

## **OUTLINE OF CRIMINAL PROCEDURE IN JAPAN**

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## **I. Outline of Criminal Procedure in Japan**

### **A. Three-tier Court System**

A three-tier court system is adopted for Japanese criminal cases. One of two courts (either a district or summary court) is used as the court of first instance depending on the severity of the statutory penalty for the charged offense as described in the charge sheet for criminal cases. The high court is then the court of second instance, while the Supreme Court is the final appellate court of appeal.

### **B. Court of First Instance**

#### **1. Summary court**

##### **a. Jurisdiction**

A summary court generally only has jurisdiction over criminal cases where the penalty is a fine or lighter. A sentence of imprisonment with work can also be imposed for minor cases, such as theft or embezzlement, but the length of the imprisonment term that can be rendered is restricted.

##### **b. Composition of the court**

A single judge handles each case in summary court.

##### **c. Summary proceedings**

Special proceedings that do not require a court hearing can be used for simple punishment of minor crimes where the facts are not in dispute at a summary court. Summary proceedings are initiated by the public prosecutor requesting a summary order at the same time as institution of prosecution.

The public prosecutor must confirm with the suspect that there is no objection to the application of the summary proceeding prior to initiating the procedure.

A Summary court examines documentary and material evidence submitted by the public prosecutor without holding a court hearing, and may impose on the accused a fine of not more than 1,000,000 yen.

If any party involved objects to the summary order and requests a formal trial, the case is transferred to a trial procedure in a court of first instance.

About 80% of all criminal cases are handled as summary proceedings.

Refer to Graph 1 for statistics on summary proceedings and formal prosecutions.

**[Graph 1. Comparison of Applications for Summary Orders and Formal Prosecutions and Cases Brought to District Courts and to Summary Courts for Formal Prosecutions \(2012\) \(PDF: 108KB\)](#)**

#### **2. District court**

##### **a. Jurisdiction**

The district court has jurisdiction as the court of first instance over criminal cases other than those liable to fines or lesser punishment. There are no summary proceedings for cases sent to a district court, for which court hearings are always held.

b. Composition of the court

In the district court, a single judge handles each case except for certain crimes with heavy statutory penalties, which are handled by a panel of three judges.

Certain types of crimes in which the general public have a strong interest are designated to be handled under the Saiban-in system.

The courts can also handle other cases with a three-judge panel at their own discretion. Refer to Graph 2 for the number of cases handled by a single judge and a three-judge panel respectively.

**Graph 2. Number of Cases Handled by Single-Judge and by Three-Judge Panel (Ordinary District Court Cases in the First Instance) (2012)(PDF: 65.3KB)**

c. Saiban-in system

Fact finding and sentencing are conducted by a panel comprised of six Saiban-ins chosen from the general public together with three judges for certain types of serious crimes in which there is strong public interest, such as homicides, robbery causing death or injury, arson of inhabited buildings, and kidnapping for ransom.

The Saiban-in system is the same as the citizen participation system adopted in Germany and France, etc. in that the panel is comprised of both Saiban-ins and judges.

However, Saiban-ins find facts and determine the sentence with the judges, while issues of legal interpretation are handled entirely by the judges, which differs from the citizen participation system in Germany and France etc.

On the other hand, the Saiban-ins are appointed by random selection from voter registration lists per case, which is much like the jury system adopted in the United States and elsewhere.

However, Saiban-ins conduct deliberations together with judges, and determine the sentence, as well as whether the accused is guilty or not, which is different from other jury systems.

As described above, the Saiban-in system is unique to Japan, differing from both the citizen participation and jury systems.

d. Speedy trial procedure

Among cases handled by a single judge at district and summary courts, those deemed clear and minor can be tried by a speedy trial procedure.

In a speedy trial procedure, the court sets a trial date as early as possible, applies a less rigorous examination of the evidence, and renders a judgment insofar as possible, within

one day. When a court renders a judgment of imprisonment in a speedy trial procedure, the execution of sentence shall be suspended.

In order to conduct a speedy trial procedure, when the public prosecutor deems it appropriate, the public prosecutor must secure the consent of the suspect, and then make a petition in writing for a speedy trial procedure at the time of instituting prosecution.

Then if the defense counsel for the suspect also agrees to the case being tried by a speedy trial procedure and the accused states that he/she is guilty at the opening proceedings of the ordinary trial of first instance, the court will decide to apply the speedy trial procedure.

This is different from an arraignment in the United States and other jurisdictions, as the evidence is examined even though the accused has admitted guilt.

## **C. Court of Appellate Instance**

### **1. Court of second instance**

If either party is dissatisfied with the judgment in the first instance, said party can appeal to a court of second instance with a demand to reverse the judgment by alleging errors. It is noteworthy that the public prosecutor also has the right of appeal in the same way as the accused.

All appeals for criminal cases are handled by the high court, with such cases being tried by a three-judge panel. An appeal can be made to the court of second instance on the following grounds:

- (1) Non-compliance with procedural law in the trial procedure
- (2) An error in the interpretation or application of law in the judgment
- (3) Excessive severity or leniency of the sentence
- (4) An error in fact finding

The procedure for the court of second instance is to review the court proceedings and judgment in the first instance through the records, rather than holding a new trial to re-find facts.

Therefore, proceedings in the court of second instance are mostly restricted to oral arguments made by the public prosecutors and defense counsels, and in contrast to the first instance, the high court does not examine witnesses or other evidence.

However, the court of second instance exceptionally examines evidence that was not assessed in the first instance when they consider it is necessary to investigate facts that remain unclear after examining the records of the first instance.

Once the court of second instance has reviewed the records of the first instance, and it confirms that there was no error in the judgment through the trial procedure, the court then dismisses the appeal.

On the other hand, when the court admits that there is an error and the judgment in the first instance should be revised, the court must reverse the judgment.

If the court of second instance admits the court of first instance should reexamine the evidence, or its judgment should be revised, it will reverse the judgment and remand the case to the court of first instance, and a retrial will be held at the court of first instance. However, the high court can also immediately render a new judgment based on the case records and the evidence examined by the court of the first and second instance if appropriate.

In any of these cases, if only the accused appealed, any sentence will not be heavier than that rendered by the court of first instance.

Needless to say, any judgment by the high court is binding on the court of first instance, when the case is remanded to the court.

#### **Table 1. Reasons for Reversals by Courts of Second Instance (PDF: 28.3KB)**

### **2. Final appellate instance**

Either party can make a final appeal to reverse the judgment of the court of second instance.

The Supreme Court handles all final appeals.

At the Supreme Court, cases are generally handled by a Petty Bench comprised of five justices, but cases involving important constitutional issues and suchlike are handled by the Grand Bench comprised of all fifteen justices.

Final appeals can only be filed on the following grounds:

- (1) A violation of the Constitution or an error in the interpretation of the Constitution
- (2) An alleged conflict with precedents of the Supreme Court or high courts

However, the final appellate court may reverse the judgment in the second instance under special circumstances when it deems that not doing so would be contrary to justice.

As guardian of the Constitution, the Supreme Court is the court of last instance having the authority to determine whether all laws, orders, regulations and measures comply with the Constitution or not.

Therefore, ensuring appropriate interpretation of the Constitution and the law is the primary purpose of the final appeal system, so the procedure of the final appellate instance is different from that of the first and second instances in that there is no examination of witnesses.

However, the Supreme Court is the court of last resort in Japan, so it has the discretionary power to reverse any judgment in the second instance if it determines that leaving the judgment intact clearly constitutes an injustice.

The types of judgment of the final appellate court are almost the same as those in the court of second instance.

In other words, when the Supreme Court admits that there has been no error in the judgment of second instance, the final appeal will be dismissed, whereas the case is

remitted to the lower court when the judgment is reversed in the Supreme Court.

However, the Supreme Court may also remit a case to the court of first instance instead of to the court of second instance when reversing the judgment of second instance.

The Supreme Court can also render its own judgment immediately when appropriate based on the case record and evidence.

## **Table 2. Dispositions by the Supreme Court(PDF: 28.6KB)**

## **Jurisdiction and Procedure of Criminal Cases (PDF: 111KB)**

### **II. Proceedings from Investigation to Judgment in the First Instance**

#### **A. Introduction**

Based on a procedure regarding cases heard by Saiban-ins, this chapter explains the criminal procedure from the investigation following a crime and institution of prosecution, through the preparations for a criminal trial, appointment of Saiban-ins, and the trial from within the criminal procedure at courts in Japan as per the overview in Chapter 2, with certain casebook example presented in the frames.

#### **B. Investigation**

*On June 3, 2013, a homicide was committed at a tavern in Minato-ku, Tokyo.*

*Although police officers rushed to the scene as soon as it was reported, the assailant escaped.*

*According to a witness, the victim was Akiko Mori (Ms.), who was an employee of the tavern, and the assailant was Taro Yamada (Mr.), who suddenly stabbed her in the chest with a knife after she refused his entreaties to reconcile with him.*

*The police officers noted the witness' explanation, and requested to a judge for an arrest warrant for Taro on the charge of homicide.*

*The judge reviewed the documents submitted by the police officer, and duly issued an arrest warrant.*

#### **1. Offense and opening of investigation**

##### **a. Investigative authorities**

The criminal procedure starts with an investigation by the authorities.

There are various triggers for an investigation, such as reports and notifications from victims or witnesses of crimes, police interviews and questioning, complaints, and accusations depending on the type and nature of the case and offense.

The main investigative authorities are police officers and public prosecutors.

The task of police officers is to maintain social security, but in the case of an investigation, they are the primary investigative authority as judicial police officers, and are the main

power.

On the other hand, the public prosecutor receives cases referred from the police, and takes over the police officers' investigation results before considering whether the case will withstand the rigors of the institution of prosecution, or when he/she deems it necessary, he/she conducts additional investigations. The public prosecutor is a legal expert from an administrative department of the government, and their status is guaranteed in the same way as judges for quasi-judicial services.

Police officers and public prosecutors are mutually independent authorities, not hierarchically related, who handle such investigations in cooperation. However, public prosecutors may advise or instruct police officers as necessary. (Code of Criminal Procedure, Article 193)

#### b. Requirement for judicial warrants

Articles 33 and 35 of the Constitution state that no person shall be apprehended, searched, or seized except upon a warrant issued by a judge, unless he/she is committing or has just committed an offense.

This system is known as the warrant principle, and its aim is to ensure that compulsory investigations are not left to the sole discretion of the investigative authorities, but that a judge who takes a fair and neutral stance determines their necessity in advance.

Compulsory investigations can be implemented exceptionally only as stipulated under the law. (Code of Criminal Procedure, Article 197. Legal principles for compulsory investigations)

The inappropriate exercising of authority during an investigation while crimes are being investigated and evidence collected and preserved may constitute serious abuse of the individuals' fundamental rights and freedoms as citizens.

Therefore, how to balance the demand to swiftly and appropriately achieve the purposes of an investigation and reveal the truth with the need to prevent any abuse of the fundamental rights and freedoms of citizens is an important perspective for any investigation.

## 2. Arrest

*On June 5, Taro was arrested by a police officer on the basis of the arrest warrant. Taro was detained after being informed of the facts concerning the crime as described in the warrant and his right to appoint a defense counsel, and was given an opportunity to provide an explanation.*

#### a. Arrest

An arrest is a compulsory measure to physically restrain a suspect, and limits their physical freedom for a certain period to prevent the concealment or destruction of

evidence and their escape.

Three types of arrest are defined under the Code of Criminal Procedure as follows.

- (1) Ordinary arrest based on a warrant issued by a judge in advance
- (2) Emergency arrest to physically restrain a suspect for serious crimes when a warrant from a judge cannot be obtained in advance because of urgency, with the request for a warrant being submitted to a judge immediately after the arrest
- (3) On-the-spot arrest to physically restrain a suspect without an arrest warrant when a person is apprehended in the act of committing or having just committed an offense, and there is no doubt about mistaken identity

In the case of an ordinary arrest, the police officer must show the arrest warrant to the suspect (Code of Criminal Procedure, Article 201), and immediately advise them of the essential facts of the suspected crime and to the fact the suspect may appoint defense counsel, after which they are given an opportunity for explanation. (Code of Criminal Procedure, Article 203, paragraph (1))

b. The right to remain silent and its notification procedure

The police officer must notify the suspect of their right to remain silent while also giving them the opportunity for explanation at the time of arrest.

Article 38, paragraph (1) of the Constitution states, "No person shall be compelled to testify against himself."

This constitutional right is extended, and Article 198, paragraph (2) of the Code of Criminal Procedure states that the suspect must be notified of their right to remain silent: "In the case of interrogation... the suspect shall, in advance, be notified that he/she is not required to make a statement against his/her will."

### 3. Referral to public prosecutor

*The police officer referred Taro to the public prosecutor with the documents and articles of evidence at 10:00 a.m. on June 7.*

*The public prosecutor considered that further physical restraint was needed, after providing Taro with an opportunity for an explanation regarding the suspected facts of the crime and assessing the documents and articles of evidence.*

*Consequently, the public prosecutor requested at 4:00 p.m. on the same day to detain the suspect.*

#### Referral to public prosecutor

Since the fundamental rights and freedoms of a suspect are restricted to a large degree, the period of physical restraint is strictly stipulated under the law. When a suspect is arrested by a police officer, the police officer must refer the suspect to a public prosecutor with documents and articles of evidence within 48 hours of their arrest (Code of Criminal



Procedure, Article 203, paragraph (1)).

The public prosecutor who receives such referral must determine whether the suspect is to be released or request a judge to detain the suspect for further physical restraint within 24 hours of receiving the suspect, and within 72 hours of the suspect being placed under physical restraint. (Code of Criminal Procedure, Articles 205, paragraphs (1), (2) and (4))

#### 4. Detention of the suspect

*The judge examined the documents and after questioning Taro and offering him an opportunity for an explanation, issued a detention warrant on the same day.*

*On June 16, the public prosecutor requested an extension of the detention period from a judge because their investigation was not complete. The judge decided that this was unavoidable and extended the detention period for 10 days.*

##### a. Definition and requirements for detention of the suspect

Detention of a suspect is a compulsory measure applied following an arrest and is restricted to arrested suspects only, and only a public prosecutor can request such detention.

Detention of a suspect is permitted when there is probable cause to suspect he/she committed a crime, and if any of the following apply. (Code of Criminal Procedure, Articles Article 207, paragraph (1) and Article 60, paragraph (1))

- (1) The suspect has no fixed residence.
- (2) There is probable cause to suspect that he/she may cancel or destroy evidence
- (3) The suspect fled or there is probable cause to suspect that he/she may flee

The judge who receives the request, reviews the documents and other supporting evidence, and if the judge determines that requirements for detention are fulfilled after notifying the suspect of their right to remain silent and right to appoint defense counsel and directly hearing the suspect's explanation, may then issue a detention warrant.

##### b. Period of detention prior to institution of prosecution

The detention period prior to institution of prosecution is limited to 10 days from the day on which detention is requested. (Code of Criminal Procedure, Article 208)

However, a judge is permitted to extend the period by up to a further 10 days upon request from the public prosecutor if unavoidable circumstances exist, such as when further investigation is necessary. Although it is extremely rare, detention can be extended for five more days for certain crimes, such as insurrection.

##### c. Document which contains a statement given before a public prosecutor

Such interrogation as is deemed necessary to achieve the purpose is permitted in an

investigation and the public prosecutor may interrogate both suspects and witnesses during the investigation stage, and is authorized to prepare a written record of their statements in the public prosecutor's presence. (Code of Criminal Procedure, Article 197 and Article 198, paragraphs (1) and (3))

There are rules excluding hearsay evidence in the Code of Criminal Procedure (described later). However, according to Article 321, paragraph (1), item (ii) of the Code of Criminal Procedure, under exceptional circumstances and provided that all legal requirements are satisfied, the court may adopt the document which contains a statement given before a public prosecutor created at the investigation stage as evidence.

#### d. Court-appointed defense counsel system

Article 37, paragraph (3) of the Constitution stipulates, "At all times, the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State."

Accordingly, the Code of Criminal Procedure stipulates a system for the court to appoint defense counsel. (Code of Criminal Procedure, Articles 36, 37, and 289)

Previously, suspects did not have the right to request a court-appointed defense counsel, but currently, when detention is required or a detention warrant is issued and when the case is punishable with the death penalty, imprisonment for life with or without work, or imprisonment with or without work for more than three years, if the suspect cannot appoint defense counsel privately because of indigence or other reasons, the suspect can request a court-appointed defense counsel from a judge. (Code of Criminal Procedure, Article 37-2).

Even if the suspect did not request court-appointed defense counsel when the detention warrant was issued, in the event that there are any doubts that the suspect may not be able to determine whether or not defense counsel is needed due to diminished mental capacity or any other reason, a judge can appoint defense counsel ex-officio. (Code of Criminal Procedure, Article 37-4)

#### e. Right to interview with defense counsel

Article 39, paragraph (1) of the Code of Criminal Procedure stipulates, "The accused or the suspect in custody may, without any official being present, have an interview with, or send to or receive documents or articles from counsel or prospective counsel upon the request of any person entitled to appoint counsel". As described, arrested suspects or suspects under detention have the right to receive advice from defense counsel by means of an interview without any official being present, which is known as the right to interview with defense counsel.

### **C. Institution of Prosecution**

*On June 26, the date on which his detention would expire prior to institution of prosecution, the public prosecutor submitted a charge sheet to the Tokyo District Court, charging Taro with homicide.*

- Monopolization of prosecution, discretionary prosecution, and remedy for abuse of prosecutorial power

In Japan, there is no allowance for criminal prosecutions to be instituted by any entity other than the state, i.e. victims (state prosecution policy), and among state institutions, a prosecution is only vested in public prosecutors under Article 247 of the Code of Criminal Procedure, which is known as the monopolization of prosecution.

At the same time, public prosecutors can decline to prosecute at their own discretion as stipulated under Article 248 of the Code of Criminal Procedure, even if well-grounded suspicion exists and they believe the suspect is guilty.

A prosecution need not be instituted if it is not deemed necessary considering the criminal's character, age, environment, gravity of the offense, situation when the crime was committed, and the circumstances after the offense, etc. This is called the principle of discretionary prosecution.

Refer to Graph 3 for statistics on the ratio of the public prosecutors' final disposition.

Public prosecutors have wide-ranging prosecutorial discretion in Japan, and there are two juristic systems in place to remedy any abuse or illegal exercising of that discretion by public prosecutors.

The first is an examination by the Committee for Inquest of Prosecution.

The Committee for Inquest of Prosecution investigates whether a public prosecutor's decision not to institute prosecution was appropriate or not, based on claims by the victim or a party concerned in criminal cases, or under its own authority.

The Committee for Inquest of Prosecution is comprised of 11 members selected by lot from individuals with the right to vote for members of the House of Representatives.

The purpose of this system is to reflect public opinion in the appropriate exercising of prosecutorial authority.

From May 21, 2009, a system was adopted whereby suspects could be prosecuted when the Committee for Inquest of Prosecution resolved to pass an institution of prosecution under certain conditions for cases previously dismissed by a public prosecutor.

Another system is a quasi-prosecution procedure (Code of Criminal Procedure, Article 262 and later).

Plaintiffs and accusers may demand that a trial be held in a district court if dissatisfied with a public prosecutor's decision not to institute prosecution where the crime involves a government employee.

If it is judged that the demand has sufficient grounds, the court will adjudge that the case should be committed to the competent district court. In this case, it is considered that the prosecution regarding the case deemed to have been instituted and an attorney appointed

by the court exercise the same function as a public prosecutor.

### **Graph 3. Case Dispositions by Public Prosecutors (2012) (PDF: 81.5KB)**

#### **D. Trial Preparation (including requests for bail)**

*The case for Taro was assigned to the Third Criminal Division, which is one of the three-judge panels at the Tokyo District Court.*

*Taro has been charged with the crime of homicide, and the case is to be tried and judged under the Saiban-in system.*

*Pretrial arrangement proceedings for the Taro case are to be held first, and the points at issue and evidence will be organized prior to the first trial date.*

*At the same time as the pretrial arrangement proceedings, the defense counsel, Mr. Sato, who was requested by Taro, questioned his family about the background details.*

*Also, a few days after institution of prosecution, the defense counsel was notified by the public prosecutor that evidence which the public prosecutor was planning to examine in the trial can be inspected and copied.*

*The defense counsel visited the Public Prosecutor's Office to assess the evidence.*

*The defense counsel thought the document which contains a statement given before a public prosecutor concerning Mr. Yoshinobu Takagi, who was interviewed by the public prosecutor, was rather questionable.*

*According to the document which contains a statement given before a public prosecutor, Mr. Takagi said that Taro pursued Akiko, who stepped back when she saw the knife just before the stabbing, but this contradicted the explanation provided by Taro.*

*Taro claimed that Akiko suddenly approached him. Therefore, the defense counsel also demanded from the public prosecutor disclosure of other documents which contain statements given before a public prosecutor concerning Mr. Takagi, which the public prosecutor had not planned to submit for examination, and these were disclosed to him.*

*The defense counsel clarified during the pretrial arrangement proceedings that the allegation described on the charge sheet that the accused had intended to kill Akiko would be disputed.*

*The defense counsel consented to examination of all items of documentary evidence requested by the public prosecutor, except for the document which contains a statement given before a prosecutor concerning Mr. Takagi.*

*Also, the defense counsel expressed no objection to examination of the knife used in the crime.*

*The public prosecutor demanded examination of the witness, Mr. Takagi, as examination of the document which contains a statement given before a public prosecutor concerning Mr. Takagi was not consented to, and the defense counsel expressed no objection to the examination of Mr. Takagi as a witness.*

*Then, it was decided that Mr. Takagi would be examined as a witness on the first trial date. Also, it was decided that Ms. Maki Yamada, the mother of the accused, would be examined as a defense witness, and the accused would be questioned, etc. Once a rough trial plan was decided, the schedule for the Taro case was set; the first trial date would be held on September 28, and the trial was scheduled to finish on September 30, and thus the final trial plan was drawn up after arrangement of issues and evidence through the pretrial arrangement proceedings.*

### **1. Pretrial arrangement proceedings**

After hearing the opinions of both parties concerned, the pretrial arrangement proceedings can be held at the court prior to the first trial date in order to arrange issues and evidence of the case, and to establish the trial plan.

Through this procedure, a trial plan is established after identifying the allegations, requesting examination of the evidence by both parties concerned, and rendering of a ruling to examine the evidence or dismiss the request for examination of evidence, etc. Pretrial arrangement proceedings must be held in cases that will adopt the Saiban-in system.

### **2. Disclosure of evidence**

When the public prosecutor requests examination of the documentary or material evidence, an opportunity to inspect them must be provided to the defense counsel in advance as promptly as possible after institution of prosecution. (Code of Criminal Procedure, Article 299, paragraph (1), Rules of Criminal Procedure, Article 178-6, paragraph (1), item (i)).

For cases involving pretrial arrangement proceedings, the public prosecutor must disclose evidence to the defense counsel whose examination is demanded in the pretrial arrangement proceedings (Code of Criminal Procedure, Article 316-14); additionally, in response to the demands of the defense counsel, the public prosecutor must disclose certain types of evidence deemed important to judge the credibility of particular evidence requested by the public prosecutor (Code of Criminal Procedure, Article 316-15), and evidence related to the defense counsel's allegations (Code of Criminal Procedure, Article 316-20).

### **3. Principle of the adversary system**

The principle of the adversary system is adopted in the current legislation. Under this principle, the court is able to examine evidence if needed, but the parties concerned have the initiative for the collection and provision of evidence.

### **4. Exclusion of hearsay evidence**

Article 37, paragraph (2) of the Constitution guarantees the right of examination by

stipulating: “The accused shall be permitted full opportunity to examine all witnesses, and shall have the right of compulsory process for obtaining witnesses on his/her behalf at public expense.”

Hearsay evidence cannot be used as evidence as per Article 320 of the Code of Criminal Procedure.

However, the Code of Criminal Procedure allows for some exceptions, such as when the accused consents to, and when the written statement is made under special circumstances that lend credibility and are necessary to prove the facts of a crime.

## **5. Designation of a trial date**

The court shall, insofar as possible, hold the trial on successive days in cases which require several days for the proceedings. Refer to Table 3 for the average number of days expended on trials held under the Saiban-in system.

**Table 3. Distribution of the number of the accused per actual trial period (from the first to the final trial date) under the Saiban-in system and average actual trial period (per guilty or not guilty plea)(PDF: 51.2KB)**

*Meanwhile, the defense counsel requested bail.*

*This request was assigned to a judge in a different criminal division (the Warrant Division).*

*When the public prosecutor opposed the granting of bail, the judge examined the case records, and interviewed the defense counsel upon his request.*

*After considering the nature of the crime and the weight of evidence amassed to date, the judge dismissed the bail request.*

## **6. Bail**

Bail is a system used to release an accused on condition of payment of bail money.

Under current legislation, bail is not available to suspects.

Article 89 of the Code of Criminal Procedure stipulates that when bail is requested, bail must be granted except for certain cases, such as when the accused committed a serious crime and there is probable cause to suspect that the accused may conceal or destroy evidence.

Use of the Saiban-in system is normally reserved for those charged with serious crimes.

## **7. Bail requests before first trial date**

A judge other than the one scheduled to hear the trial normally handles matters concerning detention before the first trial date (Refer to Code of Criminal Procedure, Article 280, paragraph (1)).

This derives from the principle of eliminating the risk of prejudice.

## **E. Appointment of Saiban-ins (*Lay Judges*)**

*Saiban-ins who will participate in the trial are appointed before the trial starts.*

Saiban-ins are randomly selected by lottery from eligible voters.

The actual process is as follows. Each district court drafts a list of Saiban-in candidates by around fall of each year to be used the following year.

In the following year, when a prosecution targeted for trial under the Saiban-in system is instituted, each district court selects candidates as Saiban-ins for each case from the name list of Saiban-in candidates by lottery, and sends out a notification (writ of summons) to attend court on the day of the proceedings to appoint Saiban-ins.

On the day for appointing Saiban-ins, the presiding judge asks candidates as to whether there are any circumstances that prevent them from acting as a Saiban-in or whether they apply to be excused.

Six Saiban-ins are then appointed by lottery from among the candidates, excluding those who are unable to act as a Saiban-in or are excused from performing the duties of a Saiban-in.

Supplementary Saiban-ins may be appointed to fill vacancies when appointed Saiban-ins are unable to attend.

## **F. Trial**

*Taro's trial began in Courtroom 411 on the fourth floor of the Tokyo District Court at 10:00 a.m. on September 28.*

The trial procedure is as follows.

In addition, basically the same trial procedure is adopted as used in other cases that are not subject to being heard by the Saiban-in. However, in those cases, the trial is conducted by a single judge or a panel of judges, pretrial arrangement proceedings are not necessarily required, and an opening statement by the defense counsel is not always presented at trials for which no pretrial arrangement proceedings were held, nor can a statement of the results of the pretrial arrangement proceedings be presented, and while the public prosecutor and defense counsel request to examine the evidence in open court, the court decides whether or not the evidence will be adopted after hearing the other party's opinions, and such evidence as is adopted will be examined, etc.

**[Criminal case proceedings \(PDF: 101KB\)](#)**

## 1. Opening proceedings

*Presiding judge: This court is hereby in session.*

*[To the accused] Please step forward.*

*The accused stepped up before the witness stand. The presiding judge asked the accused to confirm his name, registered domicile, residence, occupation, and date of birth for identification.*

*Presiding judge: The trial is now being held regarding the charge against you of homicide. Please listen as the public prosecutor reads the charge sheet.*

*[To the public prosecutor] Will you please read the charge sheet?*

*The public prosecutor read aloud the charged facts and the applicable penal statutes as recorded on the charge sheet.*

*Presiding judge: The court is now going to hear this case based on the charge against you that has been read by the public prosecutor. Listen carefully to what I am about to tell you.*

*You have the right to remain silent.*

*You may refuse to answer some of the questions, or you may remain silent throughout the trial.*

*However, any statement made by you in this court may be used as evidence either for or against you.*

*Therefore, answer any questions bearing in mind these points. Do you understand?*

*Accused: Yes, I do.*

*Presiding judge: Do you have anything you wish to say in response to the statement just read by the public prosecutor?*

*Accused: Yes. Although she was stabbed with a knife, I never meant to kill her.*

*Presiding judge: I see. What is your opinion, Defense Counsel?*

*Defense counsel: I concur with the accused. He had no intention of homicide in this case. Therefore, he is not guilty as charged.*

## 2. Examination of evidence



*Presiding judge: Now, we shall commence with an examination of the evidence. Please make your opening statement.*

*The public prosecutor presented his opening statement, explaining the background to the crime, the crime itself, and other circumstances.*

*As regards the intention to kill (intention of homicide) that is disputed by the accused, the public prosecutor stated to the court that the accused went to the scene with a knife bought in advance, with the intent to stab Akiko to death.*

*In response to this allegation, the defense counsel stated that the accused had bought the knife for cooking, not with the intent to stab Akiko to death, and that on the day of the incident, he only intended to threaten her with the knife.*

*After the opening statements had been presented, the presiding judge disclosed the results of the pretrial arrangement proceedings, stating that the point at issue in this case was whether or not the accused had intended to kill Akiko, and that the court was going to examine the evidence requested by the public prosecutor, including documentary evidence, such as the on-site inspection report and investigation report, as well as the knife used in the offense, and then examine Mr. Takagi as a witness.*

a. Opening statement

In criminal cases, the principle of “innocent until proven guilty” is held, so the public prosecutor must prove the charged facts beyond a reasonable doubt based on the evidence.

Therefore, the public prosecutor makes an opening statement at the start of the examination of evidence, and clarifies the specific facts to be proved. Also, in the case of trials held under the Saiban-in system, after the public prosecutor’s presentation, the defense counsel also makes an opening statement if he/she has any facts to prove or other allegations to make on factual or legal issues.

b. Statement of the pretrial arrangement proceedings results

Points at issue and evidence are organized through the pretrial arrangement proceedings in preparation for trials in which Saiban-ins are not involved, so clarifying the results in the trial after the opening statement enables the disputed points regarding examination of evidence, and what kind of evidence is to be examined and in what order for the disputed points, to be clearly shown.

c. Examination of evidence

*Presiding judge: Now, the evidence is to be examined. Public prosecutor, please explain the evidence in detail.*

*The public prosecutor read out the documentary evidence, such as the on-site inspection record, which indicated the circumstances at the scene of the crime, and exhibited the knife, which was then submitted to and retained by the court.*

- Methods of examining evidence

There are three types of evidence, namely witnesses, documentary evidence, and articles of evidence. Examination takes the form of questioning for witnesses, or exhibiting for articles of evidence.

In examining documentary evidence, the presiding judge instructs the person who requested examination to read the document aloud (Code of Criminal Procedure, Article 305).

However, when the presiding judge may find it to be appropriate after hearing the opinions of the parties concerned in the case, he/she may instruct that the document be summarized rather than read out in its entirety (Rules of Criminal Procedure, Article 203-2).

### **3. Examination of witnesses**

*Presiding judge: Next, we will examine Mr. Takagi as a witness. Please step up to the witness stand, Mr. Takagi.*

*The presiding judge questioned Mr. Takagi to confirm his identity, ordered him to swear an oath, and advised him of the punishment for perjury if false testimony was offered, and of his right to refuse to answer questions that could incriminate him or his relatives; thereupon, the public prosecutor began his questioning.*

*The public prosecutor, after brief questioning about Mr. Takagi's occupation, the time of his arrival at the tavern, and so on, examined him in detail on the offense he had witnessed.*

*Mr. Takagi's testimony in court matched the details in the document which contains a statement given before a public prosecutor.*

*Following examination by the public prosecutor, the defense counsel began its examination.*

*Mr. Takagi was questioned about how much alcohol he had consumed that evening, what sort of conversation had taken place between the accused and the victim, and how clearly he was able to observe the incident from where he was sitting, etc.*

*After the cross-examination, the Saiban-ins, associate judges, and presiding judge asked some supplementary questions.*

In accordance with Article 304 of the Code of Criminal Procedure, witnesses are first

examined by the presiding judge or associate judges. After that, the public prosecutor, accused, or defense counsel examines the witness. The court can determine the order of examination.

However, in practice, the witness is first questioned by the party that called them to the stand, then by the other party, and finally, the Saiban-ins and judges conduct their examination. This reflects the principles of the adversary system, whereby witnesses are first examined by the parties.

#### **4. Questioning the accused**

*Presiding judge: Next, the accused will be questioned.*

*[To the accused] Step up to the stand.*

*The accused stepped up to the stand.*

*Presiding judge: [To the defense counsel] You may proceed.*

*In answering the defense counsel's questions, the accused made the following assertions:*

*He bought the knife on that day not to stab Akiko but to use for cooking.*

*On that evening, he talked with her for over thirty minutes, but finally he was told not to come back to the tavern again.*

*When he recalled the knife he had, he impulsively thought that she might change her mind if he threatened her.*

*"Reconsider, otherwise we'll die together," said the accused.*

*When he pointed the knife towards her, she unexpectedly lunged at him as if to take it off him.*

*Then, while fighting for the knife, the accused realized the knife was stuck in her chest. The accused deeply regrets the incident.*

*After that, the public prosecutor, Saiban-ins, presiding and associate judges posed more questions to the accused.*

Under Anglo-American law, the accused can choose to stand as a witness, but in Japan, the accused is not obliged to give testimony after swearing an oath. This means that the accused can legally refuse to answer any questions, but can make a voluntary statement, which is admissible as evidence.

#### **5. Confession**

When the accused makes a confession to a police officer or public prosecutor after admitting having committed a crime during the investigation stage, the confession details will be recorded as evidence in a written statement of the accused, and may be requested as evidence and examined.

In terms of the timing to request examination of the confession, the law stipulates that such

examination shall not be made until after all other evidence for proving facts constituting the offense are examined (Code of Criminal Procedure, Article 301).

This rule is so that the Saiban-ins and judges do not prejudge a case based on a confession.

As regards the admissibility of evidence, Article 38, paragraph (2) of the Constitution stipulates that any confession made under compulsion, torture, or threats, or after prolonged arrest or detention shall not be admitted in evidence.

This is reinforced by Article 319, paragraph (1) of the Code of Criminal Procedure, which also stipulates that any confession made under compulsion, torture, or threats, or after prolonged arrest or detention, or if there is doubt that it was made voluntarily, may not be used as evidence.

As regards the evidentiary value of a confession, Article 38, paragraph (3) of the Constitution stipulates that no person shall be convicted or punished in cases where the only proof against them is his/her own confession.

This is also reinforced by Article 319, paragraph (2) of the Code of Criminal Procedure, which stipulates that the accused shall not be convicted if their confession, whether it was made in open court or not, is the only piece of incriminating evidence.

The arraignment system is not adopted under current legislation, so even if the accused admits guilt in court, the fact-finding proceedings cannot be omitted. (Refer to the Code of Criminal Procedure, Article 319, paragraph (3)).

However, such cases can be transferred to a summary criminal trial (Code of Criminal Procedure, Articles 291-2, 307-2, and 320, paragraph (2)).

## **6. Demonstration of circumstances (The One-Phase System of Criminal Proceedings)**

*Presiding judge: Now, moving on to demonstrating circumstances. Public prosecutor – please read the summary of the report on the accused’s criminal record and the written answers to the inquiries into his personal background.*

*The public prosecutor read the summary of these documents, which revealed the accused had a juvenile delinquency record of theft and a previous conviction of causing injury through negligence while driving a car five months prior.*

*Presiding judge: Next, we will question Ms. Maki Yamada, the accused’s mother, as a witness regarding any mitigating circumstances. Ms. Yamada, please step up to the witness stand.*

*The presiding judge questioned Ms. Maki Yamada to confirm her identity, ordered her to swear an oath and advised her of punishment for perjury. The defense counsel questioned her*

*about the accused's routine behavior, relationships with women, his juvenile delinquency of theft, and efforts to compensate the victim's family and so on. The public prosecutor confirmed during cross-examination that the family of the victim had refused his offer of compensation. Finally, the presiding judge asked a further question about the accused's relationships with women, and then the questioning ended.*

The court must find facts and determine the sentence in the event that the accused is found guilty, so the proceedings for fact-finding and sentencing are merged into a single phase.

Thus, evidence both for fact-finding and for mitigating/aggravating circumstances are submitted during the same procedure. The characteristics of this single-step system are adopted until the stage of rendering a judgment.

If convicted, the sentence is rendered without separately declaring a guilty verdict.

However, efforts shall be made to conduct the examination of evidence on circumstances that are clearly unrelated to the facts of the crime as separately as possible from the examination of evidence that is related to the facts of the crime. (Rules of Criminal Procedure, Article 198-3)

## **7. Closing Arguments**

*Presiding judge: The examination of the evidence is complete.*

*[To the public prosecutor] Public prosecutor, please present your closing arguments.*

*The public prosecutor made his closing arguments. He emphasized the argument about intention of homicide to reaffirm his claim that this was a premeditated homicide. Finally, the public prosecutor expressed an opinion on the sentence to be imposed.*

*Public prosecutor: The public prosecutor considers a sentence of 10 years' imprisonment with work is appropriate for the accused.*

*Presiding judge: [To the defense counsel] Your closing arguments, please.*

*The defense counsel pointed out that the accused had purchased the knife with other kitchen utensils, and that the witness, Mr. Takagi, had drunk too much to be able to observe the incident accurately. He concluded that it was clear that the accused did not have the intention to kill her.*

*The presiding judge then ordered the accused to step up to the witness stand.*

*Presiding judge: Before we conclude these trial proceedings, do you have anything you*

*would like to say to the court?*

*Accused: I can do nothing but apologize to Akiko. Please be merciful in your judgment.*

*The presiding judge then declared the date for rendering the judgment, and concluded the trial.*

## **8. Deliberations**

*After concluding the trial, the judges and Saiban-ins conducted their deliberations. First, they discussed whether the accused had the intention to kill or not based on the evidence examined in court. As a result, they agreed that the accused had such intention.*

*Then, deliberations were held on the sentencing, and the circumstances of the accused were also discussed with reference to sentencing trends for similar cases in the past, before finally concluding that an eight-year imprisonment with work would be appropriate.*

The judges and Saiban-ins hold their deliberations. (The Act on Participation of Saiban-in in Criminal Trials, Article 66, paragraph (1)).

In order to organize a unified opinion as a panel, the judges and Saiban-ins on the panel must state their own opinions (The Act on Participation of Saiban-in in Criminal Trials, Article 66, paragraph (2), etc.). However, the Saiban-ins must also understand the interpretation of requirements for what constitutes a crime as a prerequisite for reaching a judgment as to whether a crime was committed or not.

Therefore, the presiding judge must carefully explain the applicable laws and regulations to the Saiban-ins for such deliberations, to organize the deliberations so that Saiban-ins can easily understand, and to provide sufficient opportunities for Saiban-ins to express themselves (The Act on Participation of Saiban-in in Criminal Trials, Article 66, paragraph (5)).

The judgment (verdict) rendered by the panel comprised of judges and Saiban-ins is determined based on the majority opinions of all of the panel members, including the opinions of both the Saiban-ins and judges (The Act on Participation of Saiban-in in Criminal Trials, Article 67, paragraph (1)).

While basically adopting the opinion of a simple majority, the opinions of both the judges and Saiban-ins should be included so as to enhance the intent of the Saiban-in system that renders judgment on the court proceedings by sharing responsibility in a collaboration between the judges and Saiban-ins. Furthermore, judgment cannot be rendered based on a majority decision that is only held by the Saiban-ins and excludes all judges bearing in mind the guarantee under the Constitution to the right to a fair trial in a court of law.

## 9. Judgment

*The court rendered its judgment at 4:30 p.m. on September 30 in the same courtroom.*

*Presiding judge: The court hereby renders its judgment. The accused is sentenced to eight years imprisonment with work. The 10 days held under pre-sentencing detention shall be included in said period of imprisonment. The knife under seizure shall be confiscated. Court costs shall be borne by the accused.*

*The court judged that the accused had the intention of homicide when he pulled out the knife in front of Akiko in the tavern and declared him guilty of homicide. At the end, the presiding judge advised the accused of his right to appeal.*

### a. Rate of acquittal

Table 4 shows the ratio and number of accused acquitted in courts of first instance.

### **Table 4. Annual Comparison of Number and Rate of the Accused Found Not Guilty or Partially Not Guilty (PDF: 30.7KB)**

### b. Sentencing

Please refer to Table 5 for statistics on the terms of imprisonment with work by types of offense (ordinary cases in courts of first instance).

One of the characteristics of the Japanese Penal Code is the extremely wide range of penalties prescribed by law.

The court chooses the kind of punishment and determines its terms or amount with broad discretion.

Theoretically, the court's broad discretion over sentencing could cause some disparity in sentencing.

However, such differences are not very substantive in practice for the following reasons:

- (1) By integrating numerous previous decisions, the courts have created implicit sentencing standards, based on subjective and objective circumstances, such as the severity of the offense, conditions under which the offense was committed, the circumstances of the offender, and so forth. During deliberations on sentencing in Saiban-in proceedings, the Saiban-ins are shown graphs and other data which indicate the trends in sentencing in precedent cases for the same type of offense.
- (2) Both the accused and public prosecutor can appeal to the high court on the grounds of inappropriate sentencing by the court of first instance.

### **Table 5. Comparison of Terms of Imprisonment with Work When Sentenced by Type of Crime (All District and Summary Court Cases, 2012) (PDF: 125KB)**