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## Right of Prisoners Imposed Life Imprisonment to Get Paroled in Japan

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# Right of Prisoners Imposed Life Imprisonment to Get Paroled in Japan

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## [ABSTRACT]

In Japan Article 28 of Penal Code enacted in 1907 prescribes that prisoners imposed the life imprisonment can get paroled after serving in a prison for ten years in case they evince signs of substantial reformation. Before 2000 most of prisoners imposed life imprisonment which is abbreviated "life-sentenced prisoner", got paroled after serving seriously in a prison for the period between 15 and 20 years. After getting paroled they could be rehabilitated themselves under the guidance of Hogoshi (a volunteer probation & parole officer).

In the late 1990s the movement of crime victims surged up. People supported their insistence for the imposition of severer punishment on criminals. In consideration of public opinion in June, 1998, the Deputy Chief Prosecutor of Supreme Public Prosecutors Office issued a notification secretly that life-sentenced prisoners having committed a heinous crime worthy of death penalty should serve in a prison for longer time than

twenty years or until his death. Under this notification the total number of life-sentenced prisoners serving in a prison increased up to 1,800. Most of them are doomed to die in a prison because only less than 10 get paroled annually after serving seriously in a prison for over 30 years. I will insist that the practice under this notification violates the human right of life-sentenced prisoners to get paroled which is prescribed by Article 28 of Penal Code.

## 1 . Requirements of Getting Paroled of Life-Sentenced Prisoners Prescribed in Penal Code

Current Penal Code was enacted in 1907 under the influence of Modern School advocated by Franz Eduard von Liszt (1851-1919) in Germany (Yokoyama, 2010). Under Modern School the criminal policy is emphasized. From this viewpoint prisoners should be released from a penal institution as early as possible if they are reformed by receiving correctional treatment in the institution. Therefore, our Penal Code has Article 28 on the right to get paroled as early as possible. The content of Article 28 is the following ;

Article 28 When a person sentenced to imprisonment evinces signs of substantial reformation, the person may be paroled by a disposition of a government agency after that person has served one-third of the fixed term sentenced or 10 years in the case of a life imprisonment.

I associated with late József Vigh, a Hungarian criminologist, a leader in the International Society for Social Defense created in 1949. He wanted to develop the theoretical elaboration of Modern School advocated by Franz Eduard von Liszt to establish the humanistic criminal policy. Therefore, he evaluated this Article 28 as an ideal provision on getting

paroled earlier of prisoners who serve seriously under correctional treatment in a penal institution. He was surprised with knowing that such an ideal provision was enacted in Japan in 1907.

Although no prisoner is released just soon after serving for one-third of the fixed term sentenced or for 10 years in the case of a life imprisonment, many prisoners have released on parole before reaching the fixed term sentenced or before the death in a prison in the case of a life imprisonment. This practice proves that the correctional treatment in a prison has been carried out under the rehabilitation model, which scholars of Modern School have emphasized.

## 2 . Requirements on Getting Paroled of Life-Sentenced Prisoners Prescribed in Juvenile Law

In Japan the Juvenile Law was enacted for the first time in 1922. After the end of Pacific War new Juvenile Law was enacted in 1948, under which more juvenile delinquents are treated under the welfare and rehabilitation model on the base of *parens patriae* than those treated under the old law (Yokoyama, 2015). Under the current juvenile justice juveniles of the age of between 14 and 19 can be imposed the criminal punishment in place of the protective educative measures prescribed by Juvenile Law if they commit some serious offense and if they have few possibility of being reformed by the protective educative measures. Therefore, requirements on getting paroled of prisoners who committed a crime before the age of 20 are prescribed in the Juvenile Law.

In the consideration of the purpose of rearing a juvenile soundly prescribed by Article 1 of Juvenile Law the requirements on getting paroled of a person sentenced the life imprisonment as a juvenile are

mitigated as the following Article 58 shows.

Article 58(1) A person sentenced to imprisonment as a juvenile may be paroled after the following periods have passed.

- (i) seven years in case of life imprisonment

In Japanese criminal justice system, the life-sentenced prisoners are scheduled in principle to get paroled before their death in a prison.

### 3 . Situation of Life-Sentenced Prisoners in Chiba Prison around 1965

I belonged to Students' Club to Study Criminal Sciences at Chuo University. Under my initiative members of this club conducted research on the treatment in four prisons in 1965. One of these prisons was Chiba Prison, in which prisoners sentenced the imprisonment for 8 years and over and the life imprisonment whose criminal tendency is not serious, were treated. According to statistics on correction compiled by the Ministry of Justice, of all prisoners treated in Chiba Prison at the end of 1963 42.1% and 26.8% committed a murder and a robbery respectively. Therefore, the rate of life imprisonment and the imprisonment for period between under 20 years and 10 years amounted to 17.8% and 21.8% respectively. At that time the progressive treatment system was carried out, under which prisoners were promoted from 4<sup>th</sup> class to first class by examination on their serving seriously. Prisoners promoted to the higher class had higher possibility of getting paroled. As most of life-sentenced prisoners worked diligently at a factory in the prison without violating any rule, they were promoted to second class or first class. Therefore, of all prisoners, 27.0% and 29.8% belonged to first class and to second class respectively. In Japan most of life-sentenced prisoners having committed

a heinous crime are not a born criminal advocated by Cesare Lombroso (1835-1909).

We conducted a questionnaire survey to security officers in charge of treating prisoners at four prisons. Concerning a question about predicted rate of a re-offense of ex-prisoners 32.7% of security officers in Chiba Prison answered under 20%, while the corresponding rate of security officers working at two prisons for treating criminals confined for the first time, and those working at a prison for treating recidivists were 26.5% and 5.6% respectively.

Security officers working at Chiba Prison for treating long-term prisoners and life-sentenced prisoners thought that their humanistic correctional treatment was successful to make prisoners themselves rehabilitate after getting released from the prison.

#### 4 . Proceedings to Grant Parole to Life-Sentenced Prisoners before 2000

According to Offenders Rehabilitation Law, when the period specified in Article 28 of the Penal Code has passed with respect to a person committed for the execution of the sentence of imprisonment, the warden of a penal institution is obligated to notify the relevant regional parole board of that fact. Therefore, a warden of a prison should recommend to grant a parole to life-sentenced prisoners to the regional parole board if they evince signs of substantial reformation after serving seriously in a prison for over 10 years. Before 2000 members of a regional parole board accepted the recommendation by the warden in principle. Therefore, most of life-sentenced prisoners were granted parole after serving seriously in a prison for period between 10 years and 20 years, which was

the maximum fixed term of imprisonment before the revision of Penal Code enforced in January, 2005.

Soon after the recommendation to a regional parole board the warden offered a special program on rehabilitation to long-termed and life-sentenced prisoners. In case of Chiba Prison in which prisoners of imprisonment of over 8 years and life-sentenced prisoners were treated, they lived in a dormitory with ordinary furniture to receive a special program on rehabilitation soon after a warden recommended parole for them to the regional parole board. A security officer in charge of rehabilitation took the prisoner under the program outside to make him/her learn how to use money at a store, how to ride a train by buying a ticket and so on. It was a good program.

## 5 . Implementation of Parole around 1975

The implementation of parole is shown in White Paper on Crime in 1976 [written in Japanese]. According to this White Paper the total number of prisoners at the end of 1975 amounted to 37,744. 14,664 were released on parole in 1975, of which 79.9% got paroled after serving their sentence for more than 80% of their fixed term. The total number of life-sentenced prisoners who got paroled amounted to 84 in 1971, 49 in 1972, 66 in 1973, 72 in 1974 and 114 in 1975. In Table 1. the period of serving of life-sentenced prisoners before getting paroled in 1975 is shown.

Of 114 life-sentenced prisoners in 1975, 83 or 72.8% got paroled before serving in a prison for less than 16 years. At that time the maximum fixed imprisonment term was 20 years. Therefore, only 4.4% got paroled after serving in a prison for 20 years and more. After life-sentenced prisoners got paroled, they were taken care of by Hogoshi, a volunteer

**Table 1.** Serving Period of Life-Sentenced Prisoners before Getting Paroled

Serving Period	Paroled Prisoners	%
Less than 13 years	15	13.2
Between 13 and less than 14	18	15.8
Between 14 and less than 15	25	21.9
Between 15 and less than 16	25	21.9
Between 16 and less than 17	11	9.6
Between 17 and less than 18	6	5.3
5. Between 18 and less than 19	6	5.3
Between 19 and less than 20	3	2.6
20 years and more	5	4.4
Total	114	100.0

Source : White Paper on Crime in 1976 [written in Japanese], p. 199

probation & parole officer. They did rarely commit any serious offense under guidance of Hogoshi. Then, they rehabilitated themselves completely by receiving an individual pardon prescribed by Amnesty Law.

## 6 . Change in Practice to Grant Parole in Late 1990s

In the late 1990s the movement of crime victims surged up. Crime victims insisted the establishment of national compensation system for them, and the system to support them in criminal justice and juvenile justice. In addition, they demanded criminalization and imposition of heavy criminal punishment on offenders, especially murders. As the mass media reported about their demand as the big news, more and more people supported it.

Considering the change in public opinion, prosecutors of Supreme Public Prosecutors Office discussed how to change the practice to grant parole to life-sentenced prisoners. To change the practice on June 18,

1998, Deputy Chief Prosecutor of Supreme Public Prosecutors Office issued a notification (which I cite as “Notification of 1998” in this paper) addressed to all chief prosecutors of High Public Prosecutors Office and all chief prosecutors of District Public Prosecutors Office. As this Notification of 1998 was issued secretly, we did not know its contents until the publish of a scooped article of Asahi Newspaper on January 8 in 2002.

According to this scooped article prosecutors select a case of a criminal imposed the life imprisonment owing to having committed a special heinous offense among ordinary life-sentenced offenders. The purpose of this selection is to confine him/her in a prison for longer period than 20 years. According to this scooped article the proceedings conducted by the public prosecutor is the following :

Prosecutors of High Public Prosecutors Office or Regional Office assign a selected case as a case of “a specially life-sentenced offender” after they consult with prosecutors of Supreme Public Prosecutors Office. After the judgement at a court is finalized in a case of “a specially life-sentenced offender”, a prosecutor asks a warden of a prison not to recommend parole easily in this case to a regional parole board. In addition, the prosecutor asks the warden to listen to opinion of a public prosecutor in advance before his/her recommendation for granting parole to a regional parole board.

At that time such important positions in the Ministry of Justice as Vice-Minister and three Director-Generals : a director-general of Criminal Affairs Bureau, of Correction Bureau and of Rehabilitation Bureau were occupied by elite public prosecutors. Therefore, officers affiliated with Correction Bureau and Rehabilitation Bureau did not object the Notification of 1998.

In Japan the notification should be issued within a framework of a

statute, which Paragraph 6 of Article 73 of Constitution prescribes. Contents of the Notification of 1998 was not based on any article of a statute, as Article 28 of Penal Code on prisoners' right to get paroled was not changed. This notification violates Article 14 of Constitution to guarantee the equality under the law, because the standard to select "a specially life-sentenced offender" among ordinary life-sentenced prisoners are unreasonable. In addition, the Notification of 1998 may violate the prohibition of double jeopardy under Article 39, because the life imprisonment with getting paroled was changed to the heavier life imprisonment without getting paroled by a public prosecutor after the judgment finalized at the court before the enforcement of Notification in 1998. Therefore, Deputy Chief Prosecutor of Supreme Public Prosecutors Office issued the Notification of 1998 secretly.

The illegal Notification of 1998 was enforced in July in 1998. I reckoned that Masakuni Yoshino, a member of United Red Army, who participated in a gunfight against the riot police at Asama Mountain Villa in February in 1972, was assigned as "a specially life-sentenced offender" at that time. However, the Supreme Public Prosecutors Office has not published about any assignment of "a specially life-sentenced offender".

In Asahi Newspaper dated on January 8 in 2002 the illegal Notification of 1998 was reported as a scooped article, in which a reporter foresaw that life-sentenced prisoners might be confined in a prison for more than 20 years or until their death. However, few scholars in criminal laws drew attention to this foresight, because they refrained from emphasizing rights of offenders in the upsurge of crime victims' movement.

At the time of enforcing the illegal Notification of 1998 prosecutors did not foresee that many life-sentenced prisoners except for those assigned as "a specially life-sentenced offender" would be confined until their death.

However, in practice even ordinary life-sentenced prisoners are doomed to be confined until their death, as I will mention later.

According to the scooped article of Asahi Newspaper, the average period of serving in a prison of the paroled life-sentenced prisoners were between 15 and 16 years during the period from 1977 to 1988. As the tough policy against life-sentenced prisoners was adopted by illegal Notification of 1998, few life-sentenced prisoners were granted parole by their serving seriously in a prison for less than 20 years.

## 7 . Revision of Penal Code in 2004

In 2004 the revised Penal Code was enacted in response to crime victims' demand to impose the severe punishment on offenders, especially those having committed a murder. The maximum term of imprisonment lengthened from 15 years to 20 years. In case there is some reason to aggravate punishment, the maximum term lengthened from 20 years to 30 years. In case the imprisonment imposed on offenders whose punishment was mitigated from the death sentence or the life-imprisonment sentence, its maximum term was lengthened from 15 years to 30 years. After these revisions the life-sentenced prisoners could not get paroled before their serving seriously in a prison for 30 years, although Article 28 of Penal Code was not changed.

The tough policy against offenders taken partly in advance by the illegal Notification of 1998 was legalized by the revision of Penal Code in 2004. However, this illegal notification was not abolished. Therefore, the practice under this illegal notification continues until the present.

## 8 . Enactment of Offenders Rehabilitation Law

Previously, there were two laws on rehabilitation of offenders : the Law on Prevention and Rehabilitation of 1949 and the Law on Probation for Offenders with Suspended Sentence of 1954.<sup>(1)</sup> By integrating these two laws Offenders Rehabilitation Law was enacted in 2007. Then, I would like to consider some articles of this law on parole related to life-sentenced prisoners.

### 1) Concerning Article 34(1)

Article 34(1) If the warden of a penal institution finds that the period set forth in the preceding Article has passed with respect to a person committed for the execution of the sentence of imprisonment falls under the standards prescribed by Ministry of Justice Order, the warden must recommend the granting of parole for that person to the relevant regional parole board.

Is the illegal Notification of 1998 issued by Deputy Chief Prosecutor of Supreme Public Prosecutors Office included in the Ministry of Justice Order? In practice the warden bound by the illegal Notification of 1998 refrains from recommending the granting of parole to life-sentenced prisoners to the regional parole board, because the practice in Correction Bureau and Rehabilitation Bureau of the Ministry of Justice are put under the control of elite public prosecutors dispatched from the Public Prosecutors Office, although recently public prosecutors do not occupy a

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(1) In 1933 the probation imposed on ideological offenders was introduced, under which probation officers supervised not to make them oppose the waging of a war. In fear of revival of this probation the probation for offenders with suspended sentence was not prescribed in the Law on Prevention and Rehabilitation of 1949.

position of the Director-General of both Correction Bureau and Rehabilitation Bureau.

## 2) Concerning Article 35(1)

Article 35(1) Even in the case where a recommendation set forth in the preceding Article has not been made, if a regional parole board finds it necessary, the board may commence proceedings as to whether or not to grant parole.

When Offenders Rehabilitation Law was enacted in 2007, they were concerned that the warden does not recommend the granting of parole to prisoners to the regional parole board by negligence. Therefore, the regional parole board is given the power to commence proceedings as to whether or not to grant parole. The power is given in case of granting parole to life-sentenced prisoners, too.

## 3) Concerning Article 38(1)

Article 38(1) If a regional parole board carries out proceedings as to whether or not to grant parole, and the victims, etc. (meaning persons that have suffered damage as a result of the crimes which are the grounds for the punishment rendered to the person subject to proceedings (hereinafter referred to as "victims" in this paragraph) or their statutory agents, or in the case where victims have died or suffer severe mental or physical disorders, their spouse, lineal relatives or siblings ; the same applies in the following paragraph) have filed a request, wishing to express their opinions regarding the parole of the person subject to proceedings and their sentiment on damage caused by the crimes (hereinafter referred to as "opinions, etc." in this Article), the board is to hear their opinions, etc., as provided for by Ministry of Justice Order; provided, however, that this does not apply if the board finds it inappropriate, in light of the nature of the case, the circumstances of the parole proceedings and other related circumstances.

This article was inserted into Offenders Rehabilitation Law to satisfy

crime victims who wish to confine offenders in a prison as long as possible without granting parole easily. However, when a warden takes proceeding to grant a parole to a life-sentenced prisoner who has served in prison for longer than 30 years, is there any crime victim who files a request, wishing to express his/her opinions regarding the parole of the person subject to proceedings and their sentiment on damage caused by the crimes? Article 38(1) seems to be made by elite public prosecutors of Ministry of Justice who do not know the practice in the field of correction and rehabilitation.

#### 4) Decision Making on Parole and Practice of Parole

Article 39(1) A disposition to grant parole pursuant to the provisions of Article 28 of the Penal Code is to be made by decision of a regional parole board.

Article 40 A person for whom parole has been granted is to be on probation during the period of the parole.

Both Article 39(1) and Article 40 are applied in case life-sentenced prisoners are granted parole, although there are some special proceedings when members of a regional parole board decide to grant parole.

Even in case a life-sentenced prisoner is granted parole, he/she is put under the supervision and guidance of a probation & parole officer and Hogoshi. Usually, Hogoshi with rich experiences as a caseworker guides a parolee of the former life-sentenced prisoner. If parolees wish, they can be accommodated in a rehabilitation facility operated by a private organization in the community within six months after being released from a penal institution.

Hogoshi meets a parolee 2 or 3 times in a month at his/her house, or at some place to meet secretly in order to reconfirm whether the parolee abides by rules to be observed or not. Hogoshi gives help a parolee as a

caseworker in such a way as finding a job and giving consultation about worries. Hogoshi works in the same way for a parolee of the former life-sentenced prisoner, although he/she is more careful to keep secrecy of the parolee, because someone may spread information about the parolee as a heinous criminal. If such information spreads through SNS, it would be more difficulty for the parolee to rehabilitate him/her in the community.

Previously, a probation & parole officer and Hogoshi with rich experiences had accumulated knowledge about how to keep information about a parolee of a former life-sentenced prisoner secretly. I am concerned that their knowledge becomes poor because the total number of a parolee of a former life-sentenced prisoner decreased drastically after the issuance of the Notification of 1998.

## 9 . Issuance of Notification on Examination to Grant Parole to Life-Sentenced Prisoners

At the time when the Offenders Rehabilitation Law was enacted in 2007, it was necessary to clarify the proceedings on granting parole to the life-sentenced prisoners, because the jury system in a trial of such a serious case as a murder, a robbery causing death and injury, and an arson to an inhabited house was scheduled to start on May 21, 2009. Then, in August in 2008 Okiharu Yasuoka, the Minister of Justice, decided to establish a study meeting on granting parole to life-sentenced prisoners. Core members of the meeting were a section chief of Rehabilitation Bureau, Correction Bureau and Criminal Affairs Bureau. After having a meeting seven times, in November in 2008 they presented a report about their conclusion of discussion at the study meeting to the Minister of Justice. He approved this conclusion.

Officers of Rehabilitation Bureau made a draft of a notification on examination in a regional parole board to grant parole to a life-sentenced prisoner. They discussed it with officers of Criminal Affairs Bureau and Correction Bureau. On the basis of a final draft on March 6 in 2009 Fumio Sakai, Director-General of Rehabilitation Bureau issued a notification on proceedings in a regional parole board to grant parole to a life-sentenced prisoner (I cite this notification as “Notification of 2009”). The Notification of 2009 was published on web site of the Ministry of Justice, although the Notification of 1998 continued to be unpublished.

#### 1) Publish of Data about Practice of Having Granted Parole to Life-Sentenced Prisoners

Members of the study meeting recommended to publish information about life-sentenced prisoners’ serving in prisons and their getting paroled. As this recommendation was realized, annual data about these items have been published, which we can see on the web-site of the Ministry of Justice.<sup>(2)</sup>

However, this web-site is unknown. Therefore, people fail to understand that more and more life-sentenced prisoners die in a prison without getting paroled, which I will explain later on the basis of this web-site.

#### 2) Change in Proceedings on Granting Parole to Life-Sentenced Prisoners at Council of Regional Parole Board

By Paragraph 1 of Article 23 of Offenders Rehabilitation Law a regional parole board exercises its power by a council composed of three board members. By Paragraph 1 of Article 25 the council may carry out

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(2) <https://www.moj.go.jp/content/001408824.pdf>

research by interviewing a person that is the subject of proceedings, questioning concerned persons and/or using other methods. In principle this research is conducted by one member of the council. In case of examination on whether parole should be granted to a life-sentenced prisoner the proceedings were changed by the Notification of 2007. By this notification two or three members of the council should carry out the research in order to examine carefully. In addition, members of the council are obliged to hear an opinion from a public prosecutor, and hear an opinion from a crime victim and/or his/her bereaved family members.

In Japan the public prosecutors are expected to express opinion as the representative of public interest. However, in the case to give an opinion to the regional parole board, can they express the opinion adequately? Usually, public prosecutors move their position every two years. Therefore, they do not know about a life-sentenced prisoner for whom a warden recommends to grant parole. They only read documents about his/her heinous crime. As they do not know that he/she evinces signs of substantial reformation after serving seriously in a prison for more than 30 years, they reply to the regional parole board that the granting of parole is too early. Accepting such a reply, members of the council decide not to grant parole. In such a situation many life-sentenced prisoners are doomed to die in a prison without getting paroled.

### 3) Examination to Grant Parole by Regional Parole Board

By Paragraph 1 of Article 34 of Offenders Rehabilitation Law a warden of a prison is obligated to recommend the granting of parole to a life-sentenced prisoner in case he/she falls the standards prescribed by Ministry of Justice Order. However, the warden may neglect this obligation. To prevent such a negligence, the regional parole board can

commence proceedings as to whether or not to grant parole. By the Notification of 2007 members of the regional parole board are obliged to commence proceedings as to whether or not to grant parole at the time when a life-sentenced prisoner serves in a prison for 30 years.

When the Notification of 2007 was issued, they seemed not to notice the Notification of 1998 which had secretly been issued by the Deputy Chief Prosecutor of Supreme Public Prosecutors Office in 1998. Therefore, the practice under the Notification of 1998 has continued.

Masakuni Yoshino, a member of United Red Army, who participated in a gunfight against the riot police at Asama Mountain Villa in 1972 seems to be assigned as “a specially life-sentenced offender” soon after enforcement of the Notification of 1998. He has never been recommended by a warden of Chiba Prison, although he has served seriously for more than 40 years. In addition, members of the regional parole board have never commenced proceedings for him as to whether or not to grant parole. I did not know this fact until February, 2021, when I began to campaign to realize the early getting paroled of life-sentenced prisoners.

#### 10. Beginning of Campaign to Realize Early Getting Paroled of Life-Sentence Prisoners.

I have associated with Kenji Yamada, a former high-ranking probation & parole officer who supported my campaign against the lowering of the application age of Juvenile Law (Yokoyama, 2020). In February in 2021 he informed me about TV documentary film entitled “A man served in a prison for the longest period”, which NHK broadcasted on February 21, 2021. The main character in this documentary film was a former life-sentenced prisoner who was granted parole after serving in Kumamoto

Prison for 61 years. However, he died soon after living idly in a facility for social welfare, of which staffs did not have any knowledge about how to make him rehabilitated.

By watching this documentary film, I decided to begin campaign to realize the early getting paroled of life-sentenced prisoners. Yamada works at a rehabilitation facility named “Koshin-kai” as a managing director.<sup>(3)</sup> As Hogoshi he takes care of a life-sentenced prisoner. The prisoner was rejected to get paroled although he has served seriously in a prison since June, 1983. A warden prepared four times for him to recommend granting of parole to the regional parole board. For the preparation the warden asked a public prosecutor to express an opinion on the recommendation to a regional parole board. Every time the warden stopped this preparation because he received an opinion from a public prosecutor that the granting of parole is too early.

Yamada introduced me to Tsuneo Furuhata, the chief-director of Kosin-kai. He is a former high-ranking public prosecutor, who worked for development of rehabilitation of criminals as Director-General of Rehabilitation Bureau of the Ministry of Justice. Then, I knew that he takes care of Masakuni Yoshino, who is graduated from Hibiya Senior High School in 1966, four years after my graduation from the school. Then, I decided to carry out a campaign to realize the early granting paroled to life-sentenced prisoners, especially to Masakuni Yoshino, who seems to be assigned as “a specially life-sentenced offender” by the Notification of 1998.

On February 23, 2021, I sent my first campaign document to people whose email address I knew, two days after watching the above-

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(3) In December in 1926 Chogoro Miyagi, a public prosecutor who worked later as the Judicial Minister, established Koshin-kai with co-operation of Keisho Fujii, a Buddhist chaplain.

mentioned documentary film on TV. I sent this campaign document to such important persons as Yoko Kamikawa, the Minister of Justice and the Director-General of three bureaus of the Ministry of Justice, and chief editorial editors of main newspaper and main TV station by an ordinary mail.

The 14<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice was held in Kyoto during the period from March 7 to March 12, 2021. Japanese representatives insisted the importance of Hogoshi system. However, they did not mention the negligence of right of life-sentenced prisoners to get paroled.

After receiving my campaign document, Satoru Ohashi, the Director-General of Correction Bureau admitted the necessity of early granting paroled of life-sentenced prisoners. He issued a notification to all wardens of a prison to increase the ratio of granting paroled of prisoners including life-sentenced prisoners without being bound by precedent. However, he did not direct the improvement of the proceedings to grant parole to life-sentenced prisoners concretely. Therefore, the practice under the Notification of 1998 has continued. According to the criminal statistics the total number of newly granted parolees of life-sentenced prisoners decreased from 16 in 2019 to 8 in 2020, 7 in 2021 and 5 in 2022.

## 11. Report of Mass Media about Gunfight at Asama Mountain Villa in February in 1972

In February in 2022 time passed 50 years after the gunfight at Asama Mountain Villa occurred. Therefore, reporters of the mass media wrote a feature article about this gunfight. Masakuni Yoshino was a survivor who had participated in the gunfight. Reporters wrote about such a topic as the

shooting incident, Yoshino's career, his situation of receiving medical treatment in East Japan Medical Center for Adult Correction, and Furuhashi's support to him. However, no reporter wrote about Yoshino's serving seriously in a prison during 38 years without getting paroled owing to practice bound by the Notification of 1998. After the finish of writing the feature articles no reporter was interested in Yoshino's serving in Chiba Prison after transference from the medical center.

## 12. Letter to Public Prosecutor General

In July in 2022 Yukio Kai was appointed as the Public Prosecutor General. On August 9 I wrote a letter to him to ask about the Notification of 1998, and sent it to him by an ordinary mail addressed to the Supreme Public Prosecutors Office.

In the letter I pointed out that the Notification of 1998 was secretly issued because it was not based on any statute. Then, I gave questions to him. Firstly, I questioned whether Public Prosecutor General has a will to publish contents of the Notification of 1998 or not. If not, I asked him about reasons why he cannot publish it.

Secondly, I questioned whether he thinks that this notification is still valid. If he thinks so, I asked him about reasons why it is valid.

Thirdly, I asked him about which prisoners are assigned as "a specially life-sentenced offender" by the Notification of 1998. In addition, I questioned him about standards of assigning as "a specially life-sentenced offender" by the Notification of 1998.

After giving the above-mentioned questions, I informed Public Prosecutor General that if he does not give any answer, I will write about it in my article entitled "Problem about Conditional Release of Prisoners Serving Life Sentence".

Although I informed him about the future publication of my article, he did not give any answer.

### 13. Presentation at Tokyo Study Group on Sociological Criminology

I have organized a meeting of Tokyo Study Group on Sociological Criminology since 30 years ago. As I prepared for a draft to publish in Kokugakuin Journal of Law and Politics, I decided to present a draft on Problem about Conditional Release on Parole of Prisoners Serving Life Sentence at a meeting of this study group held on October 21, 2022 at Rissho University. As I made a resume of the draft for my presentation, on October 13 I sent it by an ordinary mail to several important persons including Minister of Justice and Public Prosecutor General to ask to attend at the meeting held on October 21. However, they did not attend the meeting.

At the meeting I explained the situation of life-sentenced prisoners without getting paroled. By the statistics published by Ministry of Justice, in 2021 the council members of a regional parole board granted parole to 8 cases of a life-sentenced prisoner which a warden recommended to grant parole, while they rejected to grant parole in 44 cases. Bound by opinion of a public prosecutor, 84.6% were rejected.

At the meeting attendees including Tsuneo Furuhashi agreed with my insistence on the necessity of realization of the early granting of parole to many life-sentenced prisoners serving seriously in a prison during more than 30 years. However, it was a pity that any important persons invited by me did not listen to the discussion at the meeting and that they did not give me any reply about receiving a resume of my presentation.

#### 14. Campaign in 2023

At the beginning of April, 2023, Kokugakuin Journal of Law and Politics was published, in which my article entitled “Problem about Conditional Release of Prisoners Serving Life Sentence” was included (Yokoyama, 2022). I got 100 offprints of this article. I mailed 98 offprints to important persons including Minister of Justice, Public Prosecutor General, scholars in criminal laws, lawyers, editors of main newspaper and so on. In addition, I mailed it to all members of the legal affairs committee of both the House of Representatives and the House of Councilors.

Tsuneo Furuhashi appreciated my article very much. He expected that some member of the legal affairs committee might question to the Minister of Justice or Public Prosecutor General about granting of parole to life-sentenced prisoners. However, no member questioned at a meeting of the committee. They seemed to hesitate to question, because they knew that people want to impose harsh punishment on persons having committed a murder, while sympathizing with crime victims. My campaign was in vain.

#### 15. Data on Paroled Life-Sentenced Prisoners at End of 2023

After the Notification of 2009 was issued, officers of Rehabilitation Bureau have continued to publish data on results of examination in a regional parole board to grant parole to life-sentenced prisoners.

According to the data at the end of 2023 the total number of life-sentenced prisoners decreased from 1,843 in 2013 to 1,688 in 2023. The

total number of life-sentenced prisoners who got paroled newly, decreased from 16 in 2019 to 8 in 2020, 7 in 2021 and in 2022, and 5 in 2023. As the life-sentenced prisoners confined in a prison have become aged,<sup>(4)</sup> the average period of the serving in a prison of life-sentenced prisoners who got paroled newly increased from 36 years in 2019 to 45 years and 3 months in 2023.

As I mentioned before, in March, 2021, Satoru Ohashi, the Director-General of Correction Bureau issued a notification to all wardens to increase the ratio of granting parole to prisoners including life-sentenced prisoners. However, his notification did not contribute to increasing the ratio of granting parole to life-sentenced prisoners. Owing to fewer rate the number of life-sentenced prisoners who died in a prison increased from 21 in 2019 to 41 in 2023. More and more life-sentenced prisoners are doomed to die in a prison by the practice under the illegal Notification of<sup>(5)</sup> 1998.

## 16. Campaign in 2024

I continued writing a champaign document and sending it by e-mail.

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(4) Of 1,688 life-sentenced prisoners in 2023, 131 or 7.8%, 381 or 22.6%, and 368 or 21.8 were those of 80 years of age and over, those between 79 and 70 years of age, and those between 69 and 60 years of age respectively. As heinous violent offenses committed by youngsters has decreased recently in spite of criminalization (Yokoyama, 2018 : 17), 105 or 6.2% and 22 or 1.3% were those of between 39 and 30 years of age, and 29 and 20 years of age respectively.

(5) Previously, in prisons classified as L class life-sentenced prisoners and prisoners imposed the imprisonment for over 8 years were treated. As life-sentenced prisoners and longtermed prisoners increased in practice under the illegal Notification of 1998 and with heavier imposition of punishment respectively, prisoners imposed the imprisonment of under 10 years are not treated in prisons classified as L class. In prisons of L class and medical prisons a coffin is prepared.

In February in 2024 I knew that Reiko Fuchigami was elected as the first female president of Japan Federation of Bar Associations. On February 12 I wrote a letter to her, which I mailed to her lawyers' office. However, I did not receive any reply from her.

Many lawyers wishing abolition of death penalty insist that the life imprisonment without getting paroled should be adopted in the place of death penalty. They seem to acquiesce the illegal Notification of 1998, by which many life-sentenced prisoners are doomed to die in a prison without getting paroled.

I insist that the life-sentence without getting paroled is cruel punishment, which is prohibited by Article 36 of Constitution. In addition, it would destroy correctional treatment, of which Japanese government is proud. If life-sentenced prisoners do not have a hope to get paroled, they would become desperate. Security officers could not treat them under the rehabilitation model. In addition, it would be costly to confine desperate prisoners who live idly without working in a prison factory until their death. The introduction of life-sentence without getting paroled in the place of death penalty would bring about great disadvantages.

## 17. Request to New Public Prosecutor General

On July 9, 2024, Yukio Kai resigned his position as Public Prosecutor General. In my paper published in April in 2023 I wrote that it would be desirable for him to declare the Notification of 1998 as invalid. Although I continued requesting him to give answer to my questions on the Notification of 1998, he resigned his position without giving any answer to me. It must be his neglect of people's right to know which is guaranteed by Article 21 of the Constitution.

On July 9 Naomi Unemoto was appointed as the first female Public Prosecutor General. Previously, she worked at a position of Director-General of Rehabilitation Bureau. At that time, she visited Koshin-kai to meet Tsuneo Furuhashi. With such experiences she recognizes the importance of rehabilitation.

At the press conference on July 9 Unemoto told that she would introduce the idea of rehabilitation into prosecutors' activities. Immediately after hearing about it, I wrote a letter to express congratulations on her inauguration. In the letter I asked her to meet Tsuneo Furuhashi. However, I did not ask her to declare the Notification of 1998 as invalid, although I had sent an offprint of my article published in *Kokugakuin Journal of Law and Politics* in April, 2023, when she occupied a position of a chief prosecutor of Tokyo High Public Prosecutors Office.

I continued writing a campaign document. On July 30 I sent a campaign document to scholars, lawyers and so on whose e-mail address I knew. I cited a document written by Tsuneo Furuhashi, who introduced that Toshihiko Ishimaru, a chief judge of Tokyo District Court declared the imposition of a life-sentence on Masakuni Yoshino by dismissing prosecutor's demand of a capital punishment. Before death Ishimaru handed his watch to Yoshino's parents to give it to Masakuni when Masakuni releases on parole from a prison.

Immediately, I received a reply email from Mamoru Matsubara, a lawyer, who is my former classmate of Chuo University. He respected late Toshihiko Ishimaru because he was taught by Ishimaru at Judicial Training Institute after passing the bar examination. Therefore, he wrote a letter to Unemoto, a graduate from Chuo University, in order to request her to declare the Notification of 1998 as invalid. On August 2 he mailed it to Supreme Public Prosecutors Office. However, he did not receive any

answer.

On August 8-10 I attended the 15<sup>th</sup> Annual Conference of Asian Criminological Society held at Manila, at which I presented a paper entitled "Right of Life-Sentenced Prisoners to Get Paroled in Japan". On August 11, next day after I returned from Manila, I sent a copy of power point slides of the paper to scholars whose e-mail address I knew. I received a reply from such scholars as Helmut Kury in Germany, Dilip K. Das in U. S.A., Alfonso Falero Folgoso in Spain, Emilio E Dellasoppa in Brazil, Richard R. Bennett in U.S.A., Yakov Gilinskiy in Russia, Branislav Simonovic in Serbia and Ahti Laitinen in Finland. I appreciated their support to my campaign.

I waited for a reply from Supreme Public Prosecutors Office until the end of August. As I did not receive any answer, I wrote a letter to Unemoto, and mailed it to Supreme Public Prosecutors Office. However, I did not receive any answer. Then, I consulted with Tsuneo Furuhata. I wrote a formal letter to Unemoto to request to declare the Notification of 1998 as invalid. In case she declares it, I ask her to make Deputy Chief Prosecutor of Supreme Public Prosecutors Office issue a notification to all chief prosecutors of High Public Prosecutors Office and all chief prosecutors of District Public Prosecutors Office in order to transmit about it. In addition, I asked her that a prosecutor should give a reply not to oppose the proceedings on granting a parole to a life-sentenced prisoner in principle, in case a prison warden or a member of the regional parole board requests an opinion to him/her. However, I do not receive any reply.

## Conclusion

I have an opinion that a social movement should be carried out by parties' claim. Concerning granting a parole written in this paper the parties are life-sentenced prisoners. It is difficult for them to claim to a prison warden or a member of a regional parole board on the proceedings to grant parole. In case they claim on it, they would be regarded as those who do not evince signs of substantial reformation, which is a requirement prescribed in Article 28 of Penal Code. Therefore, they have to wait for the decision making of a warden and the regional parole board.

Most of life-sentenced prisoners do not have any protector, who write a letter to a petition to a prison warden to ask the starting of proceedings to grant parole. In such a situation Tsuneo Furuhashi has continued presenting a letter on petition for Masakuni Yoshino to a warden of Chiba Prison. However, it is in vain, because Yoshino seems to be assigned as "a specially life-sentenced offender" by the Notification of 1998.

I insist that the Notification of 1998 should be abolished, because it was issued illegally. Scholars and practitioners in criminal justice who receive my campaign e-mail may support my insistence. However, they do not express their support to my insistence openly, because they know that people want to impose tough sanction on life-sentenced prisoners.

In 1998 Deputy Public Prosecutor issued a notification on the selection of "a specially life-sentenced offender". It was not based on any article of a statute. It violated the jurisdiction of the legislative body. However, no member of the legal affairs committee of both the House of Representatives and the House of Councilors recognizes it.

On January 8 in 2002 Asahi Newspaper published a scooped article on the Notification of 1998. However, no newspaper and TV do not report

about it although they sometimes received a campaign letter from me. They may be afraid that they are severely criticized by people who want to impose tough sanction on life-sentenced prisoners if they criticize for the practice under the Notification of 1998.

We are proud that Japanese criminal justice has been functioned excellently under the rehabilitation model. However, this model has declined since the surge-up of crime victims' movement in the latter 1990's. In 1998 Deputy Chief Prosecutor of Supreme Public Prosecutors Office issued a notification secretly that life-sentenced prisoners having committed a heinous crime worthy of death penalty should serve in a prison for longer time period than twenty years. More and more life-sentenced prisoners are doomed to die in a prison without getting paroled. It must be the neglect of right of life-sentenced prisoners to get paroled, which is prescribed by Article 28 of Penal Code.

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