



ACPF Life & Library

In this corner, we hope to provide useful information for our members, such as introducing the ACPF activities, past events, and re-recording the contents of the forums. For the first in the series, I will be introducing, “Is Japanese Criminal Justice Still in the Middle Ages?”, the theme of the ACPF Forum held on Tuesday, June 4, 2019.

Is Japanese Criminal Justice Still in the Middle Ages?!



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This is the third in the series. To reiterate, the main arguments of the defendant, Carlos Ghosn, were as follows:

- (1) It would not have been possible for him to receive a proper trial under the practices of criminal justice in Japan, where the conviction rate is 99.4%.
- (2) It is “hostage justice” in that he would not be released on bail if he denied the charges.
- (3) He had no legal counsel during the interview, and he was forced to confess.
- (4) He did not escape from justice but from political persecution and Nissan’s conspiracy plot.

Of these, I mentioned (1) in the first part and (2) in the second part, and this time, I will be discussing (3).

1) The defendant does not have the right to an attorney in the interview

This is in fact true and is actually a point for which it is difficult to make a direct and effective counterargument. In Western countries, it is a matter of course that the suspect has the right to have an attorney present at an interview, and no matter how much I explain it to a person who argues the value of basic human rights, they cannot understand it. Perhaps it would be easier to understand if one takes a counter position, for example, there is a “corporal punishment” such as whipping or flogging in some Southeast Asian countries. For modern Japanese people, this would

be a human rights violation and humanitarian problem that cannot easily be understood or accepted. No matter how much proponents explain its use, it is difficult to accept.

When there is conflict over one particular issue, it is common even in a civil settlement to be stuck in a “never the twain shall meet” or a stalemate position. In this situation, it is necessary to add other issues, to find a way to expand the playing field and find middle ground. In this case, the most effective way is to compare other systems and practices and explain them in their entirety. Even so, it is not possible to totally convince the other person, but it may be possible to reach a little understanding.

From here on, I would like to give the kind of explanations I often give based on my own experiences.

a) Constraints of the legal weapons available on the investigator’s side and interviews

First of all, it is necessary to explain that in Japan, sting operations, wiretapping, and plea bargains have not conventionally been permitted, and it is only recently that wiretapping and plea bargains have been accepted, and even then, only in an extremely limited form.

These systems are widely accepted in the United States, and in other countries as well to a greater or lesser degree, except for plea bargains.

Plea bargains are typically adopted in the United States, but sting operations and wiretapping are also commonly used in other countries. It is easy to suppose that other countries will do the same as one's own country because everyone tends to enter the discussion on the premise of the legal system and practices of their own country. Explaining that the prosecution does not have such legal means (weapons) at its disposal has the effect of subverting that assumption. Then they ask me, "Why is that?" or "How on earth do you prosecute then?" and then they are curious enough to at least try and understand.

If I explain that, from the Japanese way of thinking, for the prosecutorial organ, which is a State authority, to use such methods is seen as "a cheap shot or a dirty trick", some react by saying, "I can understand that way of thinking" while others question, "Isn't it fine if it's prescribed by law?" Regarding the latter, if I say that the establishment of a provision by law that goes against the will of the people is not likely to work", again there are some who see the logic in this argument while others ask further questions. The most striking counterargument to me was, "Don't people who disagree with these methods realize that this leads to too much attention being attached to confessions and statements?" When I asked why, one person explained, "You can obtain objective evidence through a sting operation or wiretapping. That means statements are no longer unnecessary and are no longer important."

The idea of these methods being used to obtain objective evidence was new to me. However, in reality, in Japan, since such methods are viewed as a cheap shot or a dirty trick, they cannot be used, and in that case, the prosecutorial side is left with one of two options: either give up or conduct an interview. That is why the significance or importance of interviews in the Japanese system

comes into play.

b) The public prosecutor also interviews the suspect

The issue is how the interview is managed, but in the practices of criminal justice procedure in Japan, it is necessary to explain that the prosecutor also interviews the suspect. In many other countries, only the police conduct an interview. Moreover, unlike police in Japan, police in other countries are law enforcement agencies but they are not qualified attorneys, and so they seem to have a basic concern that the interview is a human rights violation. That is why the presence of an attorney becomes extremely important. However, in Japan, the prosecutor who is a legal expert also conducts an interview and so is able to check the interview and investigation by the police. Of course, the defense counsel would say it is not possible for the prosecutor to check because the prosecutor is also the one prosecuting, but it is necessary to explain this premise in the sense that the prosecutor's position differs from that of other countries.

c) Recording and videoing

The current situation is such that:

- Suspects are able to meet with their attorney at any time if they so wish,
- The prosecutor's interview in the case is recorded or videoed.

Therefore, the system and operation allow for a check to see if there has been any illegal or inappropriate interview. Japanese lawyers and legal experts argue that there is no obligation to record and video all cases, but in practice, most of the cases are recorded and videoed.

I would like to explain that in the Japanese criminal justice system, which differs from the systems of other countries, especially the US and

European countries, there are various checks and balances, and although the right to have an attorney present is currently not permitted, the system and operation take into account the human rights of the suspect.

Of course, many will not be convinced by the above explanation, but I think it will help in understanding the situation a little better.

2) Forcing a confession?

There can be no “forced confession” if an interview is being recorded and videoed. If seeking a confession or attempting to persuade the suspect is seen as force, I think this would have to be interpreted as a difference in the use of the term or in the perception of a word.

There is also criticism that “the interview is too lengthy”. Again, it is necessary to explain the difference with other countries. In other countries only direct questions about the crime are asked, and so it takes about 15 minutes. However, in Japan, traditionally, the interview begins with asking for a personal history, relationship with the victim and accomplices, background of getting to know them, reasons for being at the scene, motives for the crime, state of preparing a weapon, details of the crime, behavior and evidence after the crime, and so the prosecutor will look at the process and ask detailed questions. After the interview, the prosecutor will check the credibility of the statements one by one by conducting a supplementary investigation to see if the statements can be backed up. In other words, even if the term “interview” is used, it can be said that the content is quite different when compared to other countries.

In Western countries such as the United States, it is sufficient to prove the facts of the crime (Mr. V was stabbed and killed in the [prosecutor’s] jurisdiction on xx day, xx month, xx year), but in

Japan, normally the prosecutor additionally identifies the time and place, and is required to prove the background leading up to the crime, the reason for the crime, and life after the crime as much as possible in court.

From an American perspective, such an interview would be unnecessary, but I think to transform this would be as much a change as abandoning the cultural characteristics of Japan.

Finally, with regard to the defendant, Carlos-Ghosn, the interview was recorded and videoed and the status is that he still denies the charges. This being the case, at the very least, it is incomprehensible as to why he himself claims to have been “forced to confess”.

(To be continued)