Saiban-in “Quasi-Jury”

Generic structure for a question evaluating the relative strength/success of the Saiban-In thus far
A. Articles


B. Books

1. Anderson, K and Johnson, D, ‘Japan’s new criminal trials: origins, operations and implications’ in Andrew Harding and Penelope Nicholson (eds), New courts in Asia (Routledge, 2010), 371-390.


Introduction

• Judicial Reform Council (JRC) Final Report 2001, recommending the implementation of civil participation into the Japanese criminal trial as one of the major missions among many suggested reforms in the judicial system. (Ibusuki, 26-7)

• Proponents of the reform became increasingly frustrated with the perceived inefficiency of the judiciary, lengthiness of trial proceedings, and the high costs involved in attaining judicial resolutions (Ibusuki, 27)

• May 2004 the law was enacted introducing lay judges into its criminal justice system. As of May 2009, Japan started its trial system for serious criminal cases in which 6 lay persons sit with 3 professional judges to adjudicate guilt and determine sentence (Anderson and Johnson, 371)

• Rationales: improve the quality of Japanese law and democracy by increasing the size of the legal profession and the availability of legal services, improving the quality of legal services through reforming legal education, and instituting other ‘huge’ and ‘extensive’ reforms that ‘relate to the very foundation of all aspects of the justice system’ (Anderson and Johnson, 372)
  o Improve the quality of Japanese criminal justice by widening the experience of trial decision-makers and reducing the elitism of the small corps of professional judges
  o Foster greater civic participation in Japan’s polity and society.
  o Motives do not include promotions of defendants’ rights which the Justice System Reform Council explicitly excluded as a rational for reform (372-3)
  o Professor Ryuichi Hirano said, “In Western countries, the court is the place where guilty or not guilty is judged, whereas in Japan, the court is the place where guilty is confirmed.” (Kazuko Ito, 1249)
  o Contrary to Article 319 of the Code of Criminal Procedure, and Article 38 of the Japanese Constitution, many Japanese wrongful conviction cases, exonerated innocent people claimed police misconduct such as verbal violence, intimidation, psychological pressure, coercion and deceit. (Kazuko Ito 1250-1251).
  o Japanese criminal justice has been so consistent and predictable that trials have been rendered ‘empty shells’ and ‘meaningless rituals’. (David T. Johnson, The Japanese Way of Justice: Prosecuting Crime in Japan (New York: Oxford University Press, 2002), 6).
  o Japan’s legal system was heavily criticized as an “insular bureaucracy that is detached from the needs of the people.” (Sher 637).
  o Series of high profile death row acquittals in the 1970s and 1980s, in which it was discovered that individuals who had been wrongly convicted suffered through decades of imprisonment – confidence in the criminal justice system waned (Sher 637).
  o No checks on the power of prosecutors who play a central role in criminal justice proceedings (Owens 192).

• The system appears to emphasize the rehabilitation and reintegration of offenders, but does so at the expense of personal autonomy. Significant trust in prosecutors and other authorities in the criminal justice system and broadly granting them discretion. (Owens 192).
  - Trust and discretion is not accompanied by effective checks and balances → highlighted by prosecutorial mistakes and findings of unintentional/intentional bias within the system.
  - lack of external accountability = significant concerns regarding the transparency of a country with a conviction rate of 99.8% (Owens 192).
  - Others argue that the entire criminal justice system, as currently structured, favours the prosecution by emphasizing the power of prosecutors to elicit confessions from suspects and independently conduct their own investigations into crimes (Owens 201).
  - Evidence limited historically to written documentation prepared by the prosecution, especially confession statements. Defense counsel’s role was significantly diminished → “cooperative adversary system”. Judges reported that they felt as if they were simply “confirming the results of the investigation” under the pre-reform system (Owens 202).