



Japan: Overview of Criminal Law of Japan as it Relates to U.S. Troops Stationed in Japan

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JAPAN

**OVERVIEW OF CRIMINAL LAW OF JAPAN
AS IT RELATES TO U.S. TROOPS STATIONED IN JAPAN**

I. Overview

“The Japanese legal system in general, and its criminal justice component in particular, seems at first glance to be very similar to its counterpart in the United States. ...The provisions of the Japanese Constitution dealing with criminal procedure often seem to be almost word-to word equivalents of United States codes. ...As is often the case in Japan, however, what seems on the surface to be one thing is often something else entirely.”¹

It is said that the criminal justice system is controlled by prosecutors in Japan. The suspect can be captured and kept at most for twenty-three days in police jails and questioned all day between arrest and indictment. Less than 1 percent of requests for a detention warrant by prosecutors are rejected by courts.² The prosecutor has great discretion of disposition of the suspect. After indictment, the not guilty rate is under 0.1 percent of district court cases.³ A defense counsel may have the opportunity to visit the suspect only while in custody, and the counsel cannot attend questioning by police or prosecutors.

Although Article 38, paragraph 1, of the Constitution⁴ provides for the right to remain silent. Most defendants in trials confess their guilt. Confession is very important in Japan. The one-on-one lengthy questioning between a police officer or a prosecutor and the suspect, without a defense counsel, for up to twenty-three days aims to make the suspect recognize, admit, and regret what he did. In reality, if a suspect keeps silent during investigation, “it may reinforce the suspicion in the mind of investigator of his crime and may cause prolonging his detention.”⁵ In addition, bail may be

¹A. Didrick Castberg, *JAPANESE CRIMINAL JUSTICE*, at 1, (Praeger, 1990).

²General Secretariat of the Supreme Court, *ANNUAL REPORT OF JUDICIAL STATISTICS FOR 1999*, at 14 (2000).

³*Id.*, at 22-3.

⁴*KENPO*, (Nov. 3, 1946).

⁵*LIVING WITH THE JAPANESE LAW*, at 46, (Japan Legal Aid Association, 1991).

denied when the defendant refuses to admit guilt.⁶ Further, if a defendant testifies and shows “an attitude of true remorse” at trial, it “may result in a lighter sentence, whereas continued denials and a refusal to take responsibility are likely to result in harsher treatment.”⁷

The Japanese criminal justice system may be viewed by the people in the United States as an encroachment on the rights of those arrested while giving too much discretion to the police or prosecutors. As one prominent United States scholar wrote, the Japanese criminal justice system is based on a different policy--paternalism--from that in the United States.⁸ If, however, the ultimate goal of the criminal justice system is to suppress crime, this approach has been worked very well in Japan. The crime rate in Japan is very low, and the clearance rate is high.⁹

II. Criminal Law of Japan

A. Crime

The Penal Code¹⁰ and other statutes provide what constitutes a crime and set out the sentencing ranges. The crimes are not classified in detailed way, and statutes often specify very broad sentencing ranges. For example, murder includes all killings with intent, and its sentencing range is from three years to twenty years, or perpetuate-term imprisonment,¹¹ or the death penalty.¹²

B. Jurisdiction

All crimes committed in Japan are subject to jurisdiction of Japan.¹³ On the other hand, the

⁶Yuji Iwasawa, *INTERNATIONAL LAW, HUMAN RIGHTS, AND JAPANESE LAW* 278, (Oxford University Press, 1998).

⁷Daniel H. Foote, *Benevolent Paternalism of Japanese Criminal Justice*, 80 CALIF. L. REV. 317, 353. (1992). The Tokyo High Court once held that a court should not take the defendant’s silence into consideration negatively. *Kotosaibansho keiji hanketsu tokuho 39*, 23 (Tokyo High Court, Dec. 24, 1953). On the other hand, The Takamatsu High Court held that a court might impose a harsher sentence on a defendant who denied the offense than on a defendant who admitted it. *Kotosaibansho keiji hanketsu tokuho 10*, 160 (Takamatsu High Court, May 3, 1950).

⁸Foote, at 359-361.

⁹Homu sogo kenkyusho, *Hanzai hakusho heisei 12 nenban* [White Paper on Crime 2000], at 3, 24-26 (2000).

¹⁰*Kei ho*, Law No. 45 of 1907, as amended by Law No. 91 of 1995.

¹¹After ten years of imprisonment, conditional release from a prison may be granted. The Penal Code art. 28.

¹²The Penal Code, art. 199.

¹³*Id.*, art. 1. *See also*, article 1 (b) of the Agreement Under Article VI Of The Treaty Of Mutual Cooperation And Security Between Japan And The United States Of America, Regarding Facilities And Areas And The Status Of United States Armed Forces In Japan, Treaty No. 7 of 1960 (Jun. 23, 1960).

military authorities of the United States has criminal jurisdiction over all persons subject to the military law of the United States under article 1(a) of the Agreement Under Article VI Of The Treaty Of Mutual Cooperation And Security Between Japan And The United States Of America, Regarding Facilities And Areas And The Status Of United States Armed Forces In Japan (“SOFA”).¹⁴

Therefore, in case a United States serviceman or his family member commits a crime in Japan, both countries have jurisdictions. Article 3 of SOFA solves this conflict:

- (a) The military authorities of the United States shall have the primary right to exercise jurisdiction over members of the United States armed forces or the civilian component in relation to
 - (i) offenses solely against the property or security of the United States, or offenses solely against the person or property of another member of the United States armed forces or the civilian component or of a dependent;
 - (ii) offenses arising out of any act or omission done in the performance of official duty.
- (b) In the case of any other offense the authorities of Japan shall have the primary right to exercise jurisdiction.

C. Investigation

Police and prosecutors can investigate the crime, but usually police conduct initial investigation. Police may request individuals to cooperate voluntarily in questioning and to voluntarily visit police station with them for such questioning.¹⁵ Without arrest, any person has a right to refuse to answer a question and to leave the police office.

Article 14 of so-called “the Law For Special Measures Concerning Criminal Cases”¹⁶ provides that a prosecutor or a police officer may conduct investigation even into the cases over which the United States service courts exercise jurisdiction under SOFA if a offense against Japanese law is made. However, the investigation is subject to the limitations provided by other provisions of the Law or SOFA.

¹⁴Commonly known as SOFA, as an abbreviation of the Japan-US Status of Forces Agreement.

¹⁵The Code of Criminal Procedure art. 197, 198, and 223. *Keiji soshō ho*, Law No. 131 of 1948, as amended by Law No. 142 of 2000.

¹⁶The Law For Special Measures Concerning Criminal Cases To Implement The Agreement Under Article VI Of The Treaty Of Mutual Cooperation And Security Between Japan And The United States Of America, Regarding Facilities And Areas And The Status Of United States Armed Forces In Japan, Law No. 138 of 1952, amended by Law No. 84 of 1992.

D. Searches and Seizure

Basically, search and seizure shall not be conducted without a warrant.¹⁷ Article 25 of the Constitution provides “right of all persons to be secure in their homes, papers, and effects against entries, searches and seizures” without “warrant issued for adequate cause and particularly describing the place to be searched and things to be seized.” However, searches and seizure without warrant is permitted to some extent when it is conducted when the suspect is arrested with warrant.¹⁸

Article 13 of the Law For Special Measures Concerning Criminal Cases states that a prosecutor or a police officer shall conduct searches, seizure or inspection with respect to any persons or property within facilities and areas in use by and guarded under the authority of United States armed forces upon the consent of competent authorities of United States armed forces, or shall request competent authorities of United States to do so.

SOFA

Article 17 paragraph 6(a) of SOFA provides that:

The authorities of Japan and the military authorities of the United States shall assist each other in the carrying out of all necessary investigations into offenses, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

E. Arrest

Articles 33 of the Constitution states that “No person shall be apprehended except upon warrant issued by a competent judicial officer ... unless he is apprehended, the offense being committed.”

As a basic rule, a warrant is required to arrest a person, but there are exceptions. Article 213 of the Code of Criminal Procedure states that “Any person may arrest a flagrant offender without a warrant of arrest.” “A flagrant offender” includes not only a person who is committing or has just committed an offence, but also a person who seems to have committed an offence in very

¹⁷*Id.*, art 218.

¹⁸*Id.*, art 220.

near past in certain cases.¹⁹ If a private person arrested the suspect, the person shall take the suspect to a police officer or a prosecutor. A prosecutor or a policeman may arrest the suspect without a warrant if there exists sufficient reasons to suspect that he has committed a crime punishable more than three years imprisonment and exigency is required.²⁰

After the suspect was arrested, a prosecutor or a police officer shall inform the suspect of the facts provided by the warrant and the right to ask for a counsel, and give him opportunity to explain the facts as soon as possible.²¹

Regarding arrest within facilities and areas in use by and guarded under the authority of United States armed forces, Article 10 paragraph 1 of the Law For Special Measures Concerning Criminal Cases provides that such arrest “shall be conducted with the consent of competent authorities of United States armed forces upon request.” However, for arrest after pursuit of a flagrant offender who has committed a crime punishable with more than imprisonment for maximum period of not less than three years, the consent from United States authority is not required.²²

SOFA

Regarding the arrest of any member of the United States armed forces, Article 17 paragraph 5 of SOFA states as follows:

- (a) The authorities of Japan and the military authorities of the United States shall assist each other in the arrest of members of the United States armed forces, ... in the territory of Japan and in handing them over to the authority
- (b) The authorities of Japan shall notify promptly the military authorities of the United States of the arrest of any member of the United States armed forces, the civilian component, or a dependent.
- (c) The custody of an accused member of the United States armed forces or the civilian component over whom Japan is to exercise jurisdiction shall, if he is in the

¹⁹The Code of Criminal Procedure art. 212.

Paragraph 2 of the article lists four cases:

- (1) In case any person is pursued as an offender with hue and cry;
- (2) In case any person is carrying with him stolen goods, arms or others apparently seemed to have been used for an offense;
- (3) In case there is a conspicuous trace of an offense on body or clothes;
- (4) in case any person is challenged and attempts to run away.

²⁰*Id.*, art. 210.

²¹*Id.*, art. 203 para. 1, art. 204 para.1, and art. 216.

²²The Law For Special Measures Concerning Criminal Cases, art. 10 para. 1.

hands of the United States, remain with the United States until he is charged by Japan.

The last section (c) is significant. When a serviceman was arrested outside of the US base, he would be in custody of Japanese police immediately. However, if the suspected serviceman returned to the base and stay inside the base, the custody of the suspect shall *remain with the United States until he is charged by Japan*. The Japanese government has requested to amend the time when the suspect shall be in custody of Japan to be the time when judicial warrant is issued.

Following the rape of a 12-years-old girl by three US servicemen in Okinawa in 1995, the United States agreed to give “sympathetic consideration” to the pre-indictment handover of suspects in serious crimes such as rape and murder.²³ Since then, two servicemen were in custody before indictment. One of them is a service man who allegedly raped a woman in Okinawa this year. However, the suspect was moved after four days from when the warrant was issued. On the other hand, when an arrest warrant was issued for a United States serviceman who was allegedly committed arson in early 2001, the United States did not hand over the suspect before indictment. Arson was not listed for the “sympathetic consideration” in 1995.

F. Custody

From arrest to indictment, the suspect may be in custody up to twenty-three days as explained below. This time is counted from the time when the suspect has been received by the Japanese authority.²⁴

1. 48 hours (2 days)

At the arrest, if the police thinks it is necessary to keep the suspect in custody, the police detains the suspect in a custody room at the police station (the police jail).

When the police find continued detention necessary, “the police shall... take steps to transfer the suspect together with the documents and real evidence to a public prosecutor within 48 hours after the suspect was subjected to restraints.”²⁵

2. 24 hours (1day)

²³Ministry of Foreign Affairs, *Recent topics August 2001*, http://www.mofa.go.jp/mofaj/comment/q_a/topic_15.html.

²⁴The Law For Special Measures Concerning Criminal Cases art. 12 para.4.

²⁵The Code of Criminal Procedure, art. 203 para. 1.

The public prosecutor gives the suspect an opportunity to explain the charge and examines the evidence, and decides whether further detention is necessary. If further detention is necessary, the prosecutor shall request a judge to detain the suspect within 24 hours after he receives the suspect.²⁶ The suspect is taken to a District Court in order to be heard by a judge.

3. 20 days

The judge tells the suspect that he has a right to keep silent and that he has the right to retain his attorney at his own expense.²⁷ After questions to the suspect and examination of the record of investigation, the judge may issue a warrant of detention when there are reasonable grounds to suspect that the suspect has committed a crime and the case falls under any one of the following:²⁸

- (i) If the suspect has no fixed dwelling;
- (ii) If there is sufficient cause to suspect that the suspect will destroy evidence;
- (iii) If there is sufficient cause to suspect that the suspect will attempt to escape.

The period of pre-indictment detention is 10 days from the date of the request for detention. In addition, upon request of a public prosecutor, a judge may extend the period for no longer than 10 days if a judge deems there is a good reason to extend the detention.²⁹ The police jail may be a substitute for a detention house.³⁰

Bekken taiho (arrest for a separate reason)

Police may have more than twenty-three days of pre-indictment detention. When police has evidence of some crime other than the crime in chief, it obtains an arrest warrant for the other crime. Then, police uses some of the post-arrest custodial investigation period to interrogate the suspect on the crime in chief. If police found new evidence for the crime in chief during the detention period, then, it obtains an arrest warrant for the crime in chief. The Supreme Court held that the arrest and the detention in order to use the detention period to interrogate the suspect on different charges from the charge which was based on the warrant is illegal. However, if two charges relate each other and the aim of the first arrest is not to cheat the time frame provided by the law, police and

²⁶*Id.*, art. 205 para. 1.

²⁷Supreme Court of Japan, *Outline of criminal justice in Japan*, <http://www.courts.go.jp/english/procedure/index.htm>.

²⁸The Code of Criminal Procedure art. 60 para. 1 and 207 para. 1.

²⁹*Id.*, art. 208.

³⁰The Prison Law, art. 1 para.3.

prosecutors may interrogate the suspect on different charge during the detention period, and subsequently arrest the suspect on the different charge.³¹

G. Detention Environment

Bail is not available for a pre-indictment suspect.

A suspect would be questioned by police officer(s) or, later, a prosecutor extensively. Questioning may run all day and on occasion late into the evening. A suspect under detention does not have a right to leave the interrogation room, even if he refuses to talk.³²

Regarding an access to the outside, Article 45 paragraph 1 of the Prison Law provides that if a person requests visit a suspect in custody, the request is to be permitted.³³ However, upon request of a public prosecutor, if the court has a reason to believe that the accused may escape, or destroy evidence, it may forbid the suspect to see persons except a defense counsel.³⁴ In cases that there are co-suspects or that there are suspect's friend who knows the offense or circumstance of the offense, this limitation to access to the suspect is commonly requested and granted. It is possible to request a prosecutor or a court to exclude such limitation for the family member who is not involved in the case.

Similarly, the court may order inspection of documents or other articles to be handed by persons except defense counsel, prohibit the acceptance of them, or seize them. However, the court shall neither prohibit the delivery of food, nor shall seize it.³⁵

Use of telephone is not allowed during custody. No television is available, but a suspect or a defendant in custody may read books. English-language books and American-style meals are available for a United States serviceman.

³¹So-called "*Sayama jiken*," 31 Keishu 5, 821 (Supreme Court, Aug. 9, 1977).

³²The Code of Criminal Procedure art. 198 para. 1.

³³However, Article 45 para. 2 provides that no visit to an imprisoned person shall be permitted by anyone who is not his or her relative, with an exception when it is deemed particularly necessary.

³⁴The Code of Criminal Procedure art. 81 and 207 para. (1).

³⁵*Id.*

Official Minutes³⁶

Even when access to the suspect in custody is limited except a defense counsel, the United States authorities can have an access to the suspect. Paragraph 2 of “Re paragraph 9” of the Official Minutes states that “The United States authorities shall have the right upon request to have access at any time to members of the United States armed forces ... who are confined or detained under Japanese authority.”

H. Pre-indictment counsel

The suspect has a right to have a counsel by his own expense. A suspect is not entitled to have a state-assigned counsel. Article 37 paragraph 3 of the Constitution provides the right to have a counsel only for a defendant. Only after the person is formally indicted does the State appoint counsel at its expense.³⁷

Even when the suspect has his counsel, the suspect has no right to demand the presence of counsel at the police or prosecutor interrogation. A defendant or a suspect in custody merely has a right to “contacts with his defense counsel or any other person who is going to be his defense counsel ..., and to deliver or receive any documents or any other things....”³⁸ In addition, prosecutors and police “may designate the date, place and time” of visits by counsel during the pre-indictment period “when it is necessary for the investigation ... provided that such designation shall not unreasonably restrict the rights of the suspect to prepare for defense.”³⁹

I. Statements Given to Police Officers and Prosecutors during Investigation

A police officer or a prosecutor may writes a record of statements of the suspect after questioning. These statements need not include a verbatim account of the suspect’s words. The statements are summaries of selective questions and answers. A suspect are asked to sign the statement after he read it and confirm the accuracy of the statement.

These statement would play important role at trial. Especially the statement made in front of the prosecutor will be admitted as evidence broadly because it is eligible to the exception of hearsay rule.⁴⁰

³⁶Agreed Official Minutes Regarding Protocol To Amend Article XVII OfThe Administrative Agreement Under Article III OfThe Security Treaty Between The United States Of America And Japan (Sep. 29, 1953).

³⁷The Code ofCriminal Procedure, article 36.

³⁸*Id*, article 39 para. 1.

³⁹*Id*, article 39 para. 3.

⁴⁰*Id*, article 321 para. 1 item 2.

If the suspect does not understand Japanese, a police officer or a prosecutor asks a person other than the suspect to interpret questions and answers.⁴¹

J. Institution Of Prosecution

The public prosecutor has great discretion whether or not files the indictment with District Court.⁴² Even when a public prosecutor is convinced of the guilt of a suspect, the prosecutor may decide not to institute prosecution at his discretion. Recently, more than 30 percent of violations of Penal Code cases (except traffic violations) has been suspended from prosecution.⁴³ However, bargaining or guilty-plea practice is not allowed in Japan.

Upon the institution of prosecution, the defendant is transferred from the police jail to the detention house. When a prosecution is instituted against the suspect under detention, the detention will be continued automatically. If the accused is charged with an offense punishable imprisonment for minimum period of more than one year, detention will be continued until the end of the trial.⁴⁴

K. Bail

Article 89 of the Code of Criminal Procedure provides that when a request for bail is made, it must be allowed unless it falls within exceptions as follows:

- (1) the offence is punishable with imprisonment for a period of one year or more;
- (2) there has been a prior conviction with a sentence of more than ten years;
- (3) the defendant is an habitual offender;
- (4) there are grounds to fear destruction of evidence;
- (5) there are grounds to fear injury to persons; or
- (6) the name and address of the defendant is unknown.

The factor (4) has been interpreted broadly, and bail has often been denied on that ground, especially when the defendant refuses to admit guilt.⁴⁵

⁴¹*Id.*, article 223 para 1.

⁴²*Id.*, article 248. Factors to be considered are the character, age, and situation of the offender, the gravity of the offense, the circumstances under which the offense was committed, and the conditions subsequent to the commission of the offense.

⁴³White Paper on Crime 2000, at 42.

⁴⁴The Code of Criminal Procedure, art. 60 para.2; art. 89 item 1.

⁴⁵Yuji Iwasawa, *International Law, Human Rights, And Japanese Law*, 278, Oxford University Press (1998).

L. Pre-trial preparation

The Rule of Criminal Procedure⁴⁶ provides that the public prosecutor and the defense counsel shall make preparation of trial in order to proceed the trial speedy.

Defense counsel would be informed by the public prosecutor a few days after the institution of prosecution that he would be able to inspect or copy the items of evidence that would be requested by the prosecutor for examination at the trial. Defense counsel will visit the Public Prosecutors' Office to inspect these items of evidence.

The principle of adversary system expect both parties take the initiative in gathering and offering evidence, but defense counsels sometimes do not gather evidence other than interviews with the family member of the accused. If defense counsel has evidence unknown to the prosecutor, defense counsel shall let the prosecutor know and examine it.

Defense counsel and prosecutor would inform each other of which evidence he would give consent. If some of them would not been given consent, the defense counsel or the prosecutor decide the treatment of them and inform the other of it.

M. Trial -in general

Article XVII paragraph 9 (a)-(f) of SOFA provides that a member of the United States armed forces shall be entitled certain matters at trial, e.g. speedy trial, but all of them are already protected under Japanese Constitution and other laws. In addition, article XVII paragraph 9 (g) of SOFA states that a member of the United States armed forces shall be entitled “to communicate with a representative of the Government of the United States and to have such a representative present at trial.”

Court

The District Courts or the Summary Courts shall be a court of first instance.⁴⁷ The District Courts have general jurisdiction.⁴⁸ A District Court may handle cases through a single-judge court, but certain cases for which the statutory penalty is severe shall be handled by a three-judge court.

⁴⁶The Supreme Court Rule No. 32 of 1948, as amended by Supreme Court Rule No. 15 of 2000.

⁴⁷Art. 24 and 33 of the Court Organization Law, Law No. 59 of 1947, as amended by Law No. 142 of 2000.

⁴⁸The Summary Courts can exercise jurisdiction only over cases relating to offenses punishable by fines or lighter punishments and other minor offenses, such as theft and embezzlement.

Other cases may also be handled by a three-judge court at its own discretion.⁴⁹

Dates for Trial

Article 37 of the Constitution provides that the accused shall enjoy the right to a speedy trial. Article 179-2 paragraph 1 of the Rule of Criminal Procedure states that “a court shall conduct trial day after day and hear a case in succession as much as possible, when it needs more than two trial dates.” However, in reality, when a trial is to require two days or more, the dates are usually fixed at certain intervals.

Right to Have a Counsel

Article 37 paragraph 3 of the Constitution provides that a defendant shall have the assistance of a competent counsel who shall be assigned to his use by the State, if the defendant is unable to secure the same by his own efforts,

Interpreter

Article 14 paragraph 3 (f) of the International Covenant on Civil and Political Rights,⁵⁰ which Japan ratified, provides that, when the accused cannot understand the language which is used in the court, he shall be entitled to receive help of an interpreter free of charge. Article 175 of the Code of Criminal Procedure is also interpreted that the court shall use a interpreter for the accused who is not versed in Japanese.⁵¹

N. Trial Procedure

Japan currently does not have jury trial system.⁵² Judges find the facts and decide the sentence. Fact-finding procedure and sentencing procedure are combined into one phase.

At the trial, following the opening proceedings, examination of evidence, questions to the defendant, and the closing argument are proceeded.

⁴⁹The Court Organization Law, art 26.

⁵⁰Treaty No. 7 of 1979.

⁵¹9 Keishu2, 282 (Supreme Court, Feb. 15, 1955).

⁵²Japan has The Jury Trial Law (Law No. 50 of 1923, as amended by Law No. 61 of 1947), but it has been suspended since 1943.

(1) Opening Procedure

After the identification of the defendant by the court, the prosecutor makes a statement which contains counts constituting the criminal charges made against the defendant. After being advised of his right to remain silent, the defendant is given an opportunity to state his opinion about the charge. Even if he admits the charge, the fact-finding process is not skipped, although it may simplify its process.⁵³ Defense counsel also has opportunity to state his opinion.

(2) Examination of Evidence

At first, the public prosecutor makes the opening statement, which outlines the facts he intends to prove. Then, prosecutor requests the court to examine his evidence. The defense counsel consents or objects to all documentaries and real evidences. In examination of documentary evidence, if the defendant-side consents and if the judge deems it proper, the presiding judge may have a person summarize the evidence, instead of reading the whole.⁵⁴

Article 37 paragraph 2 of the Constitution guarantees the defendant's right to cross-examine a witness. Thus, hearsay evidence is excluded unless with the consent of the defendant, with some exceptions prescribed by law. The witness shall swear by reading the oath form aloud. Under oath, the witness may be punished for perjury if he gives a false testimony. The witness has a right to refuse to answer questions on the grounds that it may incriminate himself or his relatives.

The examination of confession shall not be requested until after the other items of evidence for proving facts constituting the offense are examined in order that the court may not be biased against him.⁵⁵

After a prosecutor, a defense counsel submit evidence. A defense counsel often request the defendant's family as a witness in proof of circumstances to be considered in sentencing. The counsel also often provide a proof of .

Under the Constitution and the Code of Criminal Procedure, the defendant has the right to keep silent at trial. However, defendants usually make voluntary statements, which will be admitted in evidence. When a defendant testify, he does not oath. Defendants typically express his regret, perhaps, in order to get lenient sentence. “[A]n attitude of true remorse may result in a lighter sentence, whereas continued denials and a refusal to take responsibility are likely to result in

⁵³The Ministry of Justice, *Criminal Justice in Japan*, at 17.

⁵⁴The Rule of Criminal Procedure, Article 203-2

⁵⁵The Code of Criminal Procedure, art. 301.

harsher treatment.”⁵⁶

(3) Closing Argument

The prosecutor expresses the opinion on the sentence to be imposed in his closing argument. Then, the defense counsel presents the opinion. If a defendant wants to say anything to the court before closing, he will.

O. Judgment

Judges find facts and decide sentence. There is a implicit sentencing standard among prosecutors and courts. The court put a considerable weight on Prosecutors’ sentence requests. A judgment is rendered in open court.

Sentence

If extenuating circumstances are found, courts can reduce the minimum sentence provided by law by half.⁵⁷ If the defendant has not been imprisoned within past five years, sentences of up to three years may be suspended.⁵⁸ “[F]actors as family relationships, working habits, assurances from sureties and employers, and type of friends play an important role in determining whether sentences are suspended.”⁵⁹ In addition, “[t]he attitude of the defendant at trial also carries great weight: a sincere confession evidencing acceptance of moral responsibility and the sincere desire to reform is crucially important.”⁶⁰ In 1999, the ratio of the case in which the defendant fully confessed was about 92 percent.⁶¹

In most cases, the person who has received a suspended sentence is not placed under the supervision of a probation officer.⁶²

⁵⁶Foote, at 353. The Tokyo High Court once held that a court should not take the defendant’s silence in consideration negatively. Kotosaibansho keiji hanketsu tokuho 39, 23 (Tokyo High Court, Dec. 24, 1953). On the other hand, The Takamatsu High Court held that a court might impose harsher sentence on a defendant who denied the offense than on a defendant who admitted it. Kotosaibansho keiji hanketsu tokuho 10, 160 (Takamatsu High Court, May 3, 1950).

⁵⁷Penal Code art. 68.

⁵⁸*Id.*, art. 25(1)(ii).

⁵⁹ Foote, at 352.

⁶⁰*Id.*

⁶¹General Secretariat of the Supreme Court, Annual Report of Judicial Statistics for 1999, at 26. (2000).

⁶²White Paper on Crime 2000, at 54.

Cost of Trial

The court shall charge all or a part of the expenses for the proceedings to the defendant when he is convicted. The court do not have to do so, if it is obvious that the defendant cannot pay the expenses due to indigence.⁶³

Rate of Not-Guilty Judgement

The rate of the case in which defendants found not-guilty in courts of first instance was about 0.1 percent in 1999.⁶⁴

P. Appeal

(1) First Appeal

A party who is not content with the judgment of the first instance may file an appeal with a higher court for its review alleging an error exists.⁶⁵ A public prosecutor is able to appeal as well as a defendant.⁶⁶

Examples of grounds for the first appeal are: (i) non-compliance with procedural law in the trial proceedings; (ii) an error in the interpretation of or the application of law in the judgment; (iii) excessive severity or leniency of the sentence; and (iv) an error in fact-finding.⁶⁷

The first appeal's proceeding is not a new trial, in which all issues of facts are tried again, but a review of the proceedings and judgment of first instance through the original court's records. Therefore, the procedures of the first appeal are mostly limited to oral arguments presented by the prosecution and the defense counsel, and the court does not examine witnesses and other evidence.⁶⁸ However, the court of appeals may examines a witness when it is necessary to inquire into factual matters that remain uncertain.⁶⁹

⁶³The Code of Criminal Procedure, art. 181 para. 1.

⁶⁴White Paper on Crime 2000, at 54.

⁶⁵The Code of Criminal Procedure, art. 372.

⁶⁶Supreme Court of Japan, *Outline of criminal justice in Japan*.

⁶⁷The Code of Criminal Procedure, art. 377-382.

⁶⁸Supreme Court of Japan, *Outline of criminal justice in Japan*.

⁶⁹The Code of Criminal Procedure, art. 393.

No penalty heavier than that imposed by the original judgment can be rendered if the appeal is filed only by a defendant.⁷⁰

(2) Second Appeal

The party may also file an appeal against the judgment of the first appeal court. The grounds for the second appeal are usually limited to (i) a violation of the Constitution or an error in its interpretation, or (ii) an alleged conflict with precedents of the highest courts.⁷¹

Bail During Appeal

When the defendant has been sentenced to punishment of imprisonment or heavier penalties, the defendant has no right to bail during appeal.⁷²

Q. Parol After Imprisonment

“In Japan, the granting of parole is entirely up to the discretion of the criminal-justice authorities. The inmate has no right to file an application for parole, nor is automatic good-behavior credit awarded. The superintendent of the prison initiates the process by requesting a regional parole board to grant parole for specified individuals.”⁷³ Recently, superintendents request parole for about 60 percent of adult inmates, typically after they have served 70 percent of their sentences.⁷⁴

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⁷⁰The Code of Criminal Procedure, art. 402.

⁷¹The Code of Criminal Procedure, art. 405.

⁷²The Code of Criminal Procedure, art. 344.

⁷³Footnote, *supra*, at 357-8.

⁷⁴White Paper on Crime 2000, at 80.