



Doch!



Doping as Criminal Offense in Japan

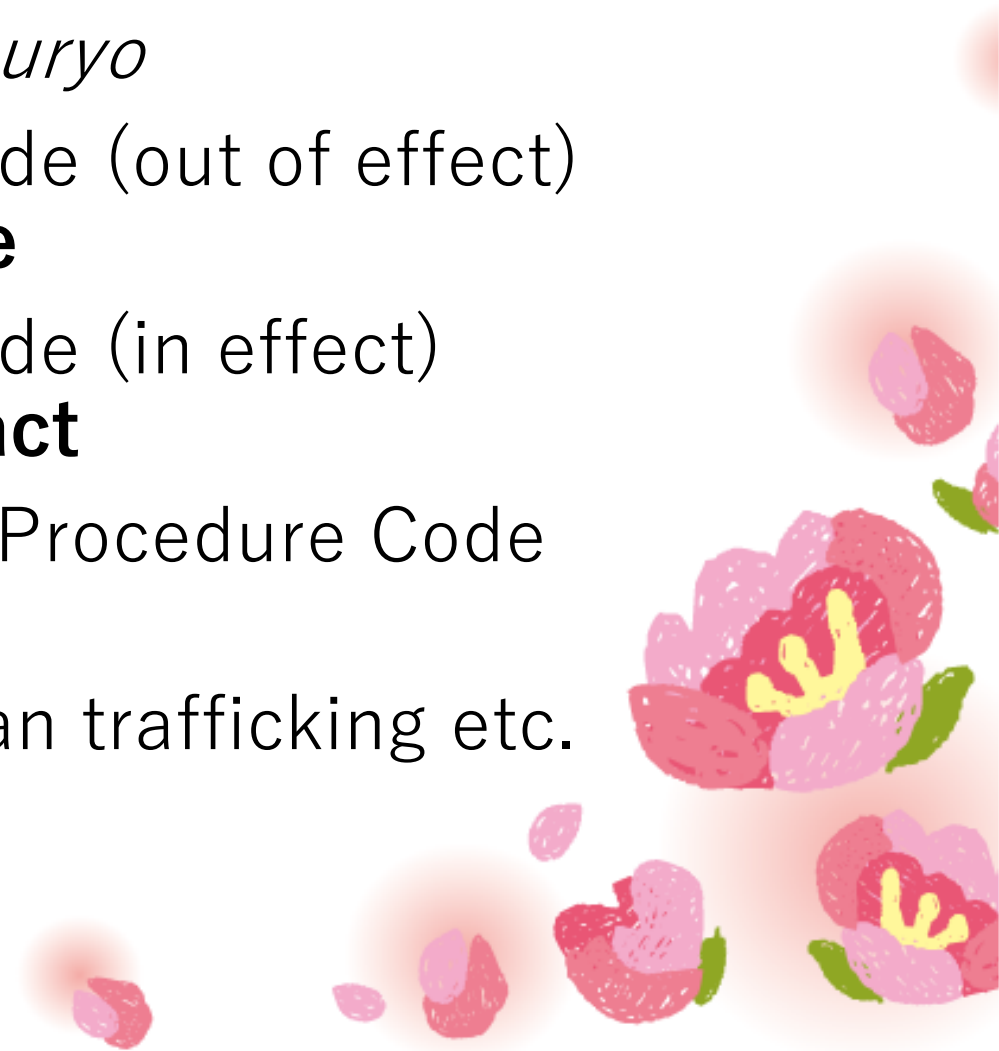
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Brief History of Japanese Criminal Law

- Old Chinese law → 701 *Taiho Ritsuryo*
- French influence → 1880 Penal Code (out of effect)
Too precise
- German influence → 1907 Penal Code (in effect)
Very abstract
- American influence → 1948 Criminal Procedure Code
- International influence
→ Drug control, child protection, human trafficking etc.

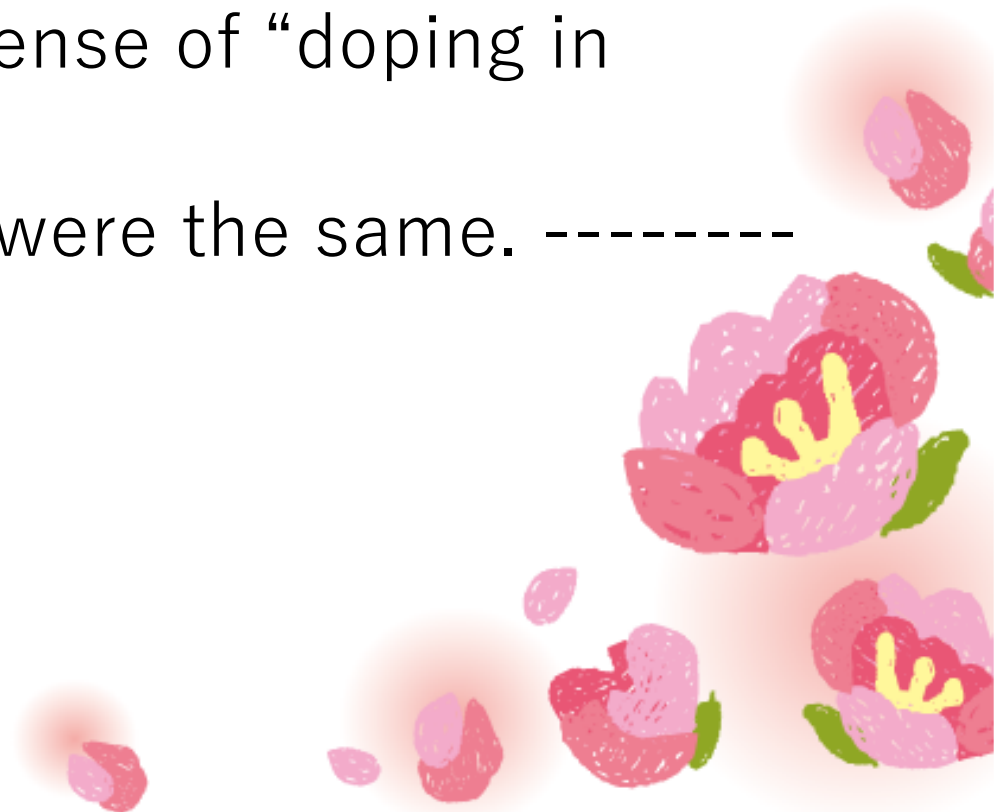


Confused Development of German Antidoping Criminal Law

- All sport associations are private organizations.
- Originally, there was not a criminal offense of “doping in sport.”

----- Until then, Germany and Japan were the same. -----

BUT,



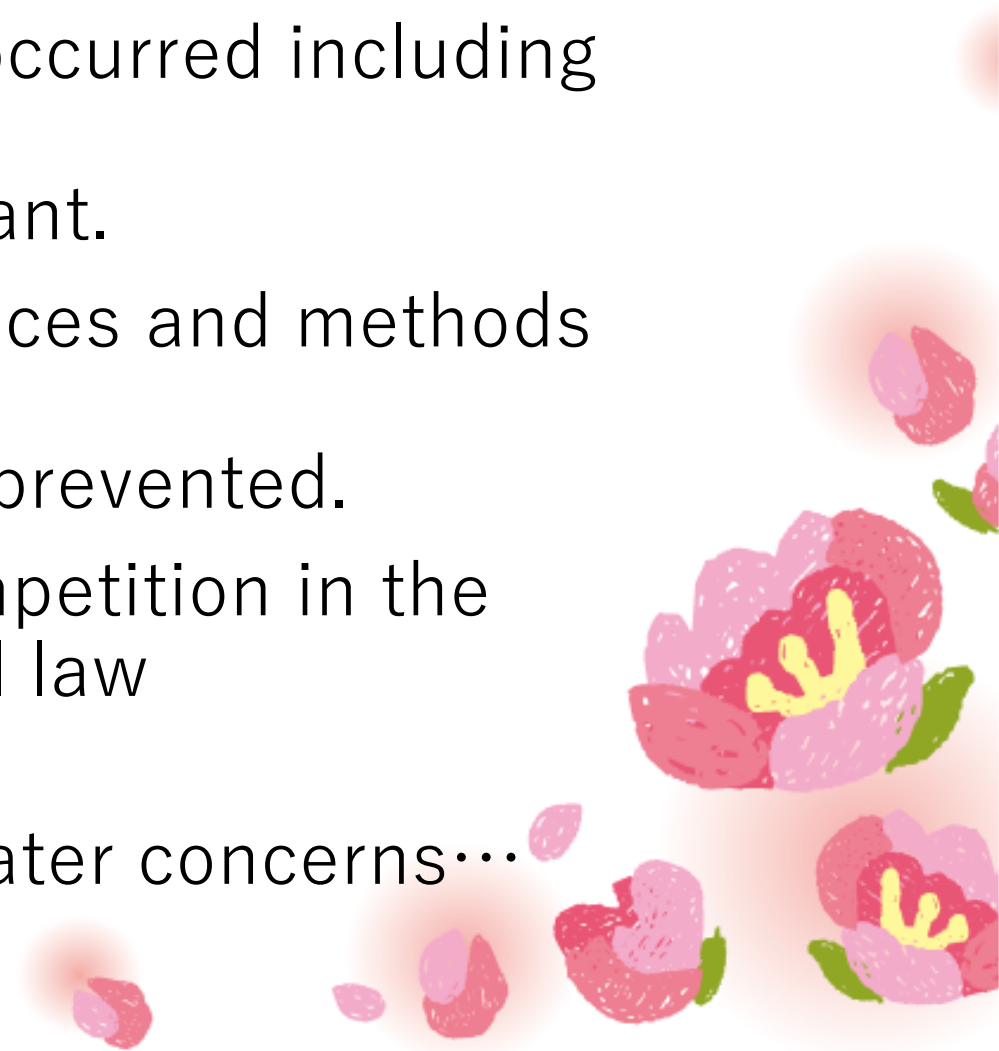
German Legislation

1. Criminalization in Medical Substances Law
protecting health of the People
position of the engaged athlete: victim
2. Criminalization of simple possession of prohibited substances (of more than certain amount)
punishment of abstract endangerment of another person
position of the engaged athlete: victim and offender
3. Antidoping Law (2015)
punishment of infringement of competition in sport
position of the engaged athlete: offender



Considerations on Protected Interests

- It is true that some serious incidents occurred including death of an athlete.
Health protection in general is important.
- However, there are prohibited substances and methods whose physical harm is not proven.
Infringement of **competition** must be prevented.
- However, in Japan, only economic competition in the market has been protected by criminal law (Antimonopoly Law).
- There are more competitions with greater concerns...



Japan's Decisions toward Tokyo 2020

- Establishment of Japan Sports Agency as a **public administrative** body in order to strengthen doping control in sport
- No introduction of a new criminal offense of “doping in sport”
- Instead, we would make use of existing (broad) criminal offenses.
There are many!

For example,



Obstruction of Business (Sabotage)

- Article 233 jStGB.

A person who damages the credibility or **obstructs the business** of another person by spreading false rumors or by the use of **fraudulent means** is punished by imprisonment for not more than 3 years or a fine of not more than 500,000 yen.

... According to the case law, this offense is an abstract endangerment offense.
No real damage is required.

Japan's
Original!



Similar Legislation:

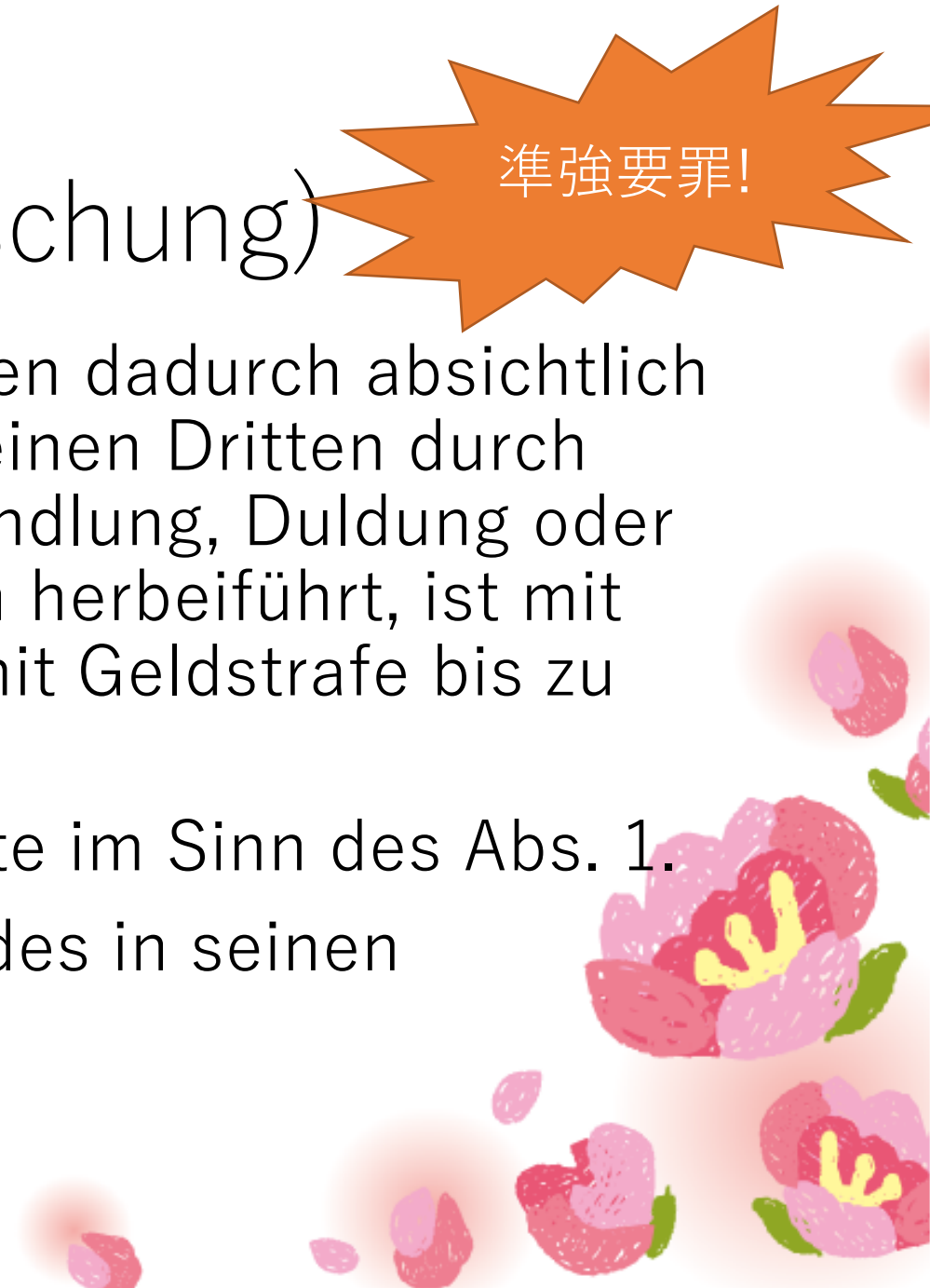
Austrian § 108 StGB (Täuschung)

準強要罪!

(1) Wer einem anderen in seinen Rechten dadurch absichtlich einen Schaden zufügt, daß er ihn oder einen Dritten durch Täuschung über Tatsachen zu einer Handlung, Duldung oder Unterlassung verleitet, die den Schaden herbeiführt, ist mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bis zu 720 Tagessätzen zu bestrafen.

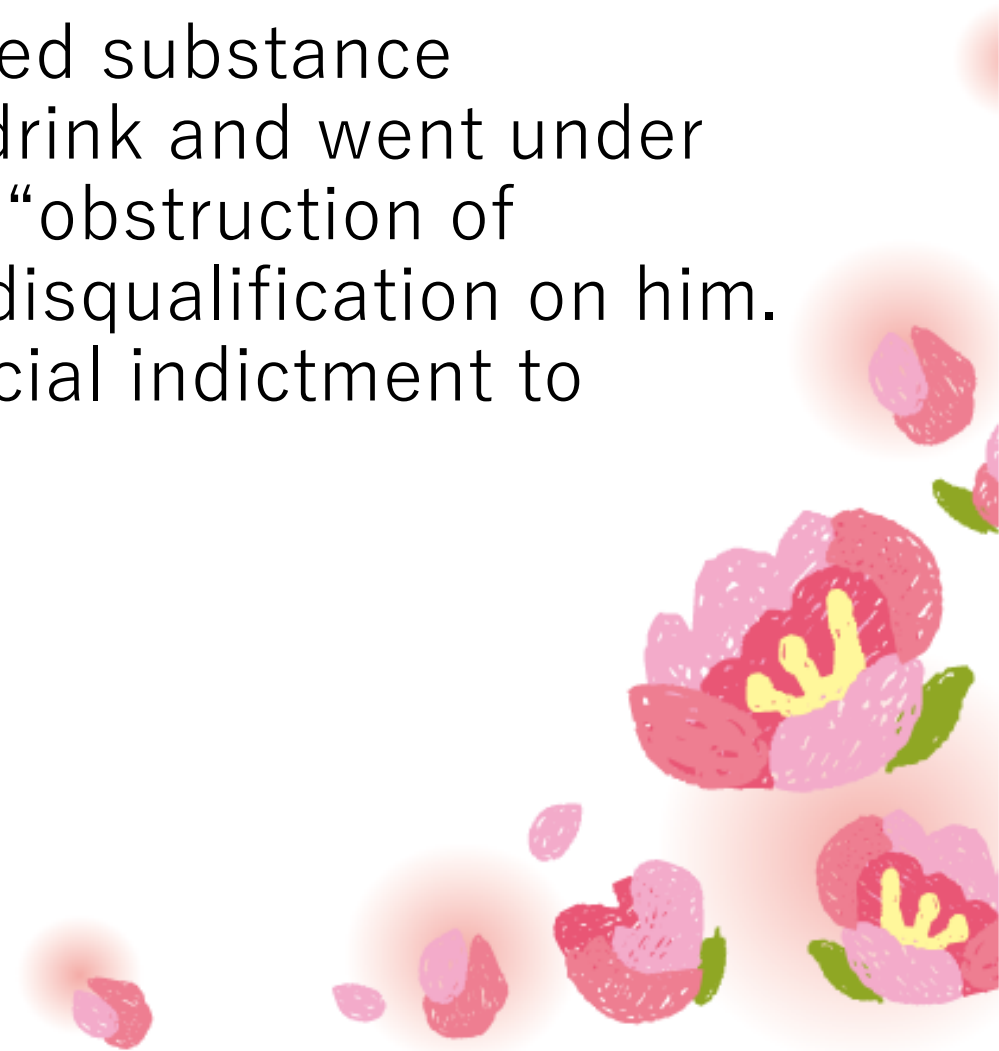
(2) Hoheitsrechte gelten nicht als Rechte im Sinn des Abs. 1.

(3) Der Täter ist nur mit Ermächtigung des in seinen Rechten Verletzten zu verfolgen.



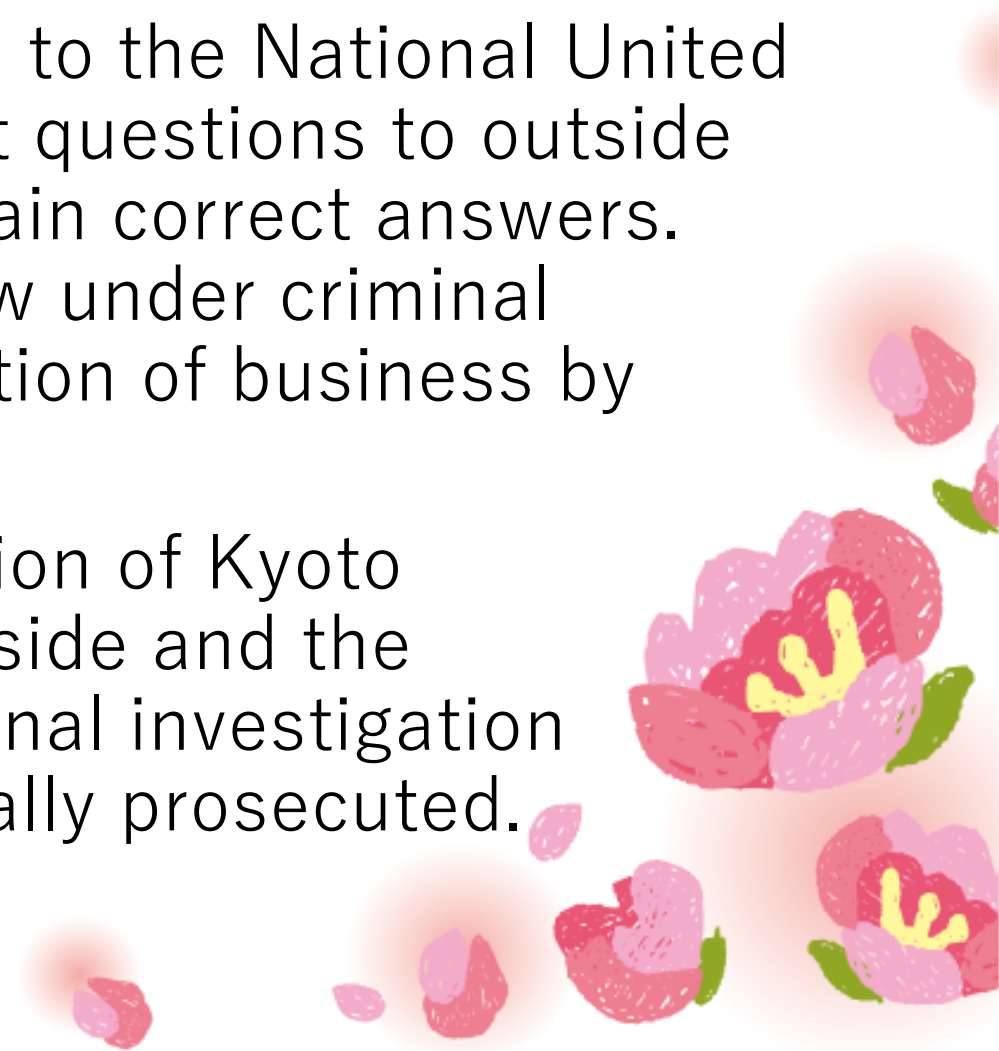
Canoe Case

- In 2017, a canoe athlete put a prohibited substance (metandienon) into his rival athlete's drink and went under criminal investigation of the charge of "obstruction of business." JADA imposed eight years disqualification on him. The prosecutor refrained from the official indictment to continue criminal procedure.



Offense against Competition: Cheating in Entrance Examination

- In January 2022, an applicant, a minor, to the National United Examination for Higher Education sent questions to outside during the examination in order to obtain correct answers. She and an outside cooperater are now under criminal investigation. Their charge is “obstruction of business by fraudulent means”.
- In 2011, during the entrance examination of Kyoto University, questions were sent to outside and the sender, also a minor, went under criminal investigation of the same charge and was not officially prosecuted.

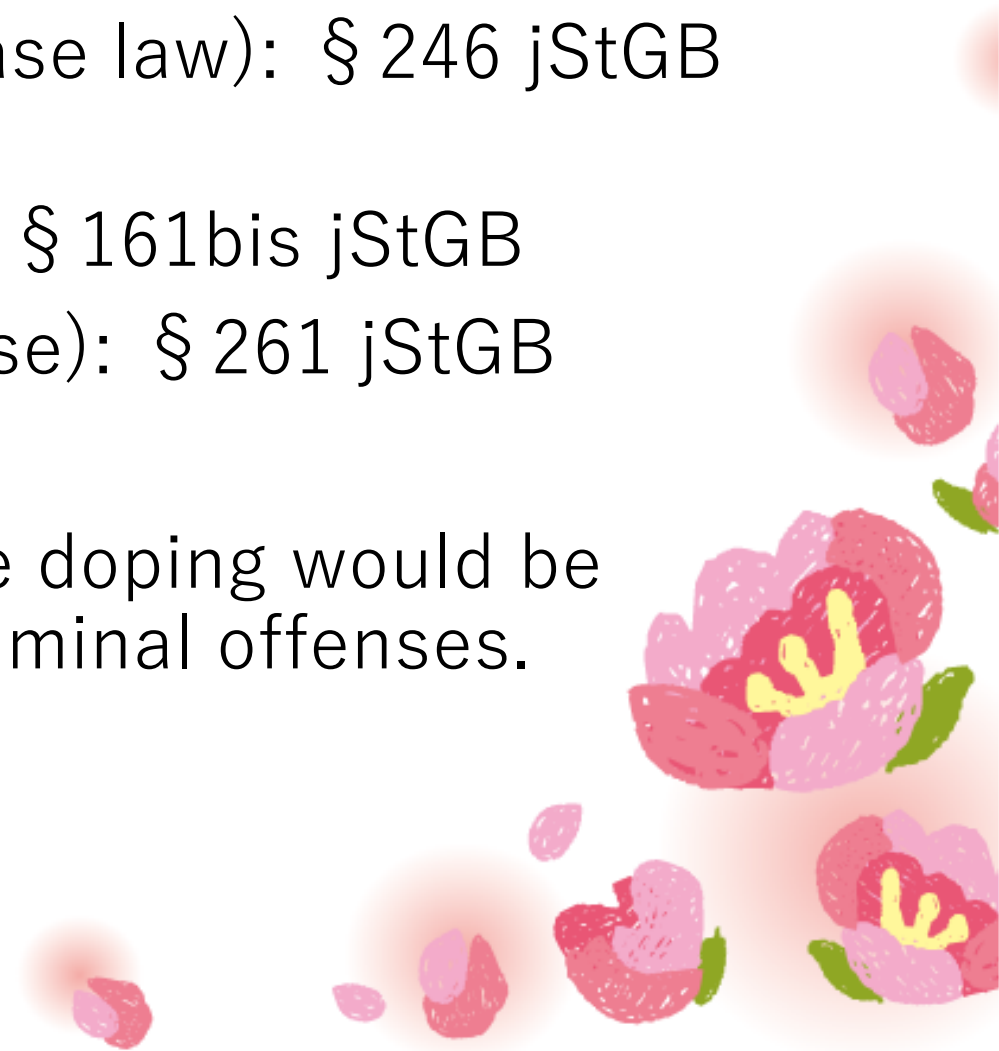


Other Existing Offenses

- **Fraud** (extreme wide application by case law): § 246 jStGB
Damage to property is not required.
- **Forgery** of (electromagnetic) records: § 161bis jStGB
- **Destruction** of property (damage to use): § 261 jStGB

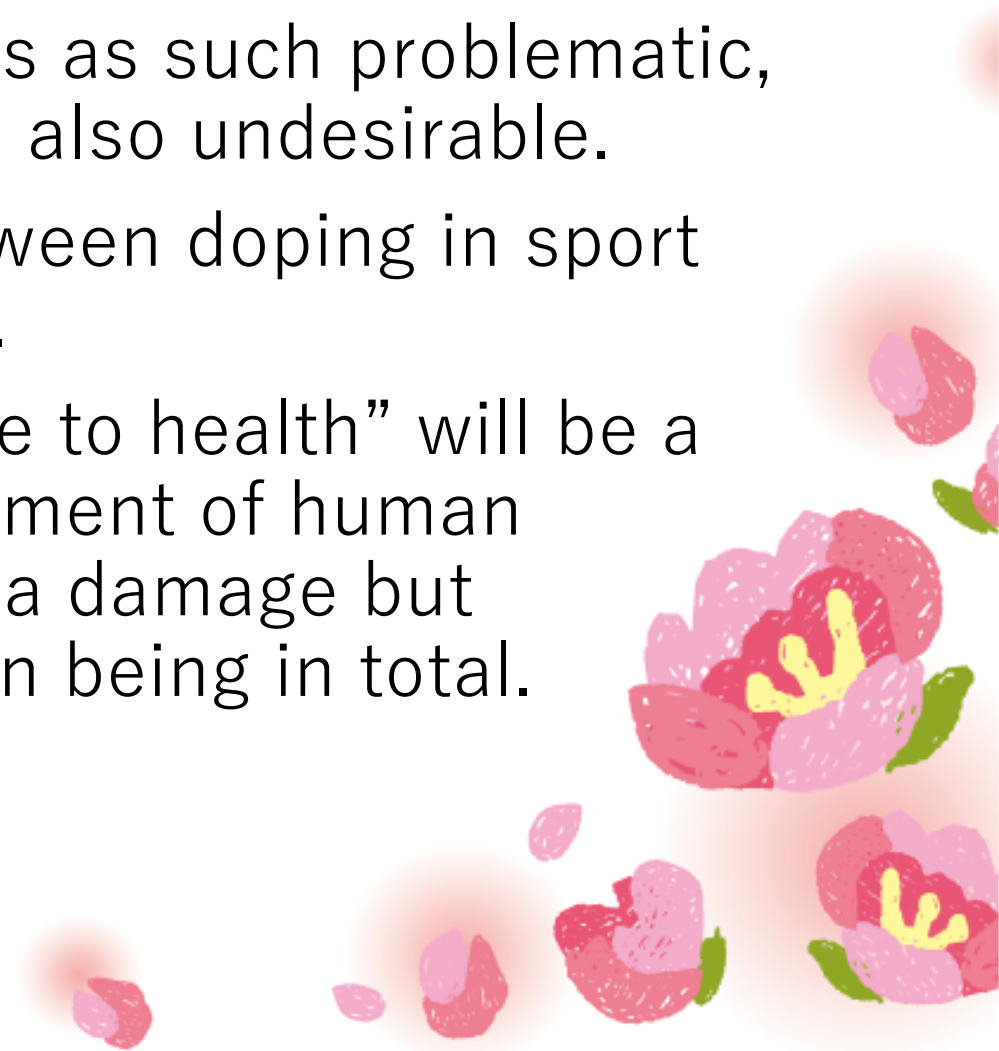
Almost all doping cases other than gene doping would be covered by definitions of the existing criminal offenses.

(!?)



Conclusions

- Too broad definition or interpretation is as such problematic, but expansion of criminal legislation is also undesirable.
- Japan decided to avoid imbalance between doping in sport and other infringement of competition.
- In the future, interpretation of “damage to health” will be a point of dispute, because the enhancement of human physical ability does not always mean a damage but may change the natural traits of human being in total.



Thank you!

