

Articles

Political Threats to Judicial Independence in Post-war Japan: Judging from Judge Impeachment Cases

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Abstract

In Japan, judges typically work with high integrity and are held in deep trust by the public. However, some judges have deviated from this high level of integrity, and in the past 70 years seven of them have been removed for misbehavior by the Judge Impeachment Court.

In this paper, the author reviews and analyzes all Japanese impeachment cases, in addition to some impeachable but unimpeached judge cases. By placing them in the context of judicial history, the author unveils one aspect of the structural problems regarding the relationship between politics and the judiciary.

The key questions of this paper are how impeachment of judges has constitutionally worked and whether it has been properly conducted in Japan. The impeachment procedure is somewhat political. If an innocent judge were unduly impeached and removed from office it would undermine the independence of the judiciary, which is guaranteed by the Constitution of Japan, and if deviant judges unreasonably evaded impeachment and removal it would amount to the same result. So far there have been some questionable impeachment cases, but as yet a fatal misjudgment has not been made. Since the impeachment system faces the unavoidable risk of abuse, more attention should be paid to it, and further study should be conducted on it.

1. Introduction

In Japan, judges in judicial courts typically work with high integrity and

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are held in deep trust by the public.¹⁾ John O. Haley, one of the leading non-Japanese scholars of Japanese legal studies, admires Japanese judges stating: ‘Japanese judges are among the most honest, politically independent, and professionally competent in the world today’ (Haley 2007: 99).²⁾ It is argued that this stems both from judges’ individual self-restraint and from bureaucratic control, as this foreign scholar’s states ‘[o]rganized as an autonomous professional bureaucracy, the judiciary comprises a small, largely self-regulating cadre of elite legal professionals who enjoy with reason an extraordinarily high level of public trust’ (Haley 2007: 99).

Although Japanese judges have been strongly respected in general³⁾, not all of them are great people, and unfortunately there have been some who have deviated from a high level of integrity. Over the 70-year history of the postwar judicial system, eight judges in inferior courts have been tried in the Judge Impeachment Court for misbehavior, and seven judges have been removed from office. How has impeachment of judges constitutionally worked in Japan? Has it been properly conducted so far?

In this paper, the author reviews and analyzes all Japanese impeachment cases, which are almost unknown to foreign scholars, in addition to some impeachable but unimpeached judge cases. By placing them in the context of judicial history and delving into some impeachable but unimpeached judge cases, the author hopes to unveil one aspect of the structural problems regarding the relationship between politics and the judiciary.

2. Overview of the Judge Impeachment System in Japan

The Constitution of Japan, which was enacted on May 3, 1947, established the first impeachment system in Japan’s history. Japan’s impeachment system is unique, since its target is limited to judges in judicial courts, and it is implemented by the special organizations established by the Diet and consisting of Diet members. Although the impeachment system is so

1) According to a public opinion poll continuously conducted by one of the leading polling institutes in Japan, judges are well-trusted (public trust is 3.3 in a maximum score of 5). For comparison, the score for the Self Defense Force is 3.8, for medical institutions it is 3.7, for Diet members 2.5, and for the mass media and bureaucrats 2.6 (Chūō Chōsa Sha 2019).

2) Haley states ‘Japan’s judges depend far more on public confidence in their nonpartisan professionalism and expertise than their common law counterparts’ (Haley 2006: 92).

3) Haley asserts that generally ‘[j]udicial corruption is virtually unknown,’ and ‘[j]udges do not take bribes’ in Japan and ‘[a] combination of factors helps to explain this extraordinary integrity’ (Haley 2007: 112). This paper, however, introduces virtually corrupt judges and judges who took de facto bribes as a deviation from the usual extraordinarily high level of integrity.

important that it is described in the Constitution,⁴⁾ little attention has been given to it in Japan.⁵⁾

The Constitution of Japan strongly guarantees an independent status for judges. Article 78 states:

Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties⁶⁾. No disciplinary action against judges shall be administered by any executive organ or agency.

The grounds for impeachment are described in Article 2 of the Judge Impeachment Act: '[j]udges shall be removed by impeachment in the following cases: (1) grave violation of official duties, or serious neglect of work; (2) other misconduct gravely degrading the dignity of judges whether in duty or not'.

The procedure for an impeachment of a judge is as follows:

1. Whoever thinks a certain judge should be impeached can ask the Judge Impeachment Committee to impeach the judge (Article 15, Paragraph (1) of the Judge Impeachment Act⁷⁾). The Committee also accepts requests from the Supreme Court to impeach any judges whom the Court deems to be impeachable (Article 15, Paragraph (2)).⁸⁾

2. The Judge Impeachment Committee consists of ten members of the House of Representatives and the same number of members of the House of Councillors (Article 5, Paragraph (1)). When a public proposal or claim by the Supreme Court is filed, or when the Committee itself deems any judges to be impeachable, the Committee shall investigate and decide whether to impeach the judge. The Committee can also suspend the impeachment of the judge under extenuating circumstances (Article 13). A resolution for impeachment or suspension requires a greater than two-thirds majority

4) The Constitution of Japan has two provisions regarding the judge impeachment system. One is Article 64, which established the tribunal for impeachment (the Judge Impeachment Court), and the other is Article 78, which provides for impeachment of judges in judicial court.

5) There are few articles on Japan's impeachment system in Japanese, while textbooks on the Japanese constitution usually introduce it only briefly. No articles have been published about Japan's impeachment system in English, except Tsuji (2011) which introduces the Japanese impeachment system and all cases except the cases of Judge Shimoyama and Judge Hanai who were impeached after the publication, and Yanase (2015) which portrays the impeachment system while showing the similarities and differences between Japanese and American systems.

6) Judgment of incompetence to perform official duties for a judge is decided by the court that is superior to the subject judge's court pursuant to Article 3 of the Judge Disciplinary Act.

7) Articles referenced hereinafter in this chapter are those of the Judge Impeachment Act unless otherwise stated.

8) The chief judges of the inferior courts, when they deem a certain judge under their own jurisdictions impeachable, shall report to the Supreme Court.

vote of all attending members of the Committee (Article 10). When the Committee approves the resolution for impeachment, it files the articles of impeachment with the Judge Impeachment Courts (Article 14).

3. The Judge Impeachment Court consists of seven members of the House of Representatives and the same number of members of the House of Councillors (Article 16, Section 1). The Court shall hold an oral argument, and after deliberation it shall make a judgment regarding removal of the impeached judge. The judgment for removal requires a greater than two-thirds majority vote of all the attending members of the Court (Article 31, Paragraph (2)).

4. When the Court declares a sentence of removal of the impeached judge, he or she will be removed from office immediately, and will lose his or her certification of becoming a judge, a public prosecutor, or an attorney.

Aside from impeachment, there are disciplinary and warning measures: (1) reprimand or non-penal fine of up to 10,000 yen for violation of official duties, neglect of work, or other misconduct degrading the dignity of judges (Article 49 of the Court Act)⁹⁾ pursuant to the Judge Disciplinary Act, and (2) verbal or written warning against inadequate handling of affairs or behavior of judges pursuant to Article 80 of the Court Act or Article 21 of the Rules for Affairs of Inferior Courts. These disciplinary and warning measures are decided by the court which is superior to the subject judge's court.

3. Judge Impeachment Cases in Japan

While the impeachment system in Japan has a 70-year history, there have been relatively few actual impeachment cases. To date, the Judge Impeachment Court has tried nine cases regarding eight judges, and it has removed seven judges. In this Chapter, the author describes all cases the Court tried below.¹⁰⁾

9) The grounds for impeachment described in Article 2 of the Judge Impeachment Act mirror the grounds for disciplinary measures described in Article 49 of the Court Act, except for the addition of an emphasis. However, the author would like to note the distinction between formal impeachment by the special organizations established by the Constitution and disciplinary action handed down from a judicial court.

10) Since the final judgment of the Judge Impeachment Court will be published in the Kanpō (Japan's Official Gazette) as public information according to Article 36 of the Judge Impeachment Act, all judgment documents are officially recorded in Kanpō. Such judgments as well as the major decisions by the Judge Impeachment Committee until 1997 can also be seen in Saibankan Dangai Saiban-sho Jimukyoku & Saibankan Dangai Sotsui Iinkan Jimukyoku (1997).

a) Judge Amano (*Kanpō Shōwa Series* 6588, 283-87)

Judge Amano Shunichi of the Shizuoka District Court, Hamamatsu Branch, was absent for a week without permission to go on a business tour with an attorney who was acquainted with him. Moreover, he was involved with dealing goods for the black market, and after the police discovered the crime, he tried to pressure the local police chief into overlooking it. His absence was found to be a grave violation or serious neglect of duties of judges, and his conduct regarding the black market dealings was found to be a misconduct gravely degrading the dignity of judges. As such, he was impeached by the Judge Impeachment Committee ex officio on June 29, 1948.

The Judge Impeachment Court, however, decided not to remove him on November 27, 1948. The Impeachment Court held that, while his absence violated the rule, it was not a grave violation or serious neglect of duties, because the District Court functioned well with the alternate judge. His conduct regarding the black market dealings was held to be excessive but did not rise to the level to require removal under Article 2, Paragraph (2) of the Judge Impeachment Act.

After the Impeachment Court's decision, he was reprimand by the Tokyo High Court as a disciplinary measure on January 31, 1949.

b) Judge Terasako (1950) (*Kanpō Shōwa Series* 6924, 106-09)

Judge Terasako Michitaka of the Otsuki Summary Court was accused of giving advice to the wife of an acquaintance to hide black-market goods before the police investigation that the judge knew was imminent. In addition, he advised his acquaintance to refuse a summary order and to request a formal trial, and then sought to have the trial assigned to him, against procedural rules. He was also alleged to have suborned perjury of his acquaintance in the trial. Because of these allegations and responding to a request by the Chief Justice of the Supreme Court, the judge was impeached under Article 2, Paragraph (2) of the Act on December 7, 1948.

On February 3, 1950, the Judge Impeachment Court decided not to remove him, because it held his conduct did not rise to level of violating the duties of judges nor misconduct gravely degrading the dignity of judges. Although he provided information of the police investigation to the wife of his acquaintance, it was not proven that he advised anyone to hide evidence. While he was responsible for leaking confidential investigation information, it was found to be a causeless event and unavoidable based on their relationship. Additionally, his intentional assignment of the trial to himself seemed highly suspect, but it was not found to be gravely serious. The fact that he suborned perjury was not proven.

After the Impeachment Court's decision, Judge Terasako was punished by a non-penal fine of 9,000 yen by the Tokyo High Court as a disciplinary measure on May 31, 1950.

c) Judge Takai (*Kanpō Shōwa Series* 8790, 350-54)

Judge Takai Sumio of the Obihiro Summary Court was charged with the following five actions: (1) he failed to treat cases swiftly, causing 395 summary orders to become void and preventing indictment for two-thirds of them; (2) he gave a signed blank warrant to his officials in advance, and let them arbitrarily issue the warrant; (3) in a civil dispute regarding a personal acquaintance, he threatened the opponent with imprisonment unless the opponent settled or compromised, and requested an early resolution from the opponent, and issued an arrest warrant for the opponent himself; (4) he issued an illegal bench warrant, and then lost it out of carelessness; and (5) he let unauthorized court officials to hold conciliation, and ignored both his and his subordinates' problematic attendance records for a long time. On August 30, 1955, he was impeached by the Judge Impeachment Committee ex officio. He was further punished by two non-penal fines of 2,000 and 7,000 yen by the Tokyo High Court as a disciplinary measure on June 12 and December 28, 1954.

The Judge Impeachment Court decided to remove him on April 6, 1956, because it considered that the aforesaid actions (1), (2), and (4) constituted grave violation of duties of judges or serious neglect of duties; considered (3) a misconduct gravely degrading the dignity of judges; and held (5) did not rise to the grounds stipulated in Article 2, Paragraph (1) of the Act.

d) Judge Terasako (1957) (*Kanpō Shōwa Series* 9239, 216-18)

Judge Terasako Michitaka, in his second time before the Judge Impeachment Court (the first in 1950, detailed above) had been moved to the Atsugi Summary Court, and had been invited to and accepted dinner by a party of a case he presided over with conciliation commissioners. After he realized that this had been reported to his court by someone, he tried to cover it up, bribed the conciliation commissioners with a sake barrel to deal with another party, and paid for the dinner in question after the fact and after the investigation by the Judge Impeachment Committee. At a public request, he was impeached under Article 2, Paragraph (2) of the Act on July 11, 1957.

The Judge Impeachment Court decided to remove him on September 30, 1956, holding that his conduct gravely degraded the dignity of judges.

e) Judge Kitō (*Kanpō Shōwa Series* 15066, 17-20)

On August 4, 1976, the incumbent Prime Minister Miki Takeo received

a call from an unidentified person¹¹⁾ who falsely claimed to be the Prosecutor-General, who then tried to get the Minister to admit to unjust political pressure with regards to the Lockheed Scandal under the former Prime Minister Tanaka Kakuei. This conversation was recorded by someone.

Assistant Judge Kitō Shirō of the Kyoto District Court, concurrently serving as a judge of the Kyoto Summary Court, gave the tape of this conversation to a journalist, although he recognized that the fake call would have harmful effects on the prosecutors' investigation of the scandal. The Judge Impeachment Committee impeached him on February 1, 1977, responding to requests of both the public and the Supreme Court.

The Judge Impeachment Court decided to remove him on March 23, 1977, because it held his excessive politically oriented behavior betrayed public trust and gravely degraded the dignity of judges.

f) Judge Taniai (*Kanpō Shōwa Series* 16445, 7-9)

Assistant Judge Taniai Katsuyuki of the Tokyo District Court, concurrently serving as a judge of the Tokyo Summary Court, received a complete golf set and two business suits as a gift from an attorney for a party in his assigned case.¹²⁾ Upon a request of the Supreme Court, he was impeached on May 27, 1981.

The Judge Impeachment Court decided to remove him on November 6, 1981, because it held that his conduct gravely violated duties of judges, betrayed the public trust, and gravely degraded the dignity of judges.

g) Judge Muraki (*Kanpō Heisei Series* 3253, 11-14)

Assistant Judge Muraki Yasuhiro of the Tokyo District Court concurrently serving as a judge of the Tokyo Summary Court and as acting judge of the Tokyo High Court, was convicted of child prostitution with three girls aged 14 to 16 involving the payment of money. He was sentenced to two years in prison with probation of five years on August 27, 2001.

There were questions as to whether a judge whose actions were found to be otherwise disqualifying¹³⁾ should automatically be removed (like national government employees) or remain in office until the Judge Impeachment

11) The Impeachment Committee did not specify that Judge Kitō, in fact, made the fake call. However, Kitō was later indicted for fraud and found guilty, proving that he made the fake call. He was ultimately sentenced, on June 9, 1977, to detention for 29 days for abuse of authority by public officials.

12) He (as well as the attorney) was arrested for bribery, but his indictment was suspended. This was the first case in which an incumbent judge was arrested for crime.

13) Article 46 of the Court Act stipulates that a person who has been punished with imprisonment without work or a heavier penalty shall not be appointed as a judge.

Court removes him. He was the first incumbent judge to face this situation.

He was impeached on August 9, 2001, responding to a request from the Supreme Court.

The Judge Impeachment Court consequently decided that any judges whose actions were found to be otherwise disqualifying will not be automatically removed, rather, they shall remain in their office until the Impeachment Court removes them. The Court ultimately decided to remove him on November 28, 2001, because it held his conduct gravely violated duties of judges, betrayed the public trust, and gravely degraded the dignity of judges.

h) Judge Shimoyama (*Kanpō Heisei Series 4982, 10-12*)

Judge Shimoyama Yoshiharu of the Utsunomiya District Court, concurrently serving on the Utsunomiya Summary Court, was convicted of stalking a female court official, by monitoring her behavior and constantly sending sexually suggestive e-mails to embarrass her.¹⁴⁾ He was sentenced to six months in prison with probation of two years on August 8, 2008. He also was impeached by the Judge Impeachment Committee on September 9, 2008, responding to a request from the Supreme Court.

The Judge Impeachment Court decided to remove him on December 24, 2008, because his conduct gravely infringed upon woman's dignity, betrayed public trust, and gravely degraded the dignity of judges.

i) Judge Hanai (*Kanpō Heisei Series 6025, 8-11*)

Assistant Judge Hanai Toshiki of the Osaka District Court took videos with his cell phone up a woman's skirt on a commuter train, was arrested on the spot, and received a summary order to pay a fine of 500,000 yen. Responding to a request from the Supreme Court, he was impeached on November 13, 2012. He graduated from a national law school in Nagoya, passed the bar examination six months later, and was appointed to an assistant judgeship. His arrest came one year and seven months after his appointment, and he confessed that he started his video voyeurism immediately after his appointment.

The Judge Impeachment Court decided to remove him on April 10, 2013, holding that he lacked an awareness of human rights, and his conduct betrayed public trust and gravely degraded the dignity of judges. The judge was just 28 years old when the Court removed him.

14) His sexual harassment took place while he was in charge as the chief of the Ashikaga Branch of the Utsunomiya District and Family Courts.

4. Analysis of the Judge Impeachment Cases and Relevant Problems

4.1. Lenient Decisions of Non-Removal under the Post-war Turmoil

Immediately after the end of World War II, which was also the beginning of Japan's impeachment system, the Judge Impeachment Court tried two cases concerning black market activities. In these two cases, the Court decided not to remove the impeached judges, excusing their behavior in the post-war turmoil. These decisions by the Court could be considered justified, because government distribution and control of supplies were highly confused, shortages of essential goods were serious, and consequently black market business was widely 'overlooked' in those days in Japan. Among judicial professionals, it was well known that Judge Yamaguchi Yoshitada died from starvation because of his refusal to use the black market.¹⁵⁾ Most people at that time felt pity for him and deeply respected his upright behavior as a judge. He was the epitome of virtue befitting a judge, acting morally and legally, yet people also understood that virtue may not save a life. Ordinary people experienced the food shortages, and understood judges faced the same risks, and therefore perceived the black market to be unavoidable. Most of the Judge Impeachment Court members, who were the representatives of the Japanese people, thus seemed to pity the judges and were forgiving of their guilt. The Court stated in its first judgment that: 'since a judge is also a member of society, it is impossible to infringe on his or her right to live in a community.'

However, the two impeached judges did not appear to be saving themselves, but rather used their positions as judges to access the black market to help their acquaintances. Considering the impeached judges' indirect benefit of the black market activities, as well as their obstructions of justice, these two judgments could be considered relatively lenient.

The impeachment system was new, however, and the Court judges and staff were inexperienced in implementing it. The author surmises that the Judge Impeachment Court had not begun to form the standards for impeachment and removal for judges yet, or the Court might have simply acted out of compassion.

15) At that time, the food rationing system was introduced because of its scarceness in Japan, however, the rationed food was so small that many Japanese people were starving and had no choice but to buy food on the black market. Since he was so strict in obeying the Foodstuff Control Act, he fed the rationed food to his children and refused to use the illegal black market, and eventually died of malnutrition. His life history is described in detail in Yamagata (2010).

4.2. Two Decisions of Removals and Potential Impeachment in the 1950s

In 1956 and 1957, the Judge Impeachment Court decided to remove two judges from their offices, one for improper treatment of a warrant and the other for quasi-bribery. The Court seemed to decide these cases without hesitation, because both acts of misconduct obviously gravely degraded the dignity of judges. The author presumes that the Court's standard for impeachment began to emerge from these two relatively straightforward cases. The Court stated in its third judgment that misconduct resulting in public doubts about the fairness of trials would gravely degrade the dignity of judges, and hence they were impeached. The Court also emphasized public trust of justice when considering impeachment cases in its fourth judgment.

One of these cases was that of Judge Terasako, who was initially impeached but not removed. Although he had an opportunity to reflect on his behavior after his first impeachment trial, he repeated the same mistake. The second time, the Judge Impeachment Court did not tolerate the behavior and removed him.

In addition to these cases, there were some in which the Judge Impeachment Committee decided to abandon or suspend the impeachment of judges. The 1950s were the most challenging era for Japan's judiciary, because courts could not always control proceedings against disturbance in controversial cases related to socialists or communists. This phenomenon was referred to as the *areru hōtei* ("the violent courtroom").

When Judge Sasaki Tetsuzo of the Osaka District Court did not control or reprimand communist defendants' arbitrary behavior in court¹⁶⁾, it was requested that he should be impeached. However, the Judge Impeachment Committee decided to suspend his impeachment on November 12, 1954.¹⁷⁾ The author believes that this fact has been of decisive importance for judicial independence. If the impeachment against him for his incomplete control of court proceedings had succeeded, it would have caused a chilling effect on Japanese judges. Therefore, not using impeachment as a tool for criticizing the court control of proceedings was beneficial to the indepen-

16) For example, defendants sometimes delivered impermissible presentations on political topics, applauded or engaged in silent prayer for foreign revolutionists, and loudly sang songs of revolution in chorus with their supporters in the courtroom. Judge Sasaki did not stop the defendants, denying the prosecutors' petition; rather he was perceived as supporting the defendants' behavior. This was known as the *Suita Mokuto* ("Silent Prayer") Incident.

17) Afterwards, the impeachment against Judge Sasaki was again requested, because he unjustly took the side of the Korean defendants and held them not guilty or sentenced them to inappropriately light penalties in other criminal cases. However, the Judge Impeachment Committee decided to suspend his impeachment on January 10, 1955.

dence of judges.

In contrast, while Chief Justice Tanaka Kōtarō of the Supreme Court also faced impeachment, he expressed his deep concern about sacrilege in the court and the undermining of judicial authority, and encouraged judges to be brave at a court director's meeting in June, 1951. Tanaka said in a May 1955 meeting that judges should not listen to 'the noise of the public', when some progressive people criticized the presiding judges' control of the court in the Matsukawa Incident, the Yakai Incident, and others. Leftist attorneys requested he be impeached for his remarks at the meetings and his strict attitude toward the defense counsels in the Mitaka Case, but the Judge Impeachment Committee decided on January 28, 1959 not to impeach him. Subsequently, attorneys continuing to complain about the Matsukawa Incident again requested the Committee to impeach him, but on April 28, 1960 he was again spared impeachment. Although Tanaka's attitude toward his subordinate judges and attorneys might be controversial and be criticized as a threat against judicial independence, his behavior could be understood as a measure to prevent conservatives' criticism against the judiciary. If he had not shown the strict attitude toward progressives, the judiciary might have lost political balance, and consequently faced critical attack by conservatives.

The late 1950s marked the onset of a period of rapid economic growth for Japan after the postwar chaos. As Japan made a new start for prosperity, the Judge Impeachment Committee and the Judge Impeachment Court further defined adequate standards for impeachment and removal of judges.

Public requests for impeachment were used as a political weapon, but they were unsuccessful. Although the organizations in charge of impeaching judges were unavoidably involved in the political controversy, they fought to remain objective.

4.3. The 1970s as a time of Political Turbulence

Judge Kitō's case was a serious political scandal. If the impeached judge's plot had succeeded, the highest public prosecutor and Prime Minister Miki would have been deeply marginalized, while the former Prime Minister Tanaka might have evaded arrest. Miki and Tanaka were both influential politicians belonging to the Liberal Democratic Party (LDP) and were involved in an internal factional struggle with each other. Besides the impeachable actions, Kitō had illegally obtained the personal prison record of Miyamoto Kenji, who was a chairman of the Japanese Communist Party, and leaked it to a journalist. Kitō was therefore sentenced to ten months in prison with probation of two years. He seemed to have had strong political motives, but it has remained unclear what his ultimate goal was. Regard-

less, since not only the politicians belonging to opposition parties but also those belonging to the ruling party did not endorse his politically motivated conduct, all members of the Committee and the Court agreed to his impeachment and removal. The author points out that Kitō deviated significantly from the expectation of politically neutral judges in Japan.

In the 1970s, discussions relating to courts and judges in Japan necessarily include the Hiraga *Shokan* (epistle) Incident.¹⁸⁾ This occurred in the context of the serious ideological confrontation between conservatives and progressives in the 1970s. The LDP, which had exclusive control of the government from 1955 to 1993, had taken the position that the Japan Self-Defense Forces (SDF) were constitutional and that the Japan-U.S. security treaty should be maintained. In contrast, the left continued to criticize the LDP's security policy and insisted that the SDF and the Japan-U.S. alliance were unconstitutional and should be revoked.¹⁹⁾

Judge Fukushima Shigeo of the Sapporo District Court was presiding over the trial of the Naganuma Case,²⁰⁾ which involved the constitutionality of the SDF. Chief Judge Hiraga Kenta of the Sapporo District Court²¹⁾ wrote his own opinion about the constitutional issues in the Naganuma Case in an epistle (aka Hiraga *Shokan*) although Hiraga himself was not in charge of the case, and shared it with Fukushima privately. Fukushima thought that Hiraga's action constituted a serious violation of judicial inde-

18) There are a few English papers about the Hiraga *Shokan* Incident. For instance, Hayakawa (1971) contemporarily illustrates this incident.

19) Under so-called '1955 system', the LDP had successively held majority government for about 40 years, while the Japan Socialist Party (JSP) had taken an opposing position in the national security policy with other opposition parties.

20) In 1969, the Minister of Agriculture and Forestry canceled the designation of national forests near Naganuma Town, in order to allow construction of a ground-to-air missile (Nike Hercules) base of the Japan Air Self-Defense Force in the area. Nearby residents claimed that the SDF was unconstitutional and the cancellation of the national forest designation was illegal, and they sued the Government.

21) Odanaka conjectures that the reason why Hiraga was appointed to the chief judge of the Sapporo District Court was carrying out the special mission of exercising his influence on the judgment of the Naganuma Case in response to the Government and the General Secretary of the Supreme Court, which expected a judgment that the SDF was constitutional (Odanaka 1973: 140-41).

pendence.²²⁾ Therefore, he consulted with the Deputy Chiefs of the District Court about the epistle, telling them he wanted to disclose this action. He also sent a copy of the epistle to various other judges in Tokyo seeking advice on whether he should disclose the problematic epistle or not.²³⁾ Although Fukushima promised the Deputy Chiefs it would not be disclosed until the Judicial Conference of the Sapporo District Court was over, the epistle became widely covered by the media.²⁴⁾ Afterward, on September 7, 1973, Fukushima held that the SDF was unconstitutional under Article 9 of the Japanese Constitution.²⁵⁾

The Judge Impeachment Committee received public requests for impeaching Fukushima and Hiraga from each political side.²⁶⁾

After investigation and deliberation, on October 19, 1970 the Committee decided to suspend Fukushima's impeachment for breaching the confidentiality of the Judicial Conference in violation of a judge's duty, not trying to stop diffusing the Hiraga *Shokan* which was ultimately received by journal-

22) Kumamoto points out that '[t]he Japanese understanding of judicial independence is not quite the same as in other countries where Western types of democracy provide the fundamental sources of political institutions', and '[j]udicial independence simply means independence from any kind of order, or indication, or pressure, imposed by outsiders on individual judges who deal with concrete litigation in court' (Kumamoto 1958: 220). According to his interpretation, it is possible to conclude that Hiraga's epistle threatened judicial independence, which means not judges' collective autonomy but judges' individual independence.

As it relates to judicial independence in the non-Western countries, Lin summarized that the independence of the court from other state organs was emphasized in the pre-war phase and the independence of judges' individual authority was considered the core principle of independent judicial power in the post-war phase. His analysis states that: '[s]uch a two-step process is not only the inevitable result of historical development, but also typically reflects the concrete connotations of judicial independence faced by non-Western countries, especially Asian countries that bear the legal tradition of integrating judicial power and administrative power', and he calls this particular historical experience the 'Japanese model' achieving judicial independence from the perspective of historical development (Lin 1999: 194-95).

23) Most of the judges to whom Fukushima sent the copy strongly insisted that he should disclose the epistle. Although he recognized the possibility that one or more of them might disclose it, he did not seek to prevent that, resulting in a journalist receiving a copy of the epistle.

24) One of the Deputy Chiefs of the District Court, who was not in charge of the Naganuma Case, also received the document (aka Hiraga *Memo*) similar to the epistle by Hiraga, and told Fukushima that it was not a problem and should be ignored. Fukushima disclosed the Hiraga *Memo* in a press briefing without any permission of the receiver.

25) This decision was appealed and annulled by the Sapporo High Court on August 5, 1976. The High Court held that the constitutionality of the SDF was dependent on an extremely high degree of political consideration, so it fell outside the judiciary's purview, unless it was clearly unconstitutional. On September 9, 1982, the Supreme Court declined to rule on judging its constitutionality, because it thought that it was not necessary to the case at hand.

26) Matsui points out that '[s]ometimes [...] the impeachment procedure could be used as an attempt to influence judges', and he criticized an attempt to request impeachment against Fukushima as being 'a serious threat to judicial independence', although he does not mention the attempt to request the impeachment of Hiraga (Matsui 2017: 216-7).

ists, and disclosing another confidential letter (the Hiraga *Memo*) without any permission, although the Judicial Conference had not yet reached a decision at that time.²⁷⁾

On the same day, the Judge Impeachment Committee decided not to impeach Hiraga, who was moved to the Tokyo High Court. The Committee found that the reason why Hiraga shared the epistle with Fukushima was not to interfere with or to unduly influence the authority, but only as a senior colleague helping a junior colleague. People expect judges to exercise their authority independently without undue influence. Judges must uphold the judiciary's independence and fairness of the process, and therefore should not interfere in other judges' cases. However, he handed the epistle that detailed his personal opinion on the case to the judge who was presiding over the case. The Committee held that he had overstepped his authority as a chief judge of the district court, and that it was quite regrettable that his action was suspicious of undue influence, which could undermine public trust in the court. However, while his misconduct actually degraded the dignity of judges, the Committee held that it was not grave, and therefore declined to impeach him.

Some criticized these judgments against Hiraga and Fukushima by the Impeachment Committee as wrong and believed they should be reversed.²⁸⁾ They insisted that Hiraga be impeached and that Fukushima should not be impeached.²⁹⁾ Contrastingly, Haley does not hold a negative view on Hiraga's behavior but rather understands it as the court's voluntary defense

27) Afterward, on October 26, 1970, the Sapporo High Court gave a warning to Judge Fukushima for his deplorable behavior in disclosing the Hiraga *Shokan* and Hiraga *Memo* pursuant to Article 80 of the Court Act. Fukushima then resigned in a press briefing on October 28, criticizing the Sapporo High Court's disciplinary action on him as blindly adherent to the decision of the Judge Impeachment Committee, and saying that he could not do his duties anymore because the court itself had abandoned judicial independence and instead bowed to the incumbent government. However, two days later, he suddenly withdrew his resignation in another press briefing. Again he was warned by the High Court for his criticism of the court system in the former briefing. His impeachment was again requested, but the Judge Impeachment Committee decided not to impeach him, though it criticized his behavior in the incident on March 26, 1971.

28) Miyazawa states 'Fukushima's exposure was taken to be a more serious crime than the fact that the head of the court had intervened in the decision of another judge's case', and insists that one of the factors for the harsher treatment of Fukushima was undoubtedly his membership of Sei-Hō-Kyō which is mentioned below (Miyazawa 1994: 275).

29) Washino Tadao, who is an attorney member of Sei-Hō-Kyō (mentioned below), criticized the Committee's judgments for these two judges as being inverted (Washino 2015: 56-57). Toriu Chūsuke, an attorney, points out that Judge Fukushima lost his chance to dispel the misunderstanding of his qualification as a judge because he was suspended to be impeached by the Judge Impeachment Committee, whereas he could have done so if he were impeached by the Committee and tried and sentenced not to be removed by the Judge Impeachment Court (Takeshita, et al. 1997: 81).

against potential political attack from outsiders. As Haley argues, the overseeing of an individual judge's decision on politically sensitive cases is often exercised not by political leaders but by judges themselves (Haley 2006: 106),³⁰⁾ and such judges' self-restrictive judgment makes the Japanese judiciary bureaucratic.

In addition, it can be presumed that the political movement criticizing progressive judges³¹⁾ caused the Hiraga *Shokan* Incident. Some of those who requested that Fukushima be impeached recognized that he was one of the leading activists in the Seinen Hōritsu-ka Kyōkai (Japan Young Lawyers Association), aka Sei-Hō-Kyō³²⁾, and he had been actively engaging in a political campaign. Sei-Hō-Kyō was comprised of progressive attorneys, judges, and law professors. It was criticized as a radical progressive group not only by the far-right political movement but also by politicians belonging to the government party and by the Supreme Court. In fact, the LDP criticized Sei-Hō-Kyō judges as being grossly biased,³³⁾ and formally adopted a proposal denouncing them on February 8, 1970. The Secretary-General Kishi Seiichi of the Supreme Court announced on April 8, 1970, as the official opinion of the Supreme Court, that judges should avoid joining political organizations, because it might invite public suspicion. Likewise, Chief Justice Ishida Kazuto of the Supreme Court gave similar instructions, in the official statement on the Constitutional Memorial Day, on May 2, 1970. At a press interview, the Chief Justice said, 'It is difficult for extreme militarists, anarchists, or apparent communists to serve as a judge, even though their thoughts were free.' For this statement and the denial of ap-

30) After briefly touching upon the Hiraga *Shokan* Incident (but not mentioning impeachment regarding this incident), Haley notes as follows: 'The response of the judiciary, particularly senior judges in charge of its administration, to the potential politicization of the courts in the 1970s can be argued as having secured the necessary political and public confidence for them to continue to claim immunity from politics' (Haley 2006: 106).

31) This movement was called the 'Blue Purge.' Since the 'sei' of Sei-Hō-Kyō means 'blue' in color, the naming stems from the 'Red Purge,' which was the Japanese version of purging communists from public and private sectors that took place from 1950 to 1952 under the occupation by the General Head Quarters.

32) Sei-Hō-Kyō was established for pursuit of pacifism, democracy, and fundamental human rights in 1954. In the 1970s, members of Sei-Hō-Kyō were seriously persecuted. Miyazawa illustrates that judges of Sei-Hō-Kyō received discriminatory treatment by the General Secretariat of the Supreme Court (Miyazawa 1994: 274-76). As it relates to Sei-Hō-Kyō, in 1971, the Supreme Court did not appoint some Sei-Hō-Kyō members as judges, and it did not reappoint Assistant Judge Miyamoto Yasuaki of the Kumamoto District Court after a ten-year term, although it claimed the reason of denial of his reappointment was not his membership of Sei-Hō-Kyō. See, Haley (2006: 106-07; 2007: 121-27).

33) Ramseyer and Rosenbluth thoroughly examine Sei-Hō-Kyō judges' career path statistically and prove that the Supreme Court did not generally punish leftist judges just for joining the Sei-Hō-Kyō, although it did not allow their personal politics to interfere with their work (Ramseyer & Rosenbluth 1997: 165).

pointment of Sei-Hō-Kyō candidates as judges, the impeachment of Ishida was requested by some scholars, then-famous novelists and 40,000 others, but the Judge Impeachment Committee decided not to impeach him on July 15, 1970 and April 10, 1973.

Some have said that the Supreme Court worked behind the scenes to compel judges to withdraw from Sei-Hō-Kyō since the November of 1969, although there is no official record of this. In fact, most judges withdrew from Sei-Hō-Kyō during this period, resulting in the judges section of this group being almost eliminated.³⁴⁾ The impeachment of 214 judges suspected of belonging to Sei-Hō-Kyō was requested on July 10, 1970. The Judge Impeachment Committee directly inquired of each whether they belonged to this group, rather than asking the Supreme Court for this information, but only 142 judges answered. On February 17, 1972, the Judge Impeachment Committee decided not to impeach any of the judges regardless of whether they really belonged to the group.

4.4. A Simple Case and Hidden Cases in the 1980s

Judge Taniai's case was quite simple and an easy decision for the Judge Impeachment Court, as well as the two 1950s' cases. After this, there were no impeachments for twenty years.

There was another area of judicial misbehavior in this era, however, which was not tried in the Judge Impeachment Court. Judge Yasukawa Teruo of the Kokura Summary Court told an accused woman that he had her destiny in his hands, and he engaged in prostitution with her in July 1980. The Supreme Court of Japan requested the Judge Impeachment Committee to impeach him, but during the impeachment procedure, he suddenly ran for Mayor of Hisayama Town, Fukuoka Prefecture. According to Article 90 of the Public Office Election Act, any officers shall be automatically deemed to have resigned from their office when such officers, who are prohibited to run for any elected office, put themselves forward as election candidates. He used this provision for the purpose of halting the impeachment procedure (Koike 1981: 18).³⁵⁾ Although he lost the mayoral election, he avoided impeachment and removal, and earned the full amount of his

34) The judges Section of the Sei-Hō-Kyō was finally dissolved in 1984 (Miyazawa 1994: 275).

35) Judge Yasukawa had been a court clerk for several years and was appointed as a judge of a summary court. Since he had not passed a bar examination, he originally did not have the certification to become a lawyer. However, if a judge who has once passed a bar examination avoids the decision of removal by the Judge Impeachment Court, he can maintain the qualifications to become a lawyer. If he were a judge who had passed the bar examination and cheated as mentioned above, he would not only keep his financial benefits but also be able to become a lawyer without any shame.

expected retirement bonus and pension. This was a loophole in the impeachment system at that time.

In 1981, the Diet revised the Judge Impeachment Act and added Article 41-2, which declares that a judge who is requested to be impeached by the Supreme Court or who is impeached by the Judge Impeachment Committee shall not be subject to Article 90 of the Public Office Election Act. Since then, a judge who is under an impeachment procedure cannot avoid the consequences by using this loophole.

4.5. A Political Case Again: Discipline for Judge Teranishi in the 1990s

Although no cases were filed in the Judge Impeachment Court in the 1990s, it was not the case that Japan's judiciary was trouble-free in this decade. In fact, this is the decade in which the most famous judge discipline case in post-war Japan happened.

Assistant Judge Teranishi Kazushi of the Sendai District Court and the Sendai Family Court, and concurrently serving as a judge of the Sendai Summary Court, made a speech from the audience while identifying himself as a judge at a meeting on the abandonment of the Wiretapping Bill and Anti-Organized Crime Bill, in the Social Democratic Party Building on April 18, 1998. He said, 'Initially, I was supposed to participate as a panelist in this symposium, but I have decided not to participate as a panelist, because the chief judge of my court warned me that I might be subject to disciplinary measures for participating in this meeting. I personally don't think that it would amount to active engagement in a political campaign prescribed in the Court Act even if I spoke against the bills, but I will decline to speak as a panelist.' Through this speech, he conveyed his opinion to the meeting participants that the Bills had problems with respect to warrant issues from the viewpoint of a judge,³⁶⁾ thereby assisting and promoting the campaign for the abandonment of the Bills.

Article 52, Item 1 of the Court Act prohibits judges 'becoming a member of the National Diet or the Assembly of a local government or actively engaging in a political campaign' while in office. The Sendai High Court reprimanded him on July 24, 1998, because he actively engaged in a political campaign, which is prohibited by this Act, in breach of his official obligation as a judge. He immediately appealed this decision, but the Grand Bench of the Supreme Court dismissed the appeal. The Supreme Court held

36) Before his behavior at the meeting, on October 2, 1997, he wrote to the Asahi Shimbun, which is one of the progressive newspapers. In his letter, while identifying himself as a judge, he pointed out that most judges issue warrants without consideration and the judges' examinations on issuance of wiretapping warrants are unreliable.

as follows:

The Constitution adopts the principle of separation of power [...]. Among the three powers, judiciary is required to, as an independent third party, apply laws from a neutral and fair standpoint and to declare specific contents of law that are applicable to settle the dispute, thereby protecting the people's freedom and rights and maintaining rule of law. All judges who are to exercise such judiciary power must have a neutral and fair viewpoint, and they shall be independent in the exercise of their conscience and shall be bound only by the Constitution and the laws (Article 76, Paragraph (3) of the Constitution). In order to guarantee their independence, judges are entitled to sufficient protection for their status (Articles 78 to 80 of the Constitution). Judges should perform their duty independently and from a neutral and fair viewpoint, and they are also required to discipline and regulate themselves so as not to undermine their neutrality and fairness in appearance, because public confidence in justice is [...] based on fair judgments on specific cases and due court proceedings, and also endorsed by the neutral and fair appearance of judges. Therefore, judges must not be influenced by any force, and in particular, they must draw a line between them and any political force.

Based on this reasoning, the Supreme Court indicated that the purpose of Article 52, Item 1 of the Court Act prohibiting judges from 'actively engaging in a political campaign' is to secure independence as well as the neutrality and fairness of judges so as to maintain public confidence in the judiciary, while realizing disciplined relationships among the judiciary, legislature, and executive under the principle of separation of powers. The Supreme Court defined 'actively engaging in a political campaign' as an act of positively taking part in organized, planned or continuous political activities, which are likely to undermine independence as well as the neu-

trality and fairness of judges.³⁷⁾

However, five out of fifteen Justices of the Supreme Court wrote dissenting opinions that contested the imposing of no disciplinary measures on Judge Teranishi. Moreover, the Supreme Court did not make a request for impeachment against him, and the Judge Impeachment Committee did not impeach him.

Although it might seem that Judge Teranishi was unlikely to have been reappointed as a judge, he was in fact twice reappointed after ten-year terms of office, and served as a judge until August 2020.³⁸⁾

4.6. Obvious Impeachment Cases in the 21st Century

Around 2000, Japan's court system was confronted with the fiercest arguments for reform by the Justice System Reform Council,³⁹⁾ which existed under the Cabinet from July 1999 to June 2001. Legal training systems were dramatically changed under this reform, which introduced a new bar examination system and a Japanese type of law school system. Moreover, public participation in the criminal justice system, known as the *saiban-in*

37) Foote describes Judge Teranishi's Case in detail and compares it with a similar case off two years before on the opposite side of the Pacific Ocean. On January 26, 1996, Justice Richard B. Sanders of the Washington Supreme Court delivered a political speech as a participant at an anti-abortion rally, and on May 12, 1997 the Commission on Judicial Conduct of the State of Washington held that Justice Sanders violated the Code of Judicial Conduct by engaging in political activity other than to improve the law. However, the Washington Supreme Court held that the Commission's decision should be reversed on April 28, 1998, although Sanders' conduct seemed more problematic than Teranishi's. Foote points out that the Washington State Supreme Court placed great weight on judges' right to free expression, while the Supreme Court of Japan emphasized the interests of a fair and impartial judiciary (Foote 2009: 292-93). The author adds that it is reasonable for the Supreme Court of Japan to value maintaining public trust in a fair and impartial judiciary because the legitimacy of the judiciary in Japan is built on public trust.

38) Some studies have claimed that the refusal of reappointment of judges is politically used to control them. For instance, Matsui states '[t]he Supreme Court can use this power to refuse reappointment to ensure judges continue to meet its expectations and not disrupt the harmony of the judiciary', illustrating the refusal of the reappointment of Judge Miyamoto as proof of his arguments (Matsui 2017: 222). This might be true for Miyamoto in 1970s, but the refusal of reappointment of judges has not been used as a political weapon. Haley concludes that '[d]enial of tenure was no longer a viable sanction', because no judge has been denied reappointment since Miyamoto (Haley 2007: 126).

39) The purposes of this council was 'clarifying the role to be played by justice in Japanese society in the 21st century and examining and deliberating fundamental measures necessary for the realization of a justice system that is easy for the people to utilize, participation by the people in the justice system, achievement of a legal profession as it should be and strengthening the functions thereof, and other reforms of the justice system, as well as improvements in the infrastructure of that system' (Article 2, Paragraph (1) of the Law concerning Establishment of the Justice System Reform Council).

seido (trial system by lay judges)⁴⁰⁾, was introduced, consistent with the recommendations of the Council, in order to promote the understanding of the people and to enhance their trust of the judiciary. However, the judge disciplinary system and judge impeachment system were never discussed by the Council, although the judge appointment system was partly changed.⁴¹⁾

After twenty years with no impeachment trial, one was filed in the Judge Impeachment Court in 2001. Since then, there were three impeachment cases in the 21st century, which all stemmed from male judges' sexual harassment or sexual crimes. Notably, Judge Hanai is the first impeached judge who graduated from a law school and passed the new bar examination.⁴²⁾ The author does not believe that the quality of judges has deteriorated due to the new system designed to nurture the legal profession, based on this one case. Instead, the author notes that Hanai's own wicked crime obviously undermined public trust in the judiciary, because he perpetrated it at the very time he was working on the trial of an arson murder case with *saiban-ins*, a trial in which issues included the constitutionality of the death penalty by hanging⁴³⁾. The author believes that the same is true of the other two impeachment cases in 2000s.

In Japan, from the late 2000s to the early 2010s, politics have dramati-

40) Article 1 of the Act on Criminal Trials with Participation of *Saiban-in* stipulates the purpose of this system as follows: 'This Act sets forth special provisions to the Court Act (Act No. 59 of 1947) and the Code of Criminal Procedure (Act No. 131 of 1948) and other necessary items for criminal trials with the participation of *saiban-ins*, considering that the involvement of *saiban-ins* appointed from among the people in criminal procedures together with judges contributes to promote the understanding of the people and to enhance their trust in the justice' (emphasis added). The meaning of the new participation system was described and thoroughly examined in Yanase (2016: 327).

41) Consequently, the following systems were implemented: ensuring judges gather diversified experience as legal professionals in positions other than the judiciary (in order to secure judges with abundant, diversified knowledge and experience); establishing councils which select appropriate candidates for nomination as lower court judges, and recommending the results of their consideration to the Supreme Court (in order to reflect public views in the process whereby the Supreme Court nominates those to be appointed as judges); and creating appropriate mechanisms for the personnel evaluation of judges (in order to secure transparency and objectivity).

42) The number of people who passed the bar examination was under 300 in the 1950s, gradually increased, and reached around 500 from 1963 until 1990, again increasing to about 1,000 in 1999, and 1,500 in 2005. In 2006, the new examination system, under which only law school graduates can take the exam, was introduced, while the old examination coexisted during the transition period until 2011. Since 2007, the number of those passing the bar increased to over 2,000 for seven years, but since 2014 suddenly dropped and is currently around 1,500. Hanai passed the examination in 2009.

43) The so-called Konohama-ku Pachinko Arson Case was first tried in the Osaka District Court, and the panel consisting of *saiban-ins* and professional judges (including Hanai) strenuously discussed the constitutionality of the death penalty. On October 31, 2011, the District Court sentenced a defendant to capital punishment after affirming its constitutionality, and the Supreme Court upheld this judgment on February 23, 2016.

cally changed. Muraki was tried for impeachment from August to November of 2001, during the time of the LDP-Komeito (formerly New Komeito) coalition government. In the meantime, the impeachment investigation of Shimoyama was held from June to July of 2008, when the ruling coalition commanded a majority in the House of Representatives while the opposition parties had control of the House of Councillors (aka the *nejire kokkai* (divided Diet)).⁴⁴⁾ Hanaki was impeached under the government led by the Democratic Party of Japan (DPJ) on November 13, 2012, and after the general election and governmental transition he was removed by the Judge Impeachment Court under the LDP-Komeito coalition government on April 10, 2013. During these three impeachments, although the majority of the Houses of the Diet had changed and therefore the leading members of the Judge Impeachment Court had also changed, the Court's attitude regarding the delinquent judges did not change. The author presumes the reason was that the issue of impeachment had no relationship to political affairs.

5. Conclusion

By reviewing all judge impeachment cases as well as some impeachable but unimpeached judge cases in Japan, it becomes evident that the judge impeachment system is subject to complex problems, which include political matters.

Some of the cases that relate to a judge's personal interests are obviously faults of those judges lacking high integrity. They are definite deviations from Japanese judicial norms. Impeachments for them have contributed to maintaining public trust in the judiciary.

In contrast, other cases which involve political issues are difficult to interpret. As for the political cases, there were some questionable actions by the Judge Impeachment Committee, but the Judge Impeachment Court has not made a fatal misjudgment.⁴⁵⁾ However, it can be said that the im-

44) This impeachment was filed on September 9, 2008, when eight days prior Prime Minister Fukuda Yasuo announced his resignation because he could not control the Diet any longer. Since the House of Representatives was at risk of dissolution, the Judge Impeachment Court took special measures against it (Matsumoto 2011: 83-84).

45) Ramseyer and Rosenbluth conclude that 'in substance, Japanese judges are agents of LDP principals; in practice, LDP principals treat Japanese judicial agents much as principal-agent theory suggests', and 'LDP leaders use their direct control over judicial appointments and indirect control over the Secretariat to shape judicial decisions' (Ramseyer & Rosenbluth 1997: 178-79). In this connection, the author points out a fact that Ramseyer and Rosenbluth do not find. Japanese judge impeachment precedents indicate that neither the LDP nor the Supreme Court have succeeded to use impeachment in order to politically shape judicial decisions, although removal is more decisive in effecting judges than moving to provincial lower court.

peachment procedure is somewhat political, because anyone can ask the Judge Impeachment Committee to impeach a judge and members of both the Committee and the Court are politicians. Therefore, the impeachment system has an inherently unavoidable risk of abuse. If an innocent judge were unduly impeached and removed from office it would undermine the independence of the judiciary, which is guaranteed by the Constitution of Japan, and if a deviated judge unreasonably evaded impeachment and removal it would amount to the same result.

The author concludes that more attention should be paid to Japan's judge impeachment system, and further study should be conducted on it.⁴⁶⁾

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46) Readers of this paper might expect the author to refer to Judge Okaguchi's case, but the author deliberately does not mention this case here. Judge Okaguchi Kiichi of the Sendai High Court concurrently serving as a judge of the Sendai Summary Court, posted problematic comments on Twitter and Facebook repeatedly ignoring two warning measures by the Chief Judge of the Tokyo High Court (on June 21, 2016 and March 15, 2018), and as a result he was twice reprimanded by the Grand Bench of the Supreme Court of Japan on October 17, 2018 and August 26, 2020. He was impeached by the Judge Impeachment Committee responding to public requests for impeachment against him on June 16, 2021. Judge Okaguchi's reprimanded case is partly described in Tsuji (2020: 99-103). Since this case is an important one involving the constitutional issues of judges' freedom of expression, the author plans to examine it in detail in a subsequent paper.

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