

Opinion Calling for the Elimination of Hostage Justice

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Japan Federation of Bar Associations

I. SUMMARY OF OPINION

1. The detention and bail practice, in which suspects or the accused who maintain their innocence or exercise the right to remain silent are held in custody for particularly prolonged periods of time (described as "hostage justice"), is in contravention of the Constitution of Japan and international human rights law. Additionally, the practice hinders the search for the truth in criminal cases in conflict with the intention of the legislators who enacted the Code of Criminal Procedure (the "Code"). Therefore, the practice must be eliminated immediately.
2. In order to eliminate hostage justice, provisions to the following effect should be set out in the Code:

When making judicial decisions on detention or bail, in light of suspects' and the accused's right to a defense, the fact that they deny the commission of the alleged crime, refuse to undergo interrogation or make statements, or challenge the evidence tendered by the prosecution, must not be taken into consideration to the suspects' or the accused's disadvantage.

Additionally, Article 89(iv) of the Code, which stipulates one of the exclusion criteria for disqualifying suspects or the accused from getting mandatory bail ("[when] there is probable cause to suspect that the accused may conceal or destroy evidence"), should be deleted.

3. The electronic monitoring system and the house arrest system should be considered as options of alternative measures that are less restrictive on the premise that hostage justice will be eliminated and a bail practice in which the accused are released in principle will be in place. The electronic monitoring system and the house arrest system must be used only if necessary and limited to the minimum extent necessary.

II. GROUNDS FOR OPINION

1. Needs to Eliminate Hostage Justice

- (1) In the detention and bail practice operating in Japan, suspects or the accused who maintain their innocence or exercise the right to remain silent are held in custody in particular for extended periods of time. The practice is carried out by inferring the potential of concealing or destroying evidence or absconding from the fact that these suspects or accused persons do not admit the commission of the alleged crime. In this practice, custody is functioning as a means to extort a confession and hinder the assertion of one's innocence. This way of using detention and bail is called "Hostage Justice." Hostage Justice has been under a barrage of international criticism, causing substantial detriment to society as expatriates and foreign firms engaging in business activities in Japan are increasingly perceiving the backwardness seen in the Japanese criminal justice system as a risk.

- (2) Despite several decades of domestic and international criticism, no essential improvement has been made to this day in this practice of detention and bail which well deserves the denomination *hostage justice*. For instance, in the "Postal Fraud Case" involving a former Chief of Bureau of the Ministry of Health, Labour, and Welfare (whose acquittal was confirmed in 2010), among the four persons charged, three individuals who signed and sealed the written statement fabricated consistent with the prosecution's story were granted bail immediately after they were charged. Whereas the then Chief of Bureau—who kept denying the commission of the alleged crime because she had not committed it—was held in custody for more than 4 months, from prosecution through granting of bail.

The case triggered an amendment to the Code in 2016, leading to the following provisions set out in Article 90 of the law in order to clarify what should be taken into consideration in assessing an ex officio release on bail: "... the detriments caused to health, livelihood, social life or preparation for defense which the accused may suffer due to continued custody." When the amendment was approved by the Committee on Judicial Affairs in each House of the Diet, each Committee made a supplementary resolution to urge the Government and the Supreme Court of Japan to give especially careful consideration when they enforce the amendment, in light of the fact that the amendment was made "...

on the basis of the extensive discussion reflecting on the recurrence of miscarriages of justice," to the following: "[E]ffort to disseminate information shall be made so that the bail practice is used in accordance with the aim of the Code when making judicial decisions pertaining to bail, such as paying attention not to over evaluate the accused's following behavior and treat them to their disadvantage; not giving consent to the evidence tendered by the prosecution as set forth in Article 326 of the Code, as well as not giving a statement which admits to the facts charged, or remaining silent."

In the wake of the aforementioned miscarriage of justice coming to light and the resultant bandwagon leading to the amendment of the Code, the detention request dismissal rate and the bail rate (percentage of the accused released on bail to the total number of the accused to whom detention warrants were issued) are recognized to be on an upward trend if compared to the situation 10 years ago.

Yet, a majority of the cases where a detention request was dismissed or bail was granted, are those in which suspects or the accused admitted the alleged crime. Although courts and the public prosecutors offices do not provide detailed statistical information, it is still evident that suspects and the accused who maintain their innocence or exercise the right to remain silent show a greater tendency towards longer periods of custody than those who admit the commission of the alleged crime. The situation remains such that, if an accused person maintaining his or her innocence is released on bail immediately after charge, the case would be described as "unusual." According to the statistical information provided to the Japan Federation of Bar Associations (the "JFBA") by the Supreme Court of Japan, the bail rate in first instances in ordinary criminal cases tried at district courts in 2019 was 33.1% and 28.2% for cases where the accused has made a confession and cases where the accused denied the charge, respectively, indicating that granting bail is uncommon for both groups. Looking at the bail rate in terms of the stage in court proceedings, in confession cases, 25.8% of the accused were granted bail before the first trial date, compared to 12.7% in denial cases. Looking at the bail rate in connection with the duration of detention, 17.8% of the accused in confession cases were granted bail within 15 days after charge compared to 7.1% in denial cases. For the detention period of one month after charge, the bail rate was 23.3% in confession cases as compared to 9.4% in denial cases. Thus, the fact is that approximately 90% of

accused persons who maintain their innocence are kept in detention up until the first trial date and are not granted bail after more than one month after being charged.

Altogether, the very nature of “hostage justice”—the way suspects and accused persons maintaining their innocence or exercising the right to remain silent are subjected to prolonged custody, as well as the modalities of custody as a tool to extort a confession and hinder maintaining one’s innocence—has not yet been corrected.

- (3) Torture inflicted by public officers is “absolutely forbidden” under the Constitution of Japan (Article 36). The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Japan acceded in 1999, also requires State Parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction (Article 2(1)).

Article 1(1) of the above Convention provides the definition of the term “torture” as follows:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (Article 1(1)).

Custody is an act which inflicts severe hardship on a person, both physically and psychologically by means of depriving liberty to the full extent. Custody protracted by maintaining one’s innocence or exercising the right to remain silent causes great anguish that suffices to elicit a coerced confession, hindering the persons in custody from maintaining their innocence. In many instances, suspects and accused persons maintaining their innocence or exercising the right to remain silent are subject to even greater suffering by being prohibited

from seeing or interacting with people other than attorneys. It is an undeniable fact that, in Japan, custody is working as a means to extort confessions and hinder maintaining one's innocence. Although the public prosecutors offices would not disclose the relevant statistical information, the Japanese prosecutors, almost without exception, raise strong objections to granting bail to the accused who maintain their innocence or exercise the right to remain silent, whereas, for suspects and accused persons who make a statement which is consistent with the prosecution's story, they admit to bail or endow them with privileges that allow them to avoid custody in the first place. These facts demonstrate clearly that there are not a few cases where the prosecutors' act of trying to hold suspects and accused persons in custody for prolonged periods of time can be construed as aiming to elicit confession, punish the act of denying the commission of the alleged crime or remaining silent, or force abandoning the assertion of innocence. Judges also cannot avoid criticism for their acquiescence to the prolonged custody, since they let it happen with no measures to prevent it from leading to coerced confessions and hindering the assertion of innocence. Thus, hostage justice causes myriads of instances that fall into the category of torture inflicted by public officers forbidden absolutely under the Japanese Constitution. Japan has an obligation to eliminate hostage justice as a legislative, administrative, and judicial measure to preclude effectively any act that comes under the category of torture.

- (4) Hostage justice must be eliminated because it not only constitutes a contravention of the prohibition of torture, but also does not satisfy the requirements specified in the Constitution of Japan and international human rights law in many aspects.

In Japan today, it is common for the accused who maintain their innocence or exercise the right to remain silent to be held in continued detention for more than several months after being charged. It is even common for the duration of detention to exceed one year. These circumstances equate to a situation where the accused are deprived of liberty and punished before trial, and hence, it is in contravention of Article 31 of the Constitution of Japan that guarantees proper judicial proceedings to anyone as follows: "No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law."

Additionally, holding suspects or accused persons exercising the right to remain silent in prolonged custody by inferring the potential for concealing or destroying evidence or absconding from the fact that they do not admit the commission of the alleged crime, is nothing short of deprivation of liberty on the ground that they do not give a statement to their disadvantage. This constitutes a contravention of Article 38(1) of the Constitution of Japan, which guarantees the right to remain silent as follows: "No person shall be compelled to testify against himself."

Moreover, everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. *See* Article 14(2) of the International Covenant on Civil and Political Rights, and Article 31 of the Constitution of Japan. Maintaining one's innocence is nothing less than exercising the right to be presumed innocent freely, instead of waiving the right. Given that the guarantee of the right to be presumed innocent is in place, suspects and the accused who maintain their innocence especially should be released from custody in light also of their right to prepare a defense. Yet, in the detention and bail practice in Japan, suspects and accused persons maintaining their innocence are deemed generally to have a greater degree of "subjective probability" of concealing and destroying evidence or absconding, thereby being treated to their disadvantage. From both logical and empirical standpoints, it is irrational to assume a stronger motive for concealing and destroying evidence or absconding in suspects and accused persons who should be judged as innocent than in those who committed a crime and should be convicted. Nevertheless, the detention and bail practice at present is to assume a higher "subjective probability" of concealing and destroying evidence or absconding in suspects and the accused maintaining their innocence and hold them, rather, in prolonged custody when there is a greater need to release them from confinement. This way of using detention and bail is not possible without the underlying presumption of guilt, which reflects the fact that the right to be presumed innocent is perceived as something like a public facade.

- (5) Article 89(iv) of the Code, which specifies an exclusion criterion for disqualifying the accused from getting mandatory bail, is set out as follows: "[when] there is probable cause to suspect that the accused may conceal or destroy evidence." Today, in most cases, the accused maintaining their innocence are assessed as being subject to this clause. However, this way of applying the criterion is in

conflict with the intention of the legislators who enacted the Code.

Article 89(iv) of the Code, which was approved by the second session of the Diet in 1948, was set out as follows in its original form proposed: “[when] the accused has the potential to conceal or destroy evidence.” The course of events is documented in the minutes of a meeting of the House of Representatives Committee on the Judiciary at that time, where a Diet member raised concerns about potential preclusion of bail on the assumption that the accused persons who deny the charge have the potential for concealing and destroying evidence, referring to the fact that the accused denying the charge were not granted bail under the former Code of Criminal Procedure. In response to this, an official representing the Government, who was in charge of drawing up the Government’s original proposal pointed out that in the wake of the enforcement of the Act on Emergency Measures to the Code of Criminal Procedure Associated with Enforcement of the Constitution of Japan, the judiciary’s perception of bail was changing as reflected in an increase in the number of releases on bail. It was noted that therefore, it was unlikely that, in the context of the actual practice, the interpretation of the clause, “[when the accused] has the potential to conceal or destroy evidence,” would lead to the application of bail similar to the one seen under the former Code of Criminal Procedure. (Minutes No. 37 of the second Meeting of the House of Representatives Committee on the Judiciary).

Additionally, to a question posed by another Diet member, the same official answered as follows:

“[The interpretation of the clause, ‘the accused has the potential to conceal or destroy evidence,`] is subject to the decision made by judges, but at least their decision must be rational. The clause envisages certain circumstances where the supporting materials underpinning the decision are those from which anyone can infer that the accused will conceal or destroy evidence in all likelihood. In these circumstances, one may construe it objective, in a sense.” (Minutes No. 39 of the 2nd Meeting of the House of Representatives Committee on the Judiciary)

Having undergone these discussions, the original clause, “[when] the accused has the potential to conceal or destroy evidence,” was modified to “[when] there

is probable cause to suspect that the accused may conceal or destroy evidence” by the Diet and consequently, the current Article 89(iv) was passed.

In light of the development of the discussion in the Diet, it is evident that the clause, “[when] there is probable cause to suspect that the accused may conceal or destroy evidence,” under Article 89(iv) was meant to be an exclusion criterion anticipating exceptional circumstances where there are materials which underpin anyone’s inference that the accused will most probably conceal or destroy evidence. Therefore, the current state of practice in which most of the accused maintaining their innocence are assessed as being subject to this article is obviously in conflict with the intention of the legislators who enacted the Code.

- (6) Hostage justice leads to erroneous fact-finding in criminal trials and hinders the search for the truth in criminal cases.

Imposing custody inflicts immense anguish on the person affected through depriving liberty to the full extent. Depriving him or her of their job, it causes substantial financial detriment and gives serious impact on health, both mentally and physically. The fact that maintaining one’s innocence leads to prolonged custody drives non-criminal people to give up their assertion of innocence and make a false confession, which, consequently, obstructs the search for the truth in numerous cases.

In criminal trials, providing the accused, i.e., the party involved, with ample opportunities to prepare their defense is imperative to apprehend the facts properly and find the truth of the case. Getting oneself fully prepared to defend the case is particularly important for the accused who maintain their innocence. However, if held in custody, they can neither make contact with the outside world nor can they search and examine relevant materials freely or investigate on the internet—even meetings with defense counsel are restricted in time and place. Thus, hostage justice hinders the accused’s preparation of their defense, thereby preventing the truth of the case from emerging through informative court hearings.

Moreover, hostage justice is functioning as suppressive force to coerce suspects and accused persons who undergo interrogation or testify at trial as a witness into making a statement which is consistent with the prosecution’s story. By

falsifying the content of testimony, hostage justice misleads the fact finding and impedes the discovery of the actual facts of the case.

Facing the criticism against hostage justice, some argue, as if the prolonged custody were something of necessity, that once evidence is concealed or destroyed, it is impossible to be restored and the truth of the case can never be found. However, this contention disregards intentionally the fact that it is nothing less than hostage justice itself that obstructs the search for the truth in criminal cases. Those who advocate the contention are confounding coerced admittance of the prosecution's story with arriving at the truth in criminal cases. The truth of a case can be found not by the statement evidence distorted by great anguish and fear of custody, but by informative court hearings where the accused's defense rights are fully guaranteed.

- (7) Responding to the recent surge of domestic and international criticism leveled at hostage justice, Japan's Ministry of Justice published a defensive explanation stating, "the Japanese criminal justice system is not working in such a way that people are coerced into giving confessions by detention, so it does not deserve the criticism that describes it as 'hostage justice'."

However, it is a statistically-proven, objective fact that suspects and the accused who maintain their innocence or exercise the right to remain silent are subject to protracted custody. It is also an undeniable fact that custody for prolonged periods of time causes severe suffering which is intense enough to extort confessions. During 20 days of pre-charge detention, in addition to a maximum of 72 hours of initial detention, suspects undergo long hours of questioning each day, not being allowed to have defense counsel present there, and are required to confess. Even if the legally maximum detention period is expired, sometimes arrest and detention may be repeated on another charge. This practice, i.e., the prosecutors may continue to impose the post-charge detention without a new judicial review once a charge was filed, has been continuing as a common procedure without any applicable statutes. The post-charge detention limit (two months in principle) provided in Article 60(2) of the Code has completely become a mere formality as bail cases granted on account of the expiration of the post-charge detention period are close to none. Similarly, statistics show that Article 91 of the Code which provides that "[w]hen confinement through detention has been unduly long, the court must . . . make a ruling to rescind the

detention or grant bail," is almost never applied. To suspects and the accused, being held in custody amounts to even greater anguish and fear than a fixed-term sentence because they do not know how long it is going to last. Miscarriages of justice that have occurred thus far clearly demonstrate the fact that suffering and fear of custody have contributed to extorting false statements. Regrettably, it is the undeniable truth that the Japanese criminal justice system has been working in a modality that elicits coerced confessions by the use of custody.

Not only that, the prosecutors in Japan overtly file a request for extension of the 10-day maximum pre-charge detention period set by the Code in principle, for the reason that "questioning of the suspect has not been finished." Even if suspects clearly indicate their intention to exercise the right to remain silent in the suspect interview, it is the norm for the prosecutors to keep seeking a confession from suspects, confining them in the interrogation room for a long time. Also, in the phase of post-charge bail, the prosecutors almost invariably make a strong objection to granting bail to the accused who claim innocence or exercise the right to remain silent whereas, to those who give a statement in line with the prosecution's story, the prosecutors tolerate granting bail, or rather, give them the benefit of not being held in custody in the first place. Occasionally, remarks by "a senior prosecutor" criticizing the court's decision are reported in the media if a court grants bail in a case where the accused maintains his or her innocence. Thus, it is also undeniable that the prosecutors or the Public Prosecutors Offices in Japan have been using custody as a means to extort confessions and trying to maintain the practice.

Under the circumstances, the defensive explanation published by the Ministry of Justice is incongruous with reality and is completely unconvincing.

- (8) As has been highlighted so far, the detention and bail practice—which well deserves the epithet, "hostage justice"—is in contravention of the Constitution of Japan and international human rights law, since it allows suspects and the accused who maintain their innocence or exercise the right to remain silent to be held in quite prolonged custody, thereby causing a myriad of cases that fall into the category of "torture." Moreover, the ongoing practice is in conflict with the intention of the legislators who enacted the Code and hinders the search for the truth in criminal cases. Therefore, the detention and bail practice labeled as

“hostage justice” must be eliminated immediately.

2. Amendment to the Code to Eliminate Hostage Justice

- (1) In order to eliminate hostage justice, the Code should be amended so that provisions to the following effect will be set out in the Code:

When making judicial decisions on detention or bail, in light of suspects’ and the accused’s right to a defense, the fact that they deny the commission of the alleged crime, refuse to undergo interrogation or make statements, or challenge the evidence tendered by the prosecution, must not be taken into consideration to the suspects’ or the accused’s disadvantage.

In Japan, when a judicial decision is made on detention, the extension of detention period, a stay of execution of detention order, or the ban on interviewing and other interaction, suspects and the accused who maintain their innocence are treated at a disadvantage, since they are deemed to have a higher degree of “subjective probability” of tampering with evidence or absconding than those who committed a crime and admit guilt.

Such reasoning reflects the fact that the right to be presumed innocent is perceived as something like a public facade and is unjustifiable. In consequence, suspects and the accused who maintain their innocence or exercise the right to remain silent are held in particularly lengthy custody and numerous cases that fall into the category of “torture” are produced, leading to a situation that constitutes a breach of the Constitution of Japan and international human rights law.

Japan is obligated to take effective legislative measures to eliminate hostage justice. Therefore, in order to correct the practice to which it is attributable, the Code should be amended so that a provision to the above effect are set out.

- (2) Additionally, Article 89(iv) of the Code should be deleted to eliminate hostage justice.

Article 89 of the Code addresses conditions of mandatory bail (bail as a matter of indefeasible right) by listing exclusion criteria (“The request for bail must be

granted, except when. . ."). Item (iv) specifies the fourth exclusion criterion, "[when] there is probable cause to suspect that the accused may conceal or destroy evidence."

Today, in most criminal cases, the accused who claim their innocence are deemed to meet this criterion. Even in instances where they made bail, what was granted in most cases was not mandatory bail but ex officio bail (Article 90 of the Code) which was granted while still deeming the accused maintaining their innocence to have met the criterion set forth in item (iv). This way of using bail is in conflict with the intention of the legislators of the Code—who envisioned item (iv) as exceptional circumstances where there are materials from which anyone can infer that the accused will conceal or destroy evidence in all likelihood—thereby degrading Article 89, which stipulates that bail must be granted in principle, into a dead letter.

In light of the actualities of the practice, Article 89(iv) of the Code should be deleted as an effective legislative measure to eliminate hostage justice. On the premise of interpreting 89(iv) in accordance with the legislators' intention, the number of cases which do not meet any other exclusion criteria but item (iv) will be limited to a great extent, and for such cases, less restrictive measures to prevent concealing or destroying evidence should be adopted as alternatives to continued custody.

3. Examining Alternative Measures Less Restrictive Than Imposing Custody

- (1) Article 9.3 of the International Covenant on Civil and Political Rights provides that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody." In this regard the United Nations Human Rights Committee monitoring the implementation of the Covenant by its State parties presented their remarks in the General Comment No. 35 adopted in 2014 as follows:

Courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case.... After an initial determination has been made that pretrial detention is necessary, there should be periodic re-examination of whether it continues to be reasonable and necessary in the light of possible alternatives.

That is to say, custody, which deprives liberty to the full extent, should be continued only if, after various less-restrictive alternatives were examined and the alternatives were found to be incapable of achieving its purposes.

In Japan, however, no alternative measures to custody except the following are set out to ensure the accused's appearance at court and so forth: "When the court grants bail, it may specify the residence of the accused or add other appropriate conditions to the bail" (Code Article 93(3)), and "[The court may ...] entrust the accused under detention to a relative, shelter organization or other person, or specify the residence of the accused, and make a ruling to suspend the execution of detention." (Code Article 95)

By contrast, in foreign countries, various alternatives have been introduced including the electronic monitoring global positioning system (GPS), which allows the accused to be released with a GPS tracking device fastened to monitor their movement, as well as the house arrest system, where the accused are required to wear a radio frequency ankle monitor and forbidden from going out of their homes.

In the United States, for instance, they use the GPS electronic monitoring system, where the accused wear a GPS tracking device that collects the satellite signal and transmits the location information to a monitoring center operated by probation officers, as well as the house arrest system, where an electronic ankle tag is affixed to the accused and a separate home monitoring unit is set up on their landline phone in their place of residence, from which a tracking signal is sent to a monitoring center to ensure that the accused remain at home during a prescribed period of time.

The electronic monitoring system and the house arrest system as above violate the privacy of the accused and restrict their liberty of movement. Therefore, administering these systems to the accused who are to be granted bail under the current judicial system is nothing less than expanding the restriction on human rights. In Japan, very few legislative facts would be available to justify such expansion of the restriction on human rights.

- (2) On the other hand, compared to custody which deprives liberty to the full extent, the electronic monitoring and house arrest are undeniably less restrictive. If the

accused in custody can be released by the use of electronic monitoring or house arrest, it would be preferable. Given that the restriction on human rights must be the minimum extent necessary, developing these alternative measures is required.

Meanwhile, a majority of people take an outlook that, even if these systems are introduced in Japan, there is no hope for the expansion of the use of bail while human rights of the accused who are already on bail will rather be restricted. The prospect should not be consigned to a thoughtless dismissal as an irrational concern considering the history of the continued use of detention and bail opposed to the legislators' intention and not in accord with the Constitution of Japan and international human rights law.

Yet, prolonged custody not only inflicts serious suffering on the accused who are presumably innocent, but causes great financial detriment by, for instance, depriving them of work, thereby producing significant damage to their psychological and physical health. Moreover, custody as imposed in Japan causes serious harm to the fairness of criminal trials and obstructs the search for the truth in criminal cases by functioning as pressure to extort confessions, prevent the accused from maintaining their innocence, and coerce them into making statements in accordance with the prosecution's story. Taking into account the magnitude of such malignant harm caused by custody, there is no denying the need for exploring alternative measures that are less restrictive than custody.

As the electronic monitoring captures and records location information of the individual monitored, it will prevent the accused in general from attempting to flee and hinder effectively their travelling to the places where a witness and other relevant persons are located and intimidating them. With regard also to concealing and destroying evidence, the fact that the information about the location of the evidence is captured and recorded will help restrict presumable modalities/methods of tampering, so that the actual probability and the extent of concealing and destroying evidence can be examined on the basis of the presumption. In house arrest combined with the electronic monitoring, going out beyond the prescribed range of areas is detected immediately and the fact can be recorded, thereby the original purpose of holding unsentenced persons in custody is attained in most cases. Thus, if these alternative measures are

adequately in place, there will be a significant reduction in the number of cases where the original purpose of holding unsentenced persons in custody cannot be achieved unless they are kept in custody in penal institutions. Even though we should not be optimistic about how these alternative systems may be used in the future, it is undeniable that quite a few accused persons are detained in custody although the confinement would obviously be unnecessary if only electronic monitoring or house arrest were available.

In another aspect, it is also indisputable that the unavailability of the electronic monitoring system and the house arrest system that are commonly in use in foreign countries, has been used as the pretext for the use of prolonged detention, allowing the indigenously Japanese practice of hostage justice to function and contributing to harboring it.

- (3) We have no option to postpone eliminating hostage justice. It would be unforgivable to undertake strengthening the restriction on human rights of the accused who would be released on bail in the status quo while keeping hostage justice running. Therefore, the introduction of the electronic monitoring system and the house arrest system should be considered as options of alternative measures that are less restrictive than custody, on the premise that hostage justice will be eliminated and a bail practice in which the accused who are presumed innocent are released in principle will be in place.

Additionally, when considering the electronic monitoring system and the house arrest system, the discussion should be conducted on the basis of the fact that these systems also constitute, after all, a disposition which violates the privacy and restricts liberty of movement. These systems must not be used with the accused who do not need to be monitored, but be applied only when posting of a cash bond is not enough to prevent the accused from absconding for reasons such as where they are expected to receive a long prison sentence, or when there is an imminent probability that the accused, unless being monitored, may commit an offensive act or other grave hostile act against a witness or other relevant persons. The extent of monitoring should remain limited to the minimum necessary in accordance with the circumstances of each case, hence the constant tracking should not be implemented unless the degree of probability of absconding and suchlike is sufficiently high. The time period of monitoring should be limited to the minimum necessary and the monitoring

must be terminated immediately when it is no longer needed. Unquestionably, it is unacceptable to invade the privacy and restrict the liberty of movement of the accused maintaining their innocence or exercising the right to remain silent. In this respect, the following elements should adequately be taken into account: consideration of the rights and interests of suspects and the accused, as well as of their families and other relevant persons; and the international models and standards related to the training of the personnel belonging to the relevant organizations and the assurance of transparency.