【報　告】

Prisoners' Rights in Japan and the Reference to International Human Rights Law

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1. Prisoners' treatment in Japan from a human rights perspective

1-1. Living conditions in penal institutions

The prison population rate in Japan is far lower than that in the United Kingdom.[1] Prison overcrowding – the result of a tough-on-crime policy after the late 1990s – has been resolved for the most part by a decline in the number of prosecutions for trial[2] and a corresponding increase in the number of penal institutions.[3]

However, living conditions in penal institutions are extraordinarily removed from the outside world and prisoners are under a very strict administration regime, which may be called the 'Japanese correctional administration system'. For instance, although the degree of strictness varies from prison to prison, prisoners are prohibited from (a) being defiant towards prison officers and talking back to them (known as *komei*),[4] (b) exchanging nods with other inmates without the permission of prison officers while at work (known as *husei-kodan*), or (c) even wipe away beads of sweat without the permission of the prison officers while at work. If a

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1 Japan's prison population rate per 100,000 population was only 46.0 (including pre-trial detainees) at the end of 2016. Regarding the transition in prison population in Japan, *see*, Ministry of Justice, *White Paper on Crime 2016*, (2017), Part2/Chapter4/Section1/1, fig. 2-4-1-1. *See also*, Koichi Shima, 'Key Policies of Fiscal Year 2017 (Heisei 29) Corrections Administration', (2017) 128 (6) Keisei 12, at 14-16.

2 Ministry of Justice, *supra* note 1, Part2/Chapter2/Section2, fig. 2-2-2-1.

3 It denotes prisons, juvenile prisons, and detention houses.

4 The relationship between prisoners and prison officers is feudalistic with prisoners being subordinate.

prisoner disobeys these rules, he is likely to be imposed disciplinary punishment,[5] and any possible parole[6] will be delayed.[7]

In this system, there is no leeway for a prison riot or disturbance such as the Strangeways Prison riot in 1990, and prison officers need not carry weapons under normal conditions, although they are allowed to use them.[8] However, the Japanese correctional administration system is questionable from the viewpoint of prisoners' human rights. According to this system, the longer a prisoner serves his term, the more he acquires a passive and heteronomous demeanour, thereby weakening his potential smooth re-entry into society.

1-2. Significance of the reference to international human rights law

Living conditions in penal institutions of Japan rarely develop into a political issue and become a topic of conversation among the public. For example, the Diet and the media have ignored the unconstitutional judgment on prisoners' disenfranchisement clause (Article 11 (1) 2 of the Public Offices Election Act 1950) in September 2013.[9] This response to the judiciary is symmetrical in comparison with the swift response of the Diet after the unconstitutional judgment on disenfranchisement of the adult wards clause (Article 11 (1) 1 of the same Act) in March 2013.[10] Described in rather exaggerated terms, prisoners are Japan's *forgotten people*. Therefore, since it is difficult to expect any improvement in prisoners' conditions through the political route, it is important that the judiciary play a key role in prisoners' litigation.

Although the case law on prisoners' litigation has yet to change the deferential approach

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[5] Article 150(1) of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees 2005 (hereinafter the 2005 Act). In this connection, 'Penal detention facilities' is a general term for penal institutions, detention facilities, which were called *daiyo-kangoku* in common parlance, and coast guard detention facilities. Although it is unofficial, English translations of the Japanese laws and regulations are listed on the website of the Ministry of Justice: < http://www.japaneselawtranslation.go.jp/law/?re=02> (last accessed on 29 July 2018).

[6] In Japan, an unconditional release system has not been adopted. Prisoners may be paroled after they have served one-third of the definite term sentenced or after 10 years in the case of a life imprisonment when they evince signs of substantial reformation (Article 28 of the Penal Code 1907).

[7] Over 10 years have passed since the enactment of the 2005 Act, which made a wholesale revision of the Prison Act 1908 according to which prisoners were not assumed to have the benefits of human rights. The revision recognizes that a prisoner is entitled to and is a holder of human rights (Article 1 of the 2005 Act). It dictates that '[s]entenced person are to be treated with the aim of stimulating motivation for reformation and rehabilitation and developing adaptability to life in society' (Article 30 of the 2005 Act). However, the Japanese correctional administration system has, in general, been maintained with prisoners' rights remaining extremely restricted even today. The 2005 Act continues to allow prison authorities a large margin of discretion in restricting a prisoner's rights. Hence, the Act has not brought about any substantial change in the Japanese correctional administration system.

[8] Article 80 of the 2005 Act.

[9] Judgment of the Osaka High Court of 27 September 2013, 2234 Hanrei-Jiho 29.

[10] Judgment of the Tokyo District Court of 14 March 2013, 2178 Hanrei-Jiho 3.

overall,[11] and the judiciary in Japan rarely mentions international human rights law in their judgments, recent Supreme Court judgments[12] have occasionally referred to international human rights treaties and foreign laws as one of the bases for unconstitutional judgments or decisions to reinforce their own judgments.

For instance, in the Nationality Act case in April 2008, the Supreme Court decided that Article 3 (1) of the Nationality Act 1950 was in violation of Article 14 (1) of the Constitution;[13] the former provides that a child born out of wedlock to a Japanese father and a non-Japanese mother and acknowledged by the father after birth may acquire Japanese nationality only if the child has acquired the status of a child born in wedlock as a result of the marriage of the parents. The majority opinion mentioned the International Covenant on Civil and Political Rights (hereinafter ICCPR), the Convention on the Rights of the Child, and foreign countries which 'have revised their laws in order to grant nationality if, and without any other requirement, it is found that the father-child relationship with their citizens is established as a result of acknowledgement'.[14]

Second, in September 2013, the Supreme Court decided that the first sentence of the proviso to item 4 of Article 900 of the Civil Code 1896, which discriminates in terms of the share in inheritance between children born in wedlock and children born out of wedlock, was in violation of Article 14 (1) of the Constitution. The Supreme Court indicated that 'among the United States and European countries, no country maintains a distinction'.[15] It went on to state that, since 1993, the United Nations Human Rights Committee and the Committee on the Rights of the Child 'have repeatedly expressed concerns, recommended legal revision, etc. to Japan, specifically criticizing the discriminatory provisions relating to nationality, family

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[11] For example, the Hiroshima prison case. When the human rights protection committee established by the Hiroshima Bar Association received a request from a prisoner seeking redress for human rights violations, lawyers who were the members of the committee filed an application for an interview with other prisoners who were said to have witnessed the scene of violations; however, the warden of Hiroshima prison disallowed any such interview. In April 2008, the Supreme Court decided that the measure adopted by the prison warden could not be considered illegal. (Judgment of the Supreme Court of 15 April 2008, 62 (5) Minshu 1005, para.5.).

[12] Although it is unofficial, English translations of the judgments and decisions of the Supreme Court are listed on the website of the Supreme Court: <http://www.courts.go.jp/app/hanrei_en/search?> (last accessed on 29 July 2018).

[13] Article 14 (1) of the Constitution of Japan; 'All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.'

[14] Judgment of the Supreme Court (GB) of 4 June 2008, 62 (6) Minshu 1367, para.4 (2)(c). *See also*, Judgment of the Tokyo District Court of 29 March 2006, 1932 Hanrei-Jiho 51 (the first instance of the jointly conducted case of this judgment), paras.3 (1) 8-9.

[15] Decision of the Supreme Court (GB) of 4 September 2013, 67 (6) Minshu 1320, para.3 (3) B.

register, and inheritance'.[16]

Third, in December 2015, the Supreme Court judged that Article 750 of the Civil Code, which dictates that a husband and wife shall adopt the surname of the husband or wife, does not violate Article 13,[17] Article 14 (1), and Article 24[18] of the Constitution. However, the opinion by Okabe J. pointed out that '[t]he Committee on the Elimination of Discrimination against Women' 'has expressed its concern repeatedly since 2003 concerning the fact that Japan's Civil Code contains discriminatory provisions concerning the choice of a surname to be used by a married couple, and has been requesting Japan to abolish these provisions'.[19] Furthermore, the dissenting opinion by Yamaura J. indicated that, in addition to the abovementioned point, '[m] any countries around the world allow a married couple to choose to use separate surnames in addition to using the same surname'.[20]

Regarding prisoners' litigation, in the Tokushima prison case, although it was overturned by the Supreme Court,[21] the Takamatsu High Court in November 1997 referred to *Golder v UK*[22] and *Campbell and Fell v UK*,[23] and stated that 'a general principle' of the European Convention on Human Rights (hereinafter ECHR) 'may be a guideline for interpreting Article 14 (1) of the ICCPR' (right to equality before courts and tribunals and to a fair trial). 'Judgments of the European Court of Human Rights' (hereinafter ECtHR) 'may be considered a guide in making the substance of prisoners' right of access to the court clear'. Thus, 'the legal contacts clauses of the Prison Act 1908 and the Prison Rules 1908 must be construed in conformity with the purpose of Article 14 (1) of the ICCPR'.[24]

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[16] Ibid., para.3 (3) C. For a detailed analysis of this judgment, *see*, Akiko Ejima, 'Emerging Transjudicial Dialogue on Human Rights in Japan: Does It Contribute to the Production of a Hybrid of National and International Human Rights?', (2014) 14 Meiji Law School Review 139, at 149-162.

[17] Article 13 of the Constitution of Japan; 'All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.'

[18] Article 24 (1) of the Constitution of Japan; 'Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.'
Article 24 (2); 'With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.'

[19] Judgment of the Supreme Court (GB) of 16 December 2015, 69 (8) Minshu 2586, para.1 (2) A of the opinion of Okabe J.

[20] Ibid., para.2 (3) of the dissenting opinion of Yamaura J.

[21] Judgment of the Supreme Court of 7 September 2000, 1728 Hanrei-Jiho 17.

[22] *Golder v UK,* Application 4451/70 (1975, PC).

[23] *Campbell and Fell v UK*, Applications 7819/77 and 7878/77 (1984).

[24] Judgment of Takamatsu High Court of 25 November 1997, 1653 Hanrei-Jiho 117, para.3 (1) 1. The warden of Tokushima prison refused him permission to consult his lawyers out of the presence and hearing of a prison officer to obtain state compensation for his treatment.

2. The experience of the United Kingdom: merits and demerits of the ECHR

The United Kingdom had been under the influence of the Strasbourg jurisprudence prior to the enactment of the Human Rights Act 1998. On the other hand, the judicial branch, political branch, and public opinion in Japan tend to attach little importance to the international human rights law. However, considering that the international human rights law has a certain amount of influence on prisoners' rights and liberties, the judiciary may have to pay more attention to prisoners' rights than it does presently. Therefore, although there have been ominous signs of deterioration in relations between the United Kingdom and Strasbourg in recent years, it is useful to refer to the situation in the United Kingdom.

2-1. Influence of the ECtHR on prisoners' litigation

Since 1975, when *Golder v UK* denied the concept of 'implied limitations' of Article 6 of the ECHR and confirmed that the right of access to the courts includes the right of access to a lawyer,[25] the ECtHR has been repeatedly invoked in cases against the UK government concerning prisoners' litigation and has had a certain influence on prisoners' treatment.

To cite a few examples, in cases regarding privileged legal correspondence and lawyers' visits of sentenced prisoners, *Golder v UK* and *Silver and others v UK*[26] laid the groundwork for the development of the UK courts' case laws, i.e. *Raymond v Honey*,[27] *ex parte Anderson*,[28] *ex parte Leech* (*No.2*),[29] and *R* (*Daly*).[30,31]

As for lifer cases, in *V v UK*, the ECtHR found 'that the fixing of the tariff amounts to a sentencing exercise', and '[t]he Home Secretary, who set the applicant's tariff, was clearly not independent of the executive, and it follows that there has been a violation of Article 6 (1)' of the ECHR.[32] Furthermore, from the late 1980s to the early 2000s, the ECtHR found that life sentence prisoners were entitled 'to take proceedings to have the lawfulness of their continued

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[25] *Golder, supra* note 22, paras.26, 34-36 and 40.

[26] *Silver and others v UK*, Applications 5947/72 *et al.* (1980).

[27] *Raymond v Honey* [1983] 1 AC 1 (HL, 1982).

[28] R *v Secretary of State for the Home Department, ex p Anderson* [1984] 1 QB 778 (DC, 1983).

[29] *R v Secretary of State for the Home Department, ex p Leech* (*No.2*) [1994] QB 198 (CA, 1993).

[30] *R* (*Daly*) *v Secretary of State for the Home Department* [2001] UKHL 26.

[31] *See*, Tim Owen and Alison MacDonald (eds.), *Livingstone, Owen, and MacDonald on Prison Law*, (5th ed., Oxford, 2015), at 323-333.

[32] *V v UK*, Application 24888/94, (1999, GC), paras.111 and 114. *See*, Masao Kawai, 'Personal Liberty of the Life Sentence Prisoners: From the Case Law Concerning the Terms of Imprisonment of Life Sentence in Britain', (2010) 61 (1) Waseda Law Journal 141, at 157-161.

detention' before a 'court' for the purpose of Article 5 (4) of the ECHR,[33] and that the Parole Board could not be regarded as a 'court'.[34] Although not necessarily contributing to put the brakes on the political branch's adoption of a tough-on-crime policy,[35] the judiciary has played a certain part in both the tariff-setting process and the release stage than before.

2-2. Antipathy and compromise?

However, in recent years, relations between the United Kingdom and Strasbourg seem to have begun to cool.

2-2-1. Prisoners' voting rights cases: *de facto* acknowledgement of disregard?

In prisoners' voting rights cases, *Hirst v UK (No.2)* found a violation of Article 3 of the First Protocol of the ECHR in 2005.[36] However, due to the growing sentiment against Europe, combined with the backing of a severe punishment policy among the public,[37] there are no indications of any amendment to section 3 of the Representation of the People Act 1983 to this day.

Although successive governments showed a minimum response towards the ECtHR and the Committee of Ministers,[38] and they did not have the slightest desire to amend section 3 of the Representation of the People Act 1983 to give voting rights to even a small portion of the prisoners at the bottom, both the ECtHR and the Committee of Ministers seem to have made concessions to the United Kingdom since 2011. For instance, the ECtHR has granted an extension to the deadline set in *Greens and MT v UK*, which ordered the UK government to bring forward appropriate legislative proposals to implement *Hirst v UK (No.2)* within six

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[33] *Thynne, Wilson and Gunnell v UK*, Applications 11787/85 *et al.* (1990, PC), para.76.

[34] *Weeks v UK*, Application 9787/82 (1987, PC), paras.64, 66 and 68, *Thynne*, *supra* note 33, paras.79-80, *Hussain v UK*, Application 21928/93 (1996), paras.57-58 and *Stafford v UK*, Application 46295/99 (2002, GC), paras.88-90. *See*, Kawai, *supra* note 32, at 149-153 and 161-164.

[35] Section 269 and schedule 21 of the Criminal Justice Act 2003 (c.44).

[36] *Hirst v UK* (No.2), Application 74025/01 (2005, GC).

[37] *See*, HC Deb, 10 February 2011, vol.523, cols.493-586. And *see also*, Conservative Party, *Protecting Human Rights in the UK: The Conservatives' Proposals for Changing Britain's Human Rights Laws*, (October 2014) at 3.

[38] For instance, HC Deb, 3 November 2010, vol.517, cols.921-922, Voting Eligibility (Prisoners) Draft Bill, November 2012, Cm.8499, paras.28-40 and House of Lords and House of Commons Joint Committee on the Draft Voting Eligibility (Prisoners) Bill, 'Draft Voting Eligibility (Prisoners) Bill: Report', Session 2013-14 (HL Paper 103, HC 924), paras.236-237 and 239. *See*, Masao Kawai, 'The Relationship between Strasbourg and the UK: From the Viewpoint of the Prisoner Disenfranchisement', Takashi Kuramochi, Yukio Matsui and Ken Motoyama (eds.), *The 'Modernisation' of the Constitution and the Transformation of the Westminster-Model*, (Keibundo, 2016), at 378-381.

months[39] from the date of *Scoppola v Italy* (*No.3*).[40, 41] The ECtHR also found that neither local government elections nor referendums could be considered elections to the 'legislature' within the meaning of Article 3 of the First Protocol of the ECHR[42] and declined to make any award for legal costs and expenses.[43] In addition, the Committee of Ministers 'welcomed and strongly supported the announcement made by the Lord Chancellor and Secretary of State for Justice when presenting the legislative proposals to Parliament that "the Government is under an international legal obligation to implement the [European] Court's judgment"'[44] and 'welcomed the recommendation of the parliamentary committee that all prisoners serving sentences of 12 months or less should be entitled to vote'.[45, 46] These may be considered as evidence that Strasbourg has *de facto* permitted the disregard of the Strasbourg jurisprudence.[47]

2-2-2. Whole lifer's cases: 'compromise' that is called 'dialogue'?

Regarding whole life cases, in July 2013, in *Vinter v UK*, the ECtHR found that '[i]n light' 'of this contrast between the broad wording of section 30' of the Crime (Sentences) Act 1997[48] '(as interpreted' 'in a Convention-compliant manner, as it is required to be as a matter of United Kingdom law in accordance with the Human Rights Act) and the exhaustive conditions announced in the' Lifers Manual,[49] 'the Court is not persuaded that, at the present time, the

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[39] *Greens and MT v UK*, Applications 60041/08 and 60054/08 (2010).

[40] *Scoppola v Italy* (*No.3*), Application 126/05 (2012, GC).

[41] HC Deb, 6 September 2011, vol.532, col.14WS.

[42] *McLean and Cole v UK*, Applications 12626/13 and 2522/12 (2013), paras.28-30 and 32-33.

[43] *Firth and others v UK*, Applications 47784/09 *et al.* (2014), paras.15 and 20-22 and *McHugh and others v UK*, Application 51987/08 *et al.* (2015), paras.11 and 14-17.

[44] CM/Del/Dec (2012) 1157/30, adopted by the Committee of Ministers on 6 December 2012 at the1157th meeting of the Ministers' Deputies.

[45] CM/Del/Dec (2014) 1193/28, adopted by the Committee of Ministers on 6 March 2014 at the 1193rd meeting of the Ministers' Deputies.

[46] Although in December 2015, the Committee of Ministers 'EXPRESSED PROFOUND CONCERN that the blanket ban on the right of convicted prisoners in custody to vote remains in place' (CM/ResDH (2015) 251, adopted by the Committee of Ministers on 9 December 2015 at the 1243rd meeting of the Ministers' Deputies).

[47] *See*, Kawai, *supra* note 38, at 381-382.

[48] Section 30 (1) of the Crime (Sentences) Act 1997 (c.43); 'The Secretary of State may at any time release a life prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.'

[49] The Prison Service Order 4700 (Indeterminate Sentence Manual, PSI 29/2010 and PI 06/2010), para.12.2.1.; 'The criteria for compassionate release on medical grounds for all indeterminate sentence prisoners (ISP) are as follows: −the prisoner is suffering from a terminal illness and death is likely to occur very shortly' ', or the ISP is bedridden or similarly incapacitated' '; [A]nd [t]he risk of re-offending' 'is minimal; [A]nd further imprisonment would reduce the prisoner's life expectancy; [A]nd there are adequate arrangements for the prisoner's care and treatment outside prison; [A]nd early release will bring some significant benefit to the prisoner or his/her family.'

applicants' life sentences can be regarded as reducible for the purposes of Article 3' of the ECHR.[50] In February 2014, in *R v McLoughlin*, the Court of Appeal replied that the Lifer 'Manual cannot restrict the duty of the Secretary of State to consider all circumstances relevant to release on compassionate grounds.' '[T]he term "compassionate grounds" must be read' 'in a manner compatible with Article 3. They are not restricted to what is set out in the Lifer Manual.' '[T]he law of England and Wales therefore does provide to an offender "hope" or the "possibility" of release in exceptional circumstances which render the just punishment originally imposed no longer justifiable.'[51]

Then, in February 2015, in *Hutchinson v UK*, the fourth section of the ECtHR found that 'it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation'. 'In the circumstances of this case where, following the Grand Chamber's judgment in which it expressed doubts about the clarity of domestic law, the national court has specifically addressed those doubts and set out an unequivocal statement of the legal position, the Court must accept the national court's interpretation of domestic law'.[52] The Grand Chamber maintained this judgment in January 2017.[53]

It may be said that *Hutchinson v UK* kept up appearances of the UK government and appeased anti-Europe sentiment within the United Kingdom to some extent, in that *Hutchinson* did not find a violation of Article 3 of the ECHR. And it may also be said that *Hutchinson v UK* did not put a damper on the European human rights protection standards, in that *Hutchinson* did not overrule *Vinter* and attempted to ensure that it did not extend to other member states.[54] However, the reality is that the effect of *Hutchinson v UK* is tantamount to maintenance of the *status quo* of the UK's penal policy, and this judgment is capable of lowering the human rights' standard of the ECHR.[55]

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[50] *Vinter and others v UK*, Applications 66069/09 *et al.* (2013, GC), para.130.

[51] *R v McLoughlin, R v Newell* [2014] EWCA Crim 188, paras.32-33 and 35.

[52] *Hutchinson, v UK*, Application 57592/08 (2015), paras.24-25.

[53] *Hutchinson, v UK*, Application 57592/08 (2017, GC), paras.51-52, 55-57, 63-64 and 69-72.

[54] Ibid., para.51.; '[T]he Secretary of State is bound by section 6 of' the Human Rights 'Act to exercise the power of release in a manner compatible with Convention rights.' 'The power or' 'the duty of the Secretary of State to release a prisoner on compassionate grounds cannot therefore be regarded as akin to the broad discretion conferred on the Head of State in certain other jurisdictions'. *See also*, Helen Fenwick, *Fenwick on Civil Liberties and Human Rights*, (5th ed., Routledge, 2017), at 165.

[55] Ibid., dissenting opinion of Pinto de Albuquerque J., paras.13-18, 31 and 38. *See also*, Masao Kawai, 'Is Whole Life Sentence an Inhuman Punishment?: From the Viewpoint of Article 3 of the European Convention on Human Rights', Tatsuro Kudo, Hiroshi Nishihara, Hidemi Suzuki, Go Koyama, Toru Mori, Yuhiko Miyake and Kazuhisa Saito (eds.), *Creative Evolution of the Constitutional Law: A Festschrift for Professor Koji Tonami on his 70th Birthday, volume 2*, (Shinzansha, 2017), at 234-236.

3. Conclusion

In Japan, the international human rights law has, in general, not been given due importance. However, for instance, although it rarely becomes an issue of public concern in present-day Japan, in 2013, the Committee on Economic, Social and Cultural Rights 'notes with concern' that the Penal Code provides for imprisonment with work, which is called *choeki*,[56] in breach of Article 6 of the International Covenant on Economic, Social and Cultural Rights (right to work).[57] Apart from whether this view is appropriate or not, international human rights law may offer a viewpoint which may contribute to human rights protection.

On the other hand, in the United Kingdom, certain criteria of international human rights law have been adopted, albeit reluctantly, despite severe criticism. Surely, the present Human Rights Act's system has a vulnerable point. The framework of the Human Rights Act 1998 is likely to suffer repellence against the Strasbourg human rights protection system directly within the United Kingdom, in that it has incorporated the main part of the ECHR and requires a court to 'take into account' the Strasbourg jurisprudence (section 1(1) and section 2 (1) of the Human Rights Act 1998).

However, at least in the context of prisoners' rights, as long as the strong backing of a tough-on-crime policy among people continues, it seems to be desirable that the United Kingdom does not weaken the influence of the ECHR more than at present.[58] As the experience of the United Kingdom vividly shows, an expansion of the authority of international human rights agencies may arouse antipathy within member nations, and there is no guarantee that international human rights agencies make a judgment or recommendation that decides in a prisoner's favour. However, especially in the field of disliked minorities, it seems that the framework of international human rights is still important.

Since the Council of Europe and the European Union are different organizations as a matter of form, the Strasbourg human rights protection system may not be influenced by Brexit directly. However, the Strasbourg human rights protection system has intensified its

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[56] If a prisoner evades work without just cause, which is called *taieki*, he may be imposed disciplinary punishment (item 9 of Article 74(2) and 150(1) of the 2005 Act). In this connection, evading work amounted to approximately 30% of all disciplinary punishment cases of the sentenced prisoners in 2017. Ministry of Justice, *An Annual Report on Correctional Statistics 2017*, (2018), fig. 17-00-95.

[57] The United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Japan, adopted by the Committee at its fiftieth session (29 April-17 May 2013) E/C.12/JPN/CO/3, para.14. *See*, Takaaki Matsumiya ""The Unification of Prison Sentences" and the Purpose of Punishment and Correctional Treatment', (2017) 89 (4) Horitsu-Jiho 79, at 80-83.

[58] *See*, Richard Clayton, 'The Empire Strikes Back: Common Law Rights and the Human Rights Act', [2015] PL 3, at 8-10.

effectiveness due to its multi-layered relations with the European Union system. Accordingly, it is not impossible that Brexit may affect the effectiveness and authority of Strasbourg.[59] Granting that the European Union has various problems, it would nevertheless be undesirable if the effectiveness and authority of the Strasbourg human rights protection system vis-à-vis the United Kingdom is weakened.

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[59] Akiko Ejima, 'Resilience of the Multi-Layered System for the Protection of Human Rights: With the Appearance of "National Particularism"', (2017) 89 (6) Houritsu-Jiho 90, at 92 and Tobias Lock, 'Human Rights Law in the UK after Brexit', [2017] (Brexit Special Extra Issue) PL 117, at 121. On the other hand, Brice Dickson, translated by Ryo Sasaki, 'The European Convention on Human Rights and the United Kingdom's Supreme Court: A Postscript: The Conclusion That Brexit Will Bring about Human Rights Protection in Britain', Yasuzo Kitamura and Maki Nishiumi (eds.), *Cultural Diversity and International Law: As the Viewpoint of Human Rights and Development*, (Chuo University Press, 2017), at 357-360.