

**Outline of Criminal Justice  
in JAPAN  
2019**



**Supreme Court of Japan**



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# I . HISTORY OF MODERN CRIMINAL JUSTICE IN JAPAN

In Japan, the feudalistic ruling system that had continued for about 700 years ended in 1867 and the development of a centralized political structure as a modern unified nation was undertaken. The *Meiji* government promoted the modernization of Japan, leading to a revolutionary change in criminal justice proceedings; the judicial system generally shifted closer to the western style.

In 1880, the government promulgated *Chizaiho*, the Criminal Procedure Law, modeled after the Napoleonic criminal code from France. In 1890, the Criminal Procedure Law was revised to become the Code of Criminal Procedure, the first western style comprehensive criminal justice system adopted in Japan.

In 1922, a new Code of Criminal Procedure was promulgated, influenced by German Law. Thus, the Code of Criminal Procedure from the *Meiji* era onward can be said to be fully based on the Continental European system.

The current Code of Criminal Procedure was promulgated in accordance with the principles of the new postwar Constitution in 1948 to fully protect fundamental human



The Courthouse of Fukui District Court

rights.

Under this code, the Continental European system is maintained to a much greater degree, while at the same time, the best characteristics of Anglo-American law have been adopted.

The most notable points are the stringent requirements on judicial warrants for compulsory investigations, restrictions on the admissibility of evidence, such as the hearsay rule, and adoption of the adversary system in the court procedure. Therefore, the current Code of Criminal Procedure can be considered a hybrid of the Continental European and Anglo-American legal systems.

As a result of various systemic reforms since the end of the 20th century, the role of the judiciary has become more important. Thus, the judicial system has been reformed to afford swifter, more familiar and reliable justice for the general public. In terms of criminal justice, criminal procedures have also been amended to enhance and speed up the process, and to expand the public defense system.

Additionally, a saiban-in system has been in place since May 21, 2009, in which the general public participates in the trial and judgment of criminal cases. As described, the criminal justice system in Japan has evolved and improved in order to better suit the 21st century.

## II. OUTLINE OF CRIMINAL JUSTICE IN JAPAN

### A. Three-tier Court System

A three-tier court system is adopted for Japanese criminal cases. One of two types of 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 charging instrument 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. It is vested with the power to impose imprisonment with work with regard to a certain scope of offenses that are punishable by light statutory penalties, such as theft and embezzlement, only with a term of sentence as limited by law.

##### b. Composition of the court

A single judge handles each case in summary court.

##### c. Summary proceedings

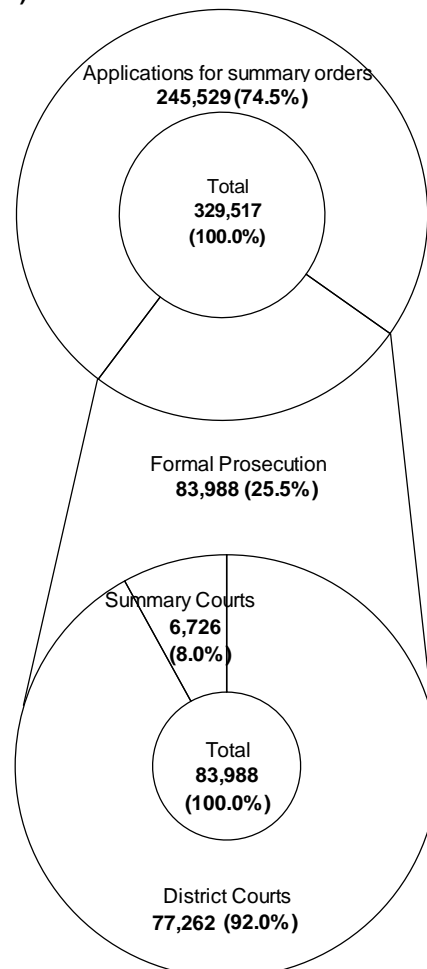
Summary proceedings that do not require a court hearing can be used for simple punishment of minor crimes where the facts are not in dispute at a summary court. Summary proceedings are initiated by the public prosecutor requesting a summary order at the same time as the institution of prosecution. The 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 a fine of not more than 1,000,000 yen on the accused. If any party objects to the summary order and requests a formal trial, the case is transferred to a trial procedure in a court of first instance.

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 (2017)**



(Note) Source: Annual Report of Statistic on Prosecution for 2017, Ministry of Justice

**2. District court**

**a. Jurisdiction**

The district court has jurisdiction as the court of first instance over criminal cases other than those liable for 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 serious crimes in which the general public has 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.

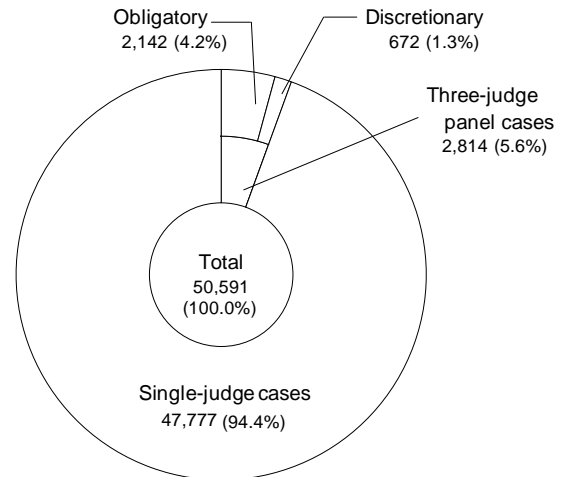
**c. Saiban-in system**

Fact-finding and sentencing are conducted by a panel comprised of six saiban-in chosen from the general public together with three judges for certain types of serious crimes in which there is strong public interest, such as homicide, 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-in and judges.

However, saiban-in 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, France, etc.

On the other hand, the saiban-in are appointed by random selection from among persons registered in the list of voters for each case, which is much



**Graph 2. Number of Cases Handled by Single-Judge and by Three-Judge Panel (Ordinary District Court Cases in the First Instance) (2017)**

like the jury system adopted in the United States and elsewhere.

However, saiban-in 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. Expedited trial proceedings**

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

In expedited trial proceedings, the court sets a trial date as early as possible, applies a less rigorous examination of the evidence, and renders a judgment within one day insofar as possible. When a court renders a judgment of imprisonment in expedited trial proceedings, execution of the sentence shall be suspended.

In order to conduct expedited trial proceedings, 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

expedited trial proceedings at the time of instituting prosecution.

Then, if the defense counsel for the suspect also agrees to the case being tried by expedited trial proceedings 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 expedited trial proceedings.

This is different from an arraignment in the United States and other jurisdictions, in which 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 that errors were committed. 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 a 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 conduct fact-finding again.

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 that 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 confirms that there was no error in the judgment through the trial procedure, the court then dismisses the appeal.

On the other hand, if the court admits that an error was made and the judgment in the first instance should be revised, the court must reverse the judgment.

If the court of second instance admits that the court of first instance should reexamine the evidence or revise its judgment, 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 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 determined 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**

Classification Year	Number of the accused (A)	Number of reversals (B)	Due to inappropriate sentencing					Due to errors in fact finding					Due to errors in application of law					Others		
			Total (C)	Own judgment	Remanded or transferred	% (C/B)	% (C/A)	Total (D)	Own judgment	Remanded or transferred	% (D/B)	% (D/A)	Total (E)	Own judgment	Remanded or transferred	% (E/B)	% (E/A)	Total number (F)	% (F/B)	% (F/A)
2013	6,108	569	87	87	-	15.3	1.4	57	53	4	10.0	0.9	49	42	7	8.6	0.8	385	67.7	6.3
2014	5,890	558	115	115	-	20.6	2.0	70	67	3	12.5	1.2	39	34	5	7.0	0.7	350	62.7	5.9
2015	6,078	589	101	101	-	17.1	1.7	83	77	6	14.1	1.4	46	32	14	7.8	0.8	375	63.7	6.2
2016	5,910	669	134	134	-	20.0	2.3	89	76	13	13.3	1.5	42	34	8	6.3	0.7	417	62.3	7.1
2017	6,098	587	111	111	-	18.9	1.8	79	76	3	13.5	1.3	54	43	11	9.2	0.9	361	61.5	5.9

(Note) Cases for which judgments were reversed based on multiple grounds are recorded in multiple appropriate columns.

**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 the like 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 if it deems that not doing so would be contrary to justice.

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

Therefore, ensuring appropriate interpretation of the Constitution and the law is the primary purpose of the final appeal system; therefore, 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, if the Supreme Court admits that there was no error in the judgment of second instance, the final appeal will be dismissed, whereas the case will be remitted to the lower court if the judgment is reversed by the Supreme Court.

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

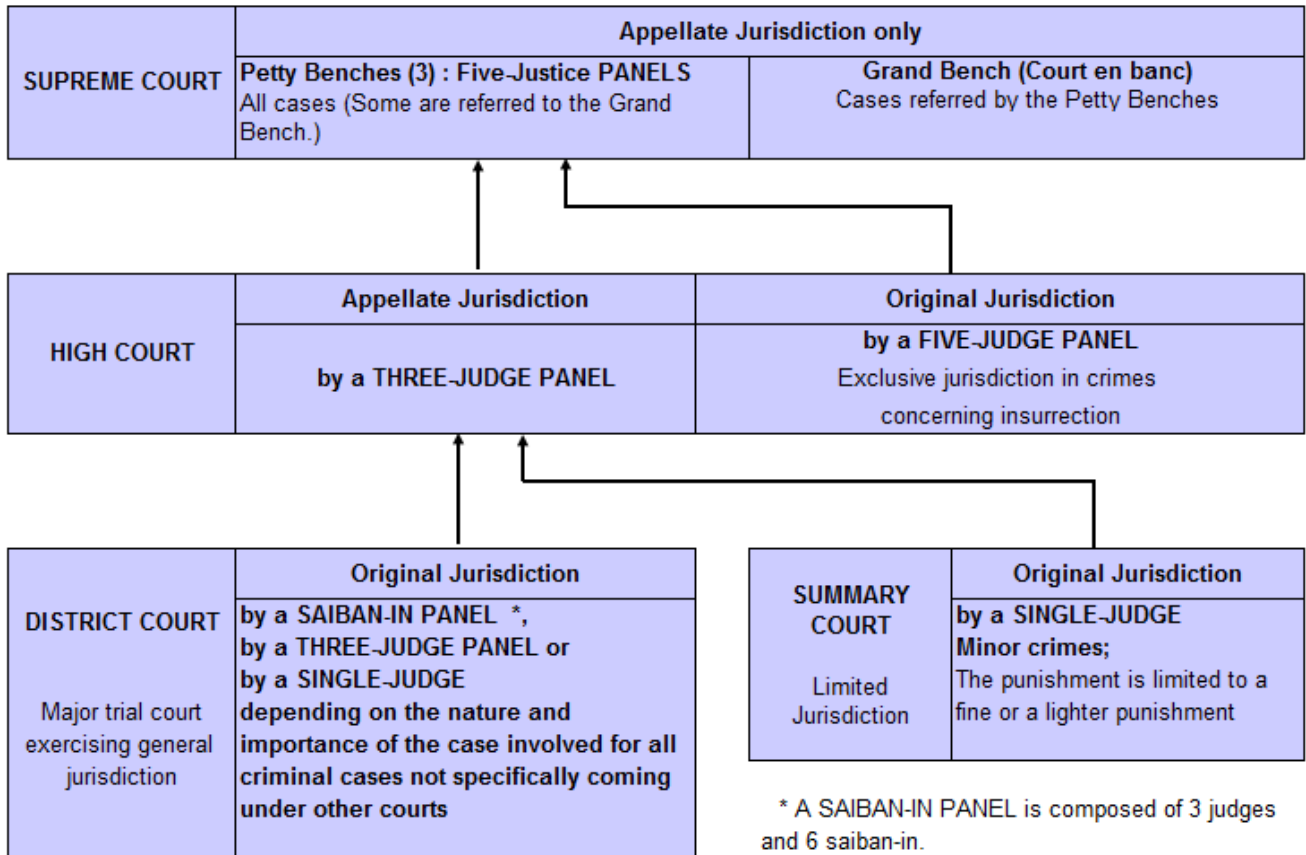
The Supreme Court can also render its own judgment immediately when appropriate based on case records and evidence.

**Table 2. Dispositions by the Supreme Court**

Classification Year	Number of the accused (A)	Dismissal of appeal			Percentage dismissed % (B/A)	Reversal					Percentage reversed % (C/A)	Withdrawal of appeal	Dismissal of prosecution and others
		Total (B)	by judgment	by decision		Total (C)	Own judgment			Remanded or Transferred			
							Guilty	Not guilty	Dismissal for judicial bar				
2013	2,017	1687	6	1,681	83.6	2	2	-	-	-	0.1	318	10
2014	1,974	1618	10	1,608	82.0	9	4	2	-	3	0.5	340	7
2015	1,891	1565	8	1,557	82.8	-	-	-	-	-	-	317	9
2016	1,957	1597	7	1,590	81.6	2	1	-	-	1	0.1	351	7
2017	2,106	1776	5	1,771	84.3	1	-	1	-	-	0.0	327	2

(Note) Special appeals to the court of the last resort and extraordinary appeals to the court of the last resort are not included.

**Jurisdiction and Procedure of Criminal Cases**



(Note)

A direct appeal may be filed to the Supreme Court against a judgment of the district court or the summary court in which the court decided unconstitutionality of law, ordinance, etc.

### III. PROCEEDINGS FROM INVESTIGATION TO JUDGMENT IN THE FIRST INSTANCE

#### A. Introduction

Based on a procedure for cases heard by saiban-in, this chapter explains the criminal justice procedure, from the investigation following a crime and institution of prosecution through to the preparations for a criminal trial, appointment of saiban-in, and the trial from within the criminal justice procedure at courts in Japan based on the overview in Chapter 2, with certain casebook examples 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 from a judge 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 justice 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 consist of 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 thus represent the main power.

The public prosecutor receives cases referred by 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, and conducts additional investigations. The public prosecutor is a legal expert from an administrative department of the government, and his/her status is guaranteed in the same way as judges for quasi-judicial services.

Police officers and public prosecutors are mutually independent authorities, unrelated hierarchically, who handle such investigations cooperatively. However, public prosecutors may advise or instruct police officers when 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 order of 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 an individual's fundamental rights and freedoms as a citizen.

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

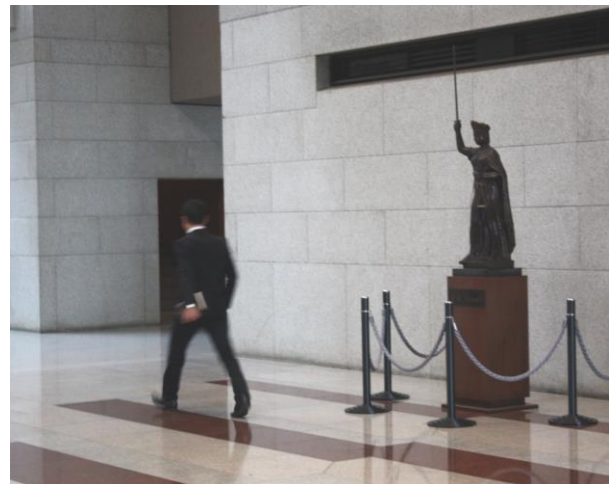
**2. Arrest**

*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, limiting his/her physical freedom for a certain period to prevent the concealment or destruction of evidence as well as his/her 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 a serious crime when a warrant from a judge cannot be obtained in advance due to the urgency of the situation, with the request for a warrant submitted to a judge immediately after the arrest

(3) On-the-spot arrest without an arrest warrant to physically restrain a suspect when the person is apprehended in the act of committing or having just committed an offense, and there is no doubt about his/her 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 him/her of the essential facts of the suspected crime and of the fact that the suspect may appoint a defense counsel, after which he/she is given an opportunity to explain (Code of Criminal Procedure, Article 203, paragraph (1)).

**b. The right to remain silent and its notification procedure**

When investigating the suspect, the police officer must notify the suspect that he/she has the right to remain silent.

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 his/her right to remain silent: “In the case of an interrogation... the suspect shall, in advance, be notified that he/she is not required to make any statement against his/her will.

### 3. Referral to the 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 to provide an explanation regarding the suspected facts of the crime and assessing the documents and articles of evidence.*

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

#### Referral to the 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 together with the documents and articles of evidence within 48 hours of his/her arrest (Code of Criminal Procedure, Article 203, paragraph (1)).

The public prosecutor who receives such a referral must determine whether to release the suspect or request a judge to detain the suspect for further physical restraint within 24 hours of receiving the suspect, with the period of physical restraint not exceeding 72 hours (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 to provide 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; only a public prosecutor can request a 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, Article 207, paragraph (1) and Article 60, paragraph (1)).

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

The judge receives the request and reviews the documents and other supporting evidence, and if he/she determines that the requirements for detention have been fulfilled after notifying the suspect of his/her right to remain silent and right to appoint defense counsel and directly listening to the suspect's explanation, the judge may then issue a detention warrant.

**b. Period of detention prior to the institution of prosecution**

The detention period prior to the institution of prosecution is limited to 10 days from the day on which the detention is requested (Code of Criminal Procedure, Article 208, paragraph (1)).

However, a judge is permitted to extend this 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 (Code of Criminal Procedure, Article 208, paragraph (2)). Although it is extremely rare, detention can be extended for five additional days for certain crimes, such as insurrection (Code of Criminal Procedure, Article 208-2).

**c. Written statement taken by a public prosecutor**

Such interrogation as 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 transcript of their oral 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 a document that 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 for his/her 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, if the suspect cannot appoint defense counsel privately due to 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 there is any doubt 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 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 the institution of prosecution, the public prosecutor submitted a charging instrument 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 victims or any persons other than the state (state prosecution policy), and among state institutions, the right to prosecute is only vested in public prosecutors under Article 247 of the Code of Criminal Procedure; this 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 was committed, 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 or not a public prosecutor's decision not to institute prosecution was appropriate, 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 lottery from among Japanese nationals aged 20 or older with the right to vote.

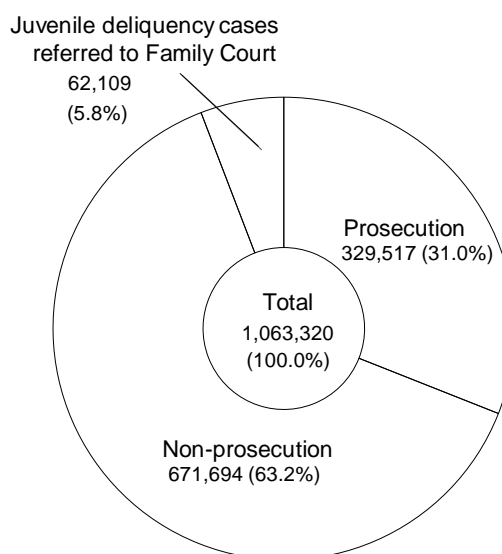
The purpose of this system is to reflect public opinion in the appropriate exercising of prosecutorial authority.

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 they are dissatisfied with a

**Graph 3. Case Dispositions by Public Prosecutors (2017)**



(Note) Source: Annual Report of Statistic on Prosecution for 2017, Ministry of Justice



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.

#### **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 was 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 the 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 that the written transcript of Mr. Yoshinobu Takagi's oral statement taken by a public prosecutor was rather questionable.*

*According to this written statement, 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 written transcripts of Mr. Takagi's oral statements that were not planned to be submitted for examination, which were then provided.*

*The defense counsel clarified during the pretrial arrangement proceedings that the allegation described on the charging instrument 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 written transcript of Mr. Takagi's oral statement taken by the prosecutor.*

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

*The public prosecutor demanded to examine the witness, Mr. Takagi, since consent for examination of the written transcript of Mr. Takagi's oral statement taken by the prosecutor was not given, and the defense counsel expressed no objection to such an examination.*

*It was then decided that Mr. Takagi would be examined as a witness on the first trial date. It was also 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, with the trial scheduled to finish on September 30, and thus the final trial plan was drawn up after arranging issues and evidence through the pretrial arrangement proceedings.*

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

The court may, upon the request of the public prosecutor, the accused or defense counsel or ex officio, hold a pretrial arrangement proceeding prior to the first trial date in order to arrange the issues and evidence of the case and establish a 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 a ruling to examine the evidence or dismiss the request for examination of evidence, etc. Pretrial arrangement proceedings must be held in cases that 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 it must be provided to the defense counsel in advance as promptly as possible after the 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 for which examination is demanded in the pretrial arrangement proceedings to the defense counsel (Code of Criminal Procedure, Article 316-14). Additionally, the public prosecutor must, upon the request of the defense counsel, disclose evidence belonging to a certain evidential category that is deemed to be important to judge the credibility of specific evidence for examination requested by the public prosecutor (Article 316-15) and which is deemed to be connected to the allegation of the defense counsel (Article 316-20), when he/she deems it appropriate.

### **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 regarding 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, 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 for 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)

		Number of the accused	Actual trial period									Average actual trial period (days)
			2 days	3 days	4 days	5 days	Within 10 days	Within 20 days	Within 30 days	Within 40 days	Over 40 days	
2011	Total	1,525	24	365	362	176	442	134	15	3	4	6.2
	Pleaded guilty	885	23	335	246	92	171	17	1	-	-	4.5
	Pleaded not guilty	640	1	30	116	84	271	117	14	3	4	8.5
2012	Total	1,500	10	278	322	177	461	204	28	12	8	7.4
	Pleaded guilty	806	9	250	246	98	169	33	-	1	-	5.0
	Pleaded not guilty	694	1	28	76	79	292	171	28	11	8	10.1
2013	Total	1,387	13	189	259	163	518	185	31	20	9	8.1
	Pleaded guilty	725	13	158	191	101	215	41	3	-	3	5.8
	Pleaded not guilty	662	-	31	68	62	303	144	28	20	6	10.5
2014	Total	1,202	7	139	198	145	458	213	23	15	4	8.2
	Pleaded guilty	644	7	128	162	86	212	46	2	1	-	6.0
	Pleaded not guilty	558	-	11	36	59	246	167	21	14	4	10.8
2015	Total	1,182	3	118	171	121	469	229	47	11	13	9.4
	Pleaded guilty	623	3	114	137	85	236	41	7	-	-	6.2
	Pleaded not guilty	559	-	4	34	36	233	188	40	11	13	13.0
2016	Total	1,104	-	116	142	94	437	260	35	13	7	9.5
	Pleaded guilty	568	-	107	120	59	208	67	5	2	-	6.7
	Pleaded not guilty	536	-	9	22	35	229	193	30	11	7	12.6
2017	Total	966	1	58	92	98	367	281	47	11	11	10.6
	Pleaded guilty	449	1	53	84	63	184	58	5	1	-	7.2
	Pleaded not guilty	517	-	5	8	35	183	223	42	10	11	13.5

(Note) The actual trial period for proceedings refers to the period from the first trial date to the final judgment (pronouncement of judgment) and includes days when trials and other proceedings are not conducted as well as Saturdays, Sundays, and public holidays.

(Note) Fig. 42 of "Data for implementation status of trials examined by saiban-in" published by the General Secretariat of the Supreme Court of Japan (in Japanese only)

*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 the accused on the condition of payment of bail money.

Under current legislation, bail is not available to suspects before they are prosecuted.

Article 89 of the Code of Criminal Procedure stipulates that when bail is requested, it 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 principal of eliminating the risk of prejudice.

### E. Appointment of Saiban-in (Lay Judges)

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

Saiban-in are selected at random by lottery from among Japanese nationals aged 20 or older with the right to vote.

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

In the following year, when the first trial date of a

case to be heard by saiban-in is fixed, each district court selects candidates as saiban-in for each case from the list of saiban-in candidates by lottery, and sends out a notification for them to attend court on the day of the proceedings to appoint saiban-in.

On the day of appointing saiban-in, the presiding judge asks the candidates whether there are any circumstances that would prevent them from acting as saiban-in or whether they wish to apply to be excused.

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

Alternate saiban-in may be appointed to prepare for the case when appointed saiban-in are unable to attend.



### Model view of a saiban-in courtroom

1 Judges 2 Saiban-in 3 Court Clerk 4 Court Secretary 5 Public Prosecutor 6 Defense Counsel 7 Accused  
(Note) Sometimes a court stenographer is seated next to a court clerk.

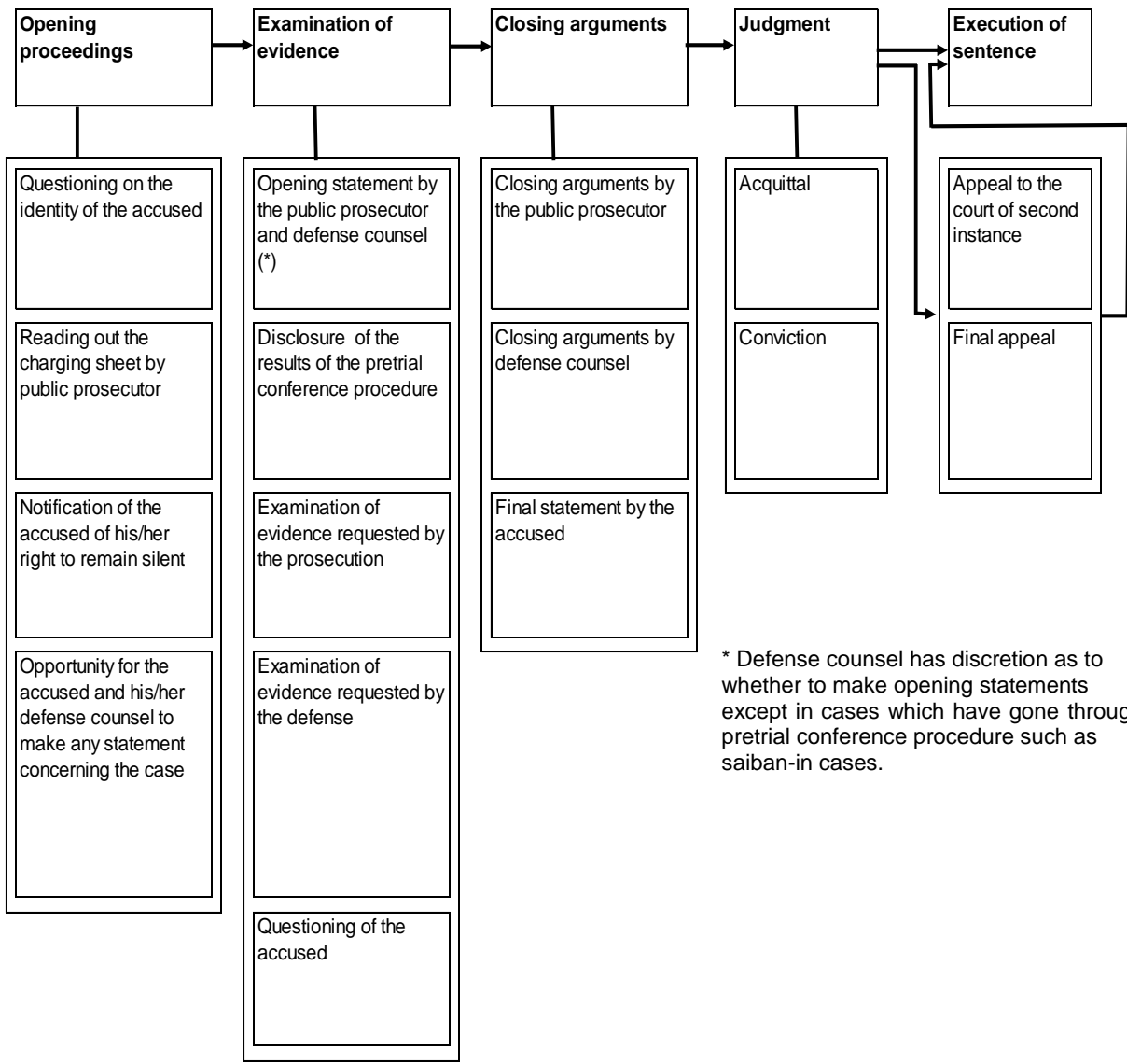
*Taro's trial began in Courtroom 411 on the fourth floor of the Tokyo District Court at 10:00 a.m. on September 28.*

#### **F. Trial**

The trial procedure is as follows.

Generally, the same trial procedure as other cases that are not subject to being heard by saiban-in is adopted. However, in such 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. Additionally, 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 evidence that is adopted is examined, etc.

**Criminal Case Proceedings**



\* Defense counsel has discretion as to whether to make opening statements except in cases which have gone through pretrial conference procedure such as saiban-in cases.

## 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 charging instrument.*

*[To the public prosecutor] Will you please read the charging instrument?*

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

*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 these points in mind. 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 examination of the evidence. Please make your opening statement.*

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

*Regarding 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 upheld, so the public prosecutor must prove the fact pertaining to the charges 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 of issue and evidence are organized through the pretrial arrangement proceedings in preparation for trials in which saiban-in are not

involved, so clarifying the results in the trial after the opening statement enables clear identification of disputed points as they pertain to the examination of evidence, types of evidence and the order in which evidence is examined.





### c. Examination of evidence

*Presiding judge: Now the evidence will 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 finds it to be appropriate after listening to 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 to tell the truth, and advised him of the punishment for perjury if false testimony were to be offered, and of his right to refuse to answer questions that could incriminate him or his relatives. The public prosecutor then began his questioning.*

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

*Mr. Takagi's testimony in court matched the details in the written transcript of his oral statement taken by the 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-in, 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. Following this, the public prosecutor, the accused, or the 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 him/her to the stand, followed by the other party, and finally, the saiban-in 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 bought, 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 from him.*

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

*Thereafter, the public prosecutor, saiban-in, 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 pertaining to proving facts constituting the offense are examined (Code of Criminal Procedure, Article 301).

This rule is so that the saiban-in and judges do not prejudice a case based on the presence of a confession.

Regarding the admissibility of evidence, Article 38, paragraph (2) of the Constitution stipulates that any confession made under compulsion, torture, threats, or after prolonged arrest or detention shall not be admitted into 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, threats, or after prolonged arrest or detention, or for which doubt concerning its voluntarily exists, may not be used as evidence.

Regarding 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 the person 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 his/her confession, whether or not it was made in open court, 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 regarding his personal background.*

*The public prosecutor read the summary of these documents, which revealed that 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 asked Ms. Maki Yamada to confirm her identity, ordered her to swear an oath to tell the truth and advised her of the punishment for perjury. The defense counsel questioned her about the accused's routine behavior, relationships with women, his juvenile delinquency involving 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 the 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 is 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 based 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 the intention to commit homicide to reaffirm his claim that this was a premeditated homicide. Finally, the public prosecutor expressed an opinion concerning the sentence to be imposed.*

*Public prosecutor: The public prosecutor considers a sentence of 10 years imprisonment with work to be 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 been drinking 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 the victim.*

*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-in conducted their deliberations. First, they discussed whether or not the accused had the intention to kill 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-in hold their deliberations (Act on Criminal Trials with Participation of Saiban-in, Article 66, paragraph (1)).

In order to organize a unified opinion as a panel, the judges and saiban-in on the panel must state their own opinions (Act on Criminal Trials with Participation of Saiban-in, Article 66, paragraph (2), etc.).



However, the saiban-in must also understand the interpretation of requirements for what constitutes a crime as a prerequisite for reaching a judgment as to whether or not a crime was committed.

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

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

While basically adopting a simple majority opinion, the opinions of both the judges and saiban-in should be included so as to enhance the intent of the saiban-in system that renders a judgment on the court proceedings by sharing responsibility as a collaboration between the judges and saiban-in. Furthermore, a judgment cannot be rendered based on a majority decision that is held only by the saiban-in 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**

Classification		Judgment*		Judgment of not guilty		Judgment of partially not guilty		Rate of not guilty judgment C/A (%)	Rate of not guilty judgment in cases of not guilty plea (D+E)/B (%)
		Total (A)	Pleaded not guilty** (B)	Total (C)	Pleaded not guilty (D)	Total	Pleaded not guilty (E)		
Court	Year								
District Courts	2013	51,291	5,173	114 (4)	114	61	60	0.22	3.36
	2014	51,498	4,881	109	108	49	44	0.21	3.11
	2015	53,191	4,885	71 (1)	70	71	70	0.13	2.87
	2016	52,121	5,082	105 (2)	105	72	72	0.20	3.48
	2017	49,446	4,971	111 (1)	111	62	60	0.22	3.44
Summary Courts	2013	7,764	709	434 (426)	434	4 (3)	4	5.59	61.78
	2014	6,857	264	15 (2)	15	2	-	0.22	5.68
	2015	6,267	249	12 (6)	12	1	1	0.19	5.22
	2016	5,570	205	8 (4)	8	1	1	0.14	4.39
	2017	5,216	217	8 (2)	8	1	1	0.15	4.15

\* Total of guilty and not guilty judgments.

\*\* "Pleaded not guilty" refers to cases where the accused did not admit all charged facts or argued a reason to preclude establishment of the crime with regard to Article 335, paragraph(2) of the Code of Criminal Procedure.

(Notes) Figures in parentheses indicate the number of retrial cases included in the total.

**b. Sentencing**

Please refer to Table 5 for statistics on the terms of imprisonment with work based on type 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 form 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-in are shown graphs and other data that 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, 2017)**

Crimes (Statutory range of imprisonment)	Term	Total	For life	Not more than 30 years	Not more than 20 years	Not more than 10 years	Not more than 5 years	3 years		Not less than 2 years		Not less than a year		Not less than 6 months		Less than 6 months	
								Suspension of execution of sentence in part	Suspension of execution of sentence in whole	Suspension of execution of sentence in part	Suspension of execution of sentence in whole	Suspension of execution of sentence in part	Suspension of execution of sentence in whole	Suspension of execution of sentence in part	Suspension of execution of sentence in whole	Suspension of execution of sentence in part	Suspension of execution of sentence in whole
Total	(100.0)	48,978	(0.0)	(0.0)	(0.3)	(1.5)	(4.7)	(5.9)	(2.1)	(11.6)	(42.7)	(19.9)	(0.1)	(13.6)	(2.9)	(0.0)	(2.0)
Offer of bribes (3yrs. ⇔ 1mth.)	(100.0)	10	-	-	-	-	-	-	(21.9)	(1.1)	(53.3)	(1.7)	(19.9)	(0.1)	(0.0)	-	-
Acceptance of bribes (see below *)	(100.0)	15	-	-	-	-	(6.7)	-	(8)	-	(40.0)	(33.3)	-	-	-	-	-
Homicide (death pen., life, 20yrs. ⇔ 5yrs.)	(100.0)	219	(3.2)	(30.1)	(23.7)	(10.0)	(25.1)	(4.6)	(4.6)	(0.5)	-	-	-	-	-	-	-
Injury (15yrs. ⇔ 1mth.)	(100.0)	2,346	-	-	(0.0)	(0.5)	(3.4)	(4.9)	(23.9)	(0.2)	(17.1)	(0.3)	(15.0)	(6.1)	(0.2)	(0.1)	(0.1)
Injury through negligence in the pursuit of social activities (5yrs. ⇔ 1mth.)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Death through negligence in the pursuit of social activities (5yrs. ⇔ 1mth.)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Negligent driving causing injury (7yrs. ⇔ 1mth.)	(100.0)	916	(0.9)	-	-	(0.2)	(0.9)	(0.9)	(2.9)	(2.7)	(38.4)	(37.8)	(0.1)	(55.1)	(0.9)	(0.7)	(0.7)
Negligent driving causing death (7yrs. ⇔ 1mth.)	(100.0)	77	-	-	-	(7.8)	(18.2)	(14)	(32.5)	(15.6)	(39.0)	(2.6)	-	(2.6)	-	-	-
Theft (10yrs. ⇔ 1mth.)	(100.0)	13,203	-	-	(0.3)	(2.3)	(3.0)	(40.2)	(19.3)	(0.1)	(12.2)	(0.2)	(17.0)	(6.5)	(0.1)	(0.0)	(0.0)
Habitual theft (20yrs. ⇔ 3yrs.)	(100.0)	1,316	-	-	-	(0.7)	(24.4)	(15.8)	(49.7)	(0.1)	(9.3)	(0.1)	(0.1)	(6.5)	(0.1)	(0.0)	(0.0)
Robbery (see below **)	(100.0)	481	(2.7)	(0.4)	(3.1)	(26.8)	(31.6)	(15.2)	(6.7)	(2.1)	-	-	-	-	-	-	-
Fraud (10yrs. ⇔ 1mth.)	(100.0)	4,052	-	-	(0.1)	(2.2)	(10.8)	(67.7)	(37.9)	(21.1)	(29.7)	(2.5)	-	(0.7)	(0.1)	-	-
Extortion (10yrs. ⇔ 1mth.)	(100.0)	409	-	-	(0.2)	(4.4)	(9.0)	(37)	(45.7)	(31.8)	(38.1)	(2.4)	-	(0.7)	-	-	-
Violation of the Public Office Election Act (7yrs. ⇔ 1mth., ***)	(100.0)	9	-	-	-	-	-	-	(11.1)	(11.1)	(44.4)	(44.4)	-	(44.4)	-	-	-
Violation of the Stimulant Drug Control Act (life, 20yrs. ⇔ 1mth., ***)	(100.0)	8,558	-	(0.0)	(0.2)	(1.0)	(5.8)	(498)	(33.9)	(6.3)	(52.8)	(8.9)	(0.2)	(0.0)	-	-	-
Violation of the Road Traffic Act (1) (10yrs. ⇔ 1mth., ***)	(100.0)	5,947	-	-	-	(0.1)	(0.4)	(24)	(2.0)	(1.7)	(22.0)	(0.1)	(57.9)	(0.1)	(49.2)	(17.4)	(13.8)
Others	(100.0)	11,420	(0.0)	(0.0)	(0.5)	(2.7)	(3.9)	(6.1)	(0.1)	(14.6)	(38.2)	(0.3)	(26.8)	(0.3)	(19.1)	(3.3)	(1.5)
			1	3	55	305	442	701	2,114	6	1,669	4,367	30	2,176	375	1	172

(1) Including violation of the Act Regarding Security of Storage Places for Automobiles.

\* Acceptance of bribes includes: acceptance upon request (7yrs. ⇔ 1mth.); acceptance in advance of assumption of office (5yrs. ⇔ 1mth.); passing of bribes to a third party (5yrs. ⇔ 1mth.); aggravated acceptance (20yrs. ⇔ 1yr.); acceptance after resignation of office (5yrs. ⇔ 1mth.); acceptance of bribes for exertion of influence (5yrs. ⇔ 1mth.); and simple acceptance of bribes (5yrs. ⇔ 1mth.).

\*\* Robbery includes: robbery causing death (death, for life), robbery causing injury (for life, 20yrs. ⇔ 6yrs.) and simple robbery (20yrs. ⇔ 5yrs.)

\*\*\* For violations of each Act

(Notes) Figures in parentheses are percentages of the total number for each offense.





**Supreme Court of Japan**