

OPINION No. 42/2006 (JAPAN)

Communication: addressed to the Government on 8 August 2005.

Concerning: Mr. Daisuke Mori.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 32/2006.)

2. The Working Group conveys its appreciation to the Government for having provided the requested information.
3. (Same text as paragraph 3 of Opinion No. 32/2006.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments.
5. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
6. According to the information received, Daisuke Mori, a Japanese citizen and a convicted murderer, born on 28 April 1971, resident in Miyagi-ken, worked as an assistant nurse at the Hokuryo Clinic, located in Sendai City, Miyagi-ken, which was closed down on 10 March 2001. On 6 January 2001, around 8 a.m., Mr. Mori was visited at his house by several officers from the Miyagi Prefecture Police Department. They were guided by the head nurse of the Hokuryo Clinic. Mr. Mori was requested to voluntarily appear at the Miyagi Prefectural Police Headquarters, Izumi Station, in order to speak about an 11-year-old female patient of the clinic. The police officers did not inform Mr. Mori of the possibility to be arrested later or about his right to contact a lawyer or his right to remain silent.
7. At the police station, Mr. Mori was interrogated by a police officer who threatened him and slandered against his father, who was also a police officer. Further, the officer made insulting remarks about Mr. Mori's girlfriend. Mr. Mori was neither provided with breakfast nor lunch. At midnight, exhausted and without the presence of legal counsel, he signed a confession statement admitting his responsibility. Thereafter, he was arrested. The police officers showed an arrest warrant issued by the Sendai District Court. Mr. Mori was later transferred to the Miyagi Prefecture Headquarters in Sendai City.
8. On 9 January 2001, Mr. Mori withdrew his confession and admission of responsibility and denied all allegations made against him. As a consequence, the interrogation was conducted in a more severe manner. From 9 January 2001 to 31 March 2001, Mr. Mori was interrogated during 10 hours every day. Both the police officers and the Public Prosecutor used abusive language against him including phrases such as "you should be executed", "you are nothing but garbage among human beings" and the like. They were pounding the desk in the interrogation room repeatedly and forced him to confess his alleged crimes.
9. From 10 to 15 January 2001, Mr. Mori did not feel well and ran a fever of 38 centigrade. During that period he was subjected to continued interrogation during 12 hours each day, finishing at 11 p.m. The Public Prosecutor and the policemen replaced a back-supported chair with a stool although Mr. Mori told them that he chronically suffers from a herniated disc.
10. According to the source, on 20 January 2001, the Public Prosecutor became furious with Mr. Mori because he refused to write the confession statement. He violently kicked the front board of the desk, on the other side of which Mr. Mori's shins were pressed hard in the sitting position. The violent kick caused Mr. Mori great pain on his right knee.

11. Mr. Mori was later charged with destruction of evidence and attempted murder, according to article 199 of the Criminal Procedure Law of Japan. He was accused of “having mixed a muscle relaxant in a then 11-year-old patient’s intravenous drip on 31 October 2000, turning her into a vegetative state”. Subsequently, he was indicted with an alleged case of homicide and four alleged cases of attempted murder.

12. According to the source, the sudden death of the patient did not result from the muscle relaxants administered to her. The police made up a fictitious case of attempted murder.

13. The source adds that in criminal trials in Japan, the courts as well as the police tend to be overly dependent upon confessions as evidence. Some jurists even submit that in Japan “confession is the king of evidence”. False confessions obtained under pressure eventually lead to false charges.

14. Since the time of his arrest, Mr. Mori was prohibited to meet with his family members except for two occasions. On 25 August 2003, his mother was allowed to see him. On 26 September 2003, his father was granted a meeting with him for 10 minutes. Even today, he is not allowed to see or communicate with people other than his family members or his defence counsels.

15. According to the source, although Mr. Mori was requested to appear at the police station voluntarily, he was the victim of violent interrogatories conducted behind locked doors. The police conducted his investigation in an unjust way. He was induced to make a false initial confession simply because he was exhausted and could not bear the examination any further. Interrogatories were conducted for a long period of time each day, accompanied by threats, insults and violence.

16. The source adds that in Japan, once charged, the rate of being convicted reaches 99.9 per cent. Mr. Mori was a victim of false charges which were the result of a confession obtained by means of threats and tricks; taking advantage of starvation and lack of sufficient sleep caused by the long time questioning. Though he later denied his responsibility, he was charged on the basis of the initial false confession made without counsel of a lawyer.

17. In its response, the Government points out that Mr. Mori committed the murder of one patient and attempted four more cases of murder through asphyxiation by putting muscle relaxation medicine into the patients’ intravenous drips, specifically, vecuronium bromide, a neuromuscular blocking agent which causes cardiovascular effects.

18. According to the Government, Mr. Mori was prosecuted for murder and attempted murder on 6 and 26 January, 16 February, 9 and 30 March and 20 April 2001. Except for the latter date he was arrested on each of the days. During the trial of first instance, Mr. Mori pleaded that it was not true that he had administered muscle relaxation medicine. These incidents had been contrived by the clinic. He added that the confession which he made soon after his arrest had been forced by the police. However, these claims were not substantiated. On 30 March 2004, the court of first instance sentenced him to life imprisonment.

19. The Government reports that Mr. Mori’s arrest was effected in accordance with article 199 of the Code of Criminal Procedure and upon a warrant issued by a judge. His detention was

carried out in conformity with article 60 of the above-mentioned Code. The prohibition of interviews during the period of detention was imposed by the judges in conformity with article 81 of the Code of Criminal Procedure, which establishes the possibility of pretrial detention if there are reasonable grounds to suspect that the defendant will escape or that he will destroy or conceal evidence.

20. In its comments and observations to the Government's reply, the source points out that it neglects the fundamental rule of the law that "anyone is presumed innocent unless he is proved otherwise". The Japanese Government couched its "Summary of the Facts" not in terms of "the suspected facts" but in terms of "the committed crime". The Government has no evidence to conclude that Mr. Mori "committed murder" and "attempted four more murders" since he has completely denied the suspicion and is contending with it.

21. It is not fair to state that the defendant's "claims were not substantiated", because the burden of proof rests with the public prosecutor. Only when the public prosecutor proved without any reasonable doubt that a suspect has committed a crime, he or she can be convicted of that crime. In Japan, however, this basic principle of criminal procedure is not being respected. In general, the legal proceedings are carried out as if the defendant carries the burden of proof regarding his or her innocence. The reply by the Government indicates that the defendant bears the responsibility of proving his innocence, when it states that "these claims were not substantiated in the trial".

22. The source points out that it had questioned how the law is put into practice. However, the Government merely elaborates about what the regulations are. The real issues, however, to which the Government has not replied, were in fact the following:

(a) The defendant was asked to go to the police station without being told the reason and without being provided with the notice of the right to remain silent;

(b) The defendant was provided with false facts (e.g. that there was the result of a polygraph test which he failed) and was interrogated threateningly;

(c) After the defendant had withdrawn his confession, he was interrogated for 10 hours a day for 26 days. During the interrogation he was made to sit on a stool without a backrest and he was subjected to indirect violence (e.g. hitting the desk and kicking against the wall).

23. The Working Group, after having received the comments from the source on 7 July 2006, addressed the Government again, asking for more information about the circumstances surrounding the trial of first instance in which Daisuke Mori was declared the author of a murder in addition to four attempted murders.

24. The Government in essence responded the following on 22 August 2006: The judgement of the court of first instance, running up to 426 pages, meticulously assessed the evidence produced by both the Prosecutor and the defence counsel. The Court determined the delinquency of Mr. Mori without actually resorting to his confession, which merely served as corroboration. Concerning the voluntariness of his confession the Court decided that the procedure of

investigation including the interrogation was in fact conducted legally, since the defendant was appropriately informed, as prescribed by law, of his right to remain silent at the beginning of the interrogation. There were no established facts that police officers unjustifiably and forcibly compelled him to confess during the course of the interrogation or at any other time.

25. The source observes in its comments to the second Government's reply that Japanese Regional and High Courts do not respect the principle of *in dubio pro reo*, whereas this is one of the fundamental principles to be applied in criminal procedures. In this connection, the source raises serious doubts in law and in fact with respect to the reliability of expert opinions introduced in court concerning sample material taken from the victims.

26. The source disagrees with the Court's interpretation of evidence as no witness testified against Mr. Mori and the expert evidence carried many inexactitudes with respect to the amount of vecuronium found in the patient's intravenous drip.

27. The source reiterates, in spite of the Government's allegations to the contrary, that while Mr. Mori was present in the police station on 6 January 2001, he was not informed of his right to remain silent and of his right to consult a lawyer. The source further reiterated that Mr. Mori was threatened and not provided with any food during the day of his interrogation. Finally, the source refers to the fact that neither the defendant nor his lawyers were informed about the date of his appeal in court.

28. In the light of the allegations made, the Working Group notes at the outset that the Government denies that it did not inform Mr. Mori of his right to remain silent at the police station; however, it affirms in line with the source that Mr. Mori withdrew his confession statement and declared himself innocent after consulting with his lawyer. Moreover, Mr. Mori remained merely 24 hours without access to a lawyer.

29. Although article 14 of the International Covenant on Civil and Political Rights (hereinafter ICCPR) does not explicitly state that all accused persons shall be assisted by a lawyer when interrogated at a police station, the Working Group has consistently construed this provision to that effect as part of the right of defence and considers the presence of a lawyer desirable in such situations. However, we do not consider it to be an infraction of the right to fair trial if, as has occurred in the present case, the defendant is initially interrogated without the benefit of a lawyer, but is able to consult one on the following day whereupon he withdraws his initial confession statement.

30. The possible mistreatment of Mr. Mori at the police station by not providing him with any food during one day and the rude and inappropriate behaviour of the Prosecutor when the defendant withdrew his confession is not serious enough to consider the trial as being unfair.

31. Both the source and the Government recognize that during the trial complicated expert evidence was presented and assessed by the Court.

32. Moreover, the source concedes that the evidence is insufficient to merit a declaration of annulment on the basis of a violation of the principle of presumption of innocence and the Working Group does not elaborate on such issues.

33. The Working Group is not an appellate court with the competence to review the evaluation of evidence presented in Japanese courts. It is merely competent to test whether, as declared in article 14 of ICCPR, the defendant has not been compelled to testify against himself or to confess guilt, whether he has enjoyed the opportunity to present all necessary evidence and the assistance of a lawyer, and whether he has been able to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

34. The principle of *in dubio pro reo* forms a criterion for interpretation of evidence. Since this principle is not protected by the right to fair trial as defined in article 14 of ICCPR, it is not applicable in this case.

35. The Working Group considers detention to be arbitrary if there has been a total or impartial inobservance of applicable international human rights norms on fair trial of such seriousness as to give the deprivation of liberty an arbitrary character.

36. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Daisuke Mori is not arbitrary.

Adopted on 21 November 2006.