

White Collar Crime - Japan

Examining the Committee for the Inquest of Prosecution

Contributed by **Anderson Mori & Tomotsune**

October 15 2012

Committee for the Inquest of Prosecution

Mandatory prosecution by committee

Cases of mandatory prosecution

Issues with mandatory prosecution system

Committee for the Inquest of Prosecution

Under Japanese criminal procedure, public prosecutors have exclusive authority to prosecute suspects, as well as broad discretion in relation to prosecution. However, a public prosecutor may make a misjudgment on the basis of which he or she will decide not to prosecute a suspect. As an appeal against the non-prosecution decision, a victim of a crime or a complainant who is dissatisfied with the decision can request that the matter be reviewed by the Committee for the Inquest of Prosecution.⁽¹⁾

The committee consists of 11 members chosen by lot from citizens listed on the electoral register, with the members serving for six-month terms.⁽²⁾ The committee, on receipt of a petition or by its own authority, can review a public prosecutor's non-prosecution decision and will rule on whether the decision was correct.

The Act for the Inquest of Prosecution was recently drastically amended, and the reforms have had a major impact on the prosecution of white collar crimes.

Mandatory prosecution by committee

Decisions of the committee originally had no legal binding force and public prosecutors made the final decision on prosecution, taking into consideration the committee's opinion. However, in 2004 the act was amended and the mandatory prosecution system under which prosecution can be commenced based on a committee decision, provided that certain conditions are fulfilled, was introduced.

If a public prosecutor has not prosecuted a case and the committee decides that the case should be prosecuted, but subsequently the public prosecutor again decides not to prosecute the case, the committee must re-examine the case.⁽³⁾ If the committee finds that the case should be prosecuted,⁽⁴⁾ the court will designate a lawyer to conduct the duties of the public prosecutor in the case and the designated lawyer will prosecute the suspect and conduct the trial.⁽⁵⁾

Cases of mandatory prosecution

After the act came into force on May 21 2009, the committee made prosecution decisions in several serious cases and the designated lawyers prosecuted the defendants based on the committee's decisions. However, the courts acquitted some of those defendants. Some examples are as follows.

Stampede accident on pedestrian bridge

In July 2001 11 people were killed and 247 people were injured as a result of a stampede on a pedestrian bridge which was extremely crowded due to the number of people watching a fireworks display in Akashi City. The Kobe District Public Prosecutor's Office prosecuted five defendants who were in charge of event security (officials of Akashi City, a policeman and an employee of a security company) and decided not to prosecute the chief and deputy chief of the local police station. In January 2010 the committee made a prosecution decision concerning the former deputy chief and he was prosecuted on a charge of professional negligence resulting in death and injury. At trial he denied negligence and the outcome is

pending.

Train derailment accident

In April 2005 a train belonging to West Japan Railway Co derailed and crashed on the Fukuchiyama line; 107 people died. In July 2009 the Kobe District Public Prosecutor's Office prosecuted an executive in charge of train safety and made a non-prosecution decision in relation to certain other relevant executives. In March 2010 the committee made a prosecution decision concerning three successive presidents of the company, each of whom was prosecuted. The executive in charge of train safety denied his negligence at the trial, with the Kobe District Court accepting the defence's claim and acquitting the executive in January 2012. The other three defendants also denied their negligence and their trial is pending.

Unlisted stock fraud case

In March 2010 a representative of an investment company was arrested on suspicion of cheating three people out of Y48 million by soliciting investment in unlisted stocks, but the Naha District Public Prosecutor's Office made a non-prosecution decision because of insufficient evidence. In July 2010 the committee made a prosecution decision and prosecuted the representative on a charge of fraud. However, in March 2012 the Naha District Court found him not guilty, as there was no evidence of the crime.

Fraudulent political fund reporting case

In January 2010 the Tokyo District Public Prosecutor's Office arrested secretaries of Ichiro Ozawa, former president of the Democratic Party of Japan, on suspicion of violating the Political Funds Control Law by allegedly submitting false reports on political funds in connection with a real estate transaction. A citizens' group also filed a criminal complaint against Ozawa, alleging that he had conspired with the secretaries to violate the law. The public prosecutor indicted the secretaries, but made a non-prosecution decision concerning Ozawa because of insufficient evidence. The citizens' group requested that the committee review the non-prosecution decision. Although the public prosecutor made non-prosecution decisions repeatedly, the committee finally made a prosecution decision and Ozawa was prosecuted in October 2010. Ozawa denied the allegation at his trial, and in April 2012 the Tokyo District Court accepted the defence's claim and acquitted Ozawa. (The appeal trial is currently pending at the Tokyo High Court.)

Issues with mandatory prosecution system

Public prosecutors in Japan are cautious about exercising their authority to prosecute suspects. If they are not certain that they can establish a defendant's guilt at trial, they will usually make a non-prosecution decision. It is difficult for the designated lawyer to establish a defendant's guilt in cases where the public prosecutor had once made a non-prosecution decision because of insufficient evidence.

The committee seems inclined to make prosecution decisions under the pressure of public opinion in cases regarding political crimes or serious accidents which caused many casualties. If the committee makes a prosecution decision in such cases, unless there is sufficient evidence to establish a suspect's guilt at trial, the suspect will suffer unpredictable and sometimes heavy losses due to the criminal procedure. If the courts deliver acquittal judgments in many serious cases where the committee has made prosecution decisions, the mandatory prosecution system will become unstable and lose public confidence.

In June 2012 Minister of Justice Mamoru Taki said, "We did not discuss thoroughly the transparency of procedure and how to reflect the common sense of the people at the time of introduction of the mandatory indictment system. We need to review this system."

For further information on this topic please contact [Yoshihiro Kai](mailto:yoshihiro.kai@amt-law.com) at Anderson Mori & Tomotsune by telephone (+81 3 6888 1000), fax (+81 3 6888 3050) or email (yoshihiro.kai@amt-law.com).

Endnotes

- (1) Article 30 of the Act for the Inquest of Prosecution.
- (2) Articles 10, 13 and 14.
- (3) Article 41-2.
- (4) Article 41-6.
- (5) Articles 40-9 and 40-10.

disclaimer.

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Author

Yoshihiro Kai



© Copyright 1997-2012 Globe Business Publishing Ltd

Online Media Partners

