

Popular Participation in the Judicial System



**Japanese Judicial
System Reform**

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(Inaugural ANJeL Visitor,
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Judicial System Reform



- June 1999, **Judicial System Reform Council** was established under the Cabinet.
- June 2001, **Recommendation** of the Council was published and reported to the Prime Minister.

http://www.kantei.go.jp/foreign/policy/sihou/singikai/990612_e.html


- November 2001, **Judicial System Reform Promotion Law** was enacted.
- December 2001, **Office for Promotion of Justice System Reform** was established under the Cabinet with 3-year time limit.
- Now, 11 Consulting Groups are discussing the issues to materialize the Recommendation.

Establishment of Judicial System Reform Council



The Justice System Reform Council was established under the Cabinet in July 1999, for the purposes of "clarifying the role to be played by justice in Japanese society in the 21st century and examining and deliberating fundamental measures necessary for the realization of a justice system that is easy for the people to utilize, participation by the people in the justice system, achievement of a legal profession as it should be and strengthening the functions thereof, and other reforms of the justice system, as well as improvements in the infrastructure of that system" (Article 2, Paragraph 1 of the Law concerning Establishment of the Justice System Reform Council).

Why Judicial System Reform?

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- Budget deficit, economic difficulty
 - Political reform, administrative reform, decentralization of political power, economic structural reform by deregulation
 - Necessity for predictable and transparent rules, just check of violations, and fair remedies for the victims.
 - Increase of the role of judicial system



Judicial System in the 21st Century

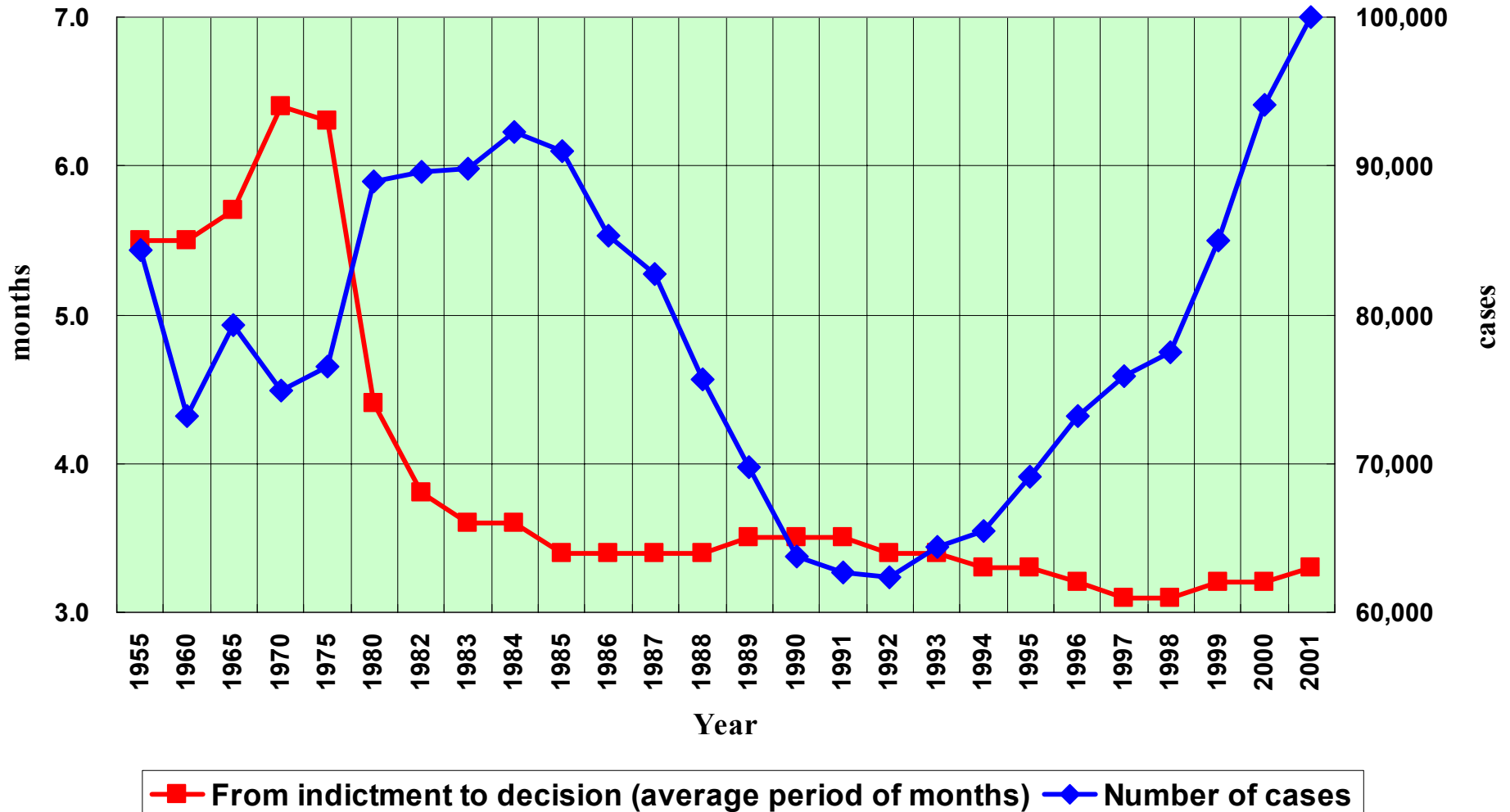
~from recommendation of the Council~

Judicial system must respond to citizens' expectation and be usable, understandable and reliable

Legal professionals to support systems should be rich in both their quality and quantity.

Popular basis should be established, including citizens' participation in the system.

Criminal Cases in District Courts



Establishment of popular base of the justice system

In Japanese society of the 21st century, it is incumbent on the people to **break out of the excessive dependency on the state that accompanies the traditional consciousness of being governed objects**, develop public consciousness within themselves, and become more actively involved in public affairs. In the field of the judiciary which plays an integral part as one branch of the existing governance structure based on popular sovereignty, the people also are expected to **participate broadly in the entire range of administration in various ways**, while maintaining autonomy and a sense of responsibility. If the people become more widely involved in the administration of justice together with legal professionals, the interface between the justice system and the people will become broader in scale and deeper, public understanding of the justice system will rise, and the justice system and trial process will become easier for the public to understand. As a result, a **much firmer popular base of the justice system** will be established.

Popular Participation in Justice



- Introduction of New Participation System in Criminal Proceedings
 - “Saiban-in” System
- Expansion of Participation Systems in Other Fields
 - Introduction of an expert commissioner system, and reinforcement of the conciliation member, judicial commissioner and court councilor systems.
 - Reinforcement of the Inquest of Prosecution system, and reinforcement of the volunteer probation officer system.
 - Establishment of a new body to reflect popular views in the process for nomination of judges.
 - Reinforcement of mechanisms so as to better reflect public views with regard to the administration of the courts, the public prosecutors offices, and the bar associations.

Why Saiban-in System is necessary?

- Litigation proceedings constitute the core of the justice system; and **popular participation in those proceedings has very important significance as a measure to establish the popular base of the justice system.** That is to say, through having the people participate in the trial process, and through having the sound social common sense of the public reflected more directly in trial decisions, the people's understanding and support of the justice system will deepen and it will be possible for the justice system to achieve a firmer popular base. From this point of view, **a new system should be introduced, for the time being in criminal proceedings, enabling the broad general public to cooperate with judges by sharing responsibilities, and to take part autonomously and meaningfully in deciding trials.**

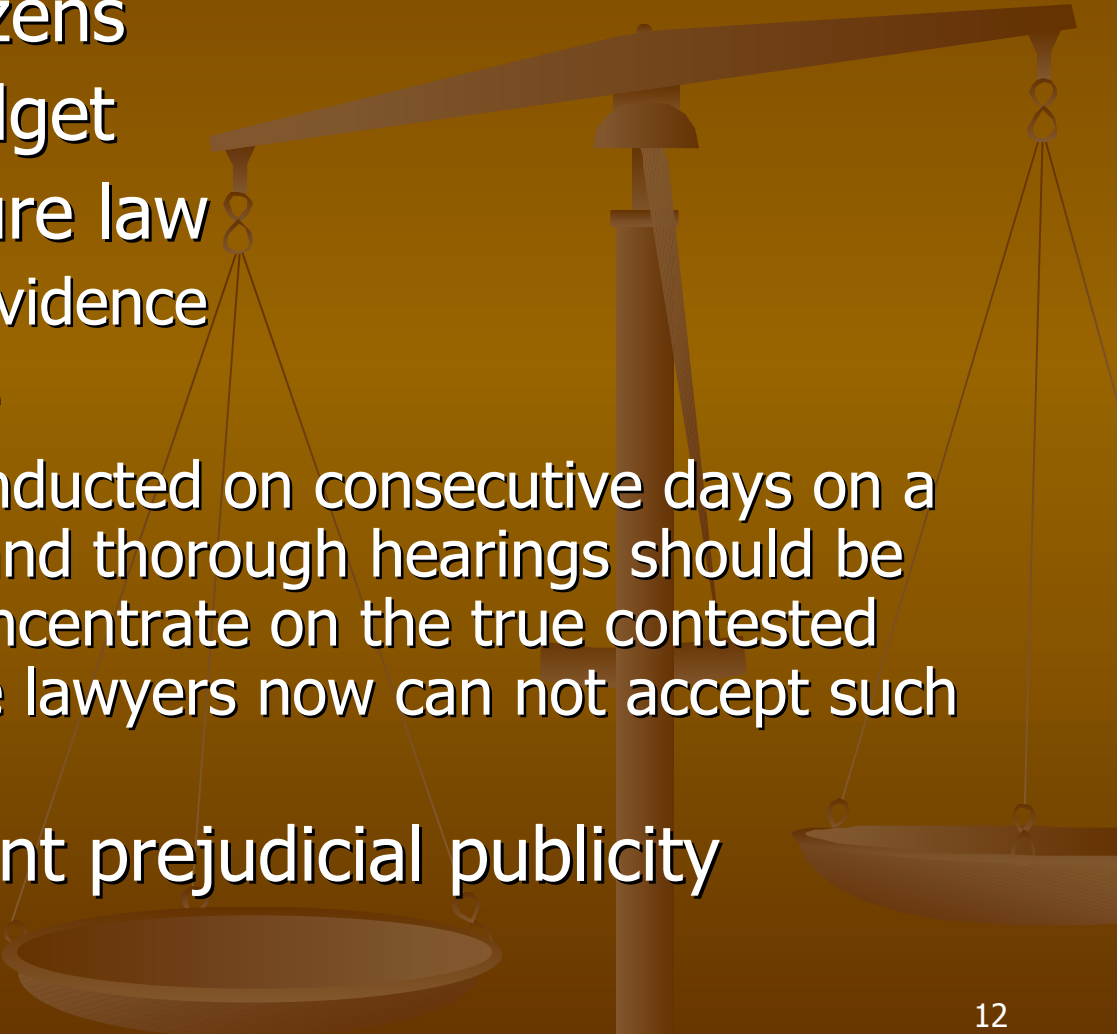
Basic Structure of Saiban-in System (from Recommendation)

- Judges and Saiban-ins deliberate together to decide the guilt and sentence
- Judges and Saiban-ins have the equal vote
- A decision adverse to a defendant cannot be made on the basis of a majority of either the judges or saiban-ins alone.
- Saiban-ins are chosen randomly from the voters list in each case
- Saiban-in candidates who have received a summons from the court should bear the duty to appear.
- Applicable cases should be cases of serious crime to which heavy statutory penalties attach
- Defendants should not be allowed to refuse trial by a judicial panel composed of judges and saiban-ins

An Image of a Japanese Courtroom



Requirements of the introduction of Saiban-in System

- Burden on the citizens
 - Burden on the budget
 - Reform of procedure law
 - Especially law of evidence
 - Reform of practice
 - Trial should be conducted on consecutive days on a continuing basis, and thorough hearings should be conducted that concentrate on the true contested issues. --- Defense lawyers now can not accept such trials.
 - Measures to prevent prejudicial publicity
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Important Issues

(From the Discussion of Consultation Group on Saiban-in System and Criminal Affairs)

- Number of Judges and Saiban-ins in a panel
- Verdicts (voting methods, written decisions)
- Authority of Saiban-ins
- Type of cases to be decided by the panel
- Reasons for disqualification
- Reasons for challenge
- Voir Dire
- Reform of Proceedings including rules of evidence
- Penalties for Saiban-ins
- Protection for Saiban-ins

Numbers and Voting Methods

■ Numbers

- Idea A: 3 Judges and 2 or 3 Saiban-ins
- Idea B: 1 or 2 Judges and 9 to 11 Saiban-ins

■ Voting methods

- Idea A: By majority, but at least 1 judge and 1 Saiban-in must join the majority
- Idea B: By majority, but in a decision adverse to the defendant at least 1 judge and 1 Saiban-in must join the majority
- Idea C: By majority, but in a decision adverse to the defendant at least the majority of judges and 1 Saiban-in must join the majority

Numbers and Voting Methods (for Reference)

■ Example of other countries

- Germany: 3J + 2L (two-thirds majority) in district courts, or 1J + 2L in summary courts
- France: 3J + 9L (two-thirds majority)
- Austria: 2J + 2L (majority)
- Italy: 2J + 6L (majority)
- Denmark: 1J + 2L (majority)
- Sweden: 1J + 5L (3L for misdemeanors) (majority)
- Greek and Portugal: 3J + 4L (majority)
- Norway: 2J + 3L (majority) in important and difficult cases, or 1J + 2L (majority)
- Finland: 1J + 3L (majority)

Authority of Saiban-ins

(Idea of the Consultation Group)

- Saiban-ins are to hear and decide whether the defendant is guilty or not guilty as well as how heavy or light the sentence should be.
- Saiban-ins can ask questions to the witnesses and the defendant.
- Judge(s), when they/she/he think(s) it appropriate, can sit with Saiban-ins to hear procedural and/or legal arguments and hear Saiban-ins' opinions.

Types of Cases to be Heard by the Panel

- Idea A: Cases which now require three-judge panel trials.
 - 4,569 (6.7%) out of 68,190 defendants required three-judge panel in 1999
- Idea B: Cases in which death penalty or imprisonment of indefinite period is applicable.
 - Indictments of 2,148 (%) out of 68,190 defendants involved such offenses.
- Idea C: Cases which now require three-judge panels and in which death was caused by intent.

Disqualification and Challenge

(Idea of the Consultation Group)

- Those who did not graduate from junior high schools.
- Those who have been sentenced to imprisonment or more.
- Those who have mental problems to do their duty. (A dissenting opinion exists)
- Member of the Diet, ministers and executives of administrative agencies, chiefs of local governments, members of self defense forces, judges, prosecutors, lawyers, court officials, officials of Ministry of Justice, police, patent lawyers, notary publics, judicial scriveners, professors of law faculty of universities, legal apprentices.
- Defendants, suspects, family members of defendants, employees of defendants, informants, witnesses.
- Those who are 70-year-old or more, members of local government diets, students, those who have been Saiban-ins within 5 years, and those who have been Saiban-in candidates within one year can refuse to be candidates.
- Those who are likely to make unfair decisions can be challenged.

Voir Dire (Idea of the Consultation Group)

- Judges, courtclerks, prosecutors and defense counsels shall attend the proceeding for questioning to Saigan-in candidates. Judges can allow the defendants to attend the proceeding. The proceeding shall be closed to the public.
- Judges shall ask questions regarding the qualification of the candidates. Prosecutors and defense counsels can request the judges to ask necessary questions.
- Judges, when there are grounds for disqualification or challenge, shall decide not to nominate the candidate ex officio, or at the claim of prosecutors or defense counsels.
- Prosecutors or defense counsels shall have the right to challenge without cause. (The number of the challenge without cause is not specified yet.)

Penalties and Protection

(Idea of the Consultation Group)

- Saiban-in candidates who do not appear to the courts shall be fined ** yen or less.
- (Ex-) Saiban-ins who disclose the deliberation of the panels or secrets known in the course of the trials shall be sentenced to ** years or less imprisonment, or fined ** yen or less.
- Those who threaten a Saiban-in or candidate or a relative thereof shall be sentenced to ** years or less imprisonment.
- The records of the proceedings which involves information (except for the name) of the Saiban-ins or candidates shall be closed to the public.
- No person may contact the Saiban-ins or candidates in regard to the cases.
- No person may do anything that are likely to harm fairness of trials, including to cause prejudice to Saiban-ins or candidates in regard to cases.
- The media shall consider that reporting about cases not prejudice fairness of trials.