

## Free and Confidential Interviews Between Prison Inmates and Counsel in Charge of Requesting Retrials

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The Code of Criminal Procedure of Japan guarantees the right to request a retrial (Art. 435 and 436) and right to the assistance of counsel for the request of a retrial (Art. 440 (1)). But the meetings of prison inmates with counsel in charge of requesting a retrial are attended and monitored by prison officials until the court has decided to open the retrial. In fact, such restrictions on legal communication have frustrated effective exercise of the right to request a retrial. This paper insists that free and confidential interview should be guaranteed between them for several reasons, just as the interview between the accused or the suspect in custody and counsel (Art. 39 (1)).

First, free and confidential interview is essential for the counsel to provide effective assistance for the prison inmates. Attendance and monitoring by prison officials inevitably produce the chilling effect on their communication. This is contradictory to the purpose of Art. 440 (1), which guarantees the right to assistance of counsel so that those sentenced could exercise right to request a retrial effectively.

Secondly, free and confidential interview granted by Art. 39 (1) should be extended to the meetings between prison inmates and counsel in charge of requesting a retrial. This is because the function and the structure of the proceeding for request of a retrial, which was redefined by the Siratori-Saitagawa decisions of the Supreme Court, is effectively equal to that of the proceeding of trial to decide about the criminal charge for the purpose of the right to assistance of counsel.

Thirdly, the International Covenant on Civil and Political Rights (ICCPR) does not permit such restrictions on legal communication as attendance or monitoring by prison officials. Art. 14 (3) (b) and (c) guarantee the right to assistance of counsel and

free and confidential communication between the accused and counsel. These guarantees should cover the proceedings of request of retrial so that the fairness of the total retrial proceedings composed of request and trial proceedings would be secured.

Fourthly, Art. 14 (1) of the ICCPR also exclude such restrictions. It grants the right to fair trial and the access to the court. The case law has recognised that free and confidential communication between and the client in custody and their lawyer is indispensable to the effective access to the court, from the viewpoint of “equality of arms”. This guarantee should cover the proceedings of the request of a retrial so that the right to access to a retrial could be exercised effectively.