The Criminal Justice System in Japan: An Overview

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Abstract

Indépendamment de son faible taux de criminalité au Japon, il est nécessaire de bien comprendre la justice pénale japonaise car les critiques à l'égard du système judiciaire traitant des personnes concernées par les procédures pénales ont augmenté ces dernières années. Cette note a pour but d'explorer une vue d'ensemble du système de justice pénale au Japon et en donne un aperçu. Il va du droit pénal transnational, du droit pénal matériel, du droit pénal procédural, du droit pénal des mineurs au système correctionnel pour les délinquants. Bien qu'il existe au Japon certaines différences et lacunes entre le droit pénal matériel et le droit pénal procédural, qui découlent des différences entre le Droit Romain et la Common Law, l'établissement d'un crime ne se fait que par la procédure pénale et les deux doivent être harmonisés en théorie et en pratique. Pour examiner les problèmes à résoudre à l'avenir, la présente note se contente de souligner que la justice pénale japonaise est aujourd'hui confrontée à plusieurs défis.

1. Introduction

According to a report by Kyodo, the total number of criminal cases has been steadily decreasing in Japan after peaking at 2.85 million in 2002(1) and the crime rate in Japan remains lower than that of most Western countries(2). Statistics show that the

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crime rate in Japan has decreased since 2003 in inverse proportion to the number of voluntary crime prevention groups, which has increased fifteen- fold from only 3,056 in 2003 to 48,060 in 2015[(3)]. However, Japan faces the challenge of the sustainability of voluntary groups due to a lack of funds, an aging population, and general societal changes[(4)]. The introduction of a new mechanism as well as the restoration of community cohesion may be necessary to support voluntary crime prevention activities, which have contributed to reducing the crime rate in Japan.

However, it is another thing to know whether Japanese criminal justice works. Criminal justice as such is not seen as a preventive system and should be seen as a mechanism for dealing with crimes that have taken place in the past and for dealing with the suspect, the accused, and convicted or sentenced persons. In addition to the question of whether it controls crime in a country, criminal justice can be assessed based on the degree of protection of the human rights of the person concerned, in conjunction with the application of punitive authority. In general, authoritative

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（1） https://www.japantimes.co.jp/news/2018/01/18/national/ (accessed 24.08.20) For more details on the status quo, refer to WHITE PAPER ON CRIME 2018 (http://hakusyo1.moj.go.jp/en/67/nfm/mokuji.html (accessed 24.08.20))

（2） According to Numbeo, the crime index of Japan is 15.91, compared with 46.73 in the United States. See worldpopulationreview.com/country-rankings/crime-rate-by-country (accessed 24.08.20).

（3） See, *Nobuhito Yoshinaka*, 2019. Towards Sustainable Crime-Prevention Activities in Japan: The Possibilities and Limits of Volunteer Groups, The Hiroshima Law Journal Vol.42 No.3, 129-132.

（4） Ibid. Japan has been faced with some social problems. Above all, the high suicide rate is thought of as a serious problem. According to the National Police Agency, the number was over 20,000 in 2017, though the rate falls for the 8th consecutive year. It might be said that the Japanese are prone to attack themselves, rather than attacking other people. Also, they encounter a declining birth rate, an aging population, a dropping marriage rate, a rising divorce rate, and an economic recession. For details, see Statistical Handbook of Japan 2019 (http://www.stat.go.jp/english/data/handbook/c0117.html (accessed 24.08.20))

advocates, including prosecutors, tend to view the Japanese criminal justice system as working well, while critics, including defence counsel, tend to view it as a system of "hostage justice"[5]. It may be true that some problems need to be resolved in Japanese criminal justice[6], but there is a certain misunderstanding or shortage of understanding of Japanese criminal law and criminal justice that is different from the Common Law system - particularly the American one. The Japanese criminal justice system can be regarded as a hybrid between Civil Law and Common Law. Substantive criminal law was strongly influenced by French and German criminal laws, while procedural criminal law, which was based on the inquisitorial system of Civil Law, was largely rectified by the American ideas or principles of adversarial system after World War II. The distinction between substantive criminal law and procedural criminal law that resulted from the differences in ideas between Civil Law and Common Law led to a schizothymic system of justice in post-war Japan.

However, a detailed discussion of the Japanese criminal justice system is beyond the scope of this note[7], therefore we will provide only a brief overview

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（5） E.g., Japan's 'hostage justice' system, The Japan Times (https://www.japantimes.co.jp/opinion/2019/01/11/(accessed 24.08.20)

（6） See Thisanka Siripala, Does Ex-Nissan Chief Carlos Ghosn's Detainment in Japan Point to Human Rights Abuse?, THE DIPLOMAT (https://thediplomat.com/2019/01/does-ex-nissan-chief (accessed 24.08.20)). *Yoshinaka* therein referred to the necessity of a defense lawyer's presence during interrogations.

（7） As for recent work available in English, see CRIMINAL JUSTICE IN JAPAN 2019 edition, UNAFEI (https://www.unafei.or.jp/publications/pdf/CJSJ_2019/00CJSJ_2019.pdf (accessed 24.08.20)), Liu, Jianhong, Miyazawa, Setsuo (Eds.), 2018. Crime and Justice in Contemporary Japan, Springer International Publishing, Colin P.A. Jones and Frank S. Ravitch, 2018. The Japanese Legal System, West Academic Press,231-281. Sayuri Umeda, 2016. Japan: 2016 Criminal Justice System Reform, The Law Library of Congress, Global Legal Research Center (file:///D:/Tom.Japan's%20Criminal%20Justice/japan-criminal-justice-system.pdf (accessed 24.08.20)),

underlying the overall system including juvenile justice and the prison system. The former, born in America, was raised in Japan, while the latter could be considered a unique Japanese descendant because of its powerful rehabilitative treatment that was discarded in the United States.

2. Criminal Jurisdiction: Transnational Criminal Law(8)

(1) Basic Principles of the Application of Japanese Criminal Law

According to the current Penal Code of 1907, article 1 regards territorial jurisdiction as the primary principle in the application of criminal law. Regardless of the category of crime, every State can exercise its criminal jurisdiction when a crime takes place in the territory of the State. Article 2 provides for protective jurisdiction as a pivotal notion to protect seven State's interests wherever the crime is committed(9). Article 3 lists 16 types of crime on the basis of active personality jurisdiction, provided double criminality is satisfied(10). Article 3-2 stipulates passive personality jurisdiction with 6 items as an auxiliary principle(11). Article 4-2 introduces universal jurisdiction over the crimes listed up in international conventions ratified by Japan(12). It does not recognize, however, absolute universal jurisdiction that allows trial in *absentia*. Article 5 describes the validity of a judgment rendered by another State's

（8） This area of study is generally called ''*Kokusai Keiho*'' or ''*Kokusai Keijiho*'', which is translated as ''International Criminal Law'' that is based on international treaties or conventions as well as national criminal laws as legal sources. ''Transnational Criminal Law'' refers to international aspects of national criminal law and is translated as ''*Kokuetsu Keiho*''. A similar terminological distinction between them can be found in other languages and jurisdictions, such as German and Germany (*Internationales Strafrecht /Völkerstrafrecht*), French and France (*droit pénal international /droit international penal*), and Spanish and Spain (*derecho penal internacional / derecho internacional penal*). See Robert Cryer, Håkan Friman, Darryl Robinson, Elizabeth Wilmshurst, 2014. An Introduction to International Criminal Law and Procedure, Cambridge University Press,3-4.

courts[13]. It negates the international force of *ne bis in idem* or double jeopardy. Japan can initiate a criminal investigation into a case even if another State already tried the case and passed a final judgment thereon. However, when the person has already served either the whole or part of the punishment abroad, execution of the punishment shall be mitigated or remitted.

No provision on vicarious jurisdiction can be found in Japanese criminal law and it does not apply to certain offenses committed abroad even though a fugitive is

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（9） Article2 titled ‘‘Crimes Committed outside Japan’’ stipulates as follows; Insurrection; Preparations; Plots; Accessoryship to Insurrection; Assistance to the Enemy and its Attempts and its Preparation and Plots; Counterfeiting of Currency and Uttering of Counterfeit Currency, Counterfeiting of Imperial or State Documents, Counterfeiting of Official Documents, False Entries in the Original of Notarized Deeds, Uttering of Counterfeit Official Documents, Unauthorized Creation of Electromagnetic Records; Unauthorized Creation of Payment Cards with an Electromagnetic Record; Possession of Payment Cards with an Unauthorized Electromagnetic Record; Preparation for Unauthorized Creation of Payment Cards with an Electromagnetic Record and its Attempts; Counterfeiting or Unauthorized Use of the Imperial Seal; Counterfeiting or Unauthorized Use of Official Seals; Counterfeiting or Unauthorized Use of Official Marks and so forth. See Japan Law Translation (http://www.japaneselawtranslation.go.jp/law (accessed 26.08.20)). Basically, the same shall apply hereunder as to the translation of Japanese laws.

（10） Article 3 titled ‘‘Crimes Committed by Japanese Nationals outside Japan’’ prescribes as follows. This Code shall apply to any Japanese national who commits one of the following crimes outside the territory of Japan: Arson, Counterfeiting of Private Documents, Counterfeiting or Unauthorized Use of Private Seals, Forcible Indecency; Rape; Quasi Forcible Indecency and Quasi Rape; Forcible Indecency and Rape by custodian and its Attempts, Bigamy, Homicide and its Attempts, Injury and Injury Causing Death, Capture; Confinement and Unlawful Capture or Confinement Causing Death or Injury, Kidnapping of Minors; Kidnapping for Profit; Kidnapping for Ransom; Kidnapping for Transportation out of a Country; Buying or Selling of Human Beings; Transportation of Kidnapped Persons out of a Country; Delivery of Kidnapped Persons and its Attempts, Defamation, Larceny, Fraud; Computer Fraud; Breach of Trust; Quasi Fraud; Extortion and its Attempts, Acceptance of Stolen Property and so forth.

present in Japan as a *forum deprehensionis* state. It seems that Japan should exercise its jurisdiction over the case when the fugitive cannot be punished in other jurisdictions(14) .

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(11) Article 3-2 titled 'Crimes Committed by Non-Japanese Nationals outside Japan' states as follows; This Code shall apply to any non-Japanese national who commits one of the following crimes against a Japanese national outside the territory of Japan. Forcible Indecency; Rape; Quasi Forcible Indecency and Quasi Rape; Forcible Indecency and Rape by custodian and its Attempts, Forcible Indecency Causing Death or Injury, Homicide and attempt, Injury and Injury Causing Death, Capture, Confinement, Unlawful Capture or Confinement Causing Death or Injury, Kidnapping of Minors, Kidnapping for Profit, Kidnapping for Ransom, Kidnapping for Transportation out of a Country, Buying or Selling of Human Beings, Transportation of Kidnapped Persons out of a Country, Delivery of Kidnapped Persons and its Attempts, Robbery, Constructive Robbery; Robbery through Causing Unconsciousness, Death or Injury on the Occasion of Robbery, Rape on the Scene of Robbery, Causing Death Thereby and its Attempts.

(12) Article 4-2 titled 'Crimes Committed outside Japan Governed by a Treaty' provides as follows; In addition to the provisions of Article 2 through the preceding Article, this Code shall also apply to anyone who commits outside the territory of Japan those crimes prescribed under Part II which are governed by a treaty even if committed outside the territory of Japan.

(13) Article 5 titled 'Effect of Foreign Judgements' describes as follows; Even when a final and binding decision has been rendered by a foreign judiciary against the criminal act of a person, it shall not preclude further punishment in Japan with regard to the same act; provided, however, that when the person has already served either the whole or part of the punishment abroad, execution of the punishment shall be mitigated or remitted.

(14) According to the German Criminal Code, Section 7, paragraph 2, German criminal law shall apply to other offences committed abroad if the act is a criminal offence at the place of its commission or if that place is not subject to any criminal law jurisdiction and if the offender was a foreign national at the time of the offence, was found to be staying in Germany and, although extradition legislation would permit extradition for such an offence, is not extradited because no request for extradition is made within a reasonable period, is rejected or the extradition is not feasible (*See Das Bundesministerium der Justiz und für Verbraucherschutz und das Bundesamt für Justiz* : https://www.gesetze-im-internet.de/index.html (accessed 25.08.20)) . See Christoph Safferling, 2011. Internationales Strafrecht, Springer, 32-33. A similar provision can be found in the Italian Penal Code, Section 10, paragraph 2.

(2) Extradition and Execution of Foreign Criminal Judgment

As a domestic law, the Extradition Act of 1953 takes the position that passive extradition can be granted without a special extradition treaty concluded with other States. When requested by another State, a fugitive is to be extradited by a Tokyo High Court's judgment, provided that 9 conditions are satisfied[(15)]. Naturally,

(15) Article 2 states as follows.

A fugitive shall not be extradited in any of the following circumstances; provided that this shall not apply in cases falling under items (iii), (iv), (viii), or (ix) when the extradition treaty provides otherwise.

(i) When the requested offense is a political offense.

(ii) When the extradition request is deemed to have been made with a view to trying or punishing the fugitive for a political offense which he/she has committed.

(iii) When the requested offense is not punishable by death, life imprisonment with or without work for life or for a long term of three years or more according to the laws and regulations of the requesting country.

(iv) When the act constituting the requested offense is deemed to have been committed in Japan and would not be punishable under the laws and regulations of Japan by death or imprisonment with or without work for life or for a long term of three years or more.

(v) When it is deemed that the act that constitutes the requested offense was committed in Japan or the trial for the offense was held in Japan, but the imposition or the execution of punishment on the fugitive for the requested offense would be barred under the laws and regulations of Japan.

(vi) Except in the case of a fugitive who was convicted in the requesting country for the requested offense, when there is no probable cause to suspect that the fugitive committed the act constituting the requested offense.

(vii) When a criminal prosecution based on the act constituting the requested offense is pending in a Japanese court, or when the judgment in such case has become final.

(viii) When a criminal prosecution for an offense committed by the fugitive other than the requested offense is pending in a Japanese court, or when the fugitive has been sentenced to punishment in a Japanese court, with the requested offense but, has not completed serving the sentence or the sentence is still enforceable.

(ix) When the fugitive is a Japanese national.

concluding a special extradition treaty is a better idea when requesting extradition from another State to implement a reciprocal extradition system. For the time being, however, Japan has concluded bilateral extradition treaties only with the US and Korea. It seems that diplomatic procedures are to be instituted when requesting a fugitive's extradition from other States(16).

Asian countries including Japan still have a long way to go with an advanced mechanism such as European Arrest Warrant that has been implemented in Europe.

On the other hand, as to the transfer of sentenced persons, which means the surrender after a final judgment handed down by the court, Act on the Transnational Transfer of Sentenced Persons 2002 regards the existence of bi/multilateral agreement with the State concerned as a pre-requisite to implementing the transfer of sentenced persons between States. Japan thus has ratified the Council of Europe's Convention on the Transfer of Sentenced Persons in 2003 as a multilateral treaty, then 3 bilateral treaties on the transfer of sentenced persons with Thailand in 2010, with Brazil and Iran in 2016. According to the Act on the Transnational Transfer of Sentenced Persons of 2002, the Tokyo district court has the jurisdiction over the inbound transfer, which means the execution of the foreign criminal judgment in Japan, whereas the Minister of Justice has the authority of deciding the implementation of outbound transfer, with the consent of the person concerned in both cases.

(3) Mutual Legal Assistance

In order to try a transnational case, another country needs not just the surrender of fugitive but the evidence concerning the case for establishing a crime. As

(16) Considering the existence of capital punishment, it seems that the "*Soering* Case" would not occur in Japan and there is no provision on a rejection of extradition request as the Italian Criminal Procedure Code, Section 698 provides that Italy, in principle, shall refuse extradition to the requesting country in case of the death penalty.

for the position thereof in Japan, Act on International Assistance in Investigation and Other Related Matters of 1980 (last amendment adopted in 2006) also does not regard the conclusion of bi/multilateral treaty as a pre-requisite, consistent with the Extradition Act of 1953, while a special treaty is required to transfer the sentenced person as a witness to another country following the position adopted by the Act on the Transnational Transfer of Sentenced Persons of 2002. This Act of 1980 is provided for active judicial assistance as a requested country. Any types of offence can be an object of assistance. But Article 2 of the Act of 1980 stipulates three restrictions on assistance as follows. <Assistance shall not be provided in any of the following circumstances: (i)When the offense for which assistance is requested is a political offense, or when the request for assistance is deemed to have been made with a view to investigating a political offense; (ii)Unless otherwise provided by a treaty, when the act constituting the offense for which assistance is requested would not constitute a crime under laws and regulations of Japan were it to be committed in Japan; (iii)　With respect to a request for examination of a witness or provision of articles of evidence, unless otherwise provided by a treaty, when the requesting country does not clearly demonstrate in writing that the evidence is essential to the investigation.> Nevertheless, the principle of *ne bis in idem* is not necessarily required.

This Act of 1980 declares the rules of specialty and the Minister of Justice shall determine conditions that the requesting country shall observe for the use or return of the evidence if necessary (Article 14(5)). Also, article 18 provides for The National Public Safety Commission to take some measures necessary for cooperating with the International Criminal Police Organization. Regarding the transfer of a sentenced inmate for testimony, the political offence is exempt from assistance and the condition of double criminality is required in addition to pre-requisite of a treaty concluded.

Challenges remain. A possible contradiction between the law of requested State (*locus regit actum*) and the law of requesting State could arise especially in the field of evidence rules. The law of requesting State would be applied in the requested State through the conclusion of a treaty between the States concerned to deal with the admissibility of hearsay evidence, the necessity of corroborating evidence in confession, and so forth. Also, it seems that a clear provision of safe-conduct should be stipulated in the Act of 1980.

3. Substantive Criminal Law(17)

(1) Legality Principle and Constituent Elements of Crime

Jurisprudence and legal theory in substantive criminal law in Japan heavily rely on German criminal law model, seemingly like in Italy, Spain, Brazil, Korea, and Taiwan. It divides criminal law theory into three fields of analyzing in detail. That is to say, Constituent Elements, Illegality, and Culpability (or Responsibility). A crime will be established when the three conditions are satisfied in full. The Constituent Elements are the first gateway to move on to the second notion called 'Illegality' and are generally regarded as types of illegal conduct. It admits the sphere of illegal conduct that are not punished and could be the objects that the intent is targeting. Nowadays the notion of Constituent Elements generally include subjective elements such as intent, purpose, or negligence, different to the classical or original conception of "*Tatbestand*" in German criminal law theory.

First, the conduct must fall under a concrete provision stipulated in criminal law. This is the well-known concept called 'Legality Principle' or ' *nullum crimen*

(17) Apart from *Shigemitsu Dando*, The Criminal Law of Japan: The General Part, 1997. Fred B. Rothman.co., very few sources or references of Japan's substantive criminal law are available in English. Those available in German, see *i.e., Keiichi Yamanaka*,2018. *Einführung in das japanische Strafrecht*, Dunker & Humblot.

sine lege'. Article 31 of The Constitution of Japan asserts <No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.> Nobody has any objections that criminal responsibility can only be based on a pre-existing prohibition of conduct that is understood to have criminal consequences. However, the notion of conduct is not always easy to interpret. According to a widely accepted theory, criminal conduct should contain not just a physical but a societal meaning. Although the idea of omission –if it has a societal meaning- is included in that of conduct, no one is punished for merely thinking of a crime. The principle of ''*cogitationis poenam nemo patitur*'' shall apply in Japan's criminal law naturally. In respect to a well-known case called ''SWAT(Special Weapons And Tactics) *Jiken*''[(18)], some argue whether the conduct *per se* existed at that time. Also, a trend towards diluting the notion of the commission of a crime could be pointed out especially in the case of complicity.

Secondly, the criminal consequences must take place, apart from attempted crime. A crime of murder (Article 199 of the Penal Code of 1907) could constitute only after someone is killed, while an attempted murder could be established if the person is not dead after the commission. Lastly, therefore, causation (conduct-and-consequence relationship) or causal link is required to bridge the gap between the two parts. The Supreme Court takes the position in principle that factual causation suffices to establish criminal causation, whereas most academics agree to the opinion

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(18)　This case was rendered by the Supreme Court on 01.05,2003. The accused had the bodyguard members called a SWAT who guards the accused, carrying a pistol and an actual package. The accused who was the head of a *Boryokudan* made it usual to do and guard him. Even if the direct indication was not passed, the accused implicitly accepted and approved that as a natural thing, and the SWAT also understood the thing, hence, the accused was making the SWAT possess the pistols. Therefore, co-principals through conspiracy was formed for possession of firearms and swords kinds. See *N.Yoshinaka*, 1999. New Legislation against "Organizational Crime" in Japan, CAHIERS DE DEFENSE SOCIALE, 45-46.

that some sorts of legal causation as well are necessary for establishing it. According to a common view, criminal causation should be established if it is considered to be general and adequate by ordinary people's experience that the consequence generally occurs from the conduct. This view is called ''Adequate Causation Theory''(19). However, a decision was rendered by the Supreme Court on 20. 11.1990 that has become well known as ''The Osaka South Harbor Case'' caused controversy among criminal law academics. In this case, the accused does the victim a serious injury to his brain causing death but later someone else also does the victim, who was taken by the accused to a company's materials place at Osaka South Harbor, a serious injury to his brain after the accused's commission. Without the second conduct committed by someone else, the victim must have been killed by the accused's conduct at a later time. The second conduct could just hasten the victim's death and the accused was found guilty of injury causing death. Traditional Adequate Causation Theory could not deal with such a case like the Osaka South Harbor where unexpected circumstances interfere with the causation because the significance of interference is not to be examined thoroughly in the stream of causation. The foreseeability is required in the Adequate Causation Theory after all. Hence, a revised Adequate Causation Theory has emerged and taken some of the contribution degrees into account, ranging from the contribution degree of the conduct causing the consequences (high or low risk of the conduct), the degree of the unusualness of the interfering circumstances to the contribution degree of the interfering circumstances

(19) In detail, this theory can be divided into three sub-theories. The subjective theory is based on the circumstances the perp recognized and could foresee at the commission of the conduct, whereas the objective theory is based on all the circumstances that existed at the commission of the conduct as well as the circumstances that took place after the commission of the conduct and ordinary people could foresee thereof, from the viewpoint of a judge. The compromise theory is based on the circumstances ordinary people could recognize and foresee as well as the circumstances the perp recognized and foresaw, from the viewpoint of the perp.

causing the consequences. In recent years, however, quite a few academics tend to shift their opinions from the ‘‘Adequate Causation Theory’’ to what we call ‘‘Objective Attribution Theory’’ under the influence of the German well-known theory *i.e. “Lehre von der objectiven Zurechnung”*. Although this theory has a variety of interpretations and is not easy to understand the complete picture, it generally disposes of two relations, what we call risk-created relation, which is the risk of the conduct at the time of commission and risk-materialized relation, which is whether the risk created was actualized as the consequences included in the sphere of the protective purposes of the norm.

(2) Illegality and Justification

Illegality manifests the worthlessness of the conduct committed or the consequences that occurred. As for the essence of illegality, some academics place great emphasis on the conduct, whereas others attach special importance to the consequences. Many scholars assert the latter in Japan unlike in Germany. This distinction is related to issues, for example, of whether the conduct without consequences or with justification should be punished. Even though the accused's conduct comes under a punishable clause prescribed in criminal law, his conduct can be justified for some reason. Japan's Penal Code of 1907 provides three typical situations of unpunishable conduct as follows.

Article 35 states that conduct performed following laws and regulations or in the pursuit of lawful business is not punishable. In general, medical practice is normally justified by its cure purposes, though its maltreatment with negligence could be punished. A sex-change operation has been justified as a cure of gender identity disorder (transsexualism) since 1998, though it had been illegal under the former precedent (The Tokyo High Court, 11.11.1970).

Article 36　(1)　stipulates conduct unavoidably performed to protect the

rights of oneself or any other person against imminent and unlawful infringement is not punishable. Article 37 (1) lays down that conduct unavoidably performed to avert a present danger to the life, body, liberty, or property of oneself or any other person is not punishable only when the harm produced by such conduct does not exceed the harm to be averted; provided, however, that an act causing excessive harm may lead to the punishment being reduced or may exculpate the offender in light of the circumstances.

Particularly there are some striking discussions about Articles 36, which refers to self-defense. Many controversies arise for parts of the self-defense clause, which are often discussed in the Lay Judge Trial (*Saiban-In Saiban*) introduced in 2009. According to precedents rendered by the Supreme Court of Japan, it seems that the requisites of self-defense can be divided into three levels. The first is the preceding circumstances before the infringement takes place, the second is the conditions necessary for circumstances at the time of self-defense, and the third is the conditions concerning self-defense conduct *per se*.

In preceding circumstances, there are at least two types. One is when an imminent and unlawful infringement was predicted by the defender, the other is when it was under provocation. Regarding a case that the accused had predicted an attack of an opponent group and set up a barricade and intercepted the attack, the accused was found guilty of joint assault because the self-defense was not justified in case that the accused did not avoid the predicted infringement and rather tried to infringe on another under an aggressive damaging intention, taking this opportunity to do an inflicting act. This situation did not suffice the condition of imminence (The Supreme Court, 21.07.1977)[(20)].

Another case is as to provocation. The accused suddenly punched a victim in the course of an argument about the way of taking out the garbage (the first attack). The victim chased the accused by bicycle and beat him from behind. The accused

defended himself with a special truncheon and thereby injured the victim (the second attack). The accused was found guilty of injury because he attacked the victim before the victim's attack, which should be regarded as a series of united event that took place just after the accused's attack and, besides, caused by it. The accused provoked the infringement by his illegal act that could not be regarded as an act under the circumstances where a certain counterattack was legitimate (The Supreme Court, 20.05.2008). According to this judgment, the provocative act should be not necessarily punishable but be illegal and the provocative act directly and imputably unleashed a victim's counterattack to which it should be committed in close vicinity of place and time, and the accused subjectively should have the predictability of provocation that his act provokes a victim's counterattack.

An interesting judgment on the availability of public and legitimate protection was rendered by the Supreme Court on 26.04.2017, ruling that self-defense should be negated in case that the accused had an aggressive damaging intention against the victim and enough time to ask public and legitimate help to address the predictable attack[(21)]. Eventually, the accused was not under the circumstances of being suffered from imminent and unlawful infringement. As for necessity, some academics develop interesting discussions about particular issues concerning DV-caused murder, duress

(20) Many academics question the predictability of this judgment. Is harmful aggressive intent *per se* irrelevant to the foreseeability of the offence? Does the foreseeability of the infringement only affect the preparation and attitudes of the defense? Or, with excessive self-defense, why does the accused lose legal protection at the same time that he or she predicted an offence and had an aggressive prejudicial intent? Perhaps the predictability of the offense is related to the necessity and relativity of the act of self-defense. When sufficiently predicting the timing and degree of an adversary's offence, the injured person may choose a less restrictive alternative to defend not only himself but also the intruder. This may lead to a correct assessment of the relativity of self-defense and, consequently, the sphere of excessive self-defense will be limited, compared to the case without prediction of the offense.

by threats, traffic accidents killed by autonomous cars, and so forth. In principle, legitimate self-defense deals with the relationship between justice and injustice, whereas necessity addresses the one between justice and justice. The former therefore suffice to balance the defense act with the infringement committed within the sphere of the corresponding degree, while the latter requires strict proportionality between averting act and present danger.

The consent of the victim could justify the conduct fulfilling the constituent elements of a crime as an extrajudicial justification, apart from the case prescribed in

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(21) In detail, the accused had become angry with an acquaintance because he had been given a pretext that he did not know, for example, by threatening him in a loud voice, shouting and hitting him several times with a fire extinguisher at the front door of his apartment during an absence. When the accused was at home, the acquaintance called to tell the accused to come down because he had come to the front of the apartment. The accused then wrapped a towel around the kitchen knife slipped it behind his waist to the right of his pants and went down in front of the apartment. The acquaintance who found the accused rushed and approached the accused with a hammer. The accused approached the acquaintance without acting in an intimidating manner, for example by showing the kitchen knife he had brought. Defending himself against an attack by the acquaintance with a hammer, the accused stabbed the acquaintance heavily on the left side of his chest with the intention of killing him. The Supreme Court stated that when the accused predicted the offense and repelled the attack with a will to attack, this situation is not sufficient as a condition of imminence because article 36, paragraph 1, exceptionally admits the self-defensive behavior of a citizen when he could not expect a legitimate request for protection from the public body in an emergency.

Some academics agree with the view that, despite the need to protect the legal interest that everyone can go (or stay) where they wish, the person is obliged to avoid the offence in a case where the obligation does not impose a particular burden on him or her, and can easily do so, except in cases where staying in the place must be considered justified, such as staying at home. It is argued that a defensive act involving a risk of endangering someone's life should only be allowed if there is no alternative to avoid the offense they are facing. In this case, the person is obliged to evacuate the place where he or she wants to stay, even if that place is his or her home or place of work. However, this theory is objected to, following a traditional idea that justice should not be done in cases of injustice, and it remains controversial.

Article 202 about homicide with consent[22].

(3) Culpability

Culpability is the last condition to accomplish the accused's criminal liability. Fulfilling Constituent Elements and Illegality does not suffice to be classed as criminal. The *nulla poena sine culpa* principle finalizes the establishment of a crime.

This notion of Culpability generally consists of intent or negligence, awareness of illegality, criminal competency or mental capacity, and reasonable expectation. Article 38 of the Penal Code of 1907 is the provision of intent and error. Paragraph (1) prescribes <An act performed without the intent to commit a crime is not punishable; provided, however, that the same shall not apply in cases where otherwise specially provided for by law.> It implies that negligent crime shall be regarded as an exceptional type of crime.

The degree of awareness of the fact ranges from definite intent, indefinite intent, willful negligence to unaware of negligence. Sometimes it is difficult to distinguish indefinite intent with willful negligence. In general, the ''even if it takes place, I don't care about it.'' test applies in practice. When ''you didn't care about the criminal consequences that occurred'', it means you had a definite intent of committing the crime. Conditional intent and general intent are regarded as the intent of the crime. A definite will of the commission of crime suffices to complete the intent of killing, even if it is indefinite because the killing depends on an accidental event (The Supreme Court, 06.03.1984). Putting poison into a bowl to intend to kill a person suffices to complete the intent of killing he who drinks it and the number of

(22) Article 202 titled Inducing or Aiding Suicide; Homicide with Consent states that a person who induces or aids another to commit suicide, or kills another at the other's request or with other's consent, shall be punished by imprisonment or imprisonment without work for not less than 6 months but not more than 7 years.

murders in proportion to that of drinkers is to be established (The Supreme Court, 09.11.1917). The mistake of fact rejects the intent of a crime, whereas the mistake of law does not reject it (Article 38(3)). Negligence requires the possibility and duty of preventing the consequences before the occurrence of the crime as well as the possibility and duty of foreseeing the consequences (The Supreme Court, 25.05.1967). Consequently, people could naturally foresee the fact that the reckless driving in question would cause any accidents resulting in an injury or a death of someone and hence the crime of ‘‘Causing Death or Injury through Negligence in the Pursuit of Social Activities (Article 211)’’ is to be established, even though the accused did not recognize the victim who was confined in the boot (The Supreme Court, 14.03.1989). Whether the sphere of the foreseeability should be concrete, abstract, or just the level of fear/uneasiness is still a moot question. ‘‘Reliance Principle’’ has been repeatedly confirmed by the Supreme Court. People can rely on other peoples’ law-abiding conduct and are not obliged to foresee the fact there would be someone who dares to breach the law in question.

Article 38, paragraph (2) states< When a person who commits a crime is not, at the time of its commission, aware of the facts constituting a greater crime, the person shall not be punished for the greater crime> because the accused did not intend to commit a greater crime, which means there was no intent to do anything in the excessive area. Paragraph (3) stipulates < Lacking knowledge of law shall not be deemed lacking the intention to commit a crime; provided, however, that punishment may be reduced in light of the circumstances.> Awareness of illegality is not required to establish a crime without regard to the types of crime, which is whether a statutory offense or a natural crime (The Supreme Court, 28.11.1950). Thus, even if the accused does not know the punishable law, the fact could not be an excuse.

Article 39 titled Insanity and Diminished Capacity, paragraph (1) states that the conduct of insanity is not punishable, and paragraph (2) stipulates that the conduct

of diminished capacity shall lead to the punishment being reduced. The insanity is the state where a person lacks the mental capacity of a judgment of right or wrong or does conduct capacity in compliance with its judgment due to a mental disorder, while diminished capacity is the state where the mental disorder is not so serious that those capacities remain but considerably decline (The Supreme Court, 03.12.1931). Deciding criminal responsibility is a mixed way of examination biologically and psychologically. It should be examined how the mental disorder affected psychological elements (the decision-making) of the actor, which consists of recognition capacity and control capacity. In the trial, no one can evaluate that the accused lacked control capacity due to the mental disorder or did not lack it but did not dare to control his conduct despite his enough capacity of control. Hence some argue recognition capacity suffices to assume criminal responsibility. Others criticize it is a throwback to the 'McNaughton Rule' that lacks an aspect of control and hence the control ability is required and regarded as a secondary condition necessary for admitting the accused's responsibility. According to a precedent, whether the accused's mental situation falls within insanity or diminished capacity is a legal assessment that is an issue entrusted chiefly to the court, and biological and psychological elements which are based thereon are also to be entrusted ultimately to the court (The Supreme Court,13.09.1983). Notwithstanding, another precedent has given a warning as follows. Biological elements (the existence or nonexistence of mental disorder and the degree thereof) based on the examination of criminal responsibility and the existence or nonexistence and the degree thereof affected to the psychological elements by the biological elements are the duty of clinical psychiatry. The court should decide with every regard to the opinion given as admissible evidence, except for recognizing reasonable circumstances inadmissible, for instance, when a doubt arises about the fairness or the ability of the expert witness or some problems exist in prior conditions of the expert opinion (The Supreme Court,

25.04.2008).

4. Procedural Criminal Law

(1) Investigation and Pre-trial

Despite a drastic amendment adopted after the Second World War under the instruction of GHQ, the system of the criminal investigation in Japan remains rather inquisitorial than adversarial. Law enforcement agencies have the pivotal power to take the initiative in investigating a criminal case. The police have the primary investigative power in most cases, while the public prosecutors preserve the primary investigative power in special cases such as economic or corporate crime, political crime, and other crimes that need special legal knowledge to investigate the case. The police or the public prosecutors are the leading actors or a subject of investigation. In this system, the accused is regarded as an object of investigation, even though due process rights are guaranteed by the Constitution of Japan[23] and the Code of Criminal Procedure of 1948. The voluntary-based investigation shall be implemented in principle and compulsory measures can be initiated only by special provisions stipulated in the CCP (Article 197).

Article 198, paragraph 1 of the CCP stipulates that < A public prosecutor, public prosecutor's assistant officer or judicial police official may ask any suspect to appear in their offices and interrogate him/her if it is necessary for the investigation of a crime; provided, however, that the suspect may, except in cases where he/she is under arrest or under detention, refuse to appear or after he/she has appeared, may withdraw at any time.> , and paragraph 2 declares < In the case of the interrogation set forth in the preceding paragraph, the suspect must be notified in advance that said person is not required to make a statement against said person's will.>. As for the former paragraph, the police and the public prosecutors agree to an opinion that the suspect cannot refuse to appear in their offices and be interrogated where he/she is

under arrest or under detention, whereas most academics and defense lawyers interpret this clause as no obligation of being interrogated. This has something to do with an issue of defense lawyer's presence during the interrogation, which has no statutory footing but has been insisted on introducing it by the Japan Federation of Bar Association and a number of academics who specialize the criminal procedure

(23) The constitutional rights are listed as follows. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law (Article 31).No person shall be denied the right of access to the courts (Article 32). No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed (Article 33). No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel (Article 34). The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33. Each search or seizure shall be made upon separate warrant issued by a competent judicial officer. (Article 35). The infliction of torture by any public officer and cruel punishments are absolutely forbidden (Article 36). In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State (Article 37). No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. No person shall be convicted or punished in cases where the only proof against him is his own confession (Article 38). No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy (Article 39). Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law (Article 40).

law. Overseas media criticize the situation in Japan where the suspect could be detained and interrogated for 23 days without the presence of a defense lawyer, while the arrest and the detention warrant shall be issued by a warrant judge and the suspect can access to his defense lawyer at any time with the exception of interrogation *per se* (Cf. Article 34 of CJ). Consistent with Article 33 of the Constitution of Japan, the warrant-issued principle is established and the warrant judge shall confirm the legitimacy of compulsory measures including arrest and detention(24). However, a system allowing for a defense lawyer's presence during interrogations should be introduced into the CCP to enhance the protection of the suspect's due process rights declared in Article 34 of the Constitution of Japan.

In principle, the police shall refer the case to the public prosecutors after the investigation is finalized, though it is not necessary to do so when it is a minor offense that public prosecutors designate so in advance. (Article 246/ Article198 of The Criminal Investigation Rules).

(2) Prosecution and Trial

Apart from some exceptions, only the public prosecutors can excise the prosecutorial power in criminal cases(25). They have a great discretionary power whether or not the case should be indicted, informed, or suspended(26). Article 248 states that< Where prosecution is deemed unnecessary owing to the character, age,

(24) According to the CCP, there are arrest warrant (Art. 199), detention warrant (Art.207.4), search and seizure warrant (Art.218.1), seizure ordering records warrant(Art.218.1), inspection warrant(Art.218.1), expert evidence warrant(Art.225.1), physical examination warrant(Art.218.1).

(25) Unlike in European countries, the current system of criminal justice in Japan has repealed the private prosecution system since the enactment of the current CCP.

(26) See David T. Johnson, 2001. The Japanese Way of Justice: Prosecuting Crime in Japan, Oxford University Press.

environment, the gravity of the offense, circumstances or situation after the offense, the prosecution need not be instituted.> Sometimes the public prosecutors are referred to as a representative of the public interests and are not necessarily regarded as an opponent of the accused. However, the criminal trial is obviously considered to be an adversarial system. The *onus probanbi* or the burden of proof continually lies in the prosecution during criminal proceedings. Thus the principle of *in dubio pro reo* applies if the prosecution fails to prove the accused's guilt beyond a reasonable doubt and the accused should be found not guilty and be acquitted. Some academics point out the public prosecutors' discretion is too powerful and influential to find not guilty in practice. In fact, statistics reveal that the rate of judgment found guilty reaches over 99.9% every year(27). Dr. *Ryuichi Hirano*, a former professor at the University of Tokyo, diagnosed the situation as 'desperate'. Thus, in order to activate the public trial and regain its vigor, the lay judge system was incorporated into the criminal justice system in 2009(28). It requires a newly introduced system called 'Pretrial Arrangement Proceeding', as a pre-requisite. Article 316-2(1) stipulates that <When the court deems it necessary to conduct productive proceedings of a trial consecutively, systematically and speedily, the court may, after hearing the opinions of the public prosecutor and the accused or his/her counsel and prior to the first trial date, order on a ruling that the case be subject to a pretrial arrangement proceeding as trial preparation for the arrangement of the issues and evidence of the case> to facilitate fair and speedy trial requested by the Constitution of Japan (Article 37). However, the lay judge system differs from the jury system found in common law jurisdictions. There is no clear distinction between fact-finding proceedings and

(27)　This figure has not changed despite the implementation of the lay judge system.

(28)　See George Mousourakis, 2011. Legality, the Trial Process and the Jury: A Common Lawyer's Perspective on the New Lay Assessor System in Japan, The Journal of law and politics 43(3・4), 95-125.

sentencing procedures, which means no difference of idea between conviction and sentence in the trial. Rather, it is similar to the French jury system of a single-stage procedure where both professional and lay judges are involved with not just finding guilty or not guilty of the accused but deciding the assessment of culpability and inflicting the penalty on the accused.

The accused has the right to remain silent all the time. <The presiding judge must, after the charging sheet has been read out, notify the accused that said accused may remain silent at all times or may refuse to answer particular questions, and other necessary particulars provided for in the Rules of Court to protect the rights of the accused, and must afford the accused and the defense counsel an opportunity to make a statement concerning the case (Article. 291,4).> and thus <the accused may remain silent at all times or may refuse to answer particular questions (Article. 311,1)>.

Some rules of evidence are introduced into the current CCP, ranging from judge's free discretion over the probative value of evidence (Art.318), the inadmissibility of involuntary confession (Art.319,1), the necessity of other evidence that reinforces the confession as a piece of only incriminating evidence (Art.319,2), the exclusion of hearsay/documentary evidence (Art.320,1), hearsay exceptions – consent, a circumstantial guarantee of trustworthiness, reasonable necessity (Art.321-328), to the exclusion of illegally obtained evidence.

(3) Recent Trends

The Law partly revising the Code of Criminal Procedure of 1948 was passed and promulgated in 2016. It seeks the construction of a new criminal justice system responding to the demands of the day. On one hand, a breakaway from relying upon the written statements of examination is contemplated to challenge the criticism grown not just among Japanese academics but foreign observers. Utilizing written statements obtained in the investigation has been widely accepted in the Japanese

public trials, notwithstanding the original deponent appears in the courtroom as a witness. On the other hand, law enforcement agencies have come to need new types of measures, corresponding to the emergence of new types of skillful crime. In this context, seven points of view will be envisaged. First, the voice and video recording of interrogation have been introduced. The whole process of interrogation shall be the object thereof in case of interrogating the suspect physically confined. Secondly, the agreement system, what we call ‘‘Japanese style of plea bargaining’’, has been incorporated with reference to the US system. The public prosecutor agrees with the suspect/ the accused on the condition of defense lawyer’s consent that the public prosecutor would not institute a prosecution or demand a specified penalty if the suspect/ the accused deposes to make clear about other person’s criminal fact. Thirdly, the ambit of interception has been expanded, adding murder, abduction, kidnapping, fraud, and so forth. Interception without an observer could be enforced by using the device that the record cannot be changed through the good use of cipher technics. Fourthly, the cases applied to the system of a state-hired lawyer for the suspect have been expanded to all of the cases the suspect is detained. In addition, when judicial police officers inform the suspect/the accused detained of the right to counsel, they are obliged to give him instructions on the way of requesting. Fifthly, the system of evidence disclosure has been enhanced. The public prosecutor is obliged to deliver the list of evidence in his charge when the accused requests in order to utilize the current system of evidence disclosure. Sixthly, some measures to protect crime victims and witnesses have been ushered in the courtroom by using a video-linked system. Lastly, new types of investigation have emerged in recent years. In 2017, the Supreme Court finalized the debate about the nature of the GPS-utilized investigation, which should be regarded as statutory-based compulsory measures. It does not belong to the notion of voluntary-based measures, though the special warrant suitable for this measure has not yet been prescribed in the CCP.

5. Juvenile Justice

(1) History and Basic Principles

It is said that the modern juvenile justice system has stemmed from the juvenile court system as special jurisdiction that was established in Chicago, the US, in 1899. A protective idea rather than a punitive one in juvenile procedure and treatment has expanded around the world since then. Juvenile offending is prone to be spawned from a bad or wretched environment revolving around the juvenile, rather than from his obstinate or problematic character. Therefore, not punishment but special treatment should be offered to juveniles who need care and protection against the harmful influence that prevails in the adult-centered society. Also, if juveniles are in lack of proper care and protection, the State should provide them with adequate protection *in loco parentis* or in the place of real parents. In fact, an old British idea of '*parens patriae*' was referred in a US judgment in 1838, where it is recognized that juveniles had to be given protection from harmful conduct or influence and that it was understood as a State's role or obligation. In this context, the conception of ''juvenile delinquency'' was born in the US. This idea is different from that of crime committed by adults and has also become widespread around the world. In Japan, under the influence of the US idea, the juvenile hearing court was introduced into the criminal justice system by virtue of the Juvenile Law of 1922. This law juxtaposed the juvenile hearing courts as an administrative body with the criminal courts as a judicial organization and the public prosecutors had not only the primary but definitive discretion over juvenile cases about whether or not the juvenile concerned should be protected or punished. Thus the former juvenile justice system can be regarded as a criminal law for juveniles. After the Second World War, the GHQ strongly recommended that the Juvenile Law of 1922 should be amended because the juvenile hearing courts were administrative bodies that were not suitable for imposing

invasive measures on juveniles from the viewpoint of human rights protection. In correspondence to the principle of the separation of power, the juvenile courts should be an independent judicial body like an umpire and focus on the judicial diagnosis of the juvenile in trouble[(29)].

(2) Outline of the Juvenile Proceedings

The Juvenile Law of 1949 set up brand-new the Family Court as a judicial body that has jurisdiction over both family and juvenile cases, where juvenile hearing division belongs to the latter. The separation of power has been actualized between the judicial family court and administrative juvenile institutions. Both functions had been converged in the former juvenile court, which was criticized by the GHQ. According to the current system, the juvenile court is regarded as neutral diagnostic bodies that do not get involved in the treatment of juveniles *per se*. Also, a protection-centered idea similar to the welfare-centered one has been enhanced and thus the primary power of deciding juvenile's treatment has been assigned to the Family Court. The public prosecutors lost their authority in instituting juvenile proceedings because the juvenile hearing division at the Family Court has wider jurisdiction over not just juvenile offenders over the age of 13 who could constitute a crime, but also juveniles being a conflict with law under the age of 14, and juvenile pre-offenders – who have the risk of offending in the future (Article 3). The Family Court has exclusive jurisdiction over the latter two cases, which never constitute a criminally punishable offense. Therefore, the Family Court will impose protective measures - (1) supervision, (2) child welfare institutions, (3) juvenile reformatory (Article 24) - on juveniles, or transfer them to welfare institutions as a welfare treatment. However, as

(29) In the Japanese context, see *N.Yoshinaka*, 1997. Historical Analysis of the Juvenile Justice System in Japan, The Hiroshima Law Journal, Volume 20, Issue 3, 302-292.

to juvenile offender cases, the police initiate criminal investigation like an adult criminal case, and shall refer the case to the public prosecutors in case that the crime concerned is punishable by imprisonment without labor or more, but shall refer the case to the Family Court directly in a case that the crime concerned is punishable by fine or lesser (Articles 41,42). The public prosecutors in the former cases shall mandatory refer the case to the Family Court, which will decide appropriate measures, ranging from acquittal, protective measures, to referral to the public prosecutors who do not preserve the discretional power of suspending prosecution (Article 45, Item 5). In this case, criminal proceedings against the juvenile offender will be instituted normally in the district court, though the penalties prescribed in the Penal Code shall be mitigated from the penalties applicable to adults and juveniles under the age of 18 at the time of the commission of the crime shall not be executed by death (Articles 51,52). As an institutional measure, the juveniles found guilty shall be incarcerated in special facilities for juvenile offenders. There are six juvenile prisons across the country.

(3) Recent Changes[30]

In concert with a global tendency in legislative reform getting tough on youth crime from the late 1990s onward, the early years of the twenty-first century in Japan have witnessed four-time amendments (in the years 2000, 2007, 2008, and 2014) to the Juvenile Law of 1949. In Japan, as well as in most jurisdictions, public outcry over youth violence has led to the emphasis on new laws and policies on the protection of society and on a more punitive approach. The well-known ‘‘Youth A” case seems to have triggered off the amendment 2000 that enables the Family Court

(30) See *N.Yoshinaka*, 2010. Recent Changes in Youth Justice in Japan, The Hiroshima Law Journal, Vol.33 No.4,27-32.

to transfer youths under 16 years of age to the public prosecutor who shall indict them for their criminal behavior. Article 41 of the Penal Code stipulates that a child below the age of 14 cannot be criminally liable and therefore cannot be convicted of an offense. In respect of the amendment 2007, the *Shun Tanemoto* case and *Satomi Mitarai* case undoubtedly made a great impact on the revision that includes some provisions authorizing not just the police power to investigate child cases infringing the penal laws under 14 years of age, but also the possibility of incarceration in the reformatory even if he or she is under the minimum age of criminal responsibility. The amendment in 2008 was made from an increasing recognition of the need for victim involvement in criminal proceedings especially after the enactment of the Basic Act on Crime Victims of 2004, which has expanded the rights of crime victims in all aspects. In addition, the former Juvenile Training School Law was abrogated, and instead, new safeguards were integrated into the Juvenile Training School Act and the Juvenile Classification Home Act in 2014.

Article 3 of the Public Service Election Law, amended in 2015, grants the right to suffrage to Japanese citizens over the age of 17. Following this amendment, Article 4 of the Civil Code of 1896 was also revised and the age of majority was changed from 20 to 18[(31)]. As of 2017, the Legislative Council of the Ministry of Justice in charge of juvenile law is examining the possibility of lowering the age of majority from 20 to 18 accordingly. For the time being, it seems that a compromise solution between advantages and disadvantages is being considered. The age of adulthood would not change, but juveniles aged 18 and 19 would in principle be referred to the public prosecutors. Moreover, article 61 on the prohibition of publication in articles, etc. would not be applied to this category of juveniles. The latter, like adults, would be identified in the publication based on their name, age, profession, residence,

（31） This provision will come into force from the 1st of April, 2022.

appearance, etc., and would be subject to the same rules as adults.

6. Correction

(1) Institutional Treatment

The 1907 Penal Code provides that a convicted person shall be punished with the death penalty, imprisonment with labor, imprisonment without labor, fine, penal detention, minor fine, and confiscation (Article 9). In reality, the penalty of a fine is higher than other penalties and is considered important, particularly in dealing not only with traffic violations but also with corporate crime, although only a small death penalty is imposed each year and is considered an exception, even if it is for murder. To prevent recidivism, however, the importance of institutional treatment has attracted attention in recent years. In this regard, the Act on Penal Detention Facilities and The Treatment of Detainees and Prisoners of 2007 prescribes three treatment contents for prisoners. Correctional treatment, namely, consists of work, rehabilitation orientation, and educational orientation (Articles 92,103,104). Production work such as sewing and metal work accounts for more than 80 percent of all prison work. In each prison, a variety of work is assigned to inmates, taking into account the character of the local community. It is true that prison work has the nature of occupational therapy when it is a sense of accomplishment, but it should in principle retain the essence of punishment. In addition, the current 2007 law provides for rehabilitation and educational counseling to facilitate the rehabilitation and resocialization of inmates. Regarding rehabilitation counseling, special programs are initiated and offered to prisoners based on the problems they face. These programs deal with drug addiction, sexual crime, organized crime, violent crime, etc. Certain types of educational programs are also offered, particularly to prisoners who have not received compulsory education in schools. In practice as well as in theory, the idea of rehabilitation is always adopted and implemented to prevent recidivism and thus

reduce the overall crime rate.

It is said that the Ministry of Justice is considering the possibility of integrating imprisonment with labor and imprisonment without labor into a new prison sentence in order to provide a variety of treatment in a flexible manner for the needs of prisoners.

(2) Community-Based Treatment

The notion of community-based treatment in Japan can be divided into three categories, namely, probation, parole, and urgent aftercare for discharged offenders. The Offender Rehabilitation Act of 2007, Article 48, stipulates < The implementation of probation for the following persons shall be governed by the provision of this Chapter:

(i) Persons under the protective measures specified in item (i) of paragraph (1) of Article 24 of the Juvenile Act ;

(ii) Persons for whom release on parole from the juvenile training school is permitted and who are under probation according to the provision of Article 40, as applied mutatis mutandis according to Article 42

(iii) Persons for whom release on parole is permitted and who are under probation according to the provision of Article 40

(iv) Persons under probation according to the provision of paragraph (1) of Article 25-2 of the Penal Code.>

Apart from juvenile probation and urgent aftercare of discharged offenders, community-based treatment is normally granted in conjunction with institutional treatment. As for Item (iv) , article 25-2 (1) states that < In a case prescribed for in paragraph (1) of Article 25, the subject person may be placed under probation through the period of suspended execution of the sentence; and in a case prescribed for in paragraph (2) of Article 25, the subject person shall be placed under probation

through the period of suspended execution of the sentence. > Volunteer probation officers and probation officers are involved in general treatment in the community setting, while rehabilitation coordinators are involved in mental health supervision and other responsibilities under the Medical Care and Treatment of Persons Causing Serious Mental Disorder Act of 2005. It is said that offenders should be treated in a community rather than an institutional setting as they must return to the community in any case where independent living is necessary to deal with some of the temptations and problems they face in their daily lives, except in the case of capital punishment.

7. Concluding Remarks: Challenges Remained

There are several problems in all areas of the criminal justice system in Japan. Regarding crime prevention, the governance power of traditional communities is declining due to the trend of a rapidly aging population and a declining birth rate. To maintain the viability of communities, the restoration of traditional community power and the introduction of other types of mechanisms, such as the NPO, must be contrasted with the status quo of the community in question.

In the field of international criminal law, bilateral agreements on extradition and transfer of sentenced persons should continue to be concluded with other countries to realize the idea of internationalization of criminal law.

In respect to national criminal law, the current penal code of 1907 is so old that obsolete articles should be removed and completely amended. For example, abortion is still prohibited and punished under Articles 212 to 216, although it is in fact permitted under certain conditions set out in the 1996 Maternity Law.

Also, substantive criminal law theories may become too complicated to apply to the trials of lay judges. There is a wide gap that needs to be bridged between lay and professional judges. It seems that, on the one hand, lay judges need to be provided with sufficient information and correct knowledge and, on the other hand,

the theories as such need to be further simplified.

Regarding criminal procedural law, procedures for the protection of the human rights of the accused and the victims should be strengthened, especially in the investigation phase. In the juvenile justice system, additional social assistance measures should be offered to juveniles under the 1947 Child Welfare Act. In the penal system, the protection of the human rights of prisoners could be improved, and treatment in the community should be facilitated.