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Exploring Litigation, Court Rulings, and Legal Mobilization in Response to Death and Suicide from Overwork: Implications for Labor Law Reform Policy Making in Japan

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*This article analyzes how litigation, court rulings, and legal mobilization have influenced law and policy making related to death from overwork (*karōshi*) and suicide from overwork (*karōjisatsu*) in Japan over the course of half a century. It highlights the gradual, but substantial, impact of litigation and court rulings on different levels of governmental measures. By taking a longer-term perspective to assess the political effects of different stages of the judicialization process and focusing on the actors of legal mobilization—particularly, cause lawyers—this study provides a more accurate depiction of the overall process of social and legal changes observed in the recent Japanese labor law reform.*

INTRODUCTION

In recent years, mental health and well-being at work have become increasingly important topics in many countries, reflecting a growing recognition of the negative impact of work-related stress on employee health and productivity (Ramsay, Scholarios and Harley 2000; Loriol 2011; Gollac 2012; Pega et al. 2021; Chireh et al. 2023). In 2021, the International Labor Organization (ILO) and the World Health Organization (WHO) jointly published a study on the risk of ischemic heart disease and stroke resulting from overwork, declaring working fifty-five hours or more per week as "a serious health hazard" (WHO and ILO 2021). These concerns have been a particularly major issue in Japan. Japanese workers who have endured overwork-related health problems, such as heart failure or depression, or their bereaved families, have taken legal action against their employers and governmental entities. The consequential, highly publicized court cases have compelled both businesses and policy makers to confront and formally recognize death from overwork (*karōshi*) and suicide from overwork (*karōjisatsu*) as critical issues stemming from organizational dysfunctions.[1] Between 1987 and 2011, the Ministry of Health, Labor and Welfare (MHLW) repeatedly amended administrative circulars (*tsutatsu*) to recognize the risks of overwork or work-related stress (Sala 2021).

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1. *Karōshi* means "death from fatigue or stress from overworking. It can occur in the form of illness, including strokes, heart attacks, asthma and mental illness, and even lead to suicide, which is known as *karōjisatsu*. Typical cases include overwork leading to high blood pressure and then to health problem (such as stroke and heart attack) or resulting in depression and suicide" (Kawahito 2022, 7).

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These risks include death or permanent disability from cerebrovascular diseases and ischemic heart diseases and psychic disorders, which sometimes result in suicide (Iwasaki Takahashi, and Nakata 2006). In 2014, the Act on Promotion of Preventive Measures against Karōshi marked the first step toward the development of a prevention policy (Yamauchi et al. 2017).[2] In 2018, the Abe Shinzō administration implemented Japan's first major labor law reform in seventy years,[3] the Work Style Reform Act (*hatarakikata kaikaku*), which aimed to improve worker productivity and create a better work-life balance.[4] One of the main focuses of the reform was to address the issue of health at work and remedy the problems of overwork-related death and suicide by establishing a cap on overtime hours (*Japan Labor Issues* 2018). The working-time reform represented a major historical change in Japanese labor law since, until that point, there had been no binding limit placed on overtime hours (Mizumachi 2021, 504).[5]

This study aims to shed light on the complex interplay among the judiciary, administrative, and legislative branches in the policy-making process in Japan. It specifically examines the link between a long history of court rulings and the labor law reform policy-making processes. The relation between karōshi/karōjistasu court rulings and the working-time reform has been widely acknowledged but not empirically tested. The central argument of this article is that, by adopting a longer-term perspective to assess the political ramifications of different stages in the judicialization process on various government measures and by focusing on key actors in legal mobilization, particularly lawyers, a more accurate understanding of the broader process of social and legal changes observed in the Japanese labor market can be achieved.

To examine the influence of courts on the shaping of administrative norms and policy-making processes, this study adopts an interbranch perspective and builds upon

2. Act no. 100, June 27, 2014 (enacted on November 1, 2014).

3. The enactment of the Equal Opportunities and Treatment for Men and Women in the Field of Employment Act, June 1, 1985, Pub. L. no. 45, followed by revisions in 1997 (Equal Employment Opportunity Act, June 18, 1997, Pub. L. no. 92 and 2006 (EEOA), represented a significant advancement in labor law as it aimed to address discrimination across various stages of employment, including recruitment, assignment, promotion, training, and termination (including dismissal and mandatory retirement) (see, for example, Yamada 2013). While the EEOA introduced important provisions and considerations, its impact was hindered by the weak enforcement of the law. Although the law did not explicitly prohibit discriminatory practices, it required employers to make efforts to avoid such treatment during recruitment, assignment, and promotion (Article 7 and 8). The 1985 law also maintained a distinction between men and women regarding working hours, exempting women from overtime and night shifts due to family responsibilities. This distinction reflected societal expectations and gender roles at the time. The 2006 revision introduced important considerations, including the need to address gender discrimination rather than solely focusing on discrimination against women. The revision also highlighted the importance of work-life balance, which was originally absent from the EEOA (Article 3 of the Labor Contracts Act, December 5, 2007, Pub. L. no. 128) including the issue of long working hours for men (Yamada 2013). The 2006 law also introduced the prohibition of indirect discrimination (Article 7), which was seen as a significant change. However, the limited application of this provision fails to adequately address the impact of prevalent working conditions in the male employment model, such as long working hours and frequent travel, on career progression. These factors have a substantial influence on an individual's ability to advance in their career, making it necessary to consider their effects when addressing indirect discriminatory practices.

4. Arrangement of Related Acts to Promote Work Style Reform, June 6, 2018, Pub. L. no. 71 (Work Style Reform Act). See, for example, Araki 2020.

5. Japan did not ratify the International Labor Organization's treaty on work-time regulations.

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the research of scholars who have demonstrated how litigation can empower activists and facilitate a less hierarchical and more participatory policy-making process (Scheingold 1974; McCann 1994; Barnes 2004; Barnes and Miller 2004; Epp 2009; Barnes and Burke 2020). The first two sections of this article lay out the relevant socio-legal literature and present the contribution of the article and the study's methodology. The third section introduces the legal and social norms of unlimited working time in Japan and examines the genesis of the movement to defend the rights of victims of "sudden death at work." The fourth section analyzes the first wave of legal mobilization[6] and highlights how the strengthening of the judicialization process entailed a dynamic interaction between courts and the administrative branch in the process of revising the standards for the recognition of death from overwork (karōshi) and suicide from overwork (karōjisatsu) as occupational diseases. The fifth section demonstrates how the second and third waves of legal mobilization against karōshi and karōjisastu led to far-reaching changes in the law through the use of various tactics by lawyers, such as lobbying and petitioning the government. It specifically emphasizes how court rulings and litigation influenced the political discourse on working time regulation beyond symbolic outcomes by legalizing the decision-making process.[7] The article concludes by elaborating on questions for future research.

Literature Review

Karōshi, or "death from overwork" and karōjisatsu, or "suicide from overwork" are a well-documented field of research. Legal scholars have examined the connection between court rulings and the recognition of karōshi/karōjisatsu as occupational diseases (Iwamura 2000; Ishii 2004).[8] Sociologists have analyzed the anti-karōshi movement and the crucial role played by the families of victims in coordination with their lawyers to defend the rights of the victims (R. Morioka 2008; Nakajima 2014, 2017). Scott North (1999, 2011, 2014), along with various co-authors, has shown that judicial decisions have had a positive impact on the families of karōshi/karōjisatsu victims and have also increased public awareness of this issue. Yet their scholarship also suggests that judicial decisions are limited to their symbolic value, emphasizing how little influence these decisions have on company practices and government actions (North and Weathers 2009, 615–36). They concluded that the 2014 Act on Promotion of Preventive Measures against Karōshi was mostly symbolic and ineffective in terms of solving the issue of unlimited working time (North and Morioka 2016). They also critiqued the policy-making process that produced the 2018 Work Style Reform Act for leaving little room for the representation of workers' interests (Kojima, North, and Weathers 2017).

6. I refer to a general definition of "legal mobilization" as a term used to "describe any type of process by which individuals or collective actors invoke legal norms, discourse, or symbols to influence policy, culture or behaviour" (Vanhala 2021).

7. Following Charles Epp (2000, 407–8), I use the term "legalizing" to refer to the influence of legal rules and procedural requirements over the decision-making processes.

8. Karōshi and karōjisatsu can manifest in various forms of illness, including strokes, heart attacks, asthma, and mental health issues leading to suicide (Kawahito 2022).

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Yet these studies fail to connect the recent labor law reforms and the judicialization of karōshi/karōjisatsu. They offer a separate analysis of each of the policy changes—the recognition of occupational disease, the Act on Promotion of Preventive Measures against Karōshi, and the regulation of working time. This siloed approach often confines judicial decisions to externalities or symbolic events, preventing the accurate study and assessment of how legal actions and judicial power influence policy-making parameters over the long term (Barnes 2004, 44). These studies also overlook the critical role of lawyers in the decision-making process and how they use institutional levers to make their voices heard. By ignoring the judicialization process and its long-term institutional impact, previous scholarship has failed to capture the changes triggered by new legislation as well as the lawyers' political role.

The lack of attention to judicialization in the karōshi/karōjisatsu literature reflects the limited presence of Japan in comparative research about judicialization (Vallinder 1994; Cichowski and Stone Sweet 2003; Sarat and Scheingold 2005; Cichowski 2006; Hirschl 2011), which might be partly due to the low visibility of this field of research within Japan itself (Kiyomiya 1971; Machimura 2023). In contrast, scholars have analyzed at length the factors contributing to the limited legal consciousness (see, for example, Kawashima 1963; Tanase 2005), the Supreme Court's judicial passiveness, and the limited power of judges (J. Satō 2008; Helmke and Rosenbluth 2009; Law 2009). Despite the 2001 judicial reform aimed at facilitating Japanese citizens' access to the judiciary system, the number of legal professionals remains lower compared to other advanced liberal democracies, and litigation has not significantly increased overall (I. Satō 2002).

The Japanese legal system is frequently characterized by its consensus-oriented and non-adversarial approach, contrasting with systems such as the American legal system, which is associated with adversarial legalism (Kagan 2004, 2019).[9] The use of courts to solve labor conflicts occurs less frequently in Japan compared to both the United States and European democracies.[10] Informal dispute resolution mechanisms, including mediation by administrative agencies, play a prominent role in resolving conflicts. The central role of the administrative branch in workplace conflict resolution is underscored by the higher number of consultations in comparison to litigation.[11] Thus, given the

9. "Adversarial legalism" refers to a particular model of legal practices and dispute resolution that is characterized by an emphasis on formal legal processes, adversarial courtroom proceedings, and reliance on litigation as a means to resolve conflicts (Kagan 2004, 2019). According to Robert Kagan (2004, 2019), this approach has become a defining feature of the American legal system and has significant implications for how law is practiced and the role of legal professionals.

10. The number of appeals to Japanese courts in labor law cases remains remarkably low. In 2020, for instance, Japanese courts handled 7,867 new labor law cases. This number represents approximately one-thirteenth of the 101,871 new cases received by the Conseil des Prud'hommes, the court of first instance responsible for individual labor disputes in France during the same year. Considering Japan's working population of 68.76 million in 2020, which is approximately 2.3 times higher than France's 29.2 million, the ratio of cases brought before the courts to the working population is approximately one-thirtieth of that in France (Mizumachi 2023).

11. Despite the establishment of the Labor Tribunal in 2004 as part of 2001 judicial reform, the annual number of labor disputes remains around eight thousand cases, whereas the Japanese administration receives approximately one million consultations annually (Mizumachi 2023).

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relative limitations of labor unions[12] and the courts[13] in Japan, the administrative branch traditionally assumes the primary responsibility for ensuring the enforcement of labor law through administrative guidance and the supervision of economic agents (Mizumachi 2022). However, the administrative branch is constrained by its limited coercive power and resources.[14]

The use of courts to influence policy making might also encounter challenges within the context of the Japanese sociopolitical system. This system is characterized by a centralized bureaucracy, the dominance of a single strong political party, corporatist structures, and the cohesive coordination of stakeholders' interests (Barnes and Burke 2015, 2020). Scholars have extensively examined the policy-making process in Japan as a form of "privatization," involving collaboration among bureaucrats, members of the ruling party—the Liberal Democratic Party—and actors from influential economic sectors. Within this process, the bureaucracy assumes a central role tied to the concept of the developmental state. This institutional characteristic represents a key aspect of the Japanese coordinated capitalist model (see, for example, Johnson 1982; Lechevalier 2014). Despite the implementation of deregulation policies, the Ministry of Economy, Trade and Industry (METI) continues to wield significant influence in policy making. In this system, which combines "expert and political judgment" within corporatist arrangements where business leaders hold significant consultative roles, the participation of lawyers is infrequent, and appeals to the courts are rare (Okimoto 1989; Kagan 2000). When compared to the United States, where adversarial legalism empowers citizens and activist organizations by emphasizing formal legal procedures, lawyers, and courts to challenge governmental arbitrariness and corporate negligence, the implementation of adversarial legalism in Japan might be hampered by institutional factors (Kagan 2000).

Indeed, there are also legal opportunity structures that are characteristic of the Japanese socio-legal system, which reveal how courts have been institutionalized in the policy-making process, highlighting an original usage of interbranch relations (Ginsburg 2008; Ginsburg and Matsudaira 2012). For example, following environmental litigation and the subsequent implementation of the first anti-pollution laws in the 1960s and 1970s, Japanese legal scholars developed the concept of "*seisaku keisei soshō*," which can be best translated as "strategic litigation." The objective of this type of litigation goes beyond mere reparation of damages after the fact; it aims to prevent future harm by

12. Japanese unions have been experiencing a decline since the mid-1990s. According to the Ministry of Health, Labor and Welfare's (MHLW) survey on labor unions in 2021, the estimated rate of labor union membership, expressed as the ratio of labor union members to total employment, stood at 16.9 percent in 2021. The survey further revealed that the unionization rate in companies with over one thousand employees is 39.2 percent, while it is only 0.8 percent in companies with fewer than one hundred employees (MHLW 2021a).

13. It is crucial to recognize the significant impact of case law on the evolution of Japanese labor law, especially regarding the role of judges in establishing legal standards. Despite the relatively low number of cases brought before the courts, judges have played a pivotal role in shaping fundamental principles that form the bedrock of Japanese labor law (see, for example, Foote 1996).

14. For instance, Japan's number of labor standards inspectors remains relatively low. According to the International Labor Organization (ILO), developed countries are recommended to have at least one labor inspector for every ten thousand workers. However, in Japan, the current ratio stands at approximately one labor standards inspector for every nineteen thousand workers, falling short of international benchmarks (Mizumachi 2023).

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creating new rights and implementing them through laws and policies in a more participatory manner (Tanaka 1996; Okubo 2022). This type of litigation requires networks of cause lawyers (Otsuka 2009; Foote 2014; Sala and Kasagi 2021). The Japan Federation of Bar Associations (Nichiberen) opposed government efforts to introduce the "loser pays principle," which holds that the losing party in a lawsuit must pay the opposing party's attorney fees and costs, because it would undermine strategic litigation (Miyazawa 2001).[15] Nichibenren argued that this principle contradicted the 2001 judiciary reform's goal of improving access to courts, particularly in cases of consumer litigation, lawsuits against national and local governments, medical malpractice lawsuits, labor lawsuits, and pollution and environmental lawsuits due to the unequal resources of the parties.

Thus, Japan provides an original and compelling context for studying the process of judicialization (Sala and Kasagi 2022; Sala and Giraudou 2023), as demonstrated by several scholars who have analyzed various cases of legal mobilization (Haley 1978; Upham 1987, 1996, 1998; Gelb 2000; Figueroa 2018; Kawamura 2018; Jobin 2020). They have documented cases in which Japanese lawyers have exposed instances of negligence or fraud in various contexts, such as medical malpractice, landmark environmental cases, or excessive lending by consumer finance companies (Kidder and Miyazawa 1993; Feldman 2009; Sala 2017). These cases highlight how courts have compelled private enterprises to address social and environmental concerns seriously. Through legal mobilization, regulatory policy-making processes have become more responsive to local conditions and protective of vulnerable interests.

For example, environmental litigation, such as in the case of Minamata disease,[16] influenced several generations of legal mobilization by highlighting how victims and their families embodied "early-risers" (Tarrow 1994), successfully denouncing the violation of social norms by polluting companies (Upham 1976; Almeida and Stearns Brewster 1998; Miyamoto 2012; Mori 2013). The legal mobilization toward recognizing patients' rights in the 1960s and the 1970s shed light on the crucial role of "rights" in articulating and resolving conflicts. Eric Feldman (2000) challenged the traditional perception of the Japanese socio-legal system by examining how, in the case of AIDS policy, recourse to courts by victims countervailed social norms and values to seek both individual redress as well as social change. More recently, Celeste Arrington (2016, 2019, 2021) showed how the Japanese judiciary can be used to defend the interests of the most vulnerable as legal activism may represent the only recourse for marginalized groups who fail to capture the attention of the state. She explained that litigation is not just about defending the interests of vulnerable groups but also about catalyzing reforms or changes in judicial interpretation (see also Arrington and Moon 2020).

15. Resolution on the Loser Pays System of Attorney's Fees (*Bengoshi hōshyū no haisosha futan seido ni kansuru ketsugi*), 2000, https://www.nichibenren.or.jp/document/opinion/year/2000/2000_22.html.

16. Minamata disease is a notorious case of methylmercury poisoning, first reported in 1956. The contamination stemmed from fish and shellfish exposed to methylmercury, a by-product of acetaldehyde production, discharged by the Chisso factory from 1932 to 1968. Despite ongoing pollution, no effective actions were taken during this period. By March 2001, 2,265 victims were officially recognized (1,784 were deceased), and over 10,000 received compensation. This incident, one of Japan's four major pollution diseases, prompted significant financial costs for compensation and cleanup, and raised global awareness about the health risks of toxic waste disposal. See, for example, "Minamata Disease," *Science Direct*, https://www.sciencedirect.com/topics/medicine-and-dentistry/minamata-disease.

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In summary, despite many structural, institutional, and cultural constraints to accessing courts in Japanese society, legal opportunity structures allow social movement actors to use the law to obtain redress and social change (Ota et al. 2009; Vanhala 2012; Steinhoff 2014; Vanoverbeke 2014). This article seeks to expand this body of literature by examining a case that has received little scholarly attention from an interbranch perspective—the judicialization of death from overwork (karōshi) and suicide from overwork (karōjisatsu)—in order to examine the central role of litigation and courts in the policy-making processes. The main claim of this article is that, over a span of more than forty years, lawyers and courts have shed light on the limitations of relying solely on the administrative branch to ensure the enforcement of labor law, given the limited influence of Japanese enterprise unions in this domain. As a result, there has been a strengthening of the role of the judiciary in guaranteeing law enforcement.

Methodology

This study draws on the review of Japanese and international socio-legal literature, the analysis of judicial decisions, and statistics published by the MHLW, the Supreme Court of Japan, and Nichibenren. I studied the minutes from the Labor Policy Council,[17] the Council for the Realization of Work Style Reform,[18] and the Karōshi Prevention Measures Promotion Council.[19] I supplemented these sources with thirty-three semi-structured interviews conducted between 2017 and 2021 with twenty-eight lawyers, four members of the MHLW attached to the Labor Standards Inspection Bureau, and one representative from a labor union. The interviews conducted with lawyers are part of the preliminary stage of a forthcoming work on legal professionals and consisted of questions regarding their motivation for becoming a lawyer, their relationship with victims, unions, and government officials, the number of karōshi cases defended, the difficulty of defending these cases, among other topics. The questions asked of senior officials concerned the process of modifying circulars and the influence of judicial decisions in this process. During the interview with the labor union representative, I asked questions about the decision-making process behind the working-time reform.

CHALLENGING THE SOCIAL NORMS OF LONG WORKING HOURS: THE EMERGENCE OF THE ANTI-KARŌSHI MOVEMENT (1967–87)

Scholars have analyzed the structural, cultural, social, and economic factors that have produced such long working hours in Japan (Koike 1988; Kumazawa 2010;

17. The Labor Policy Council is organized in accordance with the ILO's guidelines and report to the MLHW. The committee that specifically addressed working-time reform under the Abe administration began on September 27, 2013, and was held on average every month until March 2017 (MLHW 2019).

18. The Council for the Realization of Work Style Reform lasted six months from September 27, 2016, to March 28, 2017. The minutes are available on the Prime Minister's Office website at https://www.kantei.go.jp/jp/singi/hatarakikata/index.html.

19. The Karōshi Prevention Measures Promotion Council is held under the supervision of the MLHW, the first meeting was held on December 17, 2014; the council members met about twenty times until the last meeting on May 25, 2021. "Council for Promotion of Measures to Prevent Death from Overwork," *MHLW*, https://www.mhlw.go.jp/stf/shingi/0000061675_224293.html.

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Mizumachi 2010; Ono 2018; Takami 2019; Kanai et al. 2021). According to Teramoto Kosaku (1952), the concept of unlimited working hours was introduced in the Labor Standards Act (LSA) (*Rōdō kijun hō*), which was enacted in 1947 during the postwar period of industrial growth when the unionization rate was above 50 percent.[20] Under Article 36 of the LSA, employers could extend working hours by concluding a written agreement (*saburoku kyotei*) with a labor union representing the majority of workers since overtime was a relevant source of additional income for blue-collar workers at the time.[21]

The labor law's lack of regulation around working time represented one of the major aspects of the Japanese postwar social contract between workers and employers. In return for protecting the job security of their workers, Japanese firms enjoyed greater flexibility in setting working hours for their employees and often operated by exploiting unlimited overtime (Yamakawa 2002; West 2003). This was part of the maintenance of a social order developed around the promise of economic and financial stability, which granted Japanese companies a central position and role in social organization known as *kaishashugi* or companyism (Bronfenbrenner 1993). Inoue Tatsuo (2004) emphasized that the kaishashugi regime dissolved traditional labor-capital conflicts while reinforcing internal cohesion. However, it also led to excessive demands on employees for personal devotion and loyalty to their firms as well as the complicity of management, unions, or colleagues in suppressing nonconformist individuals. Furthermore, it created challenges in finding alternative employment opportunities in the external labor market (52–54). However, in specific contexts such as industrial accidents and occupational disease compensation, labor unions, in collaboration with lawyers and doctors, used organized efforts to defend workers' rights and pushed for reforms in labor administration and the compensation system.

The Genesis of the Movement to Defend the Rights of Victims of "Sudden Death at Work"

In 1957, lawyers collaborated with the Sōhyō labor union (General Council of Trade Unions of Japan) to protect workers' rights at the national level by founding the Sōhyō Defense Association. One of its objectives was to ensure companies' accountability in compensating victims and their families, providing access to appropriate medical treatment, and implementing preventive measures, including revising legal safety and health standards as well as establishing new standards of public compensation for damages incurred by businesses (Kawahito and Okamura 1990, 79). Lawyers and labor unions were highly active in the Kansai region, particularly in Osaka, due mainly to the historical presence of the Sōhyō labor union in this area (Nakajima 2014, 168–69). The majority of the lawyers involved in this network were members of the Osaka Democratic Rights League, an advocacy association for the protection of

20. Labor Standards Act, April 7, 1947, Pub. L. no. 49 (LSA).

21. The immediate postwar period witnessed significant struggles between labor and management that profoundly influenced industrial labor relations. One key characteristic of postwar Japanese unions was that their composition changed to enterprise unions, encompassing both blue-collar and white-collar workers (Nimura 2007).

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human rights and, more specifically, of workers' rights (Nakajima 2014, 2017). During the 1960s, in response to the emerging problem of "sudden death at work," lawyers, labor unions, and doctors began advocating for the recognition of overwork-related accidents and occupational diseases.[22] The evolving judicialization of "sudden death at work" was grounded in court decisions related to administrative law.

There have been two compensation schemes applicable: compensation by the employer on the basis of civil and individual liability and compensation by social security (Ueyanagi 1990, 89–92; Kasagi 2020, 1020). Unlike in the United States, Japanese defendants are allowed to pursue civil and administrative legal action concurrently and in combination. The civil compensation scheme is based on the liability of the employer, whether in tort or under contract, if the fault lies with the employer.[23] The amount of compensation is set in accordance with the damage suffered by the victim, who also bears the burden of proof. Compensation is awarded by the court, in accordance with civil law, following a lawsuit brought by the victim against the employer. Tort law sets a very high bar for proving liability.

The second compensation scheme, conducted under the Japanese social security system's accidents at work and occupational diseases branch, confers a lump sum to the claimant without any responsibility being assumed by the employer. Compensation is awarded by administrative decision and issued by the Labor Standards Inspection Office. A victim who is denied compensation may resort to administrative litigation, at the end of which the judge may overturn the administrative decision and order the payment of compensation. The causal link to the victim's job is the overriding condition for entitlement to compensation, which is particularly difficult to establish for illness (or resulting death). The conditions for compensation are established by administrative circulars (tsutatsu). By setting the conditions for the presumption of a causal link between the disease and work, these administrative circulars are intended to simplify the work of the Labor Standards Inspection Office and thus ensure the consistency of the decisions.

The first standards for the recognition of work-related cerebral and cardiovascular accidents and diseases were included in a 1961 circular (Ishii 2004, 138).[24] According to this circular, a claimant must prove that they were subject to extraordinary workload or working conditions on the day of the occurrence of the illness. Few claimants could meet this strict requirement. In administrative litigation, judges generally refer to these standards, which are supposed to have incorporated the latest scientific knowledge and reflect the position of the administration, but they are also free to ignore them. On several occasions, judges have challenged the labor inspector's denial of compensation by basing their decisions on more flexible criteria than those included in the circular (Sala and Kasagi 2021, 726–28). For example, in a 1967 decision, the judges of the Tokyo District Court took into consideration the duration and nature of the workload

22. Several occupational doctors published their research on the topic for the first time in 1975 in a special issue of the Japanese journal *Labor and Health*, followed by Uehata Tetsunojo's report "Study on Death by Overwork – Report 1: Examination of 17 cases in Different Occupational Categories" (Tetsunojo 1978).

23. Civil Code (*Minpō*) Act of 1896, Pub. L. no. 89 (latest version, Civil Code Act of 2017, Pub. L. no. 44), Arts. 415, 709.

24. Kihatsu no. 116, February 13, 1961

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performed by the worker on a daily basis to prove the causal link between the work and the death of the worker by a cerebral hemorrhage.[25] In 1969, the judges of the Superior Court of Tokyo confirmed this decision by recognizing that the long daily working hours and the mental fatigue they caused were sufficient to prove the link between the work and the death of the worker.[26] With these two decisions, judges bypassed the requirement formulated in the 1961 circular and gradually developed a new doctrine based on the notions of overwork and accumulation of fatigue (Okamura 2002, 166–67).

Long Working Hours as a Social Norm: Systemic Challenges in Addressing Karōshi

In the early 1980s, court rulings and scientific advancements further strengthened the connection between long working hours and health issues. In 1981, Tajiri Shunichiro, a specialist in occupational diseases, formed the first Liaison Committee in Osaka aimed at recognizing "sudden death at work" by bringing together local labor unions, doctors, lawyers, and families of victims. In 1982, Tajiri, with Hosokawa Migiwa and Uehata Tetsunojo, published one of the earliest books on "death by overwork." The authors coined the term "karōshi" and defined it as the phenomenon where psychologically unsound work processes disrupt a worker's normal rhythms, leading to chronic overwork and the accumulation of fatigue in the body. This condition, in conjunction with the worsening of preexisting high blood pressure and arterial hardening, can ultimately result in a fatal breakdown (Hosokawa, Uehata, and Tajiri 1982, 5).

The same year, the Ministry of Labor created a group of experts, composed of legal scholars and doctors, tasked with advising the ministry on the revision of the administrative circular. While the official reason given for this committee was that the circular had not been revised in more than twenty years and needed to be adapted to changing working conditions, it seems that it was also the result of the court rulings, which had exposed the discrepancy between the circular's criteria and the reality of working conditions.[27] In 1984, the Ministry of Labor officially published, for the first time, the number of claims for recognition as occupational disease and the number of cases recognized. In 1987, the Ministry of Labor amended the circular's criteria to include work performed in the week preceding the appearance of the first symptoms of disorder.[28] The decision for compensation was then based on the proof that "the employee performed excessive work in the week preceding the onset of the disorders." This revision was the first step toward the recognition of death from overwork.

Between 1967 and 1987, labor unions, lawyers, and doctors paved the way for a dedicated legal mobilization to improve the recognition of karōshi as an occupational disease. The inclusion of doctors and legal scholars in the revision of the 1987 circular process reflected a more formalized bottom-up and legalistic decision-making approach, demonstrating the influence of court rulings on the administrative branch. However,

25. *Nihon kinkai hōgei jiken*, Tokyo District Court, Rominshu 18-3, 686.

26. *Nihon kinkai hōgei jiken*, Superior Court of Tokyo, Hanrei times, vol. 237, 300.

27. Interview with a member of the MHLW, Labor Standards Inspection Bureau, Tokyo, October 6, 2021.

28. Kihatsu no. 620, October 26, 1987.

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this shift toward a legalistic approach contrasts with the flexibilization of working-time regulation, highlighting the limited influence of labor unions in effectively enforcing labor law.

In 1987, the LSA was amended to establish the forty-hour week.[29] In principle, employers could not require employees to work beyond this limit. This working time regulation, which was the first of its kind, forced companies to reduce overall working hours due to the cost increase resulting from overtime.[30] However, upon agreement with labor unions and in compliance with Article 36 of the LSA, new frameworks allowing flexibility were implemented as a consequence of the revision of the LSA: the Irregular Working Hour System, the Flextime System, and the Discretionary Work System (DWS).[31] In practical terms, these systems allowed companies to decouple working time from wage determination (Imai 2011, 100). Additionally, the amount of uncompensated overtime work, also known as "service overtime" (*sabisu zangyō*), increased steadily, leading to the widespread practice of excessive and unpaid overtime (Morioka 1992).

By the late 1980s, karōshi cases remained extremely difficult to defend at the organizational level. Workers were financially dependent on overtime extra payment, long working hours were still perceived as positive behavior, and the tracking and management of working time were not mandatory. In addition, proving the causal link between working conditions and cerebral and cardiovascular troubles was still difficult. Furthermore, despite the pivotal role that labor unions played in the 1960s to advocate for compensation rights in cases of "sudden death at work," their influence gradually waned due to conflicting interests surrounding the reduction of working hours as overtime work constituted a significant source of income for workers (Kawahito and Okamura 1990, 77–83). Collective bargaining, primarily driven by enterprise unions, prioritized job security for permanent workers, often resulting in compromises on working time-related issues.

ASSESSING THE INFLUENCE OF LEGAL MOBILIZATION AGAINST KARŌSHI ON WORKERS' COMPENSATION AND WORKING TIME DEREGULATION REFORM

From the end of the 1980s, the strengthening of the judicialization process had crystallized the use of strategic litigation to raise awareness about the harmful effects of excessive working time on workers' health.

29. Jun Imai mentioned the increasing pressure from the international community to reduce working time in Japan, as it was considered one of the major causes of her excessive trade surplus (Imai 2011, 98–99). Daniel Foote (1997) undertook a rather detailed examination of this topic in "Law as an Agent of Change? Governmental Efforts to Reduce Working Hours in Japan." He explained that working-hour norms in other nations were utilized in the push to reduce working hours, but the main pressure for change came from within Japan rather than from outside.

30. Although working hours steadily decreased from 1960, they started to increase after the two oil shocks and during the Japanese "bubble economy" (1985–91), eventually reaching twenty-one hundred hours per year. This exceeded the levels of the United States and Britain by over two hundred hours (Morioka 1990).

31. Matsumaru Tadashi (2022), a labor lawyer actively engaged in the anti-karōshi movement, criticizes Article 36 as a "serious loophole." He mentions that the provision was originally based on the assumption that labor and management, being on equal footing, would mutually agree on reasonable limits for overtime. At the time of the LSA's enactment in 1947, lawmakers did not anticipate the weakened role of labor unions in effectively enforcing the law.

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The First Wave of the Legal Mobilization against Karōshi (1989–2008): The Impact of Lawyers' Networks and Strategic Litigation on Establishing Causality

In 1989, the split-up of the Sōhyō[32] triggered the dissolution of the Sōhyō Defense Association, driving labor lawyers to form a dedicated network, the Rōdō bengodan (Japan Labor Defense League). The same year, several lawyers established the first national network of free legal advice by organizing the National Liaison Council of Lawyers for the Defense of Karōshi—the Karōshi Bengodan—with the aim of growing the activities organized by the Osaka Liaison Committee, created in 1981, to a national scale. Today, the Karōshi Bengodan is a group of occupational doctors and almost two hundred lawyers, generally affiliated with left-wing political parties,[33] working for small firms specialized in labor law. Most devote a large part of their careers to the defense of karōshi victims. Members include Iwaki Yutaka, a member of the Osaka Liaison Committee, as well as Okamura Chikanobu and Kawahito Hiroshi, core members of the Tokyo Karōshi Bengodan since its establishment. Another important member was Morioka Koji, a socioeconomic scholar who specialized in the study of working time and who had been engaged since the late 1970s in defending victims of death from overwork.

The Karōshi Bengodan established a non-profit organization, the Karōshi 110 Ban (karōshi hotline), in various cities, staffed by non-governmental experts and designed to raise public awareness about karōshi and offer free legal advice in order to increase the number of plaintiffs. According to Kawahito,

> [w]e gathered several plaintiffs through the karōshi hotline, providing them with our support to form victims' associations. Similar examples can be seen in associations formed by Minamata victims or post-Fukushima victims, which also received support from lawyers. It can be argued that lawyers have a significant impact on social movements in Japan through their supportive role in facilitating the formation of victims' associations. In many instances, lawyers play a crucial role in the initial stages of the movement by helping victims come together and subsequently organize. (Interview with Kawahito Hiroshi, Tokyo, June 15, 2020)

The hotline also played a crucial role in assisting doctors in identifying the characteristics of karōshi.[34] The Karōshi Bengodan's efforts to mobilize and disseminate

32. In November 1989, Rengō (Japanese Trade Union Confederation) was established through the merger of various unions, including Sōhyō, aiming to organize employees in both public and private sectors.

33. According to an interview with a labor lawyer (in Nagano, August 30, 2017), the membership of the *Jiyūhōsodan* (Japan Lawyers Association for Freedom), which was established in 1921, reveals long-standing roots of leftist affiliations among labor lawyers.

34. Drawing from the high number of reported cases, doctors were able to identify that karōshi affected a significantly higher proportion of men than women, predominantly between the ages of forty and fifty-four, with a considerable number in their thirties as well. These cases also indicated that all types of professions were affected, with a clear increase among white-collar workers (Kawahito and Okamura 1990, 7–9). According to the Karōshi white paper, recent data suggests an increase in karōshi victims in their forties and fifties, while victims of karōjisatsu (suicide from overwork) tend to be younger, in their twenties and thirties (MHLW 2021b).

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knowledge about the progress of medical research and the functioning of the compensation system for occupational diseases contrasted with the lack of government investment in addressing the issue.

Karōshi Bengodan lawyers framed karōshi as a matter of fundamental rights, based on the right to life enshrined in the Japanese Constitution, drawing attention to the significant gap between the working conditions of Japanese employees and the country's wealth (Okamura 2002; Inoue 2004). The lawyers applied this critical approach to their work by distinguishing between the imperatives of profit seeking and the pursuit of social change, reflecting the paradox of the legal profession more generally (Cummings 2011). In a 2017 interview with *Bengoshi Dottokomu* magazine, Kawahito explained that the most important consideration for a lawyer in choosing a case should not be "profit or economic calculation" but, rather, the defense of human rights (*Bengoshi Dottokomu* 2017, 4–11). As Daniel Foote (2014, 179) wrote,

> [t]he relatively limited competition in the Japanese legal profession has afforded lawyers with an assured livelihood. Thus, in turn has helped foster cause lawyering. Lawyers concerned with social causes have enjoyed the wherewithal to undertake representation relating to those causes on a pro bono basis, without worrying about remuneration; the abundance of other well-paying work has afforded them that freedom.

Thus, it was common for Japanese activist lawyers to fund their work through the financial resources obtained from successful court cases:

> In recent years, many lawyers from the Karōshi Bengodan have achieved success in winning cases. This is in contrast to thirty years ago when we did not receive any income from our activism in defending against karōshi and karōjisatsu. The current situation is significantly different, as we now have a stable source of income from karōshi and karōjisatsu cases. Previously, we had to rely on other cases to generate income for the defense of karōshi cases. (Interview with Kawahito, Tokyo, June 15, 2020)

Indeed, Kawahito explained that, in the 1990s, the majority of karōshi cases brought before the courts had a very low chance of success, and the efforts of the administration to raise awareness of the karōshi problem were futile. Nevertheless, the only way to obtain recognition of the problem was to challenge the Labor Standards Inspection Office refusal or file a civil suit to challenge the employer's responsibility (*Bengoshi Dottokomu* 2017, 4–11). According to one labor lawyer,

> [i]n civil cases, a majority of disputes are settled through agreements. However, in administrative cases, settlement agreements are rare. The court rulings in such cases can be instrumental in effecting changes to the compensation system. If we accumulate court decisions that challenge the refusal of the labor inspectors, then we can argue that the application of these standards is disconnected from reality. The decisions of the judges will exert pressure on the administration to change the standards. Lawyers play a role at

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> the beginning of the standards revision process. (Interview with a female labor lawyer H., Tokyo, August 25, 2017)

These strategic litigations show that Japanese legal activists consider judicial institutions to be more reputable, impartial, and effective bodies for adjudication than the administration (Tate and Vallinder 1995). Although the number of recognized cases remained very low despite the 1987 circular revision, the number of court cases challenging refusal from the Labor Standards Inspection Office increased. Between the 1980s and the early 2000s, about one hundred court decisions, including several decisions handed down by the Supreme Court, challenged the application of the administrative circular's criteria (Okamura 2002, 283).

Following a surge in administrative disputes, the Ministry of Labor decided to undertake further revisions to the circular. During this process, Okamura, one of the core members of the Karōshi Bengodan, presented four recommendations to the Ministry of Labor regarding causality between work and a worker's death. The first recommendation pertained to recognizing the link between disorders and work according to the criteria of the multiple cause theory rather than the relative dominant cause theory contained in the 1987 circular. Second, the circular's criteria for determining an "excessive" workload were evaluated not only in relation to the affected worker but also to all workers of the same type. As a result, Okamura recommended that workload assessments should be based on individual, rather than categorical, considerations. Third, the link between work and disorder should be assessed over a longer period than just the week preceding the onset of the disorder to consider the accumulation of fatigue. Lastly, Okamura suggested that the causal link between work and disorder should not be limited to scientific evidence alone but should also consider "commonsense" causality.

This last point was illustrated very early on in the cases of the first decisions rendered in 1967 and 1969 and remained relevant due to the limited epidemiological research on the link between work stress and cardiovascular disorders in Japan. The Ministry of Labor only partially implemented the lawyer's recommendations. In 1995, a new circular extended the period for assessing working time from "one week" to "one week or more" under certain conditions.[35] In 1996, the term "karōshi" was added to the new circular as an officially recognized sociomedical term used to qualify workers for compensation, particularly in cases where excessive workload and occupational stress led to cardiovascular disease.[36]

However, lawyers persistently fostered a dynamic interaction between litigation, court rulings, and administrative circular revisions. The Supreme Court issued a series of decisions that echoed Okamura's recommendations and overruled labor inspector denials of compensation by establishing the causal link between work and cardiovascular and brain disorders. For instance, in 1997, in the *Yotsudo denki kojiten* case,[37] the justices ultimately concluded that work did not need to be the sole cause of the onset of the disease to recognize the link between the worker's death and work as

35. Kihatsu no. 38, February 1, 1995.
36. Kihatsu no. 30, January 22, 1996.
37. *Yotsudo denki kojiten* case, Judgment of the Supreme Court, April 25, 1997, Rōhan 722-13.

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long as work was a concurrent cause. In this case, the justices recognized that the nature and duration of the tasks performed aggravated the worker's illness, leading to his death. In 2000, in another ruling (the *Tokyokaijo* case), while the justices did not examine whether the work done in the week preceding the appearance of the illness was substantially excessive, they did conclude that there was a reasonable causal link based on the accumulation of fatigue.

Continuous stress was thus recognized as being the cause of the illness. Various justices established this link on the basis of the "existence of an excessive mental and physical burden, due to the work done over more than a year by the worker, which aggravated the brain condition." [38] In 2001, in the *Osaka Awaji kōtsū* case,[39] the justices refuted the decision of the Labor Standards Inspection Office as they considered that the specific individual health condition of the worker was to be taken into account when assessing and qualifying the overload of work. The same year, after gathering medical findings in the wake of the Supreme Court's decision (in the *Tokyokaijo* case), the new circular took into account the accumulation of long-term fatigue (six months) and recommended a ceiling on overtime hours.[40] Exceeding this limit allowed for the presumption of a link between work and the appearance of cerebral and cardiovascular disorders.

For example, if the employee worked one hundred hours of overtime in one month before the onset of the disorders, the link between work and the disease would be presumed. This highlights how labor lawyers shaped the interpretation and application of the law, influenced the development of legal doctrines, and prompted policy adjustments. Figure 1 focuses on the time period between 1987 and 2001 when the dynamic interplay between court rulings and administrative circular revisions sustained a ripple effect where each circular revision fueled litigation, which, in turn, triggered additional circular revisions. Figure 2 shows how each key circular revision (in 1987, 1995, 1996, and 2001) was followed by an increasing number of compensation claims; however, it was the 2001 revision that represented a turning point in the recognition of the link between working time and the death of the worker. Figure 3 clearly shows the impact of each circular revision on the increasing number of compensations granted.

The recognition of long hours of overtime as a health risk factor involved a dynamic exchange between the judiciary and the administrative branches, which was further reinforced in the 1990s by the emergence of another work-related health issue: suicide from overwork (karōjisatsu). Save for exceptional cases, the Labor Standards Inspection Office systematically refused to recognize suicide as an occupational disease because of the very high bar for proving the link between

38. *Tokyokaijo* case, Judgment of the Supreme Court, July 17, 2000, Hanreijihō 1723-132.

39. *Osaka Awaji kōtsû* case, Judgment of the Supreme Court, July 17, 2001, Rōhan 786-14.

40. Kihatsu no. 1063, December 12, 2001, https://www.mhlw.go.jp/content/11201000/000832042.pdf. The report stipulates that the MHLW requested the Expert Committee to conduct study in response to the Supreme Court ruling on the effects of accumulation of long-term fatigue and the development of brain and heart diseases as well as the specifics factors for evaluating work overload, based on current medical knowledge. The Expert Panel held a total of twelve meetings from November 2000 to November 2001. "Announcement by the MHLW Regarding the Revision of Certification Standards for Brain and Heart Diseases," December 12, 2001, https://www.mhlw.go.jp/houdou/0112/h1212-1.html.

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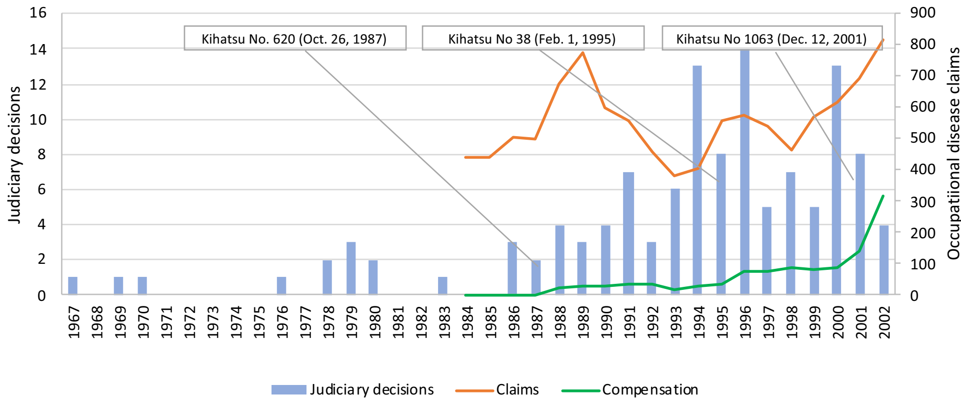

Figure 1.
Judiciary decisions, administrative circular changes, occupational disease claims, and compensations, 1967–2002.
***Source*: Compiled from data published by the Ministry of Labor (Okamura 2002, 282–84). "*Kihatsu*" refers to the formal title of administrative circulars used in cases related to karōshi and karōjisatsu.**

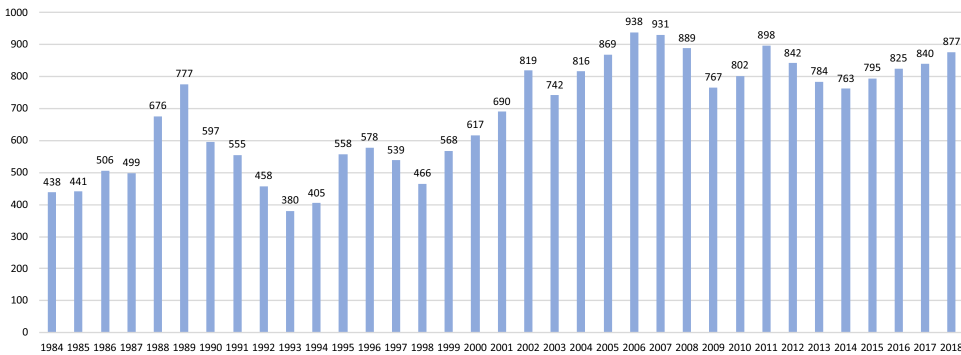

Figure 2.
Work-related injuries due to brain and heart diseases compensation claims.
***Source*: MHLW, *Karōshi nado no rōsai hoshō jōkyō* (Work-related injuries compensations granted: Karōshi), 2018.**

suicide and work.[41] Between 1996 and 2000, the successive rulings in the first *Dentsu* case, undertaken by Kawahito, recognized the employer's civil liability by establishing the causal link between the employer's fault and the employee's suicide.[42] The recognition of overwork was possible based on the amount of

41. According to Article 12-2-2 of the Workers' Accident Compensation Insurance Act of 1945, Pub. L. no. 50 (amended on June 17, 2020, Pub. L. no. 68), intentional acts are excluded from the procedure for claiming compensation by the victim (Kasagi 2020).

42. Concerning civil liability, see *Dentsu* case, Judgment of the Supreme Court, March 24, 2000, Minshu, vol. 54, no. 3, 1155.

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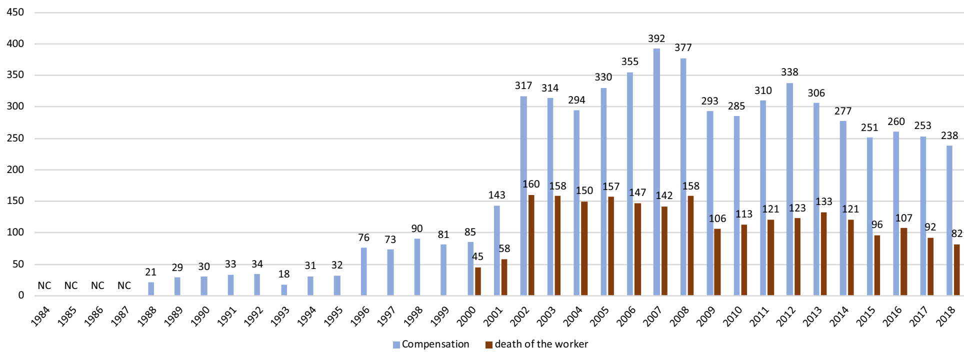

Figure 3.
Work-related injuries due to brain and heart diseases compensations granted.
***Source*: MHLW, *Karōshi nado no rōsai hoshō jōkyō* (Work-related injuries compensations granted: Karōshi), 2018.**

overtime (as established with the karōshi cases), but the challenge was proving that mental illness was triggered by this excessive stress (Kawahito 2014). The justices recognized that the impulse to commit suicide had been influenced by the victim's depressive state, which could be understood to have affected his thinking. With this decision, the justices reminded employers of their duty to prevent employees' accumulation of stress beyond a reasonable limit and to protect their mental health in the workplace (Kitanaka 2015).

During this period, some of the Labor Standards Inspection Office refusals were elaborately and innovatively challenged in courts. In March 1999, the ruling of the Nagano Lower Court in the *Iijima* case was one of the first judicial decisions to overturn the refusal of the Labor Standards Inspection Office by recognizing the suicide as the consequence of a work-related illness.[43] These legal developments precipitated a revision of the administrative circular (MHLW 1999).Consequently, the Ministry of Labor issued a revised circular, stipulating that suicide would not be considered an intentional act if the victim's suicide resulted from a mental illness.[44] This revised circular established the criteria for classifying mental disorders as occupational diseases and established a presumption of a causal link between work and the illness.[45] Subsequently, in 2000, the ministry published updated guidelines with a specific focus on enhancing the mental health of workers in the workplace (MHLW 2000). As Figure 4 shows, the revision of the administrative circular led to a relevant increase in the number of compensation claims until the 2018 Work Style Reform Act. Figure 5 shows the increasing number of compensations granted after the administrative circular revision was made in 1999.

43. *Iijima* case, Judgment of the Nagano Lower Court, March 12, 1999, Rōhan 765-43,

44. Kihatsu no. 544, September 14, 1999.

45. In order to establish the existence of a "very heavy mental burden on the employee," extremely long working hours are taken into account as a "particular event" when the employee has worked more than one hundred hours overtime in the month immediately preceding the date of illness. Kihatsu no. 544.

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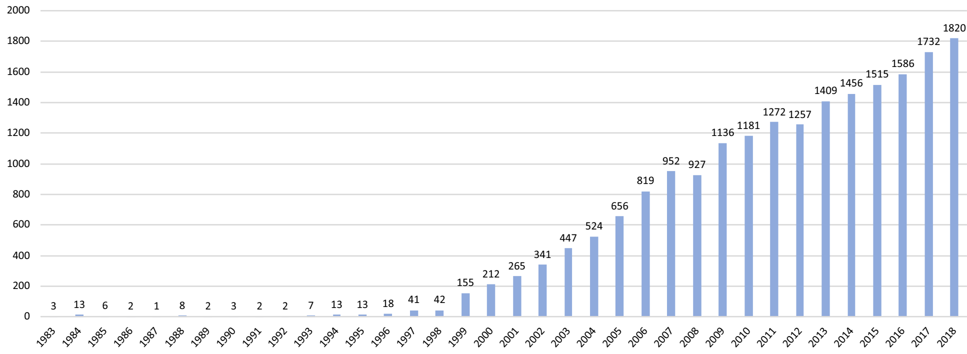

Figure 4.
Work-related mental illness compensation claims.
***Source*: MHLW, *Karōshi nado no rōsai hoshō jōkyō* (Work-related injuries compensation claims: Karōjisatsu), 2018.**

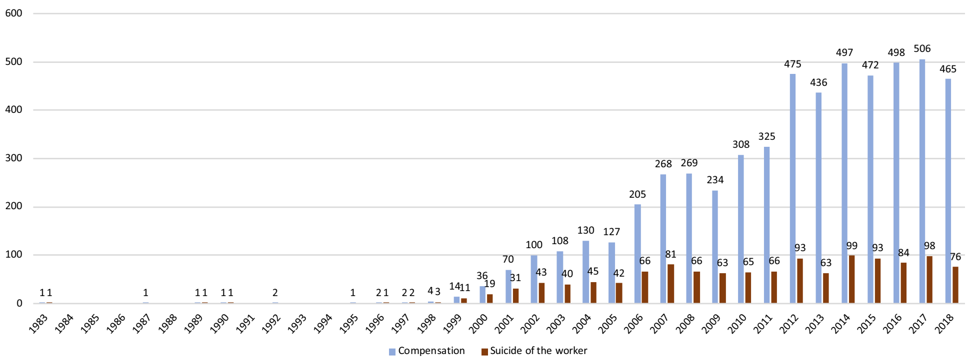

Figure 5.
Work-related mental illness compensations granted.
***Source*: MHLW, *Karōshi nado no rōsai hoshō jōkyō* (Work-related injuries compensation claims: Karōjisatsu), 2018.**

The employer's safety obligation was codified in 2007 as a contractual obligation in Article 5 of the Labor Contracts Act. By enforcing the employer responsibility, this change created a legally binding basis for lawyers to defend workers' rights. It also signified a strengthening of law enforcement by the judiciary. While adversarial legalism has not been commonly associated with the Japanese legal system as a whole, these specific cases exemplify practices aligned with an adversarial approach between karōshi and karōjisatsu victims, the administrative branch, and the enterprise. However, while this judicialization heralded a more transparent and formalized process for developing compensation standards, it starkly contrasted with the informal approach to the deregulation of working hours occurring during the same period.

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Informal Policy Making and Marginalized Labor: The Deregulation of Working Time (1995–2004)

In response to the bursting of the financial bubble and the start of a long period of economic stagnation known as the Lost Decade (1992–2004), Japanese companies froze hiring, resorting instead to the employment of non-regular workers. Companies also increased unpaid overtime to improve the cost effectiveness of their workforce. Working time was first made more flexible in 1987, and, from 1995 on, the Japanese government continued to deregulate working time to bring about a results-oriented labor management system (Imai 2011, 104–11). The Ministry of Labor pushed to extend the DWS, which was initially limited to highly qualified workers in specific fields, to all white-collar workers.

Rengō opposed the extension of the DWS, fearing that further decoupling working time from wage determination would lead to an uncontrolled increase of excessive and unpaid overtime (Imai 2011). In response, the government bypassed the consensual policy process centered on the Labor Policy Council, a tripartite advisory organ,[46] and established the Deregulation Subcommittee of the Administrative Reform Committee (*gyōsei kaikaku iinkai kisei kanwa shoiinkai*) to push the extension of the DWS (Imai 2011, 111–13; Vogel 2021, 278). The policy-making process described here exemplifies the typical informal mode of policy negotiation between dominant interest groups and the state, characterized by a centralized bureaucracy and a strong political party in power.

The threat of losing overtime income mobilized the labor unions to oppose the deregulation project and to rejoin the labor lawyers. They opposed the DWS extension by emphasizing the risk of overwork to workers' physical and mental health. As a result, the enactment of the expanded DWS was postponed until April 2000 (Nakamura 2001). Nevertheless, to circumvent the restrictive conditions for the DWS, companies adjusted other time management systems by coupling them with results-oriented management practices to further decouple working time from wage determination (Imai 2011). This resulted in an increase of unpaid overtime, and, in terms of compliance with labor law, companies were operating in a quasi-grey area. In 2004, under the neoliberal government of Koizumi Junichiro (2001–6), the regulatory constraints for the implementation of the DWS were partially lifted to encourage its utilization. The decentralization of working-time management to the company level was coupled with the lack of managerial control over the working time of DWS employees. As Imai Jun (2011, 134) has highlighted, the "DWS lifts the societal-level monitoring of work-effort by ending the concept of scheduled working time, which also acquits employers of their responsibility to manage working time at the organizational level."

The deregulation of working time reflected a centralized and informal policy-making process that marginalized labor representatives. Despite their limited influence in the working time regulation decision-making process, labor lawyers, in collaboration with karōshi victims' family associations, broadened their tactics to include parliamentary lobbying and created their own political opportunities.

46. The Labor Policy Council is an advisory organ to the Labor Minister, which consists of experts and representatives of labor and management.

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TRANSFORMING INDIVIDUAL LAWSUITS INTO A SOCIAL ISSUE: EXPANDING LEGAL MOBILIZATION STRATEGIES AND INTERBRANCH DIALOGUE

Lawyers advocating against karōshi extended their influence beyond the courts to include government administration, advisory bodies, and the parliamentary arena. Through their involvement in litigation and legal advocacy, they demonstrated their capacity to shape policy design and implementation.

The Second Wave of the Legal Mobilization against Karōshi (2008–14): Parliamentary Advocacy and the Role of Activist Lawyers in Interbranch Dialogue

In 2008, labor lawyers, in collaboration with karōshi victims' family associations, submitted a proposal for the enactment of the Basic Law for the Prevention of Deaths from Overwork.[47] The proposed law laid out the basic principles for protecting workers lives and health, respecting their rights, clarifying the responsibilities of the national and local governments and employers, and curbing long hours of overtime to prevent deaths and suicides from overwork. The national law would revise labor laws and regulations so as to require employers to monitor the actual working hours of all workers, establish a cap on working hours, establish an interval-based system between the end of one workday and the start of the next day, and require disclosure of the names of companies that have caused deaths and suicides from overwork.

Through advocating for the enactment of a basic law for the prevention of karōshi, lawyers successfully brought the regulation of long working hours to the political agenda. This second wave of legal mobilization occurred during the transition to a center-left government (2009–12) led by the Democratic Party of Japan. Seizing the opportunity, labor lawyers pushed for legal reform during this period. Three core members of the Karōshi Bengodan—Iwaki, Kawahito, and Morioka—led this initiative. Building on their expertise and legitimacy as legal professionals, they expanded their reach beyond the courts and administrative standards, turning to parliamentary lobbying, petitioning, and public awareness campaigns.[48] Several members of associations of karōshi victims' families, supported by lawyers, went to the United Nations Commission on Human Rights to make the case for the anti-karōshi movement (MHLW 2017). In the same period, the Japanese Workers' Compensation Insurance system officially recognized karōshi and karōjisatsu as occupational diseases. This recognition carried legal weight, unlike administrative circulars, and was binding for the chiefs of the Labor Standards Inspection Offices.

In 2013, following a change of the ruling party and under the administration of Abe Shinzō (2012–20), the Basic Law for the Prevention of Deaths from Overwork was

47. Resolution Calling for the Enactment of the "Basic Law for the Prevention of Deaths from Overwork" and Stricter Regulations on Long Working Hours, *Nihon Rōdōbengodan*, 52nd General Assembly, November 25, 2008, http://stopkaroshi.sitemix.jp/leaflet/081115ketsugi.pdf.

48. Stop Karōshi Executive Committee (Jikkoiin-kai), http://stopkaroshi.sitemix.jp/katudo/syomeikatudo.html.

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submitted to the 185th extraordinary Diet session. In 2014, the bill was passed unanimously by the House of Representatives.[49] This bill stipulates that the government is responsible for effectively promoting measures to prevent death and suicide from overwork. It also requires the government to formulate a general outline of preventive measures, submit a report to the Diet, and establish a council within the MHLW to promote preventive measures. Many critics highlighted the purely symbolic aspect of this law as it lacked provisions to deal with the overtime problem (North and Morioka 2016). Furthermore, the revised law removed all references to working time regulation. Nevertheless, by requiring national and local governments to work with employers and the families of victims, this law marked a first step in developing a preventive policy beyond mere case-by-case treatment and compensation. According to one labor lawyer,

> [t]he prevention law is of utmost importance. It underscores the government's responsibility to take action and implement effective measures to prevent karōshi. This legislation outlines the role of both the central government and local authorities, emphasizing their collaborative efforts with ministries and parliamentarians to tackle this problem. Since the enactment of this law, there has been a notable shift in awareness, with improved reactions and a recognition that decisive action is necessary to address the issue. (Interview with a male labor lawyer K., Yokohama, August 25, 2017)

Moreover, despite the soft nature of this law, lawyers who became members of the Karōshi Prevention Measures Promotion Council, including Iwaki, Kawahito, and Morioka, were able to continue negotiating the enforcement of the law.[50] For example, the law originally stated that "[e]mployers shall endeavor to cooperate with the government at the national and local levels in accordance with measures taken to prevent overwork deaths." Following Iwaki's request, the following provision was added to complete the original law: "In accordance with Article 5 of the Labor Contracts Act and Article 3, paragraph 1 of the Industrial Safety and Health Act, employers have the duty to ensure the safety and health of the workers they employ, including their bodies and lives" (MHLW 2015).[51]

Thus, labor lawyers reinforced a continuous dialogue among the institutions of government. Jeb Barnes and Mark Miller (2004) have highlighted that this policy-making process demonstrates that the judiciary and legislature were not necessarily competing institutions but, rather, reveals that it emerged from interactions among the branches. Moreover, the merger in 2001 of the Ministry of Labor and the Ministry of Health and Welfare reduced the opposition that existed between the Ministry of Labor and

49. Japan Institute for Labor Policy and Training, Bill to Promote Measures to Prevent Deaths from Overwork, passed by House of Representatives Health and Labor Committee (Karōshitō Bōshi Taisaku Suishin Hōan ga Shūin Kōrōi de Kaketsu), May 23, 2014, https://www.jil.go.jp/kokunai/topics/mm/20140523b.html.

50. Lawyers becoming "insider activists" is a process observed in other cases of legalism such as the smoking restriction (Arrington 2021).

51. This strengthening of the law's provisions, by mentioning Article 5 of the Labor Contracts Act directly refers to the Supreme Court's ruling in the first *Dentsu* case.

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the actors of the anti-karōshi movement in favor of greater collaboration between this new ministry and lawyers in working toward the implementation of the new prevention policy.[52] In 2014, the Headquarters for Promoting the Reduction of Long Hours of Work was established under the MHLW to supervise workplaces where overtime exceeded one hundred hours per month, and special teams were deployed in Osaka and Tokyo.[53]

As Barnes (2004) has observed about the policy-making process in the United States, judges, bureaucrats, and lawyers are integral parts of a democratic fabric that encompasses various policy forums. Each forum gives voice to different interest groups and responds to different political resources (44). This lawmaking process in Japan reflects a similar dynamic, and, while the impact of legal action on public policy implementation is generally minimal, the effectiveness of the rights established by judges can be evaluated through the mechanism of political mobilization. Such mobilization can bring about a realignment of political forces, as evidenced by the passage of the Basic Law for the Prevention of Deaths from Overwork. However, the working time regulatory policy-making process and the subsequent third wave of legal mobilization highlight the challenges associated with utilizing courts to influence policy making in the Japanese political system.

The Third Wave of the Legal Mobilization against Karōshi (2014–18): Tensions around the Framing of the Working Time Reform, the Second *Dentsu* Case, and the Enforcement of Labor Law

In response to the enactment of the Act on Promotion of Preventive Measures against Karōshi, the Abe Shinzō administration added the revision of working time legislation to its political agenda by including it in the Work Style Reform Act.[54] The government also created the Council for the Realization of Work Style Reform. This council was tasked with drafting a proposal for the outline of the reform to the Labor Policy Council but included only one union representative, Kozu Rikio from Rengō, while the other members were mostly business leaders and members of influential ministries (Vogel 2021, 283–85). Although this reform was led by the MHLW, it was part of the Japanese economic revitalization plan led by the METI. The involvement of these two administrative agencies was reflected by the confrontation of two competing discourses on how to frame the working-time reform: those who favored strengthening maximum working-time regulation to protect workers' health and those who supported greater flexibility of working time by applying the DWS to all white-collar workers in line with the debates since 1995.[55] Critics noted the lack of transparency in the decision-making process (Vogel 2021).

While this reform was conducted in a top-down process, it is necessary to also take into account the role of a third council: the Karōshi Prevention Measures Promotion

52. Interviews with lawyers, members of the Council for Promotion of Measures to Prevent Death from Overwork in Tokyo, June 5, 2020, and in Sendai, August 28, 2017.

53. Long Working Hours Reduction Promotion Headquarters, https://www.mhlw.go.jp/file/05-Shingikai-11201000-Roudoukijunkyoku-Soumuka/0000059515.pdf.

54. Arrangement of Related Acts to Promote Work Style Reform, June 29, 2018, Pub. L. no. 71.

55. Analysis of the Labor Policy Council meetings that specifically addressed working time reform under the Abe administration highlights this duality. Minutes of the meetings are available at https://www.mhlw.go.jp/stf/shingi/shingi-rousei_126969_old.html.

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Council. Since the end of 2014, the Labor Policy Council, involved in working-time reform, and the Karōshi Prevention Measures Promotion Council, in charge of the promotion of preventive measures against karōshi, had shared the same chairman as well as some members, which allowed actors of the anti-karōshi movement to indirectly make their voices heard in the decision-making process on working-time reform. Informal coordination between these two councils was also encouraged by the Labor Lawyers' Network (Rōdōbengodan) and the Japan Federation of Bar Associations (Nichibenren). In a communication, the representative of the Labor Lawyers' Network asked the union representatives to use all the information published by the Karōshi Council to counter the proposed flexibilization of working hours.[56] This desire to unite labor lawyers with trade unions can also be seen in the statement issued by the Nichibenren, which reiterated its opposition to the plan to make working hours more flexible, pointing out that it went against the law on the prevention of karōshi (Nichibenren 2014).

Supporters of flexible working-time regulations insisted that this issue could be separated from karōshi concerns. They argued that karōshi was an individual issue to be compensated by the social security, whereas working-time regulation should be decided at the company level through negotiated compromise between labor unions and management (MHLW 2014). Indeed, the working-time deregulation process in the past has shown how the ruling political party has used committees, agenda setting, and well-defined status quos to produce stable and predictable legislative outcomes (Vogel 2021).

However, the December 2015, suicide of a young employee at Dentsu[57] drastically disrupted the "privatization" of the decision-making process, highlighting the substantial influence of judicial precedents on administrative actions. Kawahito represented the employee's family, and, in September 2016, the Labor Standards Inspection Office recognized the death as a consequence of excessive work hours (Takahashi and Kawahito 2017). The case's media coverage captured Prime Minister Abe Shinzō's attention, prompting him to mention it at the Work Style Reform Act's inaugural public forum.[58] Within a few days, the Labor Standards Inspection Office initiated on-site inspections at Dentsu's offices (*The Mainichi* 2016; *Nikkei Journal* 2017).

A few weeks after the inspection, the Tokyo Labor Standards Inspection Office filed a complaint to the Tokyo District Public Prosecutors Office involving Dentsu executives. Following approval from prosecutors, an indictment to pursue the case in a summary trial was filled on the charge that Dentsu was criminally liable for operating an insufficiently protective system and failing to prevent excessive overtime (*Kyodo News* 2017). But the courts ruled that, instead of a summary trial, where proceedings are held behind closed doors, Dentsu would be tried as a corporation in a regular trial, where

56. Declaration against the "New Working Time System," June 18, 2014, http://roudou-bengodan.org/proposal/post_67/.

57. The Mita Labor Standards Inspection Office confirmed that Takahashi Matsuri had accumulated 106 hours and fifty minutes of overtime from October 9 to November 7, 2015. While the collective agreement between Dentsu and its labor union set a seventy-hour overtime limit, it was found that the actual overtime and holiday work hours reported by the employee exceeded this threshold and were not reflected in the initial calculation (Kawahito and Kanie 2017, 9)

58. Public forum (*Ikenkōkan*) from October 13, 2016, to December 8, 2016, https://www.kantei.go.jp/jp/headline/ichiokusoukatsuyaku/hatarakikata.html.

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proceedings are public (*The Mainichi* 2017b). On October 2017, the Tokyo Summary Court convicted Dentsu and fined the company five hundred thousand yen (thirty-six hundred US dollars) for breaching the LSA (non-compliance with Article 32) and the LCA (non-compliance with Article 5).

Although the fine remained highly symbolic, the trial nonetheless became a public arena where all the evidence against Dentsu was revealed to the Japanese public, including the firm's labor management and illegal overtime practices. The trial increased the political salience of the karōshi problem by pointing out companies' illegal practices, including their circumvention of labor law, the lack of control around working time, bullying, and harassment. This case exemplifies the utilization of the court system as an alternative political forum. By publicizing other companies' violations of the labor law, the administrative branch also contributed to increasing the political salience: the MHLW released on its website a list of 334 companies reported to prosecutors on suspicion of violating labor laws over the past six months (for instance, 209 cases involved a failure to implement safety measures, and sixty other cases involved violations of the LSA such as illegal long working hours) (*The Mainichi* 2017a). This shed light on the fact that many companies still expected their staff to work unlawfully long hours, depicting this trial as an opportunity to rethink and revamp deeply rooted "commonsense" assumptions about working time and, more generally, labor (*The Mainichi* 2017b). It also confirmed labor unions' lack of power to guarantee the enforcement of the law.

This chain of events exacerbated the debate around the legalization of the policy reform through a spread of legal discourse, rules, and procedures into the political sphere and policy-making process. During parliamentary debates, Senator Tamura Tomoko, a member of the Communist Party, criticized the government by pointing out the contradictions between the official objective of the Work Style Reform Act—protecting workers—and the policy-making process, which included companies involved in circumventing labor laws on working time.[59] The *Dentsu* case was mentioned repeatedly at the sixth meeting of the Reform Council by business leaders who, in response to the media attention and the risk of litigation, changed their stance and publicly agreed to the application of a cap on working hours.[60]

This second *Dentsu* case has linked the issue of occupational health to the circumvention of labor law practiced by some companies, thus creating pressure on the government to regulate maximum working hours. In early 2017, the sudden request of Prime Minister Abe to the presidents of Rengō and Keidanren (2017) (the Japan Business Federation) to agree on the legal maximum working-time limit reflected the impact of the *Dentsu* lawsuit on the entire decision-making process:

> We (in Rengō) were well-aware of the problem of suicide by overwork, long before the case of Takahashi Matsuri, we had many meetings with the families of karōshi victims to listen to their points of view and their requests to prevent these problems from continuing in the workplace. We have listened

59. Budget Committee, House of Councilors (*sanin yosan iinkai*), January 21, 2017.

60. Sixth Meeting of the Reform Council, February 1, 2017, https://www.kantei.go.jp/jp/singi/hatarakikata/dai6/gijiroku.pdf.

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> to their requests regarding the regulation of working hours. On the other hand, I think that the Dentsu case has really increased the government's awareness.... In fact, the Prime Minister urged us to reach an agreement with the Keidanren on the maximum overtime limit in a very short time. (Interview with Rikio Kozu, former President of the Rengō, Tokyo, June 16, 2022)

While the agreement reached between Rengō and Keidanren was informally reached through negotiations, the prime minister abruptly implemented this decision-making process to ensure egalitarian and participatory decision making between the parties, unlike the original process that catered to the views of companies and influential METI officials. The pressures created by litigation and the courts revealed the impact that courts could have in preventing a single branch or interest group from dominating the policy-making process and enabling marginalized voices to participate in shaping national policy.

As a result of the negotiations, the prime minister and the chairmen of Rengō and Keidanren reached an agreement to align legal norms for maximum working hours with administrative norms. The agreement set a ceiling of forty-five hours of overtime per month and 365 hours per year. The limit can be exceeded for up to six months only if a workers' representative and management reach an agreement within the legal limit of 720 hours per year and one hundred hours per month. The exemption from regulation for white-collar workers earning over 10.75 million yen per year (eighty-two thousand US dollars per year) is limited to highly skilled workers and subject to a workers' representative agreement in compliance with the law. Working time is now regulated by law and not only by administrative guidance, allowing for the application of more severe sanctions and increased administrative control.[61]

However, the implementation of the working-time reform has garnered substantial criticism from members of the anti-karōshi movement. This is exemplified by the publication of the collective work *Karōshi: How Overwork, Stress and Harassment Destroy People*, edited by the National Defense Counsel for Victims of Karoshi and published in 2022 (Amagasa 2022). Contributors to this book, including victims' families, doctors, and lawyers, voice a shared concern about the current maximum number of overtime hours allowed by the "karōshi line" that remains unreasonably high, failing to adequately protect workers' health and work-life balance. To support their claim, they refer to the joint study conducted by the WHO and the ILO, which identify a threshold of fifty-five or more hours of work per week as a risk factor for mental and cardiac disorders. Based on this research, numerous lawyers and doctors argue that the Japanese government should reduce the maximum overtime threshold to sixty-five hours per month instead of the current legal limits of eighty of one hundred hours.

61. Overtime working hours must be limited to no more than 720 hours a year and one hundred hours a month, including work on holidays, with penalties stipulated for employers that violate the regulations. Any employer who violates this rule is to be punished with up to six months in prison or a fine of up to three hundred thousand yen (US $2,135) (Suda 2022). Employers are also obliged to let workers take at least five days of annual paid leave. For workers who have been granted ten days or more of annual paid leave, employers have to designate a period for leave after accommodating worker's wishes for when to take leave.

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This change, they argue, would allow for the recognition of additional karōshi and karōjisatsu cases, currently unacknowledged due to the prevailing high standard (Suda 2022, 120–21). Indeed, one labor lawyer emphasized that "[t]he recognition standards remain stringent, with only 30 percent of cases being acknowledged. However, there has been a notable increase in societal awareness and interest regarding working hours. As a result, companies are no longer granted forgiveness. Nevertheless, prevailing in court is still not an easy feat" (Interview with a male labor lawyer S., Tokyo, August 24, 2017).[62] Victims' families, bolstered by lawyers, have expressed strong disapproval of the maximum threshold, which defines the limit beyond which one is at risk of becoming a karōshi victim. They argue that the threshold should be set in a manner that promotes work-life balance, workplace well-being, and overall health (Takahashi 2022, 71).

Nonetheless, this situation underscores the limitations of legal mobilization in influencing regulatory policy making beyond established judicial boundaries and the successes lawyers have achieved to date. The negotiations between Rengō and Keidanren, which led to an agreement to align legal standards for maximum working hours with administrative norms, demonstrate how legal mobilization can extend its impact by labor unions adopting the courts' framework for addressing this issue. However, it also reveals the labor unions' lack of strength in negotiating outside this framework to achieve a reduction in working hours that would represent a significant societal advancement by addressing the balance between work and family life, particularly in terms of gender equality. The issue of negotiations between Rengō and Keidenren exposes a lack of coordination among union members regarding the consideration of work-life balance as a matter for collective bargaining. This lack of coordination may also stem from the prime minister's sudden decision to adopt a decision-making process reliant on labor and employers' negotiations.

CONCLUSION

Through an analysis of the anti-karōshi legal mobilization and the efforts of labor lawyers spanning over an extensive period, this study sheds light on three significant elements. First, it highlights the pivotal role of courts and the influence of litigation on the evolution of administrative norms. The karōshi and karōjisatsu cases exemplify the proactive and resourceful approach of Japanese courts in response to the legal actions taken by anti-karōshi movement lawyers. These lawyers adeptly navigated Japan's major economic and social periods, effectively connecting the socioeconomic context, intensified work environments, and the issues of karōshi/karōjisatsu to expose the discrepancy between the criteria outlined in the circulars and the harsh reality of working conditions. Labor lawyers' dedication and strategic efforts have been instrumental in challenging existing norms, pushing for legal recognition, and driving forward reforms aimed at preventing further cases of karōshi and karōjisatsu.

Second, this study illuminates the institutional dialogue that has taken place over time among the administrative, judiciary, and legislative branches as evidenced by the implementation of various government measures. These measures include the official

62. Also refer to Figure 2 and Figure 4 for further details.

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recognition of karōshi and karōjisatsu as occupational diseases, the implementation of preventive laws, and the regulation of working hours. The activism of lawyers plays a crucial role in strategically maneuvering within the Japanese legal system, facilitating this interbranch dialogue and contributing to policy-making processes.

Lastly, the study demonstrates the significant impact of courts and litigation on legal and social changes. Lawyers have emphasized the limited role of labor unions and the administrative branch in ensuring the enforcement of labor law. As a result of litigation, courts' rulings, and legal mobilization, the role of the judiciary in guaranteeing the enforcement of the law has been strengthened. This is evident in various legislative developments, such as the introduction of the employer's safety obligation (Article 5 of the Labor Contracts Act),[63] the assignment of responsibilities to the state, local governments, companies, and citizens in preventing karōshi/karōjisatsu (the Act on Promotion of Preventive Measures against Karōshi), the establishment of limits on overtime hours (Article 36 of the LSA), and the obligation for employers to provide annual leave (Article 39 of the LSA). The new law imposes penalties for non-compliance (Articles 119 and 120 of the LSA). The administrative branch enforces these laws through labor standards inspectors, implementing control systems, issuing administrative guidelines, and imposing penal sanctions (Articles 97 of the LSA). This comprehensive approach raises awareness among companies, including small- and medium-sized enterprises, about the importance of complying with the new regulations.

Thus, the enforcement of the law now operates within a system where the administration and the judiciary work together, ensuring that legal actions and subsequent court rulings deem noncompliance with directives and administrative supervision illegal (Mizumachi 2022). The influence of courts and litigation on the policy-making process must be understood in light of this gradual strengthening of the judiciary branch in coordinated law enforcement with the administrative branch. From this perspective, the reform of working hours emerges as a significant transformation in labor law, legally reinforcing employers' responsibility in protecting workers' rights.

Further research is needed to explore the circumstances and social issues in which courts significantly impact the policy-making process and to identify the conditions that facilitate the reinforcement of the judiciary as the guarantor of law enforcement. While this article has focused on the regulation of working time, the influence of litigation and the role of the courts, in coordination with the activism of lawyers, can also be explored through the history of legal mobilization concerning the recognition of workplace harassment as a risk factor for workers' mental health. Further exploration is needed with respect to the process surrounding the recognition of suicide at work (karōjisatsu) to delineate its distinctions from karōshi.

While this article has framed the analysis around working time and overwork, recent studies have indicated that karōjisatsu is primarily caused by harassment, which represents a significant factor in work-related stress and depression (Amagasa 2022, 78–79). Harassment has emerged as the primary cause of individual labor disputes over the past decade. In 2019, Japan revised the Comprehensive Promotion of Labor Policies to align with the ILO's Convention no. 190 on Violence and Harassment, mandating

63. Labor Contracts Act.

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employers to implement measures to prevent workplace harassment.[64] The government also amended the Equal Employment Opportunity Act in the same year to enhance measures against sexual harassment. These legislative changes are also part of a long-standing history of litigation and legal mobilization led by labor lawyers, particularly female lawyers, to challenge gender discrimination in the workplace.

The issue of inequality, both in terms of gender and employment status between permanent and irregular workers, represents another aspect of the 2018 Work Style Reform Act, particularly through the introduction of the "equal work, equal pay" provision. However, the administrative branch bears the primary responsibility for enforcing and ensuring the effectiveness of this new law (Mizumachi 2022). Future research should delve into the role of lawyers and courts as well as the influence of litigation on the Work Style Reform Act as a whole to gain a more precise understanding of the process by which the judiciary's role in guaranteeing law enforcement is strengthened in coordination with the administration.

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