

CHAPTER 4 TRIAL PROCESS

I. PRINCIPLE

A. Presumption of Innocence

Conviction must be established by evidence beyond a reasonable doubt. The preponderance of evidence is not enough. The presumption of innocence until the determination of guilt applies at every criminal procedure stage and a suspect or defendant is to be treated as a common citizen. The public prosecutor bears the burden of proving facts relating to all material elements of the crime and to prerequisite factors for punishment. In Japan, the principle of “in dubio pro reo” prevails; that is, in case of doubt, the presumption is always in favour of the defendant. Unless affirmatively proven, the facts are disregarded and a finding of innocence is pronounced.

B. Public Trials

The accused shall enjoy the right to a speedy and public trial. Trials must be conducted and judgments must be declared publicly. Exceptions are permitted in some trials, but under strict conditions. According to Article 82 of the Constitution, if a court unanimously determines that a public trial would be dangerous to public order or morals, then it may be closed to the public. However, the judgement must be declared publicly. Furthermore, trials for political offences, offences involving the Press or cases where the rights of the people, as guaranteed in Chapter III of the Constitution, are in question (including freedom of speech and religion), must always be conducted publicly.



Criminal Trial (moot)

The court opens with a judge or judges, a court clerk and a public prosecutor in attendance. Generally, a court cannot open unless the defendant is present. The defendant has the right and duty to be present. However, in some minor cases, the defendant need not be present or may be excused by the court. Moreover, even in a case in which trial proceedings may not ordinarily be conducted unless the defendant is present, the court may proceed with trial even if the defendant is not present. This occurs when the defendant is under detention, has received a summons to appear in court for a public trial, refuses without proper reason and makes it exceptionally difficult for a custodian to bring him or her to the court (CCP Article 286-2).

In light of the importance of the activities of defence counsel, in cases where the charge is punishable by death or imprisonment with or without prison labour for more than three years, a public trial cannot open without the presence of defence counsel. If the defendant is not represented by a defence counsel in such cases, the court should, on its own authority, assign a competent defence counsel.

II. CRIMINAL TRIAL PROCEDURE¹⁶

A. Indictment

In Japan, a public prosecutor indicts a suspect by filing an information with the court. The information must state the facts constituting the offence charged. However, according to CCP Article 256, no evidentiary materials may be attached to the information so as not to prejudice a judge or judges before trial. This is based upon the premise that the court must approach the first day of the public trial in a completely unbiased

¹⁶ A new law was enacted in May 2004 which introduces the “Saiban-in” (lay judge) system in criminal trial procedure dealing with grave offences. This system will come into force before May 2009.

frame of mind, in order to realize trial by an impartial tribunal.

Unlike Britain and the United States, Japan does not have an arraignment system. Therefore, even if the accused pleads guilty in the opening proceedings, the fact-finding process cannot be omitted. To prove the case, a confession of the defendant is not enough, and the prosecutor must substantiate a confession with corroborating evidence.

After an Information is filed, the case is assigned to a single judge court or to a three-judge panel of a District Court depending on its seriousness. Case assignments are mechanical in order to prevent prosecutors from choosing a particular judge(s), and to prevent judges from selecting a particular case. Subsequently, the assigned court will serve a copy of the information to the accused without delay. Then the presiding judge sets the public trial date when the accused will be summoned. In this way, a particular judge or collegiate body of judges has several pending cases at the same time.

B. Preparation for Trial

1. Preparation by the Parties and the Court¹⁷

The Rules of Criminal Procedure impose duties on both the parties and the court in order to ensure the right to a speedy trial. The public prosecutor and the defendant's attorneys must:

- (1) disclose to the opposing party evidence which they will produce at trial at their earliest convenience;
- (2) examine such evidence and indicate whether they consent to its admissibility at trial;
- (3) make an effort to have their witnesses present at the trial; and
- (4) contact each other and clarify the issues of the case and subsequently report to the court the amount of time which should be allocated for the trial.

Respectively, the court should:

- (1) require, when it deems proper, both parties to attend a pre-trial conference to determine trial dates, allocation of time to both parties, etc. However, it is strictly prohibited for the court to discuss matters which may lead it to form an opinion about the case;
- (2) designate all trial dates necessary for the disposition of a case beforehand, based on a plan made during the pre-trial conference, and shorten the interval between trial dates;
- (3) encourage the parties to discuss as many problems as possible beforehand, in order to prevent unnecessary disputes at trial; and
- (4) exclude improper questions and statements by the parties.

2. Discovery of Evidence¹⁸

In Japan, there is no statutory procedure for discovery, such as interrogatories and depositions. The prosecution is not required to disclose all the evidence collected during its investigation. According to the Rules of Criminal Procedure, the prosecution must only reveal prior to the first public trial date that evidence which it plans to use. However, according to Supreme Court precedent, the trial court can order the prosecution to disclose evidence of importance to the defence. Upon the completion of opening proceedings, the defence may request the disclosure of a specific piece of evidence by showing concrete necessity. The court will decide whether to order disclosure after considering various factors such as the nature and content of the particular piece of evidence; the time, method and extent of disclosure; the nature of the crime; and the possibility of destroying or hiding evidence and threatening witnesses.

¹⁷ The Code of Criminal Procedure was revised in May 2004, and more detailed pre-trial preparatory proceedings have been introduced. This revision will enter into force before November 2005.

¹⁸ The revision of the Code of Criminal Procedure in May 2004 mentioned in the previous footnote also introduced several provisions governing the discovery of evidence. This will also be effective before November 2005.

C. Trial Procedure

1. Opening Proceedings

The court initially requests the defendant to identify themselves. Then the public prosecutor reads aloud the information. After the court advises the defendant of their rights, such as the right to silence, it must afford the defendant and their counsel an opportunity to make any statements concerning the case. Of course, the defendant is not required to say anything if he/she wishes to remain silent. In 2003, 91.4 percent of defendants in trial cases in District Court admitted to committing the offence charged.¹⁹

2. Examination of Evidence

At the beginning of the examination, the public prosecutor reads an opening statement which outlines the detailed facts he/she expects to prove by evidence. This procedure enables the court to more effectively make procedural decisions during the course of the trial, especially those relating to the examination of evidence and notifies the defendant of the detailed case against him/her. As a result, the trial procedure is more focused. Additionally, the public prosecutor provides lists of documentary and real evidence that he/she plans to introduce. Thereafter, the court may permit the defendant or defence counsel to produce its evidence to refute the case. Applications for examination of evidence may be made by the public prosecutor, defendant or defence counsel. The ruling to grant or to refuse the application depends upon the court's discretion. The court may also examine the evidence on its own initiative, if deemed necessary. With regard to the examination of real evidence, the presiding judge will ask the applicant to display the real evidence in court.

If the defence does not consent to the introduction of documentary evidence, i.e. written statements of witnesses and/or defendant(s), the public prosecutor may request the court to examine them instead. If such a request is granted, the court then determines who will be examined. If the court grants the examination request, the witness is first examined by the party who requested the examination. After this, the other party cross-examines, and then the witness is re-examined if necessary. After both parties have finished, the court examines the witness directly.

Testimony utilizing a video link system can be conducted if the court deems it necessary and in accordance with conditions provided for by the Code of Criminal Procedure, such as where a victim of sexual assault is too afraid to testify before the defendant in the courtroom.

3. Questioning of Defendants

The defendant's right to remain silent entitles them to say nothing at trial unless he/she wants to say something voluntarily. In many cases, including disputed ones, the defendant agrees to answer to questioning. Even after the beginning of questioning, the defendant can refuse to answer at anytime. In non-disputed cases, the defendant's testimony enables the court to collect relevant information for sentencing. During the course of the questioning, the court affords the defendant a chance to tell their version of the story.

4. Closing Arguments

After the examination of evidence, both parties review and analyze the case and make closing arguments to persuade the court of their positions. The public prosecutor makes their closing argument first, and must include an opinion as to the question of fact and the application of law, including sentencing recommendations. Thereafter, the defence receives an opportunity to state its positions on the case.

¹⁹ Annual Report of Judicial Statistics for 2003.

D. Evidentiary Rules

1. Hearsay Evidence

Hearsay evidence is, as a rule, inadmissible whether documentary or oral. There are two exceptions to this principle: (1) the parties' consent to the use of hearsay evidence, providing that the court deems it proper; and (2) as prescribed by law under very rigid conditions concerning necessity and credibility.

a) Consent

Consent to use hearsay evidence is broadly utilized in practice. When the defendant admits the commission of the offence charged, he/she usually consents to almost all the documentary evidence produced by the public prosecutor, including statements of the defendant's confession before the investigating officials. In such cases, the trial proceedings move ahead very quickly through examination of documentary evidence submitted by the public prosecutor and defence witnesses concerning mitigating circumstances, and then the thorough questioning of the defendant. The method of examining evidential documents is for the applicant to read them aloud or to state them in summary.

b) Other Exceptions

When an essential witness refuses to testify or testifies contrarily to or materially different from previous statements made before the public prosecutor, the prosecution can apply for an exception to the hearsay rule. Such prior statements may be admissible as evidence if the court finds that they are more credible than the present testimony. In such a situation, the court lets the public prosecutor ask leading questions based on the witness' prior statement before them. If the witness maintains the same testimony even after this reminder, the prosecutor will ask the witness to confirm the fact that their written statement explains the story differently. Also, the public prosecutor will ask the witness to explain the reasons why the in-court testimony differs from the contents of the written statement and the circumstances under which the witness made the former statement before the prosecutor.

After this series of questions, the court allows the defence counsel to cross-examine the witness. If the court considers the questioning insufficient, it may directly examine the witness in order to determine the circumstances that produced the contradictory testimony. The court will grant admissibility when it finds that the statements were made under special circumstances which lend themselves to a higher credibility than the present testimony and are essential for the proof of the count. For example, the court sometimes accepts written statements when the witness is so afraid of the defendant that he/she cannot tell the truth in the presence of the defendant. Additionally, admissibility is likely to be granted for the following reasons:

- 1) deterioration of memory of the witness after a long period of time, or because of illness or ageing;
- 2) influence from the defendant or other persons, through threats or bribery;
- 3) hesitation due to a special relationship with the defendant, such as family ties or membership in a common criminal organization;
- 4) arrangements with the defendant to make a false testimony in favour of the defendant.

However, if the court widens the application of this exception, the principle of direct evidence may be damaged. Therefore, in deciding admissibility, the court ensures it satisfies the above legal requirements. Therefore, after examining such evidence, the court will further examine the degree of credibility of such statements by analyzing the contents and by comparing them with other evidence.

2. Confession

The Japanese Constitution and the Criminal Code of Procedure require the voluntariness of confessions as a requirement for admissibility. Both declare inadmissible confessions made under compulsion, torture or threat; or made after prolonged arrest or detention. Moreover, CCP Article 319(1) rejects any confession suspected to have been made involuntarily. These provisions are generally interpreted to have three purposes:

(1) to exclude false statements; (2) to guarantee the human rights of defendants or suspects, especially the right to remain silent; and (3) to exclude illegally obtained confessions. Also, exclusion of such confessions aims to restrain investigators from using coercive measures during interrogation.

Additionally, Article 38(3) of the Constitution and CCP Article 319(2) provide that an accused cannot be convicted or punished in cases if the only proof against him/her is his/her own confession. To prove a case, the public prosecutor must substantiate a confession with corroborating evidence, regardless of whether the confession is made in open court or not. Although these provisions restrict the evidentiary value of confessions and curtail a judge's free evaluation of evidence, they more importantly prevent (1) erroneous judgements caused by an overemphasis on confessions, and (2) forced confessions illegally obtained by the investigation agencies.

3. Exclusionary Rule

According to Supreme Court precedent, real evidence should not be admissible at trial when obtained through searches and seizures in serious violation of search warrant requirements established by law. However, the admissibility of such evidence must also consider the situation under which the illegal proceedings were conducted; the degree of violation of the law; and the intention of the investigators. Application of this rule not only serves the immediate purpose of excluding illegally obtained evidence, but discourages illegal investigations in the future.

E. Adjudication

Under the Anglo-American legal system, there are two separate stages for fact finding and sentencing. However, in Japan, these two stages are combined, like the systems in Continental Europe. Therefore, the court examines evidence to prove guilt and evidence to determine sentencing during the same "trial" procedure. When the court finds the evidence sufficient to prove guilt, or in other words, when the court has been persuaded beyond a reasonable doubt that the defendant has committed the offence charged, a sentence may be rendered directly, without a declaration of guilt. When the court thinks that there remains reasonable doubt to prove the case, it will render a judgment of not guilty based on a failure to prove the crime. The rate of not guilty judgments of the District Court cases was 0.05 percent in 2000, 0.07 percent in 2001 and 0.07 percent in 2002.²⁰ With regard to Summary Court cases, 0.10 percent in 2000, 0.19 percent in 2001 and 0.18 percent in 2002.

Japan does not have a system similar to arraignment or plea-bargaining in which the fact-finding process terminates in undisputed cases without going to trial. Therefore, Japanese "trial" statistics include a large number of undisputed cases in which defendants plead "guilty". This type of case constitutes more than 90 percent of all cases "tried" by District Courts. In those cases it is extremely rare to have a judgment of "not guilty". Actually, because the main issue in undisputed cases before the court hearing is the selection of the most appropriate sentence, the proceedings focus on the case's aggravating and mitigating circumstances, similar to sentencing hearings in the Anglo-American systems. Proper evaluation of the court's fact-finding function requires focus on disputed cases and the use of their total as the denominator when calculating acquittal rates.

Furthermore, the number of not guilty cases usually used to calculate the "not guilty" rate consists only of defendants found not guilty of all the counts charged. Therefore, this number excludes defendants in multiple-charge cases who are found not guilty of some of the counts charged, but guilty of others. It is more appropriate to take this more accurate number of cases resulting in acquittal into consideration when examining the court's fact-finding function.

Each year the Criminal Affairs Bureau of the General Secretariat of the Supreme Court provides statistics which analyze this more accurate number (of cases resulting in acquittal) and also those cases that

²⁰ Ibid.

are disputed. According to the statistics, the rate of acquittal was 1.23 percent in District Courts and 2.42 percent in Summary Courts in 2000, 1.84 percent in District Courts and 4.82 percent in Summary Courts in 2001 and 1.67 percent in District Courts and 4.32 percent in Summary Courts in 2002.²¹

F. Sentencing

1. Punishment

The principal punishments are: death; imprisonment with or without labour for life or for a predetermined term; fine; penal detention; and minor fine (Penal Code Article 9). Additionally, the Penal Code punishes crimes by the confiscation of objects which (1) have a direct connection to criminal conduct as a constituent element of a criminal act; (2) were used or intended to be used in the commission of a criminal act; (3) produced or acquired by means of a criminal act or were acquired as a reward for a criminal act; and (4) were obtained in exchange for the objects in item (3). When confiscation cannot be executed, collection of the object's equivalent value is imposed. There are provisions in the Special Drug Law and Anti-Organized Crime Law which strengthen confiscation of illicit proceeds derived from drug offences and other offences listed in the latter law.

2. Statutory Penalty

The Penal Code and other criminal statutes provide for punishments ranging between the minimum and maximum terms for specific crimes. For example, a homicide offence is punishable by death or by imprisonment with labour for life or for not less than three years up to not more than twenty years. Fraud or theft cases are punishable by imprisonment with labour for not less than one month up to not more than ten years. In bodily injury cases, punishment may be imprisonment with labour for not less than one month up to not more than ten years, fine of not less than ¥10,000 up to not more than ¥300,000 or minor fine (¥1,000 - ¥9,999). The court may choose the kind of punishment and set the term or amount through the broad exercise of their discretion.

3. Sentencing Practice

Sentencing requires individual judges to exercise their discretion to evaluate the conduct of the offenders. However, judges feel that there must not be arbitrary disparity among similar cases, since the concept of justice includes parity in sentencing. Therefore, judges tend to think that the result of individual cases must concord with similar cases in the past and in the future.

In the daily practice of sentencing, the specific sentence for a particular case is selected not from among the wide range of punishments provided by law, but from the rather narrow spectrum of punishments as established by precedent. Therefore, the sentencing process begins with examination of the appropriate spectrum of penalties for a particular case by researching the results of past similar cases. In other words, judges have unwritten standards of sentencing that are in fact functioning as a presumptive range of sentencing for a particular type of crime. To find the particular practical spectrum of punishment, the criminal facts charged play in practice a very important role, not only in fact-finding but also in sentencing. "Criminal facts" include not only the mere facts that constitute a crime, but also various facts that have crucial importance to the evaluation of the crime, such as: means, results, and modus operandi of the offence; the extent of the injury or damage; motive for the offence; the relationship between the defendant and the victim as well as between accomplices; the actual role of the defendant in the pursuit of the offence; behaviour after the offence; situation of the victim after the offence; and the habituality of the defendant.

²¹ Ibid.

4. Sentencing Outcome

In 2002, the District Courts and Summary Courts disposed of 86,039 defendants. Among them, 84,051 were sentenced to imprisonment. Out of these defendants, 78,649 were eligible for suspension of the execution of sentence and 52,428 received a suspension. The suspension rate is 66.7 percent. Concerning probation, among persons who were granted suspension of execution of sentence, 5,313 (10.1 percent) were put under probationary supervision, including both mandatory and discretionary probation.²²

Furthermore, the average sentence term itself is relatively short. For example, among those who were sentenced to imprisonment by the Courts of first instance (District and Summary Courts) in 2002, the sentence terms were broken down as follows²³:

less than 6 months	6,598	(7.8%)
6 months to less than 1 year	11,501	(13.7%)
1 year to less than 3 years	60,550	(72.0%)
more than 3 years to 5 years	3,575	(4.3%)
more than 5 years to 10 years	1,408	(1.7%)
more than 10 years to 20 years	321	(0.4%)
life	98	(0.1%)
total	84,051	(100%)
(capital punishment 18)		

The majority of those who were imprisoned received sentences of three years or less. They account for nearly 94 percent of the total. This seems to reflect the Courts' attitude to stress rehabilitative goals.

G. Speedy Trial

In Japan, statistics for 2002 show that the District Courts completed 75,570 cases, while the Summary Courts handled 12,682. Disposition for 92.4 percent of District Court cases was reached within six months after the initiation of prosecution, of which 71.7 percent were attained during the first three months. In Summary Courts, 98.0 percent of the cases were adjudicated within six months, of which 87.8 percent were decided within three months. The average length required for the disposition of a criminal case was 3.2 months in District Courts and 2.2 months in Summary Courts. Hearings were held 2.7 times in District Courts and 2.2 times in Summary Courts on the average. This means that the date assigned for the next hearing averaged 1.2 months later in District Courts and 1.0 month later in Summary Courts.

There is no time limitation for the disposition of a case. The only exception is the Public Offices Election Law, which strongly recommends that the court render judgment within 100 days from receipt of the case.

Statistically, there are cases which have been pending for a long time. At the end of 2002, there were 351 cases pending in the District Courts for over two years.²⁴

III. APPEALS

Appeals are classified as *Koso* appeals, *Jokoku* appeals and *Kokoku* appeals. The first two lie against judgments (*Hanketsu*), while the latter lies against decisions (*Kettei*), and in some instances orders (*Meirei*). When both parties waive the right to appeal or there are no more ways to appeal, the judgment becomes final and enforceable. Contrary to the Anglo-American system, it is not unconstitutional to afford a right of appeal to a public prosecutor against a not guilty judgement or sentencing.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

A. *Koso* Appeals

A *Koso* appeal is a subsequent review of law or fact against the judgment in the first instance, other than one by a high court. It is instituted by filing a written motion in the original trial court within 14 days of judgment. The ground for this appeal should be one or more of the following, (1) non-compliance with procedural law in the trial proceedings, (2) an error in the interpretation or application of law which clearly influenced the judgment of the first instance, (3) excessive severity or leniency in sentence, and (4) an error in fact-finding in a guilty or not-guilty judgment. The High Court examines, in principle, only the written record of the case, including the documentary evidence already examined by the court in order to see what was done at the trial court, and considers the arguments of both the defence counsel and the public prosecutor. However, when deemed necessary, the High Court can examine additional witnesses or the same witnesses as examined by the trial court.

When the High Court concludes that it cannot find an error in judgment, the court must dismiss the appeal. If a ground among the above mentioned exists, warranting reversal of judgment, the court must reverse the original judgment and remand the case to the trial court or render a new judgment directly. The latter is based on the trial proceedings having been already conducted and the evidence previously examined by the trial court and the High Court.

B. *Jokoku* Appeals

If unsatisfied with the High Court judgment, the parties can lodge a *Jokoku* appeal with the Supreme Court within 14 days after the judgment. The *Jokoku* appeal system functions mainly to ensure proper interpretation of the Constitution and law. Therefore, the grounds for this appeal are limited to: (1) a violation of the Constitution or an error in interpretation or application of the Constitution; (2) contradiction with Supreme Court precedent; and (3) contradiction with High Court precedent, when no Supreme Court precedent exists.

However, as the court of last resort, the Supreme Court can reverse, at its discretion, the following erroneous judgments: (1) a serious error in interpretation or application of law; (2) an extremely unjust sentence; (3) a grave fact-finding error which is material to the judgment; (4) any reason which would support reopening of procedures; and (5) the punishment which has been abolished or changed or for which general amnesty has been proclaimed after the rendition of the original judgment. The Supreme Court only examines the record of the case and never examines witnesses or defendants. When the Supreme Court concludes that there is no ground for reversal, it dismisses the appeal. If grounds exist, the Court initiates adjudication similar to a *Koso* appeal.

IV. EXTRAORDINARY REMEDIES

Even after the judgment of a court has become final, it is possible to have it revised or set aside by means of some extraordinary proceedings “de novo” or *Saishin*. A public prosecutor, the defendant who has been pronounced “guilty”, or the defendant’s relatives within a certain degree of kinship, may request an extraordinary proceeding de novo for the benefit of the defendant against whom a judgment of “guilty” or a judgment dismissing a *Joso* appeal has become finally binding. This applies only in certain cases as prescribed by law, for instance, when documentary or real evidence or oral testimony on which the original judgment was based has been proved to have been forged or altered or false, or when clear evidence on which the defendant should have been found “not guilty” or acquitted is newly found. Request for a *Saishin* proceeding is made to the court which rendered the original judgment. If the court finds good cause in the request, it renders a decision to commence a *Saishin* proceeding. When this decision has become finally binding, a new trial is opened or a review of proceedings is reopened at the court which rendered the original decision. In the *Saishin* proceeding, no penalty heavier than that pronounced in the original sentence can be imposed.

Another extraordinary remedy is called the extraordinary appeal or *Hijo Jokoku*. When, after judgment has become finally binding, it is discovered that the judgment of the case was in violation of law, the Prosecutor-General may file an application for an extraordinary appeal with the Supreme Court. When an extraordinary appeal is considered to be well-founded, a judgment must be rendered in accordance with the following: (1) when the original judgment was in violation of law, the part in violation of law shall be quashed; however, if the original judgment was disadvantageous to the defendant, it shall be quashed and a new judgment shall be rendered; (2) when any procedure was in violation of law, the procedure in violation shall be quashed. The effect of the judgment in an extraordinary appeal, except for the judgment quashing the original judgment disadvantageous to the defendant, is, as it were, academic and does not change the status of the defendant in any way but merely sets the court's record straight.

V. PUNISHMENT

A. Categories

Principal punishments are classified, in descending order of gravity, as the death penalty, imprisonment with labour, imprisonment without labour, fine, penal detention and minor fine. Confiscation is a supplementary penalty.

The death penalty is executed by hanging at a house of detention. Although the death sentence may be imposed for 18 offences including homicide, it is only in very few cases of extremely inhuman and cruel murder, like those involving multiple victims and committed with utmost atrocity, under no irresistible pressure from the victims, that the death penalty is invoked by the sentencing court. Such situations can be seen from the fact that the annual rate of death sentence imposed was between eight to eighteen each year during the five-year period from 1999 to 2003.²⁵

The only difference between imprisonment with labour and imprisonment without labour is that while the former involves obligatory work assignment, there is no such work assignment in the latter. Both of the punishments are for life, that is for an indefinite period, or for a specific term of years. In the case of the latter, the term of imprisonment, as a matter of principle, ranges from one month to twenty years. Under certain aggravated circumstances it may be as long as thirty years, and in case there is a reason to reduce the term, it may be decreased to less than one month.

Fines range from ¥10,000 upward, but may be reduced to less than ¥10,000. Penal detention is confinement in a penal detention house for a period of one day up to 29 days without work assignment. Minor fines range from ¥1,000 up to not more than ¥10,000. If a person penalized with a fine or a minor fine is unable to pay the fine in full, he/she may be detained in a workhouse for a period counted according to the daily rate, which the court determines in its judgment. The number of days spent under physical detention pending judgment may be calculated wholly or in part by a ruling of the court.

B. Suspension of Execution of Sentence

The court may, according to the circumstances, grant the following persons suspension of execution of sentence for a period of one year up to five years from the date the sentence becomes finally binding. This is provided that the sentence to be imposed is imprisonment with or without labour for not more than three years or a fine of not more than ¥500,000 and the offender is (1) a person not previously sentenced to imprisonment without labour or a heavier penalty or (2) a person who, though previously sentenced to imprisonment without labour or a heavier penalty, has not again been sentenced to such a penalty within five years from the day when execution of the former penalty was completed or remitted. A person thus granted suspension of execution of the sentence may be placed under probationary supervision during the period of suspension.

²⁵ Ibid.

When a person who is granted suspension of execution of the sentence without probationary supervision commits a crime within the period of such suspension, suspension of execution of sentence for the second or subsequent offence (in addition to the existing suspension of execution of the sentence for the first or initial offence) may be granted. This applies only to those secondary sentences that have a term of less than one year imprisonment with or without labour and the offenders can show extenuating circumstances. All offenders subject to suspension of execution of the secondary or subsequent sentence are placed under the supervision of a probation officer and must comply with the terms of supervision.

When a person who was granted suspension of execution of sentence commits a crime within the period of such suspension, and is sentenced to imprisonment without labour or a heavier penalty without being granted suspension of execution of such sentence, the original pronouncement of suspension of execution of sentence is revoked and the original sentence will be duly executed. However, when a person under suspension of execution of sentence has remained on good behaviour through the whole period of the suspension of execution of sentence, the sentence automatically loses its effect at the end of the period of the suspension.

C. Parole

When a person who has been imprisoned with or without labour is considered to show certain signs of repentance, such a person may be granted parole, by the disposition of the administrative authorities concerned. This is provided that one third of the term of the sentence has been served in the case of those sentenced to imprisonment for a specific period, and that more than ten years have passed after the first day of execution of the sentence in the case of those sentenced to imprisonment for life. Those granted parole are placed under probationary supervision.

VI. COMPENSATION FOR INNOCENCE

The detained or confined defendant who has been finally found not guilty must be compensated by the State for their detention according to the decision of a court. Also the arrested or detained suspect whom the public prosecutor has decided not to prosecute, on the basis of their innocence, may be given compensation by the State. When a person has suffered damage due to mistakes and errors by a police officer or a public prosecutor, he/she is entitled to claim compensation for the damage from the specific prefectural government to which the police officer is assigned or from the State.

VII. SPECIAL PROCEDURES FOR JUVENILE CASES

The Juvenile Law of 1948 established the procedure for the Family Court to handle juvenile cases apart from the procedure of the regular criminal courts. Juveniles as defined in this law are persons under twenty years of age. Juveniles to be dealt with through the juvenile procedure are those (fourteen years or older) who have committed criminal offences (referred to as “juvenile offenders”) and children (thirteen years of age or younger) who commit acts which would be criminal if committed by an adult (referred to as “lawbreaking children”).

In addition to these, the juvenile procedure handles those juveniles who are “prone to commit crimes or violate criminal laws or ordinances in light of their character or surrounding circumstances and of their behaviour such as persistent disobedience to the reasonable dictates of their parents, running away from home without good cause, association with criminals or other immoral persons or frequenting immoral places or showing a disposition to engage in morally harmful behaviour”.

All of these persons must be sent by the public prosecutors or the judicial police officers, etc. to the Family Court for an inquiry and hearing. Inquiries and hearings of the Family Court are designed to find whether there exists, in the act of the juvenile referred there, sufficient basis for a hearing. It is also to make an inquiry into the temperament of the juvenile and his personal environment before the court determines whether the juvenile need be placed under protective measures. The Court is staffed with Family Court

Probation Officers. The Juvenile Law provides: “In making investigations... every effort shall be made to make efficient use of medical, psychological, pedagogical, sociological and other technical knowledge, especially the result of classification conducted by the Juvenile Classification Home in regard to the conduct, life history, disposition and environment of the juvenile delinquent, his/her guardians or those whom he/she is associated with”.

The hearing shall be conducted in a warm atmosphere and in such a manner as to win the confidence of the juvenile and their guardians, and shall promote the reflection of the delinquent juvenile on his/her delinquency. The hearing is closed to the public. Newspapers or other publications for mass communication are prohibited from publishing media articles or photographs that will enable the public to identify a particular person who has been referred to the Family Court for hearing, or a particular juvenile against whom a public action has been instituted for a crime committed by such a person in his/her juvenile days.

According to the philosophy underlying the Juvenile Law, juvenile delinquents should in principle be educated and rehabilitated as sound citizens through educative measures. Therefore, the major consequence of the protective measures rendered by the family court are (1) placement of the juvenile delinquents on probation under probationary supervision by probation officers of the Probation Office, (2) commitment of them to a Child Independent Support Institution or a Home for Dependent Children, and (3) commitment of them to a Juvenile Training School.

Theoretically, it is expected that criminal proceedings will only be instituted in exceptional cases. In regard to a case involving an offence punishable with the death penalty or imprisonment with or without labour, the Family Court may refer the juvenile (offender) to the public prosecutor only if it finds it reasonable, upon the result of the investigation and in the light of facts constituting the crime and of the circumstances under which it was committed, to place the juvenile under punitive measures. However, the Family Court refers the juvenile to the public prosecutor, in the case of a crime resulting in the death of a victim by intentional criminal act of a juvenile who is sixteen or over at the time of the commission of the crime (nevertheless, the same shall not apply in the case where the Court, after investigation, finds measures other than punitive measures proper.). When the case is sent back, the public prosecutor prosecutes the juvenile in an ordinary criminal court in the same manner as they prosecute an adult offender. However, even in such cases juveniles are, as a general rule, punished by indeterminate sentences. No juvenile offender who is under eighteen years of age when committing a capital crime can be punished with the death penalty. It must also be noted that no Family Court decision to refer a case to the public prosecutor for punitive measures can be imposed on a juvenile under fourteen years of age.