Criminal Justice System in JAPAN

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Overview of Criminal Justice System

police  Prosecution  Courts  Corrections  Rehabilitation
Supreme Public Prosecutors Office
High Public Prosecutors Office (8)
District Public Prosecutors Office (50)
Local Public Prosecutors Office (438)

Numbers of officers (2018)
Prosecutors: 1,868
Assistant prosecutors: 899
Prosecutors’ Assistant officers and other staff members: 9,042
Prosecution

- **Main function**
  - investigate criminal cases
  - Decide whether or not to prosecute
  - prove the cases in court
Investigative Process

- The police are the primary investigative agency.
- Public prosecutors conduct investigation to supplement police investigation.

Initiate their own investigation without any police involvement, particularly in politically sensitive or complicated cases.
Relationship with the police

- Generally cooperative
  - Public prosecutors have the authority to give
    - General instruction
    - General orders
    - Specific orders
Principle:

Non-compulsory basis as much as possible

Compulsory measures: arrest, detention, search, seizure, wiretapping

Judicial warrant is required
No need to have a formal decision when starting investigation

Investigate as long as necessary until the completion of statute of limitations (no time limit)
Arrest and Detention

- **Arrest**
  - Principle: judicial warrant required
  - Exceptions: flagrant offences, emergency arrests

- **Pre-indictment detention**
  - Judicial warrant required
  - Duration: 10 days (Up to 20 days can be extended)
  - No bail

- **Pre-trial detention (incl. during trial)**
  - Judicial warrant required
  - Can be bailed out
  - Duration: 60 days (can be extended)
Post-arrest procedure

Arrest by Police

referral

(within 48 hours)

Prosecutor

request for detention to Judge

(within 24 hours)

Judge

10 days +
up to another 10 days

detained

Prosecutor

Disposition of cases

* Investigation continues as necessary

released
Disposition of Cases

- Prosecution
  - Indictment (Formal Prosecution)
  - Summary Prosecution (Fine up to 1,000,000 yen)

- Non-prosecution
  - Insufficiency of evidence
  - Suspension of prosecution (Fine up to 1,000,000 yen)
Characteristics of prosecution

- **Monopolization of Prosecution**
  - No private prosecution, no police prosecution, no grand jury
  - Prosecution criteria is whether they can prove cases beyond reasonable doubt with sufficient evidence
  - Exception
    - Quasi-prosecution
    - Decision by the committee for the inquest of prosecution

- **Discretionary Prosecution**
  - Prosecutor may decide to drop the case even though there is sufficient evidence to secure a conviction
Discretionary Prosecution

Article 248 of the Code of Criminal Procedure

Where prosecution is deemed unnecessary owing to the character, age and environment of the offender, gravity of the offence, circumstances or situation after the offence, prosecution need not be instituted.
Discretionary Prosecution

- The gravity of the offence and the harm caused thereby
- The offender’s character, age, criminal history, and risk of reoffending
- The circumstances relating to the commission of the offence
- Conditions subsequent to the commission of the offence
Discretionary Prosecution

- Efficient operation of the criminal justice system

- Avoiding the negative effects of prosecution and helping offenders to rehabilitate themselves
Statistics on Case disposition

- Summary Prosecution: 245,529 (24.5%)
- Formal prosecution: 83,988 (8.4%)
- Non-prosecution: 671,694 (67.1%)

Suspension of Prosecution: 70.7%
Other non-prosecution: 29.3%

(White Paper on Crime 2018)
Safeguard against Arbitrary Disposition

- Quasi-prosecution
  - Applicable Offences of abuse of authority

- Committee for the Inquest of Prosecution
  - 11 lay people selected from among citizens
  - Examine whether decision on non-prosecution is proper
Committee for the inquest of prosecution

Meeting of the Committee for the Inquest of Prosecution
Courts Structure

- The Supreme Court
- High Court (8)
- District Court (50)
- Summary Court (438)
Courts structure

- Defence Counsel
- Judges
- Prosecutors
Basic Principles and Characteristics

- Presumption of Innocence
- No Arraignment
- Speedy and Public Trials
- Single Stage Procedure
- Right to Remain Silence
- Right to Counsel
- Adversarial Procedure
Indictment
With only charging instrument

Request for examination of the evidence

argue
Saiban-in (lay Judges) System

- The recommendation of the Justice System Reform Council in June 2001
- One of key concept “citizen participation”
- Deepen people’s understanding of the judicial system and strengthen popular support for the judiciary
- Started on 21 May, 2009
Saiban-in (lay Judges) System

Prosecutor

Saiban-in

Judge

Saiban-in

Counsel
The Scope of Saiban-in Cases

- Punishable by death or imprisonment for life

- Intentional conduct resulting in the victim’s death
Appointment of Saiban-in

- Selected at random by lottery
- Selected from among Japanese nationals aged 20 and older with the right to vote
The Role of Saiban-in

- Participation in criminal trial proceedings with professional judges
- Only in First Instance
- Decide whether the accused is guilty or not, as well as the sentencing by a majority vote.
How does Saiban-in System work?

- Positive feelings of National people
- As of December 2018, about 89,000 has participated
- Drastic change of Trial proceedings: witness examination-centered, easy to understand
- Reflect citizen’s view in sentencing
Thank you