

Japan

A drastic reform of the judicial infrastructure is to be carried out by the Judicial System Reform Council established in June 1999. The right to request government funded legal counsel is guaranteed only after indictment, even for capital cases. Thus, in Japan only persons able to pay lawyers' fees are guaranteed the right to counsel before indictment.

According to its 1947 Constitution, Japan is a parliamentary democracy. Sovereignty is vested in the people, and the Constitution refers to the Emperor as the "symbol of the state". Executive power is held by the Cabinet, composed of the Prime Minister and ministers of state. The Cabinet is responsible to the Diet, a bicameral parliament holding legislative authority. The Diet is elected by universal suffrage and secret ballot and is composed of the 500 member House of Representatives and the 252 member House of Councillors. The Prime Minister must be a member of that body. The Emperor has no powers related to government, but formally appoints the Prime Minister.

The Liberal Democratic Party (LDP) formed a Cabinet in July 1998 under Prime Minister Keizo Obuchi. In January 1999, the Liberal Party (LP), led by Ichiro Ozawa, was brought into the government. On 5 October 1999, the Cabinet was again reshuffled and the New Komeito Party was included in the government. This gave the government a majority in both the House of Representatives and the House of Councillors. Prime Minister Keizo Obuchi died on 30 April 2000 after weeks in a coma following a stroke. Yoshiro Mori replaced Mr. Obuchi as Prime Minister on 2 April.

Human Rights Background

The UN Special Rapporteur on Torture, in his report to the 1999 UN Commission on Human Rights, expressed deep concern about harsh rules and punitive measures in prisons, and the lack of fair and open procedures for deciding on disciplinary measures against prisoners accused of breaking the prison rules.

The Special Rapporteur noted the Concluding Observations of the Human Rights Committee after the discussion of the Japanese report in October 1998 (see Attacks on Justice 1998). The Committee expressed concern about allegations of violence and sexual harassment of persons detained pending immigration procedures.

The Human Rights Committee also expressed concern that Japan did not take steps to abolish the death penalty and about the conditions under which people are held on death row. Executions in Japan are often surrounded by secrecy. In 1999, several executions took place without the families of the prisoners being informed.

On 29 July 1999, Japan became a state party to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Japanese Government accepted the inter-state complaint procedure under Article 21 of the Convention, but did not allow individuals to lodge complaints to the Committee against Torture under Article 22 of the Convention.

Allegations of coerced confessions remained persistent in Japan throughout 1999. The daiyo kangoku, the substitute prison system (see Attacks on Justice 1998) is under the control of a

non-investigating branch of the police. This lack of supervision by a separate authority presents an opportunity for the abuse of the rights of prisoners.

The Permanent Mission of Japan to the International Organisations in Geneva, in its reaction to the chapter on Japan in the 1998 edition of *Attacks on Justice*, said that detention officers treat prisoners properly and referred to the Constitution and the Code of Criminal Procedures under which torture and coerced confessions are forbidden. Allegations of coerced confessions, however, continue and a separate authority would better protect prisoners from possible mistreatment.

The issue of compensation for "comfort women" who were detained and forced to provide sexual services to the Japanese military during the Second World War remained unresolved and the provision of funds by the Japanese Government through the Asian Women's Fund to individual victims was the subject of severe criticism from many victims and their defenders. The UN and the ILO called on the Japanese Government to fully compensate these women and to prosecute those responsible.

The Judiciary

The Constitution establishes the independence of judges in the exercise of their duties. Judicial power is vested in the Supreme Court and inferior courts as established by law. The inferior courts include eight High Courts (with six additional branch courts), 50 District Courts (with 242 local branches), 50 Family Courts (also with 242 local branches) and 438 Summary Courts.

The Supreme Court has jurisdiction over appeals and those complaints specifically prescribed by the Code of Procedure. The opinion of every judge of the Supreme Court must be expressed in writing. The High Court has jurisdiction over appeals from judgements by the lower courts.

Appointment Procedures

The Supreme Court consists of 15 justices, among them the Chief Justice, who is designated by the Cabinet, and formally appointed by the Emperor. The Cabinet appoints all other Supreme Court justices. Article 41 of the Court Organisation Law provides that Supreme Court justices shall be appointed from among persons "of broad vision and extensive knowledge of law, who are not less than forty years of age". The law also requires that at least ten of the Supreme Court justices have been a President of the High Court or a judge for at least ten years, or have been a judge of the Summary Court, a public prosecutor, a lawyer, or a professor or assistant professor of legal science for a total of at least 20 years.

Lower court judges are appointed by the Cabinet from a list prepared by the Supreme Court. The list is generally composed of persons who have passed the Bar and who have completed two years at the Legal Research and Training Institute. The recruits selected from the list serve as assistant judges for ten years, after which they can be appointed to full judicial positions, renewable every ten years.

Security of Tenure and Impeachment

The retirement age of Supreme Court judges is 70. As provided for in Article 79 of the Constitution, the appointment of the judges of the Supreme Court is reviewed at the first general election of the House of Representatives after a period ten years. When the majority of the voters favours the dismissal of a judge, he shall be dismissed. The Constitution provides that judges shall be removed only by public impeachment or when the judge has been declared mentally or physically incapable of performing his duties.

No disciplinary action is to be administered against a judge by any executive organ or agency. The Constitution provides, however, that when a judge has "deviated from his duty, neglected his duty or degraded himself, he shall be subjected to disciplinary punishment by decisions as provided for elsewhere by law".

According to the Law of Impeachment of Judges enacted in November 1947 a judge is "liable to be removed from his post on being impeached and convicted for either conduct in grave contravention of official duties or grave neglect of official duties; or other misconduct seriously affecting the integrity of a judge".

The Indictment Committee of Judges consists of five members of the House of Representatives and five members of the House of Councillors and is convened by the chairman or on request of at least five members of the Committee. The Indictment Committee investigates the request for indictment, but it may also entrust the investigation to government officials. A resolution to remove or suspend a judge requires a two thirds majority vote of the members. The proceedings of the Committee are not open to the public.

A Court of Impeachment consisting of seven members of the House of Representatives and seven members of the House of Councillors considers the written indictments. The Court of Impeachment must notify the indicted judge upon receiving a written indictment, whereupon the indicted judge is entitled to retain a lawyer. The provisions of the laws and ordinances concerning criminal procedure will apply.

Oral proceedings are conducted in public and a written judgement is determined by a two thirds majority of the judges participating in the hearing. A judge shall be removed upon the pronouncement of a judgement; however the position may be recovered if, after five years, a justification exists or any new evidence is found which rebuts the cause for removal.

According to the Court Organisation Law, the courts at all levels are responsible for their own administration and supervision by means of a Judicial Assembly at each level, and the corresponding chief judge. The Judicial Assembly of the Supreme Court is ultimately responsible for the administration of the judiciary.

The Judicial Assembly is comprised of all the Supreme Court justices with the Chief Justice as its chair. A General Secretariat assists the Supreme Court judges. The Supreme Court General Secretariat, together with the Legal Training and Research Institute, sponsors conferences and study sessions on various topics, including the interpretation of the law.

The recommendations of these conferences are compiled by the General Secretariat and distributed to the judges for application when deciding cases. It is feared that this practice allows the General Secretariat to exercise de facto control and influence over the Judicial Assembly and consequently, the judiciary.

Judicial System Reform Council

In June 1999, the law for establishing the Judicial System Reform Council was enacted. The Council, within the government and comprising thirteen members appointed by the Cabinet, aims to draft in two years proposals for Japan's judiciary in the 21st century. On 21 December 1999, the Council published a report "Aiming at Judicial System Reform," which states that drastic reform of the judicial infrastructure, whereby human resources and systems are integrated, is essential.

Japan Judges Network

Progress in terms of the independence and freedom of judges was made when, on 18 September 1999, twenty judges from all over the country gathered to form the Japan Judges Network aimed at an open legal system. Their first effort was to publish the book "Judges Appeal!" authored by twelve members under their real names. On 30 October 1999, they held a symposium in Osaka at which four judges on active duty expressed their opinions on several themes.

As previously reported (see Attacks on Justice 1998) Japanese judges have been restrained with respect to joining organisations and making statements outside court since the Supreme Court in 1970 issued a warning to judges not to become members of a politically coloured organisation. The Network therefore specifies that "the Network shall not have political or labour union type characteristics".

Lawyers

The Constitution provides under Article 34 that there shall be no arrest or detention without privilege of counsel. Article 40 para. 1 of the Criminal Procedures Code (CCP) guarantees the right to counsel for all suspects and accused.

The right to request government funded legal counsel, however, is guaranteed by the CCP only after indictment, even for capital cases. Thus in Japan, only persons able to pay lawyers' fees are guaranteed the right to counsel before indictment. Through the efforts of the Bar Associations, the Duty Attorney System, supported by funds from the lawyers themselves, gives free first visits with counsel. For suspects who require pre-indictment counsel but are unable to pay lawyers' fees, there is a legal aid system run by the Japan Legal Aid Foundation.

Cases

Tsutsumi Sakamoto lawyer: Mr. Sakamoto and his wife and son were slayed in 1989 by the Aum Shinrikyo or Aum Supreme Truth, the violent sect that is accused of plotting the nerve gas attack on the Tokyo subway in March 1995 that killed 12 people and injured thousands. Mr. Sakamoto was an anti-sect lawyer that represented families of some of the cult's members. In October 1998, Mr. Okazaki, a former member of the sect, was convicted for these murders and sentenced to death.

Yoshihiro Yasuda lawyer: Mr. Yasuda is the chief defence counsel for Chizuo Matsumoto (alias Shoko Asahara), founder of the Aum Shinrikyo or the Aum Supreme Truth, a violent sect. Mr. Yasuda has also served as defence counsel in many death penalty cases and is well

known as a core activist for Japan's death penalty abolition movement. On 6 December 1998, Mr. Yasuda was arrested and on 25 December indicted for financial irregularities. Mr. Yasuda pleaded not guilty during the trial.

The Tokyo District Court decided on 11 June 1999 to release Mr. Yasuda on bail, after he had spent 6 months in custody. The Public Prosecutor appealed this decision and the release was revoked. These proceedings were repeated three times and finally, after more than ten months in custody, Mr. Yasuda was released on bail by a fourth decision on 27 September 1999.

It is argued among some lawyers that the arrest, indictment and long-term custody in his case were intended to interfere with Mr. Yasuda's efforts in death penalty cases and particularly with his defence of the Asahara case.

The Japan Federation of Bar Associations (JFBA), an ICJ affiliate, issued a statement on 23 July 1999 saying that the custody of Mr. Yasuda for as many as seven and a half months (at that stage) resulted from misuse of the detention system. The JFBA strongly demanded a fair trial based on the principle of "the presumption of innocence" and under the condition where a suspect who pleads innocence and is proved so should be released at the earliest possible juncture.