Congress was to achieve legislative guarantees to stop the execution of capital punishment, which should be a step towards its abolition. The activities of this organization include the initiation and coordination of the petition campaigns addressed to different government bodies, Parliament, courts, organization of demonstrations, public lectures, propagation activities, informing the public about everything that concerns capital punishment, material, moral and professional support of prisoners who are under sentence of death, participation in public hearings, etc.

In 1990, Forum 90 was established on the basis of the initiative of the Japanese branch of Amnesty International, Information Congress for Cases of Executions, the Japanese Board for Criminal and Antisocial Activities and the Union of Advocates Studying the Issues of Capital Punishment for Ratification of the International Covenant on the Abolition of Capital Punishment (Shikei haishi kokusai jōyaku hijun wo motomeru Fōramu 90), with the membership of more than 5,300 citizens, including 600 scientists mainly from the area of law, about 500 advocates, a number of clergymen, almost 200 members of Parliament, journalists, convicts, etc. The goal of the Forum is to inform the public about the idea of the abolition of capital punishment as much as possible and to prepare Japanese society for implementation of this step.

The supreme body of Forum 90 is the national Japanese congress held every year. Its activities include regular preparations of meetings, lectures, seminars all over Japan, writing petitions to the Minister of Justice, etc. to stop the execution of capital punishment, to the Parliament to ratify the International Covenant. The members – advocates – defend the convicts sentenced to death, help them by lodging appeals or requests for reopening of the prosecutions or amnesty, correspond with them through their relatives, etc., they mediate meetings with the public through the mass media, etc., all free of charge. They organize seminars every year where they stay for several days and hold fruitful discussions in the place of their stay. They make use of a variety of possibilities to win publicity for the particular issue, and distribute leaflets at the stops of public transport, in front of the Ministry of Justice, courts, etc.

The establishment of the Association of Members of Parliament for the Abolition of Capital Punishment (Shikei haishi giin renmei) on April 7, 1994 was a milestone in their efforts lasting several years. 112 Parliament members assembled there covering the representatives of both Houses of Parliament from the Liberal-Democratic Party to the Communist Party of Japan.

According to the opinion poll among the Parliament members on the capital punishment conducted by a Japan daily Asahi shinbun published on June 14, 1994, the number of MPs who felt it necessary to change the present state was higher than that of MPs who insisted on preserving the existing system. It was a surprising shift in comparison with the opinion poll carried out by the Government five years ago, when as much as two thirds of MPs were for its preservation. The first group in-

cluded, according to the daily *Asahi shinbun*, mainly MPs representing the Japanese socialist party (*Nihon shakaitō*), the Communist party of Japan, and the Party *Kōmeitō*. The MPs, members of the Liberal-Democratic Party, New Party (*Shinseitō*) and Democratic-Social Party (*Minshutō*) were in the second group.

Forty MPs (8.4%) were for unconditional abolition, 93 were for the abolition with the introduction of the life sentence without release (19.6%) and 91 MPs (19.2%) were for the interruption of the execution and for a more intense discussion about the capital punishment. The supporters of the necessary change pointed to the possibility of judicial murder in the conditions of Japanese examination practice lagging behind the industrial countries of the world. They strongly denounced the capital punishment as a murder legalized by the state, its monstrosity and inadequacy as a punishment which should serve as an educational instrument and an opportunity for reform. They also emphasized the necessity to proceed in accord with the development in industrial countries. 191 (40.2%) members of Parliament were for the preservation of the present state, 115 of them being the representatives of the Liberal-Democratic Party and 32 representatives of the New Party. The arguments of this camp were that the capital punishment was a deterrent against criminality in Japan and their compassion with the victims and survivors. On the basis of these opinion polls we can assume that the ratio of opinions in the Parliament does not reflect the mood of the general public, the ratio of the opponents and supporters of the capital sentence will not be the same and the support for its abolition will certainly be lower on the side of the public.

In April 1993 the shadow cabinet of the Japanese Socialist Party released a declaration to stop the execution of the death penalty. The *Kōmeitō* party has also been active in this direction. Its Central executive committee adopted in the spring of 1993 an action programme for the extension of the movement for the abolition of the death penalty. A lively discussion on the issue was launched in local governments; consequently, decisions on the abolition of the capital punishment were made in 1993–94 in city councils. The city councils did so in Kiyose (Tokyo) in September 1993, in Takatsuki and Sennan (both Osaka) in December 1993 and in June 1994 in Niiza (Prefecture Saitama). The decisions were submitted to Japanese Government and the Ministry of Justice as petitions in accordance with the law on local governments.

An important appeal of the members of the movement for the abolition of capital punishment in Japan to foreign countries was the Asian Forum for the Abolition of the Death Penalty (*Shikei haishi ajia fōramu*) organized by Forum 90 in July 9–11 1993 in Tokyo. The leading personalities of the movement for the abolition of capital punishment from Taiwan, the Philippines and South Korea were in attendance. The death penalty has not been carried out in Hong Kong since 1966; this country also participated and its representatives, as the fighters for human rights, were worried by the return to China, which is one of the countries where capital punishment is most widely applied. The goal of the conference was the exchange of

experiences, evaluation of the present situation and prospects as well as coordination of their struggle for common objectives in individual Asian countries that are rather close e.g. in their religion or socio-economic conditions.

The conference adopted the Declaration of the Abolition of Capital Punishment in Asia (also known as the Tokyo Declaration) in which its participants committed themselves to a common fight. They decided to declare July 10, the day when the International Covenant on the Abolition of Capital Punishment entered into effect, to be the day of common actions. They also decided to establish an Asian Union for the Abolition of Capital Punishment (Aja shikei haishi rengō) and to organize regular common symposia in individual 'member states'. Forum 90 agreed to become the seat of the organization and to function under the title Asian Forum (Aja fōramu).

The period of the three years and four months mentioned above passed without executions thanks to the four Ministers of Justice who were in the office. Their behaviour was strongly criticized by the supporters of capital punishment who reprimanded them for incompetence, violation of the laws, and challenged them to resign. Politicians who became Ministers of Justice after that time, the former police officer Masaharu Gotōda (became Minister in December 1992 at the age of over 70) on whose order the first three executions were done in spring 1993, Akira Mikazuki (four executions in autumn 1993), Shigekado Nagano, the former Army officer as well as Isao Maeda, all agreed to preserve capital punishment. They argued that there was a threat of "a decline in the respect of the citizens for the laws" (Gotōda), and that it was necessary to uphold the existing legislature, etc.

Entering the office on July 1, 1994, Isao Maeda, Minister of Justice in Murayama's government (Tomiichi Murayama) emphasized, in addition to the above-mentioned arguments, the inadmissibility of bringing personal emotions into his office.

There has been no unambiguous evidence of an increase in the number of supporters of the abolition of capital punishment in various public opinion polls.\*\*\* However, the number is increasing at least among younger people and people with higher education. Capital punishment is considered inhuman and inadmissible by its opponents with respect to a taboo on the issue and as far as the prevention of criminality is concerned as entirely senseless and non-functioning or functioning just as an act of vengeance and demonstration of state power. Referring to the state of criminality in Japan, they deny the existence of any real reason for the re-opening of the practice of executions and request the abolition of capital punishment as soon as possible.

The changes in the traditional structure of Japanese society bringing new qualities to the material and spiritual life of citizens and the development of the public opinion in terms of the intense interest in the issues of the upholding human rights, in the relations between a citizen and the state, between an individual and a group of people will finally lead Japan to the ratification of the International Covenant on

the Abolition of the Death Sentence and to the abolition of capital punishment. This process will be strongly influenced by pressures from the outside and Japan with its great power ambitions will not be allowed to ignore them. The need of international communication in the broadest sense of the word will undoubtedly demand from Japan the adaptation of the domestic legislature to internationally valid norms. According to the present situation in Japan, it will require a lot of effort and time.

- \* The number of executions in Japan
- \*\* Criminality in Japan
- \*\*\* Public opinion polls about capital punishment

#### REFERENCES

- Shikei haishi no kai (monthly). Tōkyō, Shikei haishi no kai, No.: 163, 164, 165, 166, 167, 168, 169, 170.
- Forum '90 (monthly of Forum '90). Tōkyō, Forum '90, Vol.: 17, 18, 19, 20, 21, 22, 23.
- Shikei no genjō (Capital punishment today). Tōkyō, Forum'90, 1994, Jan 30. (Internal materials of Forum '90).
- Monthly "Sō", 1994, Feb. "Senritsu no yonin dōji shikkō – watakushi to shikei" (Four persons executed simultaneously frustrated by fear – Myself and the capital punishment).
- Ibidem: Chika NAKAYAMA: Shikei to kōgō (Capital punishment and the empress).
- Yoshio TSUJIMOTO, Isa TSUJIMOTO: Ajia no shikei (Capital punishment in Asia). Tōkyō, Seibundō 1993.
- Bimonthly Inpakushon/Impaction 1993, No. 80. Tōkyō, Inpakuto shuppansha.
- Yoshio TSUJIMOTO: Shikeiron (On capital punishment). Tōkyō, Chūōgakuin daigaku akubichu sentā 1994.
- Tomoyuki SATŌ: Shikei no nihonshi (A history of Japan and capital punishment). Tōkyō, San'ichi shobō 1994.
- Tomoyuki SATŌ: Shikei to muki no aida (Between capital punishment and life sentence). Tōkyō, San'ichi shobō 1991.
- Tomoyuki SATŌ: Shikeishu no ichinichi (One day in the life of the prisoner sentenced to capital punishment). Tōkyō, Gendai shokan 1992.
- Tomoyuki SATŌ: Shikeishu no tsuma (The wife of the prisoner sentenced to capital punishment). Tōkyō, Gendai shokan 1993.
- Tomoyuki SATŌ: Nihon no kangoku (Japanese prisons). Tōkyō, San'ichi shobō 1992.
- Akira MIYANO: Yureru kōshukeidai (The swinging gallows). Tōkyō, Kindaibungeisha 1994.
- Kōichi KIKUTA: Shikei (Capital punishment). Tōkyō, San'ichi shobō 1988.
- Kōichi KIKUTA (ed.): Shikei to yoron (Capital punishment and public opinion). Tōkyō, Seibundō 1993.
- Kaoru MURANO: Nihon no shikei (Capital punishment in Japan). Tōkyō, Tsuge shobō 1990.
- Nihon bengoshi rengōkai hencho (Edited by Japanese league of advocates): Junēbu 1993. Sekai ni towareta nihon no jinken (Geneva 1993, The world inquires about the upholding of human rights in Japan). Tōkyō, Kōchi shobō 1994.
- Shigeki MIYAZAKI (ed.): Kokusai jinken kiyaku senreishū 2 (Collection of precedences of international covenants on human rights). Tōkyō, Tōshindō 1995.

Yomiuri shinbun 1993, June 1; 1994, Dec 1.

Shikei (Capital punishment). Da kāpo, 1994, Jan, No. 19.

Asahi shinbun: 1993, March 27, March 28, March 31, April 4, April 5, April 26, May 13, May 24, June 22, June 25, Aug 29, Sep 4, Sep 6, Sep 22, Nov 9, Nov 24, Nov 27, Nov 28, Nov 29, Nov 30, Dec 6, Dec 11, Dec 15; 1994, Jan 24, Jan 27, March 18, April 3, April 7, April 9, April 15, April 29, April 30, May 12, June 14, July 1, Nov 27, Dec 2, Dec 6, Dec 8, Dec 10.; 1995, Feb 4, Feb 24, March 5, March 8, March 11.

Keiji tōkei nenpō 1993 (Criminal Statistics Annual). Tōkyō, Hōmushō 1994.

**Tab. 1**  
**\* Number of capital punishments and executions in Japan**

Year	Capital punishments	Executions	Year	Capital punishments	Executions
1945	17	8	1970	14	26
1946	15	11	1971	7	17
1947	39	12	1972	7	7
1948	49	33	1973	5	3
1949	79	33	1974	2	4
1950	25	31	1975	3	17
1951	32	24	1976	1	12
1952	41	18	1977	3	4
1953	25	24	1978	4	3
1954	21	30	1979	4	1
1955	14	32	1980	7	1
1956	24	11	1981	3	1
1957	27	39	1982	1	1
1958	21	7	1983	1	1
1959	12	30	1984	3	1
1960	33	39	1985	2	3
1961	24	6	1986	0	2
1962	13	26	1987	8	2
1963	17	12	1988	11	2
1964	9	0	1989	5	1
1965	7	4	1990	6	0
1966	13	4	1991	5	0
1967	14	23	1992	5	0
1968	11	0	1993	4	7
1969	10	18	May 1994	1	-

Source: Materials of the Union for the abolition of capital punishment (Shikei haishi no kai)

**Tab. 2**  
**\*\* Criminality in Japan today**

Year	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Total number of C	1 244 168 (100%)	1 223 546 (98.3%)	1 190 549 (95.7%)	1 211 005 (97.3%)	1 234 307 (99.2%)	1 247 631 (100.3%)	1 268 430 (102%)	1 336 922 (107.5%)	1 289 405 (103.6%)	1 357 461 (109.1%)
Number of felonies	4 380 (100%)	4 560 (104.1%)	4 048 (92.4%)	4 052 (92.5%)	4 398 (100.4%)	4 206 (96%)	4 126 (94.2%)	3 794 (86.6%)	3 896 (88.9%)	3 892 (88.9%)
First verdict	45 142	48 189	43 753	39 299	38 214	41 440	39 504	38 776	36 613	35 598
CP	4	3	4	6	5	4	9	6	7	9
Life sentence	38	40	33	24	43	36	51	29	34	40
Final verdict	1 839 205	2 091 958	2 119 558	2 129 081	2 216 145	2 438 594	2 642 766	2 508 147	2 185 545	2 140 735
CP	7	5	2	3	1	3	4	4	4	7
Life sentence	43	49	22	33	44	30	51	36	32	40
Number of executions	7	3	4	17	12	4	3	3	1	1

  

Year	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Total number of C	1 463 228 (117.6%)	1 528 779 (122.9%)	1 540 717 (123.9%)	1 588 697 (120.7%)	1 607 697 (129.2%)	1 581 411 (127.1%)	1 577 954 (126.8%)	1 641 310 (131.9%)	1 673 268 (134.5%)	1 636 628 (131.5%)	1 707 877 (137.2%)
Number of felonies	4 079 (93.1%)	4 015 (91.7%)	4 062 (92.7%)	3 950 (90.2%)	3 595 (82.1%)	3 625 (82.8%)	3 158 (78.9%)	3 212 (73.3%)	2 891 (66.1%)	2 891 (66%)	3 063 (69.9%)
First verdict	35 770	35 629	35 822	36 806	36 578	34 529	34 441	32 223	39 164	27 363	36 159
CP	2	11	5	6	9	5	6	10	2	2	2
Life sentence	34	26	43	38	39	36	65	42	46	17	17
Final verdict	2 184 095	2 214 239	2 378 802	2 485 964	2 193 721	2 365 079	1 741 044	1 355 535	1 265 998	1 271 395	1 208 878
CP	3	1	1	3	2	0	8	11	5	6	5
Life sentence	33	36	36	43	38	41	56	40	49	32	24
Number of executions	1	1	1	1	3	2	2	2	1	0	0

C- crime, CP - capital punishment

Source: Materials of Forum 90 (Foramu 90), Capital punishment at present (Shikei no genjo), Jan 30, 1994



**Tab. 3**  
**\*\*\* Public opinion polls about capital punishment**

Year	Opinion poll carried out by	To preserve(%)	To abolish(%)	Other(%)
1953	The Japan Association of Advocates	61.7	36.0	2.3
1956	Daily Mainichi (Mainichi Shinbun)	59.3	23.8	15.5
1956	Prime Minister's Office (Sōrifu)	65.0	18.0	17.0
1966	Kanagawa University (Kanagawa Daigaku)	54.1	33.0	12.9
1967	Prime Minister's Office (Sōrifu)	70.5	16.0	13.5
1969	Prof. Kikuta, Criminal law experts, judges, prison staff	68.0	27.0	5.0
1970	Kokugakuin University (Kokugakuin Daigaku)	57.6	32.2	10.2
1972	Daily Sankei (Sankei Shinbun)	53.5	30.2	16.2
1975	Prime Minister's Office (Sōrifu)	56.9	20.7	22.4
1976	Rikkyō University (Rikkyō Daigaku)	42.0	31.0	27.0
1977	Daily Sankei (Sankei Shinbun)	61.0	19.0	20.0
1980	Prime Minister's Office (Sōrifu)	62.3	14.3	23.4
1981	Tokyo Union of Advocates (Tōkyō Bengoshikai)	60.4	39.6	0.0
1982	Daily Asahi (Asahi Shinbun)	76.0	19.0	5.0
1983	NHK	70.2	13.4	16.4
1985	Japanese Board for Criminal and Antisocial Activities	63.4	35.9	0.7
1985	Seinangakuin University (Seinangakuin Daigaku)	44.3	22.5	33.3
1989	Department of criminology, Meiji University (Meiji Daigaku)	50.8	42.6	6.5
1989	Prime Minister's Office (Sōrifu)	66.5	15.7	17.8
1991	Department of criminology, Meiji University (Meiji Daigaku)	47.6	45.8	6.6
1992	Survey in the street organized by Forum Shikoku	35.1	38.8	26.8
1993	TV Asahi (Terebi Asahi), April	Note – Questions identical with the survey of Prime Minister's Office 1989		
1993	Daily Yomiuri (Yomiuri Shinbun)	62.1	20.6	17.3
May		63.9	28.3	7.8
1993	TV Asahi: Do you agree with executions in March 1993?	Yes 47.2	No 21.1	Other 31.7

Source:  
Materials of Forum'90 (Fōramu'90): Capital Punishment Today  
(Shikei no genjo), Jan 30, 1994