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THE JAPANESE LAW ON COMMUNICATIONS INTERCEPTION DURING CRIMINAL INVESTIGATIONS: TRANSLATOR'S INTRODUCTION

Yohei Suda[†]

Abstract: Japan enacted the Law on Communications Interception During Criminal Investigations last year to help control organized crime. The legislation is, in part, a reaction to domestic and international pressure that grew from recent, well-publicized crimes such as the Aum Shinrikyo attack on a Tokyo subway. The Interception Law is a powerful tool for Japanese law enforcement, however the question of whether the Interception Law violates Japan's constitutional rights to privacy and secrecy of communication has not yet been resolved.

I. INTRODUCTION

The Law on Communications Interception during Criminal Investigations ("Interception Law") allows a public prosecutor and a superior judicial police officer to intercept communications related to organized crime.¹ The nerve gas attack on a Tokyo subway by Aum Shinrikyo on March 20, 1995, which killed twelve and injured thousands more, triggered the discussion that led to the Interception Law.² Factors that weighted in favor of enacting a communications interception law included the danger of organized crime to Japanese society and international pressure on the Japanese government to deal with increasing crime.³

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¹ Hanzaisosanotameno Tsushinbojunikansuru Horitsu [Law Regarding the Interception of Communications for Criminal Investigations], Law No. 137, (adopted Aug. 18, 1999) arts. 1, 3 [hereinafter Interception Law].

² See Kiyokazu Torii, *Kenpoha tochow kyoyosuruka* [Does the Constitution allow wiretapping?], 507 HOGAKU SEMINA 8 (1997); see also Homusho Homu Sogo Kenkyujo [Legal Study Centre of Ministry of Justice], *Crimes by Members of Aum Shinrikyo*, HANZAI HAKUSHO [WHITE REPORT OF CRIMES], 1996, at 87; British Broadcasting Corporation, *Japan Approves Phone Taps* (August 12, 1999), available in <http://news6.thdo.bbc.co.uk/hi/english/world/asia-pacific/newsid_418000/418779.stm>.

³ See Homusho Keijikyoku Keijihoseika [Ministry of Justice, Criminal Matters Department, Criminal Legislation Division], *Soshikitekina Hanzaini Taishosurutameno Keijihoseibinikansuru Hoseishingikaiheno Shimon Oyobi Jumikyoku Sankoshian* [Advice to Legal System Council Regarding Enactment of Criminal Law to Deal with Organizational Crimes and Draft Proposal by Bureau], 1103 JURISUTO 165 (1996).

The constitutionality of the Interception Law is a hot issue in Japan.⁴ The question is whether the law conflicts with the constitutional rights to privacy and secrecy of communication.⁵ Supporters contend the law constitutionally limits these rights by specifying the scope of an investigation.⁶ Opponents claim that the scope of interception is unlimited and therefore unconstitutional.⁷

II. BRIEF BACKGROUND

Japanese law enforcement agencies consider communications interception a necessary tool to deal with the increasing amount of organized crime in Japan.⁸ Perhaps the most well known organized crime "incident" in Japan was the Aum Shinrikyo⁹ nerve gas attack in a Tokyo subway.¹⁰ Another example is mafia drug dealing, which has increased in recent years.¹¹ Between 1990 and 1994, the number of people arrested for drug-related crimes was approximately 15,000.¹² Since 1996, the number rose to nearly 20,000 arrests per year.¹³

Increasingly, criminals make use of telecommunications to carry out organized crime schemes.¹⁴ As most developed countries had already adopted communications interception or "wiretapping" laws,¹⁵ Japan felt international pressure to follow suit.¹⁶

⁴ See Nobuyoshi Ashibe, *Tsushinno Himitsu [Secrecy of Communication]*, 219 HOGAKU KYOSHITSU 101, 103-07 (1998).

⁵ *Nihonkoku Kenpo [Constitution of Japan]* (adopted Nov. 3, 1946) art. 35, para. 1 [hereinafter *Kenpo*], translated in MINISTRY OF JUSTICE, *THE CONSTITUTION OF JAPAN AND CRIMINAL STATUTES* (1958); see also Ashibe, *supra* note 4, at 101-07.

⁶ MASAHITO INOUE, *SOSASHUDANTOSHITENO TSUSHIN KAIWANO BOJU [INTERCEPTION OF COMMUNICATIONS AND CONVERSATIONS AS A MEANS OF INVESTIGATION]* 23-73 (1997).

⁷ Toshiki Odanaka, *Gendai Chian Seisakuto Tochoho [Contemporary Public Safety Policy and the Wiretapping Law]*, 885 HORITSU JIHO 13, 16 (1999).

⁸ See Homusho [Ministry of Justice], *Hanzaisosanotameno Tsushinbojunikansuru Horitsuan Q & A [Questions and Answers for Bill Regarding Interception of Communication for Criminal Investigation]* (visited Oct. 27, 2000) available in <<http://www.moj.go.jp/HOUAN/SOSHIKIHO/QANDA/qanda.htm>> [hereinafter *Q & A*].

⁹ Aum Shinrikyo is a Japanese religious movement.

¹⁰ Legal Study Centre of Ministry of Justice, *supra* note 2, at 87-93.

¹¹ Ministry of Justice, Criminal Matters Department, Criminal Legislation Division, *supra* note 3, at 165.

¹² Ministry of Justice, *Kakuseizaijihanno Kenkyo Jokyono Suii [Trend of Arrests of Awakening Drug Criminals]* (visited Oct. 27, 2000) available in <<http://www.moj.go.jp/HOUAN/SOSHIKIHO/RELATION/relation02.htm>>.

¹³ See generally *id.*

¹⁴ *Q & A*, *supra* note 8.

¹⁵ *Id.*

¹⁶ See Ministry of Justice, Criminal Matters Department, Criminal Legislation Division, *supra* note 3, at 165.

III. IS THE INTERCEPTION LAW CONSTITUTIONAL?

An important, unresolved issue is whether the Interception Law violates the Japanese constitutional rights to privacy¹⁷ and secrecy of communication.¹⁸ Article 35, paragraph 1 of the Constitution permits government searches and seizures, however it also requires a warrant that specifies the scope of the investigation.¹⁹ Thus the question is whether the Interception Law satisfies the “specificity” requirement.²⁰

Supporters argue that an interception warrant is specific enough to satisfy the constitutional requirement.²¹ They suggest that the thirty day limit is reasonable because the Japanese warrant is valid only for a limited time period like an American warrant.²² Opponents argue that an interception warrant does not satisfy the constitutional specificity requirement because the period of interception is too long.²³ Additionally, they maintain that an interception warrant cannot be specific because unlike a warrant of search or seizure, an interception warrant does not contain an exact description of the item to be seized.²⁴

The Interception Law is a powerful new tool available to Japanese law enforcement agencies to fight crime in Japan. The Law brings Japan up to speed with other countries that have already adopted “wiretapping” statutes, yet it remains to be seen whether the Interception Law will pass constitutional muster.

¹⁷ See Kenpo, *supra* note 5, art. 13; see also NOBUYOSHI ASHIBE, KENPO [CONSTITUTION] 114-19 (2d. ed 1999).

¹⁸ Kenpo, *supra* note 5, art. 21, para. 2.

¹⁹ Kenpo, *supra* note 5, art. 35, para. 1.

²⁰ Ashibe, *supra* note 4, at 106.

²¹ INOUE, *supra* note 6.

²² *Id.* at 182-84.

²³ Akira Goto, Tsushin Kaiwano Tocho [Wiretapping of Communications and Conversations], 37 KEIHO ZASSHI [CRIMINAL LAW MAGAZINE] 176, 177 (1998); see also Interception Law, *supra* note 1, art. 7, para. 1.

²⁴ See generally Yasuhiro Okudaira, *Ima Shiminteku Jiyuuwo Kataru Imi* [Significance of Talking about Civil Freedom Now] 885 HORITSU JIHO 4, 11 (1999).