

Japan and Their Quasi-Jury “Saiban-in” System

Japan has never had an American style jury in their criminal justice system. In 1928, Japan did attempt an optional jury system, but the flawed system only lasted for 15 years. During this time the accused rarely chose the jury option, as he would lose his rights to appeal.¹ Even if a defendant chose the jury system during this time, the ruling of the jury would only be recognized by the court if the verdict was found acceptable by the judge. If the jury’s verdict was found unacceptable, the judge could call a new jury and repeat the trial until a verdict was found that he agreed with.²

Since the abolition of this faulty jury system in 1943, the Japanese have increasingly began to mistrust the judge only trial system. The citizenry saw the judges as elite and out of touch with the public.³ The fact that the conviction rate was over 99% during this time also led to a loss of public faith as it conflicted with the supposedly inquisitorial nature of the Japanese criminal justice system.⁴

To address these growing internal problems, as well as an increasing contempt from international rights groups, Japan adopted a new quasi-jury system referred to as “saiban-in” in 2004. In the saiban-in system, there is a mixed panel of professional judges and laypeople. The number of judges and laypeople differ depending on whether or not the court is fact-finding or sentencing. In the fact-finding cases where the accused’s guilt is in contention, there is a panel of three professional judges and six laypeople randomly chosen from a list of registered voters.⁵ The nine-person panel deliberate together to make determinations of fact, and then determine the sentence if a guilty verdict is

¹ 2011 U. Ill. L. Rev. 741, 745

² Takatori, Ueno, Miura, Shibasaki, & Culver, The New Saiban-in (“Lay Judge”) System and Its Effect on the Working Environment. www.paulhastings.com/assets/publications/1167.pdf

³ 2011 U. Ill. L. Rev. 741, 745

⁴ Arne F. Soldwedel, Testing Japan's Convictions: The Lay Judge System and the Rights of Criminal Defendants, 41 Vand. J. Transnat'l L. 1417, 1419-20 (2008).

⁵ 2011 U. Ill. L. Rev. 741, 747

returned. A majority of the panel is required to convict the accused, and at least one of the three professional judges must be in the majority for a guilty verdict to stand. If a majority finds the accused not guilty, it is not necessary for a professional judge to be part of the majority.⁶

The saiban-in system is not available for all criminal trials. The system is reserved for the most serious crimes, and in those cases, the accused does not have an option, a saiban-in system is mandated.

Though the laypeople and professional judges all deliberate together, there are certain roles that only the professional judges hold. The professional judges are exclusively in control of decisions regarding criminal procedure and interpretation of the law. The layjudges on the panel are allowed to determine issue of fact and to apply those facts to the law. The layjudges are also allowed to directly question witnesses, victims, and the accused in order to help them make their necessary determinations.⁷

One of the most often cited concerns with the mixed professional and lay saiban-in system is that the professional trained judges will dominate the deliberations and influence the opinions of the layjudges. Japan was appreciative of this concern as they attempted to build procedures into the system that will prevent the opinions of the laypeople from being suppressed. The judicial rules prohibit the professional judges from stating their opinions until the layjudges have stated theirs, and the aggressive advocacy among the panel is held until the late stages of deliberations.⁸

⁶ *Id.* at 746

⁷ Takatori, Ueno, Miura, Shibasaki, & Culver, The New Saiban-in (“Lay Judge”) System and Its Effect on the Working Environment. www.paulhastings.com/assets/publications/1167.pdf

⁸ 2011 U. Ill. L. Rev. 741, 752