

Prosecution in Japan

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Introduction

In this article, I analyze the Prosecution system in Japan from the viewpoint of protocols (assessment guides) which the American Bar Association(ABA) has suggested.

Abstract of ABA's Assessment Guides

ABA's guides stipulate

1. Each prosecutor's office should have written policies governing the exercise of prosecutorial discretion to ensure the fair, efficient, and effective enforcement of criminal law.
2. Each prosecutor's office should establish procedures and policies for evaluating cases that rely upon eye witness identification, confessions, or the testimony of jailhouse snitches, informants, and other witnesses who receive a benefit.
3. Prosecutors should fully and timely comply with all legal, professional, and ethical obligations to disclose to the defense information, documents, and tangible objects and should permit

reasonable inspection, coping, testing, and photographing of such disclosed documents and tangible objects.

4. Each jurisdiction should establish policies and procedures to ensure that prosecutors and others under the control or direction of prosecutors who engage in misconduct of any kind are appropriately disciplined, that any such misconduct is disclosed to the criminal defendant in whose case it occurred, and that the prejudicial impact of any such misconduct is reminded.
5. Prosecutors should ensure that law enforcement agencies, laboratories, and other experts under their direction or control are aware of and comply with their obligation to inform prosecutors about potentially exculpatory or mitigating evidence.
6. The jurisdiction should provide funds for the effective training, professional development, and continuing education of all members of the prosecution team, including training relevant to capital prosecutions.

Current Situation in Japan

1. Status of Prosecutors

a. Qualification

To become a prosecutor, one must pass the bar exam. Prosecutors are public officers and in principle will be employed until the retirement age.

b. Organization

Public Prosecutors Office consists of 1 Supreme Public Prosecutors Office, 8 High Public Prosecutors Offices and 50 District

Public Prosecutors Offices. There are about 1700 public prosecutors in total nationwide.

c. Function

A prosecutor works to investigate, institute prosecutions, demand penalties and supervise the execution of final sentences.

2. Power of Prosecutors

Among prosecutor's authorities, the biggest power is that they can decide independently whether a case should be prosecuted or not (Criminal Procedure Law article 247). They have a wide range of discretion based on their own judgments (article 248). As a result we have a high rate of "suspension of prosecution". However, Supreme Public Prosecutors Office does not make information on the prosecution guideline publicly available.

On the other hand, once prosecutions are instituted, the rate of conviction is 99.9%¹.

There exists the Committee for the Inquest of Prosecution (検察審査会, *Kensatsu Shinsa-Kai*), designed to review cases in which prosecutors decided not to prosecute. The committee is composed of eleven citizens selected at random from the community. However, its power is narrower than the grand jury in the U.S. An inquest of the committee was not binding regarding the indictment. However, following the reform in 2009, the committee now has more power over prosecutor's decisions.

1 Some researchers say this situation is "a paradise for prosecutors".

In addition, prosecutors must always get approvals from their supervisors (決済, *Kessai*). This shows “the centralization of power”.

3. Disclosure of Evidence

The prosecution’s monopoly of power also influences in deciding which evidence is appropriate for the prosecution. The pretrial conference procedure (公判前整理手続, *Kohan zen Seiri Tetsuzuki*) has started in 2005 mainly for serious cases, including all death penalty cases. This procedure was introduced in order to sort out and specify the issues and evidence of the cases. Prosecutors do not need to disclose all evidence.

There have been cases in the past where prosecutors withheld exculpatory or mitigating evidence. Even the list of evidence is not to be disclosed now, and there is no discipline against inappropriate disclosure.

4. Prosecution Reform

In 2010, one prosecutor’s fabrication of evidence in Muraki case was uncovered and this case became the motivation for reforming the prosecution system. The special committee was established in 2012 and they published a report two years after. After that, the bill to reform the Code of Criminal Procedure was submitted to the National Diet in 2015. The bill includes mandating the full electronic recording for certain serious cases and cases which are investigated by the special unit of the prosecutors office², the introduction of a

2 Such cases account for only 3% of all crimes.

kind of bargaining system where the prosecutors can formally negotiate with witnesses to get statements or testimony from them and expanded the use of wiretapping. And prosecutors will be required to show the list of evidence in their possession prior to a trial.

5. Training

Prosecutors are representative of the public interest (article 1). Therefore they need tough training of ethical morals in judicial contexts. Yet information about the training has never been publicly revealed.

Conclusion

1. Each prosecutor's office should have written policies governing the exercise of prosecutorial discretion to ensure the fair, efficient, and effective enforcement of criminal law.

Insufficient information

2. Each prosecutor's office should establish procedures and policies for evaluating cases that rely upon eye witness identification, confessions, or the testimony of jailhouse snitches, informants, and other witnesses who receive a benefit.

Not in compliance

3. Prosecutors should fully and timely comply with all legal, professional, and ethical obligations to disclose to the defense information, documents, and tangible objects and should permit reasonable inspection, copying, testing, and photographing of such

disclosed documents and tangible objects.

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