

# ENSURING THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY IN JAPAN

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## I. INTRODUCTION

When I decided the theme of my individual presentation, I spoke to my fellow judges. I told them, “I’m going to report on measures to ensure the integrity of courts in high-profile corruption cases”. All of them asked, “What are you going to report? In Japan, that never happens.”

My fellows didn’t mean that high-profile corruption never happens in Japan. Actually, a former Prime Minister was prosecuted for receiving a bribe from Lockheed Corp, an American aircraft manufacturer. And recently, there have been some corruption cases involving politically exposed persons (hereinafter called “PEPs”) in Japan as well. But my colleagues meant that, in Japan, judges refuse to soil their hands with bribery, and they aren’t influenced by political intervention as a matter of course.

However, Japanese judges don’t overestimate themselves. In fact, in Japan, a judge was removed for a bribery scandal in 1981 by the Impeachment Court.<sup>1</sup> But he is the only judge who has been removed due to bribery since 1947, when the Judge Impeachment Court was established. According to an opinion poll, the Japanese public thinks that judges are more reliable than other civil servants and that judges are not affected by political intervention.<sup>2</sup>

So, what is it that judges’ conviction and the public’s trust is based on? In Japan, we don’t have specialized courts for corruption. So, we adjudicate corruption cases the same as usual criminal cases, whether PEPs are involved or not. We don’t have a legislative code of ethics. There are no special features regarding enforcement of obstruction of justice offences in Japan. We don’t have any of the measures that are referred to in the general information of this training course.

Then, how do we prevent political intervention and maintain integrity? I will present two answers to this question. The first is an institutional guarantee of judicial independence; the second is how Japanese courts traditionally maintain integrity. The distinction between Japanese and other countries’ courts lies in the latter answer.

## II. AN INSTITUTIONAL GUARANTEE BY THE SYSTEM

### A. Constitutional Guarantee of the Status of Judges

The Constitution of Japan creates a governmental structure based on the philosophy of the separation of powers. The status of judges is guaranteed by the Constitution, which provides that judges cannot be removed except by public impeachment, which must be conducted by a Judge Impeachment Court unless the judge is judicially declared to be mentally or physically incompetent to perform official duties. A Judge Impeachment Court is composed of fourteen members of the Diet.<sup>3</sup> It seems that some people or judges in countries that have similar impeachment systems worry about political use of it. But, in Japan, we believe

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<sup>1</sup> This judge served on the Tokyo District Court. He presided over bankruptcy cases and received a bribe from a lawyer, who was a bankruptcy administrator. The judge received golf equipment and business suits valued at 300,000 Japanese yen.

<sup>2</sup> Central Research Services Inc. surveyed the reliability according to occupations by assessment on a scale of one to five in October 2017. The results were as follows: members of the Japan Self-Defence Force (3.7), medical institutions (3.6), bank employees (3.5), judges (3.5), police officers (3.4), teachers (3.3), large company employees (3.1), journalists (2.6), members of the Cabinet (2.5), bureaucrats (2.6).

<sup>3</sup> The Diet is the Japanese parliament.

the Judge Impeachment Court is a deliberative body independent from the Diet. In practice, it has never been used politically by the members of the Diet. Moreover, any disciplinary measures against a judge who has neglected his or her duties or engaged in misconduct must be decided through a disciplinary hearing by the Supreme Court or a high court, not by the external body. So, in Japan, it is considered difficult to intervene in PEPs' corruption cases by threatening a judge's status.

#### **B. Appointment of Lower-Courts Judges**

When appointing a judge, we check the integrity of the candidate. Judges of the lower courts are all appointed by the Cabinet from a list of persons nominated by the Supreme Court. It is a constitutional requirement. According to the Supreme Court rules, the nominations by the Supreme Court must be made on the advice of the Advisory Committee on the Nomination of Lower Court Judges. This is the same body that screens judges for reappointment. A judge's tenure is ten years, and judges can be re-appointed. This means that every judge is assessed by the Committee every 10 years. The Advisory Committee on the Nomination of Lower Court Judges is an external organ composed of legal professionals and academics. Citizens, including private lawyers, can provide information about a candidate to the Committee. If the Committee finds that a candidate has a lapse of integrity, he or she will not be nominated by the Supreme Court and will not be appointed. This system reflects the public's opinions in the appointment of judges, which helps to maintain the integrity of judges.

#### **C. Assignment of Cases and Three-Judge Panels**

Judges can't select the cases they wish to try, and they can't control which cases other judges will try. In each court office, the Judicial Assembly consists of judges. Each assembly is managed democratically, and each judge has equal voting power. The Judicial Assembly decides the division of duties among judges in advance. For example, in the Osaka District Court, which is the second biggest district court in Japan, the Judicial Assembly of the Osaka District Court decides assignments of the types of suits, like civil cases or criminal cases, the caseload that should be assigned to each judge and so on. Then, the court secretariat section distributes cases automatically and equally among the judges in the order the cases are received. Courts clerks perform this task and record the allocation of cases on a receipt register, but judges can't be involved in this process. Even if someone requires a judge to give special favours in a case, the judge can't select the case himself.

Hypothetically speaking, what if someone puts pressure on or buys off judges in a pending suit, especially one involving a corruption case against a PEPs. This is just an example, because litigants don't have an incentive to buy judges off in Japan. Generally, we deal with corruption cases by three-judge panels because of the gravity and social impact of such cases, so more than one judge checks the process and substance of the trial. In this respect, we can prevent external influence more effectively than compared to a case in which a single judge presides over the trial. Of course, judges are placed in equal and independent positions, so even senior judges can't interfere with another judge's opinion, whether they are a member of the panel or not.

#### **D. Job Transfers**

In addition, judges transfer all over the country every few years in order to ensure the provision of consistent and high-quality legal services nationwide. A secondary effect is that judges do not establish relationships with litigants that would make them open to corruption. Further, when a judge is transferred, the judge hands his or her cases over to a successor, and the successor reviews the cases.

### **III. ENSURING THE INTEGRITY OF THE JUDICIARY**

The Constitution and systems to preserve judicial independence have contributed to the integrity of courts. However, Japanese courts have undertaken their own measures to maintain integrity. Judges, past and present, have traditionally inherited and protected integrity with strenuous efforts. This is exactly what our self-confidence and national trust is based on.

#### **A. Internalization of Ethics through the Training System for Judges**

We do not have a legislative code of ethics in Japan because of the training system of judges. Our training system of judges is called the "career judge system". Most judges are appointed as associate judges from among people who have passed the National Bar Examination, completed training at the Legal Training and Research Institute and then passed the final qualifying examination. So, at the start of their legal professional

careers, they are appointed as judges and trained in courts. Associate judges sit as members of three-judge panels and handle cases with a presiding judge and senior judges. Through experience, associate judges acquire skills and professional ethics. Japanese judges have created a culture of integrity that has been passed down from generation to generation. Thus, ethics become a part of the judge's personal and professional character. Further, under the career judge system, the courts and judges have a strong tendency to isolate themselves from politics, so we are less likely to be affected by political power.

### **B. Public Trust in the Courts**

The general public has great confidence in the integrity of the courts. Many people trust that judges are clean and would never take a bribe, so litigants don't think to turn the tide of a suit by giving a bribe to a judge. If you ask Japanese judges whether they have been approached with an offer of a bribe, the answer will certainly be, "No". Judges are not elected by the public. This means judges do not have a democratic foundation, but it is substituted by the trust by the public.

Public trust in the courts can also be understood by the current state of legislative ethics regulation. National government employees are covered by the National Public Service Ethics Act, but judges are excluded from this act. It has been explained that courts maintain integrity without the need for external control.

### **C. Importance of Integrity for Ensuring the Independence of Courts**

To ensure the independence of courts, it is important that judges maintain integrity on their own. As judges don't have a democratic foundation, once they lose the public's trust, they will not rely on their autonomy, and external control may become necessary. People are interested in measures to prevent corruption, so in other countries, governments and political parties use such measures to gain popular support. Such measures result in government intervention. Under such circumstances, how can we judges fairly handle high-profile corruption cases? Accordingly, courts must regulate ethics and integrity on their own in order to prevent external and unjust intervention.

## **IV. CONCLUSION**

The independence of the courts is a classical theme of separation of powers, but it might be incomplete even in developed countries. Currently, there is talk about whether the President of the United States committed obstruction of justice and whether the Prime Minister of Canada put undue pressure on the previous Attorney General. Although these are cases related to investigation and prosecution, political intervention in the courts can happen if the judiciary cannot maintain its independence. In short, the independence of the courts is not only a classic problem but also a new problem. And it might mean that the perfect independence of courts is difficult to realize.

I explained how the integrity of Japanese courts is ensured. The Japanese courts do not accept interference even in high-profile corruption cases, because of the governmental system of the judiciary, our training of judges and established tradition of the firm independence of the courts.

Lastly, I would like to tell you an anecdote that expresses the mentality of Japanese judges. An able judge in Japan, *Mr. Masataro Miyake* (1887-1949), introduced an anecdote in his book.<sup>4</sup> It is the story of an old, able judge *Sigemune* (1586-1657).

Before he gave a decision, he always prayed to a god of *Shinto*.<sup>5</sup> He prayed that "If my decision is affected by my selfishness, please take my life immediately." Mr. Miyake introduced this anecdote as "the clearest episode to pass *the Mind of the Judgment* down".

Thus, "*the Mind of the Judgment*" is handed down to us by the present system and the training of judges.

<sup>4</sup> Masataro M. (1942) "*Saiban-no-syo*" Nihonhyoronsya.

<sup>5</sup> The traditional polytheistic religion of Japan.