REPORTS OF THE COURSE

GROUP 1
MEASURES FOR EFFICIENT TRIAL PROCEDURES

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I. INTRODUCTION

Group 1 started its discussion on 3 September 2014. The Group elected, by consensus, Mr. Zafarbek from Uzbekistan as its Chairperson, Mr. Kuramoto from Japan as its Co-chairperson, Ms. Shamra from Maldives as its Rapporteur, and Mr. Suvas from Nepal as its Co-Rapporteur. The Group was assigned to discuss "Measures for Efficient Trial Procedure" in order to shorten trials. Under the above-mentioned theme, the group agreed to discuss the following issues as sub-topics.

1. Identifying and narrowing issues and evidence to be dealt with at trial in order to shorten trials.

2. Securing attendance of the accused, victims and witnesses at trial.

3. Utilization of simplified procedures in cases which are suitable for disposition by simplified procedures.

II. SUMMARY OF THE DISCUSSIONS

A. Identifying and Narrowing Issues and Evidence to Be Dealt with at Trial in Order to Shorten Trials

1. Importance of Preparation for Identifying and Narrowing Issues and Evidence

All participants introduced current procedures and practices in order to shorten trials by comparing the legal systems that each country has practiced, and this was the general information that all participants had discussed during the couple of weeks in their individual papers. Meanwhile all participants agreed to share and discuss legal systems that their countries have practiced in order to have better comprehension of the current procedures and practices.

Moreover the Group discussed identifying and narrowing issues and evidence to be dealt with at trial in order to shorten trials considering the difference of criminal justice systems in the participants' countries between adversarial systems and inquisitorial systems.

Finally, all participants agreed that it is important to prepare and cooperate between judges, public prosecutors and defence counsel for identifying and narrowing issues and evidence, in order to shorten trials. The judges, public prosecutors and defence counsel should focus on necessary issues and evidence at an early stage, without distinction between adversarial systems and inquisitorial systems. If judges, public prosecutors and defence counsel do not have prospects on necessary issues and evidence at all, there is a risk that public prosecutors or defence counsel repeatedly submit additional allegations and request examination of additional evidence without reasonable cause, and that causes the delay of trials.

2. Pretrial Conference Procedure and Evidence Disclosure in Adversarial Systems

All participants agreed to discuss pretrial conference procedure and evidence disclosure in order to identify and narrow issues and evidence in adversarial systems, in order to have efficient speedy trials in the criminal justice system.

Among the participating countries, Japan and Thailand have practiced pretrial conference procedure. Participants from those countries, which basically have adversarial systems, stated as follows:

In Japan, the pretrial conference procedure is used basically for only especially serious cases, which are dealt with at lay judge trials, or complex cases in which the accused has not confessed. The procedure is also used for the cases which are dealt with at lay judge trials and in which the accused has confessed, because it is necessary to rebuild or summarize evidence for improving the lay judges' understanding during trial. So, in Japan, the pretrial conference procedure usually lasts several months.

On the other hand, although Thailand has a similar system, Thailand does not use the pretrial conference if the accused has made a confession. Also, the duration of time for the pretrial conference is shorter, and it takes less than one month.

It is important for judges to confer with parties about identifying and narrowing issues and evidence at the pretrial stage. Especially, it is most important for public prosecutors to disclose evidence speedily including voluntary evidence disclosure in the pretrial conference procedure.

Specifically, it is a difficult problem that judges cannot confirm the contents of evidence before trial for identifying and narrowing issues and evidence. But there is room for judges to confirm parties' allegations and lists of evidence which parties will request. So judges should try to confirm those earlier, and to confer with parties for identifying and narrowing issues and evidence to be dealt with at trial in order to shorten trials.

Moreover, it is most important for public prosecutors to disclose evidence speedily and widely for defence counsel before trial. If public prosecutors disclose evidence speedily and widely for defence counsel before trial, defence counsel can examine the public prosecutor's evidence which is neither requested nor disclosed by prosecutors earlier, and judges can confirm parties' allegations and lists of evidence earlier. Finally judges can confer with parties for identifying and narrowing issues and evidence earlier.

Also, the participants from Maldives and Nepal stated that they should consider introduction of the pretrial conference as mentioned above. Maldives and Nepal practice a hybrid system, but they do not have the pretrial conference like other countries. Specifically, as a result of the system which these countries practice, legal provisions regarding criminal procedure do not provide for the pretrial conference before the actual allegations. In those countries all the evidence is disclosed with the submission of the charge sheet in court. On the other hand, these countries provide the right to obtain a copy of all the documents submitted to the court, unless any documents are confidential, which the prosecution does not want to disclose to the accused.

3. Identifying and Narrowing Issues and Evidence by Judges in Inquisitorial Systems

Participants from Laos, Cote d'Ivoire, and Viet Nam, which introduced basically inquisitorial systems, stated as follows:

Judges in inquisitorial systems can see contents of evidence before opening trial, so those countries, which have inquisitorial systems, do not need pretrial conference procedure. (Especially, the participant from Cote d'Ivoire stated that in Cote d'Ivoire, there is pretrial examination for serious cases instead of pretrial conference procedure.)

Although Uzbekistan has an inquisitorial system, the participant from the country stated that the pretrial conference has to be introduced in the country in order to shorten trials.

However, it is important for judges to prepare for trial and cooperate with public prosecutors and

defence counsel at an early stage of the inquisitorial systems too. Specifically, it is hard for judges to identify and narrow all necessary issues and evidence by themselves. Even though judges must finally make such decisions, they should hear parties' comments and order them to submit proposals for identifying and narrowing issues and evidence. That reduces the burden of judges. In addition, that enables parties to help the judge reach relevant decisions.

B. Securing Attendance of the Accused, Victims and Witnesses at Trial

1. Importance of Securing Attendance of the Accused, Victims and Witnesses at Trial

Firstly, all participants agreed that lack of attendance of the accused, victims and witnesses would be one of the major causes of delaying trials, so it is important to secure attendance of the accused, victims and witnesses at trial.

2. Securing Attendance of the Accused

(a) Problem and methods to summon the accused

All participants confirmed that, (1) the courts cannot perform trials when the accused is absent, (2) so the courts oblige the accused to attend trial by summons, (3) and when the accused is not placed in custody, and is missing, according to orders by judges or prosecutors, the police must search and arrest the accused. All participants agreed that it is important for public prosecutors and police to cooperate in order to secure the attendance of the accused at a trial.

(b) Sanctioning and trial procedure during the absence of the accused

Next, the Group discussed sanctioning the absence of the noncompliant accused and trial procedure during the absence of the accused such as utilizing a judgement by default. All participants confirmed that the courts in all countries can only deliver judgement after completing necessary examination of evidence and confirmation of parties' allegations required by law if the accused is unreasonably absent (in Japan, only when the accused is placed in custody). Moreover the group thought that it is difficult to introduce the systems and practices of other countries as they stand—because there are different systems and practices in each country for maintaining balance between the speedy trial and the accused's right—but confirmed the interesting systems and practices of each country.

For example, (1) some participants stated that the courts impose non-penal fines on the accused as sanctions for the absence of the noncompliant accused. (2) The participant from Nepal stated that if the accused does not appear in the court during the court proceeding, the court summons the accused. If the accused does not appear in court within two years, the court can issue judgement based only on the public prosecutor's evidence. (3) The participant from Viet Nam stated that the courts can exceptionally open the hearing in the absence of the accused as follows: (i) if the accused is abroad and the courts cannot receive the accused, (ii) in case the accused runs away, the chief of police issues a warrant to pursue the accused if the police cannot find him/her.

3. Securing Attendance of Witnesses

Firstly, all participants agreed that it is important not only (1) sanctioning noncompliant witnesses by judges, but also (2) protecting and supporting witnesses and victims, in order to secure the attendance of witnesses. And all participants agreed that if lack of attendance of the witness causes the delay of trial, it is more difficult to secure attendance of the witness in the future because witness's memories will become vague, causing a vicious cycle. So, all countries should avoid the vicious cycle by applying the following measures.

(a) Sanctioning noncompliant witnesses by judges

All participants agreed that (1) attendance of witnesses should be the duty of the nation, (2) so the courts should impose fines or short-term imprisonment for unreasonable absence of a witness. And all participants agreed that it is important for public prosecutors and police to cooperate in order to secure attendance of witnesses, too.

(b) Supporting and protecting witnesses

The group agreed on the following recommendations which each country should consider introducing, step by step, while we should maintain balance between the accused's rights and the witness's rights and benefits.

(i) Protecting witnesses

Of course, the courts should impose severe penalties on the defendant if the defendant causes witnesses (and victims) any harm or damage. In addition, the judge, investigator, prosecutor and defence counsel should prevent that; specifically they must protect the privacy of the witness to the extent possible. For example, his/her residence should be kept confidential, because some of the witnesses might fear revenge from the defendant if his or her residence etc. is identified. However, the courts should consider the accused's rights by noticing this information only to the defence counsel. Likewise corresponding authorities should protect witnesses not only before and during trial, but also after the trial.

(ii) Supporting Witnesses

In order to make it easy for witnesses to give testimony, of course, the courts should restrict parties' intimidating or insulting questions. And the courts, if necessary, should (1) establish partitions between the witness and the accused, observer or both in the courtroom, or (2) use a video and audio link system for testimony in another room and so on, in order to make it easy for the witness to give testimony in court. The participants from Maldives stated that the courts should use voice-changing technology and so on if necessary.

Moreover when the witness is at a remote place, the court should examine the witness in places other than courtroom, in order to enable the witness to easily attend trials. And when the witness has reasonable cause not to attend on the day of trial, the court may examine the witness on another day.

In addition, the expense of attendance of witnesses, especially witnesses requested by public prosecutors, will be basically covered by the government even though the accused finally will defray the cost if he/she is convicted. That is difficult because the budget is limited, but even partly covering expenses is efficient support for witness.

(iii) Alternative measures

The court should consider taking alternative measures for witnesses, for example, documents, videos, pre-hearing, etc., while the court should consider the defendant's right to question the witness.

C. Disposition of Cases by Simplified Procedures

1. Importance of Utilization of Simplified Procedures

All participants agreed that it is important to sort cases and utilize simplified procedures suitable for disposition, specifically, relatively minor uncontested cases, cases in which there are alternative measures for the criminal's rehabilitation, such as drug cases and so on, in order to dispose of many cases speedily and efficiently. On the other hand all participants agreed that it is important for the defendant to have the right to appeal in all criminal proceedings as one of the fundamental rights. Moreover this group discussed utilization of simplified procedures suitable for disposition in each country, and all participants agreed that they should refer to that mutually.

2. Example of Each Country

(a) The participant from Thailand stated that in Thailand there are simplified procedures as follows:

(1) The court can convict by only the accused's confession at trial about cases involving offences punishable with imprisonment for a definite term of less than 5 years.

(2) The participant from Thailand stated not to prosecute dishonored cheques in order to decrease the case load of the court trials, as a future task.

(b) The participant from Japan stated that in Japan there are simplified procedures as follows:

(1) The court can impose a fine of not more than 1 million yen in cases involving offences punishable fine by only documentary examination, without public trials, like traffic violations, simple theft cases and so on. This procedure is called "Summary Proceeding" in Japan.

(2) The court can sentence imprisonment with or without work for a definite term of not more than 3 years, always suspended, or fine in minor uncontested cases, excluding offences which are punishable by the death penalty, life imprisonment or imprisonment with or without work for a definite term of not less than 1 year. On the other hand, the court must basically set a trial date within 14 days after indictment, and must rule on that trial date. This procedure is called "Speedy Trial Procedure" in Japan.

(c) The participant from Maldives stated that in Maldives there are simplified procedures as follows:

(1) Maldives introduced an arrangement procedure system by giving warning or caution to the first instance cases. This kind of arrangement procedure would reduce the crime rate and also it would give a second chance for the accused to clear his or her criminal record and remain in society as a clean person. This arrangement is made through the prosecution. However, the participant from Maldives stated that as recommendations, this kind of arrangement procedure might be introduced to the courts as an effective way such as reconciliation and mediation or other ADR methods of disposition of cases rather than imposing criminal sanctions.

(2) Maldives does not charge traffic violation cases, but as an administrative action, the police or the regulatory body impose fines on the traffic violators.

(3) In Maldives, depending on the case being submitted, the courts do prioritize cases for prompt disposition. Usually speedy trial procedure applies in drug-abuse or drug-possession and confession-based cases.

(4) The participant from Maldives also stated not to prosecute dishonoured cheques in order to decrease the case load of the court trials as a future task.

(d) The participant from Cote d'Ivoire stated that there is simplified procedure in Cote d'Ivoire for cases involving offences punishable with imprisonment for a definite term of under or equal to two months, or fine.

(e) The participant from Nepal stated that there is a simplified procedure in Nepal for cases involving offences punishable with imprisonment for a definite term of less than six months. There is a special court act and as per the act some specific procedure will be applied to simplify and shorten the trial process for those cases which are under the jurisdiction of the special court. Corruption-related cases and money-laundering-related cases are now under the jurisdiction of the special court. Likewise in the case of minor traffic violations, the traffic police can impose the fine on the violator without formal trial.

(f) The participant from Viet Nam stated that in Viet Nam summary procedure is stipulated by the criminal procedure code. Under that code, the prosecutor's office is entitled to decide cases which will apply the summary procedure. The requirements for the case are as follows:

— The persons committing criminal acts are caught red-handed;

— The cases are simple with obvious evidence;

— The committed offences are less serious ones;

— The offenders have clear personal identifications and records.

In practice, there are few cases in Viet Nam which apply the summary procedure because of not fulfilling the first condition above.

III. CONCLUSION AND RECOMMENDATIONS

At the end of the discussion, the Group reached a consensus that the following should be recommended as measures for efficient trial procedure in order to shorten trial:

1. Firstly, it is important to sort cases and utilize simplified procedures suitable for disposition of cases as relatively minor uncontested cases and so on, in order to dispose of many cases speedily and efficiently. Coordination between investigator, public prosecutor and adjudicator is necessary to provide justice and to guaranty the rule of law.

2. Next, after sorting cases, if necessary because the defendant contests the charges and so on, it is important for judges, public prosecutors and defence counsel to prepare and cooperate by identifying and narrowing issues and evidence in order that judges, public prosecutors and defence counsel can focus on necessary issues and evidence at an early stage.

3. Moreover, it is surely important to secure attendance of the accused, victims and witnesses at trial. Especially, in order to secure attendance of witnesses, it is important not only to sanction noncompliant witnesses by judges, but also protecting and supporting witnesses and victims. In addition, all participants stated that establishing video and audio link systems for testimony would be the best way of speeding up the trial, and it protects the witnesses and victims. Likewise the system for obtaining the testimony of witnesses should be simplified, and judges should be careful to avoid the harassment of witnesses by lawyers.

4. Finally, as a whole, before transplanting any legal methods, countries will have to consider their culture and may not find it best to depend on one system, but also transplant the effective methods that are used in other systems. The criminal justice system is the body which provides justice to the whole society; therefore, it needs to have a balance between the defendant, the witnesses and the victims. Disposition of cases would be one of the effective and speedy ways to complete the less serious criminal cases. However, countries must have systems of checks and balances. Criminal justice stakeholders are recommended to build better coordination and cooperation with each other in order to improve the whole criminal justice system.