

Court System of Japan

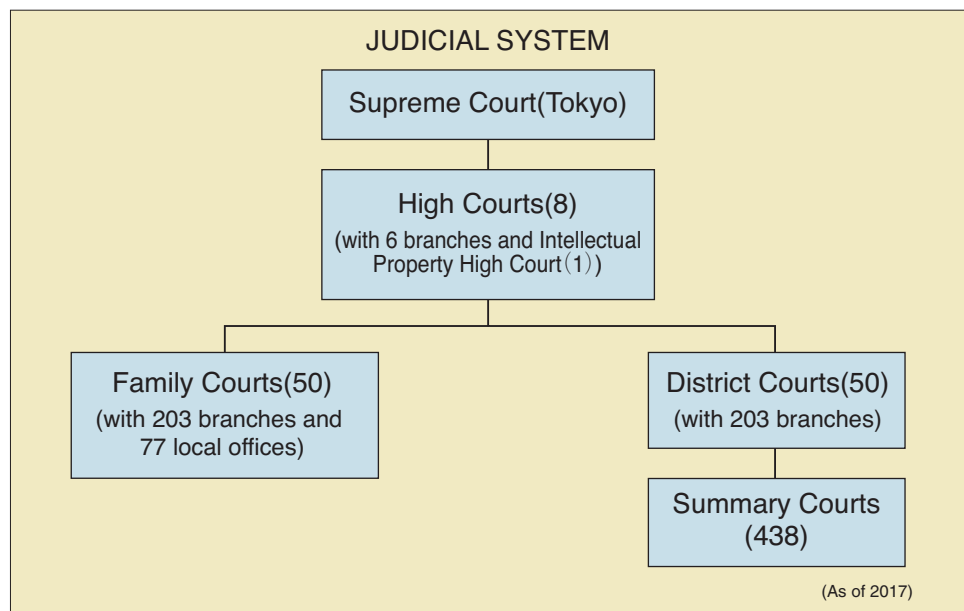
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1 The Constitution of Japan

At the apex of the Japanese legal and juridical hierarchy is the current Constitution of Japan. Promulgated on November 3, 1946, it entered into force on May 3, 1947. Three Articles are particularly important with regard to the juridical system: the Article on legislative power provides for the Diet as the sole law-making organ of the State; the Article on executive power provides that this authority is vested in the Cabinet; and the Article on judicial power provides that the whole of judicial power is vested in a Supreme Court and in such lower courts as are established by law. Taken together, these constitutional provisions create a governmental structure in Japan that is based on the Western concept of the separation of powers, and provide for checks and balances among the three organs of the State. In doing this, the Supreme Court has been equipped with the power of judicial review.

A rough illustration of the Japanese court system, the subject matter of this booklet, is given in the chart below.



2 The Supreme Court

The Supreme Court is the highest court in the land. Although the Supreme Court is vested with the power of judicial review, it is not a constitutional court in the sense in which this term is used in German law. The Supreme Court of Japan is limited to hearing actual disputes that arise, on appeal. The Supreme Court exercises appellate jurisdiction in respect of appeals and special appeals against a ruling as provided specifically in the Code of Civil Procedure and the Code of Criminal Procedure. In addition, the Supreme Court has original and final jurisdiction in any proceedings involving the impeachment of National Personnel Authority Commissioners.

The Supreme Court will entertain a final appeal in the following cases: Firstly, an appeal may be lodged against a judgment rendered by a high court as the first instance or the second instance in both civil and criminal trials. Secondly, a direct appeal may be allowed from the judgment rendered in the first instance by a district court or a family court, or against a judgment in the first instance that a summary court has rendered in a criminal case. Thirdly, if there is a special reason, an appeal filed with a high court may be transferred to the Supreme Court. Fourthly, a further appeal may be allowed to the Supreme Court against a judgment rendered by the high court acting as the court of final appeal in a civil case, if the judgment involves an erroneous interpretation of the Constitution or any other violation of the Constitution. Lastly, an extraordinary appeal may be made by the Prosecutor-General against a final and binding judgment in a criminal case.

An appeal against a ruling to the Supreme Court is permissible in civil and family cases, if the petition challenges the constitutionality of the ruling or if a high court permits the petition on finding the case to involve an important issue concerning the interpretation of laws and regulations. Also, in a criminal case, a special appeal may be filed with the Supreme Court against an order by a court or a direction by a



Courtroom of the Petty Bench of the Supreme Court (Jul. 2014)

judge in which no appeal is normally permitted, if the grounds for appeal are the involvement of a constitutional violation or a material conflict with judicial precedent.

The grounds for appeal to the Supreme Court can be summarized as follows: In civil and administrative cases, an appeal may be filed with the Supreme Court only on grounds of a constitutional violation or a material conflict with laws and regulations on lower court procedure. Automatic grounds for appeal are set forth in the Code of Civil Procedure. However, upon petition, the Supreme Court may hear a case that it finds to involve a material issue concerning the interpretation of laws and regulations. An appeal is permitted in a criminal case on grounds of ① a constitutional violation, ② a misconstruction in constitutional interpretation, or ③ a conflict with Supreme Court precedent, or with high court precedent, in its absence. However, as with civil and administrative cases, upon petition, the Supreme Court may hear an appeal that it finds to involve an important issue concerning the interpretation of laws and regulations.

The Supreme Court is composed of the Chief Justice and fourteen other Justices. It is divided into three Petty Benches, and most appeal

cases are adjudicated by one of these. Three Justices constitute a quorum for holding a trial. If an appeal involves material issues of constitutional interpretation, the Grand Bench, composed of the Chief Justice and all fourteen other Justices, adjudicates the matter. Nine Justices constitute a quorum for the Grand Bench to hold a trial.

Finally, proceedings in the Supreme Court are as follows. Appeal proceedings begin when the complainant submits a petition for final appeal (civil cases) or a written application for final appeal (criminal cases) against a judgment or a decision by a lower court, most often a high court. The Supreme Court examines questions of law rather than questions of fact, and it does so based only on the records of the courts concerned, after which it enters a judicial decision. If the Supreme Court determines that there are no grounds for appeal, it may reject the appeal without hearing oral arguments. In contrast, if it determines that there are grounds for appeal, it hears oral arguments and then renders a decision.

A certain number of judges are assigned to help the Justices of the Supreme Court as judicial research officials in the above procedure.

3 Courts other than the Supreme Court (Lower Courts)

The Constitution empowers the Diet to pass legislation in order to establish lower courts. It was in accordance with this power that the Court Act was enacted on April 16, 1947, establishing high courts, district courts, family courts, and summary courts. The Constitution of Japan prohibits the establishment of extraordinary courts.

(1) High Courts

High courts are located in eight major cities in Japan: Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu. Branches—six in all—are attached to some of the high courts. In addition, in April 2005, the Intellectual Property High Court was established as a special branch of the Tokyo High Court. Each high court is composed of one president and



*Three-judge courtroom
(criminal case)*

- 1 Judges
- 2 Court Clerk
- 3 Court Stenographer
- 4 Court Secretary
- 5 Public Prosecutor
- 6 Defense Counsel
- 7 The Accused

several judges.

In general, the high courts have jurisdiction over appeals against judgments by the district courts, family courts, and summary courts. They also hear appeals against lower-court rulings. The high courts have jurisdiction over any appeal against a ruling, unless the Codes of Procedure specifically provide for Supreme Court jurisdiction. Incidentally, civil cases and criminal cases differ in terms of appeal proceedings against a first-instance decision by a summary court; in criminal cases, the appellant may appeal against the summary court judgment directly to the high court, whereas in a civil cases, an appeal against a summary court judgment is first filed with the district court, and later passes to the high court.

The high court also has special jurisdiction in several matters. It has original jurisdiction as the court of first instance in administrative cases related to elections, criminal cases related to insurrections, and actions to revoke the decision of quasi-judicial agencies such as the Japan Marine Accident Tribunal. In addition, the aforementioned Intellectual Property High Court has exclusive original jurisdiction over appeals against decisions by the district courts which involve patent rights and over decisions made by the Japan Patent Office.

In principle, cases in a high court are handled by a three-judge panel. In cases related to insurrections or to disciplinary and other actions against judges, a panel of five judges presides over the trial. Actions



*Single-judge courtroom
(civil case)*

- 1 Judge
- 2 Court Clerk
- 3 Court Secretary
- 4 Plaintiff's Counsel
- 5 Defendant's Counsel

against trial decisions by the Japan Patent Office may be tried by a panel of five judges.

(2) District Courts

District courts are located in 50 cities—one in every prefecture except for Hokkaido, which is divided into four districts—and there are 203 branches throughout the country. District courts are normally the courts of first instance for both civil and criminal cases, except for matters specifically coming under the exclusive original jurisdiction of other types of court. District courts also have jurisdiction over appeals against summary court decisions and rulings in civil cases. Usually a single judge presides over the trial in a district court, but in the following cases, a three-judge panel is required: ① if a panel has directed that a three-judge panel should sit, ② when trying a crime punishable by the death penalty or imprisonment with or without work the minimum term of which is one year or longer, including life imprisonment, with some exceptions (e.g. robbery etc.), ③ for appeals against judgments rendered by summary courts or appeals against summary court rulings and orders, and ④ other cases that must be heard by a panel pursuant to provisions set forth by law. All district courts and some of their branches hold criminal trials with the participation of *saiban-ins* (lay judges) in certain serious cases. Under this system, a panel consisting of six *saiban-ins* and three professional judges handles such cases.

(3) Family Courts

Family courts are located at the same places as the district courts and their branches. In addition, there are 77 local offices at the same locations as summary courts. The family court was established on January 1, 1949 for the purpose of maintaining peace in the family and enabling juveniles' sound development. They have exclusive jurisdiction over cases involving domestic relations and juvenile delinquency. The Personal Status Litigation Act, which was enacted on July 16, 2003 (entering into force on April 1, 2004), extended the family court's jurisdiction over litigation involving relationships between husband and wife, parents and children, and so forth. Some typical examples of family court jurisdiction are adult guardianship, family court permission to adopt a child, division of estates and marital relationship issues such as divorce (e.g. requesting child support, designation of the person with parental authority, and so on). Further, pursuant to the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction that entered into force on April 1, 2014, cases seeking the return of the child are under the jurisdiction of Tokyo Family Court and Osaka Family Court.

Within the framework of proceedings in family court, conciliation must be sought first before divorce proceedings, parent-child disputes, and other matters falling under the Personal Status Litigation Act are pursued. Conciliation is based on the idea that it is best to take the circumstances of the family concerned into sufficient consideration.

Family courts also deal with juvenile cases. They have jurisdiction over juveniles aged 14 to 19 who have committed or are likely to commit a crime, and over persons under 14 years old who have violated or are



Juvenile case hearing

- 1 Judge
- 2 Court Clerk
- 3 Family Court Investigating Officer
- 4 Court Secretary
- 5 Juvenile
- 6 Custodians
- 7 Attendant

likely to violate penal provisions. The measures taken with regard to such juveniles are not punitive, but rather protective or educational in nature.

Cases brought before the family court are handled by a single judge or a panel of three judges fully utilizing reports prepared by family court investigating officers, as well as the diagnosis of medical officers versed in psychiatry.

(4) Summary Courts

There are 438 summary courts in Japan, and these are the most accessible to the people. Summary courts have jurisdiction over civil cases in which the disputed sum does not exceed 1,400,000 yen, and over criminal matters punishable by fines or lighter punishment and certain statutory crimes such as theft and embezzlement. Summary courts are not vested with the power to impose a term of imprisonment without work or harsher punishment. However, imprisonment with work for not more than three years may be imposed as specially permitted under the law. And if a summary court feels that a sentence of imprisonment with work for more than three years is appropriate, the court transfers the case to the district court. It should be noted that all trials in summary court are handled by a single judge.



Consultation center in a Summary Court

4 Justices, Judges, and Court Officials other than Judges

(1) Overview of the Personnel Structure

The personnel resources of the Japanese court system are explained in this Chapter. The most important point is that, as stipulated in the Constitution, all Justices and judges “shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.” A Justice or judge shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent

to perform official duties. Additionally, any disciplinary action related to dereliction of duty or misconduct must be taken pursuant to a disciplinary decision by the Supreme Court or a high court.

(2) Justices of the Supreme Court

The Chief Justice, who stands at the same level as the Prime Minister in the government hierarchy, is appointed by the Emperor following designation by the Cabinet. Other Justices, who are equal in rank to Cabinet Ministers, are also appointed by the Cabinet and then attested by the Emperor. To qualify for the position they must be “persons with a broad vision and an extensive knowledge of the law.” Supreme Court Justices are not necessarily professional or career judges. However, at least ten Justices must be selected from among judges, public prosecutors, attorneys, and professors of law at the university and graduate-school levels.

The appointment of Supreme Court Justices is reviewed by the people at the first general election for the Members of the House of Representatives following their appointment. This review continues to be carried out every ten years. A Justice whose dismissal is favored by a majority of voters is automatically dismissed, but so far, this has never happened. Justices retire at the age of 70.

(3) Judges

Lower court judges are classified into presidents of high courts, judges, assistant judges, and summary court judges. They are all appointed by the Cabinet from lists of candidates nominated by the Supreme Court. The appointment of the president of a high court is attested by the Emperor. As a rule, the nomination of lower court judges requires the advice of the Advisory Committee for the Nomination of Lower-Court Judges. As of 2014, there are eight presidents of high courts; 1,921 judges; 1,000 assistant judges; and 806 summary court judges.

Judges are appointed by the Cabinet initially as assistant judges. Assistant judges are appointed 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. The



Legal Training and Research Institute

The Legal Training and Research Institute is affiliated with the Supreme Court, and in addition to educating and training legal apprentices who have been admitted by the Supreme Court from among those who have passed the National Bar Examination for the legal profession (judges, public prosecutors, and attorneys), the institute also provides and plans various training and research for judges. As a rule, the training at the institute and successful completion of a final qualifying examination are required in order for a person to join the legal profession.

term for judges is 10 years, and they can be reappointed. They retire at the age of 65.

Assistant judges are allowed on the bench, but are not authorized to act as the only judge hearing a case. They sit as a member of a three-judge panel and assist the presiding judge. The Supreme Court may assign assistant judges with more than five years' experience to sit on the bench alone. Judges are appointed from among assistant judges, public prosecutors, attorneys, and professors of law, with at least ten years' experience in their profession.



Classroom

As for summary court judges, while those who have been the president of high court or judges, or who have practiced law for three years or more as assistant judges, public prosecutors, or attorneys may be appointed, people of ability, other than qualified jurists, who have long experience in judicial practice or the academic experience necessary for the professional duties of a summary court judge may also be appointed through selection by the Selection Committee for Summary Court Judges. The term for summary court judges is 10 years, and they can be reappointed. They retire at the age of 70.

It is probably proper to make a brief reference to a part-time judicial officer (called “conciliator” or chotei-kan in Japanese) who settle civil and domestic relations disputes through conciliation proceedings in which they have the same level of authority as a judge. They are appointed from among attorneys with at least five years’ experience in practice.

(4) Court Officials other than Judges

Besides judges, officers of the court include judicial research officials, court clerks, family court investigating officers, court stenographers, court secretaries, and court execution officers. As of 2014, the total number of such court officials is about 22,000. Among these, about 9,700 are court clerks; about 1,600 are family court investigating officers; about 250 are stenographers; and about 9,300 are court secretaries.

i Judicial Research Officials

The first type of official other than judges is the judicial research official, whose duty is to research procedure and decisions in specific cases as ordered by the Justices or judges. They are recruited from among specialists in the field of intellectual property and experts in other specialized fields, as well as from among jurists.

ii Court Clerks

Court Clerks, who are judicial experts with highly sophisticated legal education, are responsible for being present at court proceedings and keeping detailed judicial records (authentication of court proceedings) in order to ensure due process of law. Additionally, they assist the judges in research of



Training and Research Institute for Court Officials

The Training and Research Institute for Court Officials is affiliated with the Supreme Court, and is in charge of educating court clerks, family court investigating officers, and court officials other than judges. It conducts research and gives court officials the theoretical and practical training they need, as well as encouraging the development of their character and discernment.

laws, orders and judicial precedents and perform other duties stipulated by relevant laws. Moreover, court clerks make the preparatory arrangements between the dates of the court proceedings, which place them in a position of significant responsibility, and take an active role in administering litigation in cooperation with judges in order to realize proper and prompt justice.

iii Family Court Investigating Officers

Family court investigating officers conduct investigations of facts and coordination involving interpersonal relationships, and then submit reports to the judge, so as to ensure that the right decisions are made in domestic dispute cases, cases seeking the return of the child under the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction, personal status cases, and juvenile cases. They are specialists in the field of behavioral sciences such as psychology, sociology and pedagogy, and are responsible for the scientific function of the family court.

iv Court Stenographers

Court stenographers are in charge of making stenographic records of court proceedings and performing other related work.

v Court Secretaries

Court secretaries handle the administrative work involved in judicial administration, and assist in work related to handling cases filed with the courts.

vi Court Execution Officers

Court execution officers execute civil judgments and serve some of the documents issued by the courts.

5 Public Prosecutors and Attorneys

(1) Public Prosecutors

Dealing first with public prosecutors, the qualifications required are the same as those required of an assistant judge. Unlike public prosecutors in western countries, public prosecutors in Japan fall within the system of lifetime employment. Public prosecutors as a whole have the exclusive power to institute prosecution, and this is why they are placed under

the general supervision and control of the Minister of Justice. However, the Minister may only direct the Prosecutor-General with regard to the investigation or disposition of any individual case. Prosecutors are civil servants, asking the court to apply laws in a fair manner and supervising the execution of judgments.

(2) Attorneys

Attorneys participate in judicial proceedings in the capacity of either counsel to the parties in a civil case or defense counsel in a criminal trial. Most of them have also passed the National Bar Examination, completed training at the Legal Training and Research Institute, and then passed the final qualifying examination. After passing the final qualifying examination, they register with one of their local bar associations as an attorney. Once registered, an attorney is allowed to argue cases before any court in Japan. There is no distinction such as is made in the United Kingdom between a barrister and a solicitor. Every attorney belongs to one of the local bar associations organized in each jurisdiction of the district court, and at the same time to the Japan Federation of Bar Associations, which is composed of local bar associations and all individual attorneys.

6 Citizen Participation in the Judicial Process

Citizen participation has been a key concept in the judicial reforms of the 21st century. The citizenry's active participation in the judicial process allows for their views to be reflected in the contents of courts' activities, which in turn, deepens people's understanding of the judicial system and strengthens popular support for the judiciary. This gives rise to a strong and democratic foundation as a country operating under the *rule of law*. Thus, judicial reforms are underway, based on a firm belief in the importance of the people's access to justice.

Even before the reforms started, there were systems in place that allowed citizens to participate in the judicial process by acting as conciliation commissioners, judicial commissioners, counselors, and members

of Committees for the Inquest of Prosecution. The Judicial Reform Council held a conference in June 2001, and published a summary of proposed reforms. In accordance with the discussions at the conference, the *saiban-in* (lay judge) system started on May 21, 2009, a new technical adviser system was introduced, the systems for conciliation commissioners, judicial commissioners, counselors, and the Committees for the Inquest of Prosecution were expanded, and the people were given many opportunities to make their opinions reflected in judiciary. The following is an explanation of the major systems involving citizen participation.

(1) *Saiban-in* (Lay Judges)

The *saiban-in* system started on May 21, 2009. It has points in common with a jury system. *Saiban-ins* are selected at random from among Japanese nationals aged 20 and over who have the right to vote for members of the Diet's House of Representatives. *Saiban-ins* participate in criminal trials in the district court, trying serious cases, involving offences



Saiban-in courtroom

1 Judges 2 *Saiban-ins* 3 Court Clerk
4 Public Prosecutor(s) 5 Defense Counsel
6 The Accused 7 Court Stenographer
8 Court Secretary



punishable with the death penalty or life imprisonment with or without work, or involving offences that have caused a victim to die by intentional criminal acts.

Six *saiban-ins* are selected to form a panel together with three professional judges. The nine panel members decide whether the accused is guilty or not, as well as the sentence, by a majority vote. The majority opinion of the *saiban-ins* alone cannot form the basis for a conviction, but must be supported by at least one professional judge.

(2) Conciliation Commissioners

Conciliation commissioners are selected from among citizens of good character and discernment who have specialized knowledge or extensive experience in societal life. The conciliation committee, which is composed of one judge or one part-time judicial officer (called a “conciliator” or *chotei-kan* in Japanese) and two or more conciliation commissioners, encourages the parties to reach an amicable settlement in various types of civil and domestic disputes. The conciliation committee works to facilitate mutual agreement between relevant parties through encouraging discussions and proposing solutions drafted by the committee. Civil conciliations are available at both district courts and summary courts, but are mostly handled by summary courts. Conciliation in domestic relations cases (such as divorce) is available at the family court.

(3) Labor Tribunal Commissioners

Labor tribunal commissioners are selected from among people with specialized knowledge and experience in labor relations. The Labor Tribunal, which is composed of one judge and two labor tribunal commissioners, deals with labor disputes between employers and workers, and works to reconcile the parties. If the parties do not reach an agreement, the committee reaches a tribunal decision in order to put a legal end to the dispute. The Labor Tribunal Act was enacted as a part of the Judicial Reform.

(4) Mental Health Adjudication Commissioners and Counselors

If a person who has committed a serious crime while insane or

under diminished capacity is not prosecuted, is acquitted, or is given a reduced sentence, a panel of one judge and one mental health adjudication commissioner decides whether any special treatment is needed, and if necessary, the details of such treatment. If they consider that the opinion of a mental health adjudication counselor is needed to make the decision, they hold a hearing with the adjudication counselor. Commissioners are selected from among psychiatrists, and counselors are selected from among mental health and welfare experts.

(5) Technical Advisors

Technical advisors are experts in specialized areas, such as medicine, construction, or intellectual property. Technical advisors are involved in cases where expert knowledge is needed in order to solve legal disputes. They give explanations to the court about the allegations and evidence produced by the parties at any stage of court proceedings, including during proceedings for arranging issues and evidence and during the examination of the evidence. They help the judges to settle disputes properly and expeditiously when expert knowledge is needed.

(6) Judicial Commissioners

Judicial commissioners are selected from among citizens. They assist the summary court judges in their attempts to arrange a settlement, and to attend civil trials in the summary court and express their opinions about fact finding to the judges.

(7) Counselors

Counselors are selected from among citizens with a broad range of

Oral proceedings in a small claims action in a summary court with the participation of a judicial commissioner

- 1 Judge
- 2 Judicial Commissioner
- 3 Plaintiff
- 4 Defendant
- 5 Court Clerk



knowledge and experience, and they attend hearings and state their opinions to the family court when it deals with domestic relations cases (e.g. commencement of guardianship, supervision of a guardian, change of first name, change of family name), or with personal status cases (e.g. divorce). In some types of cases, counselors are allowed to have a petitioner explain to them the materials the petitioner has submitted, in order to be able to state an opinion.

(8) Appraisal Commissioners

Appraisal commissioners are selected from among citizens with professional knowledge and experience in the field of law and real property. In non-contentious cases of landlords and tenants, the judge may hear the opinion of an appraisal committee composed of three or more appraisal commissioners.

(9) Members of Committees for the Inquest of Prosecution

The members of Committees for the Inquest of Prosecution are selected at random from among citizens who are eligible to vote for members of the Diet's House of Representatives. There are 165 such committees throughout the country, each composed of 11 members. Each is totally independent, and the law stipulates that these committees not be subjected to any external influence or instruction. The primary duty of the committees is to consider whether or not a public prosecutor's disposition not to institute



Meeting of a Committee for the Inquest of Prosecution

prosecution is justifiable, and if the committee adopts the resolution that the case in question should be prosecuted, it issues a recommendation to the Chief Prosecutor to reinvestigate the case. If the prosecutor stands by the decision not to prosecute, the committee may adopt a second resolution that the case should be prosecuted. If this happens, the court is required to designate an attorney to prosecute the case, and this designated attorney is responsible for instituting prosecution. A further role played by the committee is to submit proposals for improvements in public prosecutor administration to the Chief Prosecutor.

(10) Members of District and Family Court Committees

District and Family Court Committees were first established in 2003. Every district court and family court has its own court committee, and this has the aim of ensuring that the good sense, specialized knowledge, and experience of the people will be reflected in the operation of the courts. Each committee is composed of members selected from among citizens with the relevant knowledge and experience and who play a leading role in various sectors of the community, and members of the legal profession selected from among judges, public prosecutors, and attorneys. These members give their frank and constructive opinions concerning the operation of the court through exchanges of opinions. Through these exchanges of opinions with the committee members, the court is able to keep in touch with public opinion, and takes these opinions into consideration in the actual operation of the court.