

Chapter 114

An Analysis of a Lay Adjudication System and Open Judiciary: The New Japanese Lay Adjudication System

Yumiko Kita
University of Sussex, UK

ABSTRACT

This paper presents analyses of impacts of lay adjudicators' participation in criminal matters in Japan due to the introduction of the new lay adjudication system – the Citizen Judge System [Saiban-in Seido] – in 2009. Since the late twentieth century, the introduction of the lay adjudication system seems to have been in international movement democratising the criminal justice system. This paper is devoted to an evaluation of the new system in terms of the balance between the concepts of democracy and a fair trial with consideration of the citizen judge procedures and the role of the citizen judges. In view of the closed nature of the Japanese criminal procedures and secrecy in the citizen judge system, this study will point out the challenges which prevent the fulfilment of democratic values in the practice of the citizen judge system.

INTRODUCTION

In 2001 the Japanese government announced the introduction of the new lay adjudication system, *Saiban-in Seido*, hereinafter the citizen judge system and in 2004 the National Diet passed and enforced in 2009 the law: *Saiban-in no sanku suru keijisaiban ni kansuru horitsu*, hereinafter the Citizen Judge Act. Citizens are selected randomly from the electoral register and hear and deliberate the evidence, reach a guilty or not guilty verdict, and determine the appropriate sentence with a cooperation with professional judges in a serious criminal case.

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Democratisation in the criminal justice system appears to be a current international tendency, and the introduction of a lay adjudication system coincided with Western countries' support for democratic reform in Poland and Serbia (Carothers, 2008, p.11). The long-lasting admiration for a lay adjudication in particular in criminal trials are bolstered by a belief in democracy. Researchers, such as Vidmar, have expressed the idea that a lay adjudication system is considered as a symbol of democracy because of a focus on the significance of community standards and doubts about centralised state power (1996, p.97; 2000, Ch.1). Will a lay adjudicators' participation raise democratic values in criminal trials?

The aim of this chapter is to analyse the new Japanese lay adjudication system while considering the concepts of open judiciary and democracy. In addition, the problems of the lay adjudication system will be demonstrated in order to analyse the factors which prevent the enhancement of lay adjudicators' participation. By the introduction of the new system, the restriction of freedom of expression became even more severe. This chapter is largely divided into four sections. Firstly, the relationship between the concepts of open justice, a fair trial and democracy will be clarified. Secondly democratisation in a criminal trial will be studied with the example of the introduction of lay adjudication systems as an international movement starting in the late twentieth century. The focus of this section will be to study the international tendency towards a common law mode of criminal procedures to increase democratic values in criminal procedures. In addition, it will show the conflict between this transformation and a civil law mode, which influences the role of lay adjudicators and its openness. Thirdly, the outline of the present Japanese criminal procedure will be provided. The transformation towards adversarial modes of criminal procedure brings increased impediments to participation and openness, which are the key concepts of open justice.

BACKGROUND: THE CONCEPT OF OPEN JUSTICE, A FAIR TRIAL, AND DEMOCRACY

This section is organised in two main parts: firstly the overlapping principles between open justice, the right to a fair trial, and democracy in criminal procedures will be examined in terms of their balance; the other part will show the democratic values in a lay adjudication.

The principle of open justice requires that the courts ought to be open to the public including citizens and the media. On the one hand, the right to a fair trial is codified within the international and regional treaties such as Article 6 of the European Human Rights Convention which declares:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in interests of morals, public order or national security in a democratic society ... (Section 1.)

In short, the ideal form of a fair trial will be that a judgement will be reached by impartial persons on the basis of reliable evidence fairly presented in open court (Powell, 1965, p.534). The right to a fair trial is structured by various principles such as open justice, due process, and procedural justice. A belief in due process values human rights, especially the rights of accused (Packer, 1964). All people should be

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