

NEW AND EMERGING FORMS OF CORRUPTION AND THE EFFECTIVE COUNTERMEASURES IN JAPAN

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I. INTRODUCTION

Based on the 2021 survey of Transparency International, Japan ranked 18 among 180 countries globally in terms of the Corruption Perception Index (1 best, 180 worst). And in general, Japanese citizens place a relatively high degree of trust in public servants. That said, Japan is not a corruption-free country, and we still have a long way to go before eliminating corruption completely from our society. In this paper, I would like to touch upon “New and Emerging Forms of Corruption and the Effective Countermeasures in Japan” including the explanations of our investigative agencies and how public prosecutors investigate corruption cases in Japan.

II. INVESTIGATIVE AGENCIES IN JAPAN

A. The Police

In Japan, the police are the main investigative agency. Although officers of some administrative bodies, such as narcotics agents and coast guard officers, also have limited jurisdiction to investigate certain types of offences, police officers have general jurisdiction over all types of offences. There is no special investigative agency which exclusively investigates and prosecutes corruption cases in Japan. The vast majority of criminal cases including corruption cases are investigated by the police and referred to public prosecutors. Since the police do not have the power to decide whether to prosecute criminal cases, all cases investigated by the police must be sent to public prosecutors for disposition except for very limited minor offences. The police have headquarters in each of Japan’s 47 prefectures. Currently there are approximately 260,000 police officers in Japan.

B. Public Prosecutors

Public prosecutors have the exclusive power to decide whether or not to prosecute each criminal case. Moreover, they are fully authorized to conduct criminal investigations, and actively supplement police investigations by directly interviewing witnesses and interrogating suspects as well as instructing police officers to investigate matters which they deem necessary. There are 50 District Public Prosecutors’ Offices in Japan (1 in each of 46 prefectures and 4 in Hokkaido in accordance with its vast size). Currently there are approximately 2,700 public prosecutors in Japan.

III. HOW PUBLIC PROSECUTORS INVESTIGATE CORRUPTION CASES

A. Collecting Initial Information

In this section, I would like to touch upon how public prosecutors investigate corruption cases especially in bribery cases. Since these cases are committed secretly among very limited parties, it is extremely difficult to collect initial information as well as sufficient evidence to

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establish their guilt. Therefore, I believe it is worthwhile to address bribery cases and look into how investigation is conducted in such cases.

First of all, public prosecutors need to collect initial information to commence their investigation. They need some grounds or leads to initiate cases. And there are some methods to collect initial information of these cases, such as complaints from witnesses in the form of telephone, letters, emails etc., through investigation of other cases, publications such as weekly magazines or newspapers and so on. That said, public prosecutors must bear in mind that the credibility of the collected initial information is always dubious, as some people may intentionally disseminate false negative information to frame their adversaries. Therefore, public prosecutors must, in the first place, examine whether the collected information is trustworthy enough to commence an investigation. If they fail to do so, they will definitely cause great harm to the people involved and lose the trust of society, which they need the most.

B. Tracing the Flow of Illicit Funds

In the investigation of corruption cases, identifying and proving the flow of illicit funds is fundamental and crucial. For example, in a bribery case, tracing the flow of money – namely from the source of the bribe to the receipt of the bribe as well as the concealment or use of the bribe by the recipient – is indispensable to prove the facts of the case objectively. Also, tracing the flow of money enables public prosecutors to confiscate the bribe as criminal proceeds from the offender.

In order to trace the flow of illicit funds, first of all, search and seizure is imperative. By executing search and seizure in a prompt and proper manner, gathering physical evidence will be possible. For example, in the process of search and seizure, public prosecutors could collect necessary physical evidence including receipts, letters, memos, diaries, contract documents, photos, bankcards, passbooks, CDs, DVDs, USBs, computers, smartphones and other electronic devices etc. Then public prosecutors could develop the big picture of the flow of illicit funds by analysing the collected evidence.

Secondly, interviewing witnesses and interrogating suspects are also necessary. Even if physical evidence was properly collected and analysed as mentioned above, that does not always mean everything has been completely answered. In many cases, the explanations of witnesses or suspects are needed to clarify the entire flow of the funds. For example, once money in a bank account is detected, if it was withdrawn from the bank account and its current whereabouts are unknown based on the analysis of the collected physical evidence, then public prosecutors further need to seek the explanations of witnesses or suspects in order to clarify the outcome of the withdrawal of the money. Their explanations could supplement the flow of the money corroborated by the collected physical evidence.

In addition, there are also cases where international cooperation between other countries or regions is indispensable. For example, if the money in a bank account in Japan was transferred to a bank account in other country or region, public prosecutors would probably encounter difficulties in tracing the flow of the money afterward, because public prosecutors in Japan do not have jurisdiction over other countries and regions. In such cases, Japanese public prosecutors would seek assistance from investigative authorities of other countries or regions and ask them to provide necessary information to clarify the flow of the money. By utilizing these methods, public prosecutors seek to trace the flow of illicit funds.

C. Identifying the Nature of the Funds

After identifying and proving the flow of illicit funds, public prosecutors need to identify and prove the nature of the funds. In some cases, suspects may admit the receipt or use of the funds; however, they claim that the receipt or the use is legal. They argue that the receipt or use of the funds is based on legitimate transactions, or they have the legitimate right to receive or use the funds. In order to examine or, if necessary, rebut their arguments, public prosecutors need to thoroughly identify the nature of the funds and prove whether their receipt or use of the funds is illegal and groundless or not.

To identify and prove the nature of the funds, public prosecutors need to collect physical evidence including documents, data, etc., and analyse them comprehensively in addition to interviewing witnesses and interrogating suspects. Based on the analysis of the collected evidence and interrogations of suspects etc., public prosecutors may precisely understand how and why the funds were received or used by the suspects.

It is especially important to obtain the confessions of the suspects and the statements of the witnesses in order to prove the nature of the funds because they are the only ones who know the truth of their stories. For example, in a bribery case, if a bribe giver admits that funds were intended to bribe the bribe taker, and at the same time, based on the overall investigation, no evidence was found to corroborate legitimate transactions etc. between the provider and the recipient, it is highly likely that their guilt will be established at trials.

In order to obtain the confessions, it is necessary to listen carefully to the voices of the suspects and never deny their arguments completely. They may sometimes lie or hide the true story but, at the same time, they may reveal the truth to some extent. If public prosecutors try to press their opinions unilaterally, the suspects would refuse to talk and never tell the truth to public prosecutors. And it is also essential to present the collected objective evidence to the suspects and seek their opinions on the evidence. By being presented with overwhelming objective evidence, some suspects might give up arguing on and start telling the truth to public prosecutors.

D. Identifying All the Suspects

Public prosecutors also need to identify all the suspects involved in a case. In some bribery cases, in addition to a bribe giver and bribe taker, there is also an architect who organizes the crime and a beneficiary who receives criminal proceeds in the end, including gang members and politicians etc. These figures tend to hide behind other junior figures and press their responsibilities to those people to escape from their own charges, but they are the ones who should be held accountable the most.

Public prosecutors must examine the case thoroughly, identify all the suspects, especially the kingpin, and bring all of them to justice without fail. Public prosecutors must collect and analyse enough evidence so that court can be fully confident to establish guilt of all the suspects beyond reasonable doubt.

IV. NEW AND EMERGING FORMS OF CORRUPTION IN JAPAN

A. Covid-19-Related Cases

From the outset of the Covid-19 pandemic in 2020, there were cases where individuals and legal entities defrauded the Japanese Government out of subsidies originally designed to assist those adversely affected by Covid-19 in Japan. As of 6 October 2022, more than 1,600

individuals and legal entities have wrongfully received subsidies of more than 17 billion yen, equivalent to US\$116 million. Among these cases, some were committed by Japanese Government officials, for example, those of the Ministry of Economy, Trade and Industry (METI), which is in charge of the Covid-19-related subsidy programme, as well as one of the National Tax Bureau, which is involved in the process of distributing subsidies. Two METI officials were found guilty and sentenced to 2 years and 6 months in prison and 2 years in prison with the sentence suspended for 4 years, respectively, for swindling 15 million yen jointly. And an official of the National Tax Bureau was also found guilty and sentenced to 3 years in prison with the sentence suspended for 5 years for swindling 7 million yen with his accomplices. Those officials, all in their 20s, have allegedly abused their knowledge and experience as officials of responsible ministries and bureaus and defrauded the government out of funds which could have otherwise helped those in desperate need.

B. Corruption Cases Related to the Tokyo Olympics

In August 2022, a former Tokyo Olympic organizing committee board member was arrested by the Tokyo Public Prosecutor's Office over allegations that he was bribed 51 million yen, equivalent to US\$380,000, to secure a sponsorship contract for a business wear company and grant it approval to sell official Games goods. Technically speaking, the organizing committee board members are not public servants themselves, but they are categorized as "deemed public servants". In Japan, some non-public servants are regarded as public servants in accordance with the nature of their professions, which are highly public or related to the public benefit etc., in line with those of public servants by the special acts. For example, the officials of the Bank of Japan are not public servants, but they are deemed public servants by the Bank of Japan Act in accordance with the nature of their professions. The deemed public servants are punishable by the provisions which punish public servants such as bribery, abuse of authority by public servants etc. Likewise, the former board members are deemed public servants based on the Special Act of the Tokyo Olympic Games, and they are subject to punishment for receiving bribes.

Public prosecutors arrested the founder (former chairperson) of the company, along with the former vice chairperson and the senior managing director of the firm, for allegedly offering those bribes to the former board member. It is said that the former board member denied pushing organizing committee officials to give the company such favourable treatment, saying the money was just paid for consulting services. Following this case, the former board member was arrested several times in connection with other similar cases, but he also denies wrongdoing. The investigations by public prosecutors are still ongoing, and the overall picture of the cases is yet unclear. The Olympic Games were originally commenced to encourage interactions among athletes regardless of their backgrounds in order to establish a peaceful world, but recently they have become too extravagant. In fact, in the Tokyo Olympics (2021), US\$28 billion was used, whereas, in London Olympics (2012) and in Sydney Olympics (2000), only US\$15 billion and US\$5 billion were used, respectively.¹ The expenses of the Olympic Games have ballooned nearly sixfold in just 21 years. I believe this trend is one of the big causes of such corruption cases, and the business wear companies and others sought to gain their own interests in the Tokyo Olympics Games by exploiting the enormous clout of the former board member on the organizing committee. If people concerned keep doing the same things and do not change their directions, similar cases might occur in the near future as there seems to be no sign of keeping the expenses of the Olympic Games down. And also, to prevent

¹ <https://www.forbes.com/sites/niallmccarthy/2021/07/27/tokyo-is-the-worlds-most-expensive-city-for-construction-infographic/?sh=2a363d9170d2>

the recurrence of similar cases, we need to have an effective mechanism in place which robustly scrutinizes conflicts of interest of all deemed public servants both incumbent and prospective with companies or individuals likely to be engaged in their businesses.

C. Cases Involving Cooperative Agreements

In Japan, the cooperative agreement system was created in 2016 and came into force in 2018. The new system allows suspects and defendants to enter into negotiations with public prosecutors, whereby evidence of others' criminal conduct can be provided in return for criminal charges being reduced or dropped. It covers white collar crimes such as fraud, bribery and so on.

Since its introduction, the system has been used in several cases, and the first case was related to a Japanese power equipment manufacturing company. The company was engaged in the construction of a thermal power plant in a Southeast Asian country in 2015. However, in February 2015, when the company's logistics provider tried to unload components for the plant at a jetty near the construction site, local residents along with public officials from the local port authority claimed that the logistics provider had not properly obtained the necessary licence to use the jetty and they blocked the jetty. The logistics provider was asked to pay a bribe (around USD 600,000) in order to use the jetty, and the company's employees paid the bribe to the local residents and the port authority officials, as requested, through the logistics providers, so that they could avoid the delay of the construction. Later the company became aware of the said case and could not deny the fact that the company's employees had bribed foreign public officials. Therefore, the company reported its findings to public prosecutors and entered into a cooperative agreement with public prosecutors in 2018 under which public prosecutors agreed not to charge the company in exchange for its cooperation in the investigation. Three former employees were prosecuted for bribing foreign public officials, and all of them were found guilty. Among them, two were sentenced to 1 year and 6 months in prison with the sentence suspended for 3 years, and the remaining one was sentenced to 1 year and 4 months in prison with the sentence suspended for 3 years. The number of cases in which the cooperative agreement system has been used is still small in Japan; thus, it is yet premature to judge whether the system is a truly effective means of investigation.

D. Exam-Related Cases

In Japan, national exams including the bar exam and other entrance exams of prestigious universities, especially those of medical schools, are quiet competitive. In fact, only 2 or 3 out of 100 applicants passed the bar exam each year in the past, and they were indeed extremely competitive.

In 2015, an unprecedented case happened in relation to the bar exam in Japan. A professor of a law school who was one of the members to set the bar exam of that year, disclosed some questions in advance to one of his female students, whom he was reportedly dating. This case became evident, as the female student gained unnaturally high marks. He fed exam questions to the student because she had failed the exam a year before and he wanted to help her. He was found guilty and sentenced to 1 year in prison with the sentence suspended for 5 years.

Also in July 2022, a former senior education ministry official was found guilty and sentenced to 2 years and 6 months in prison, suspended for 5 years, for allegedly receiving bribes related to a ministry support programme for private universities. He accepted a request from the members of a medical university in Tokyo to give favourable treatment to the

university in return for his second son fraudulently passing the entrance exam of that university in February 2018.

These are the two examples of corruption cases related to exams. These suspects were both in highly responsible positions, and they should have or must have surely recognized the great responsibilities attached to them at the moment of committing their crimes. However, they averted their eyes from them and acted wrongfully in favour of their loved ones even though these acts will turn out to be a major disadvantage for their loved ones in the end.

V. CONCLUSION

As mentioned above, corruption still exists in Japan and new cases are emerging. In order to prevent and fight against corruption, I believe maintaining the integrity of public servants, including those regarded as public servants, is crucial and imperative. In Japan, the National Public Service Ethics Act was enacted in 1999, and the National Public Service Ethics Code was also enacted in 2000 in order to maintain the integrity of public servants.

Based on the Act and Code etc., various trainings have been conducted for public servants so as to maintain their integrity and to raise anti-corruption awareness. However, these efforts are insufficient, and we still have much to do to completely eradicate corruption from our society. For example, in addition to conducting these trainings, we could enhance awareness of the risks of corruption by informing them repeatedly of the actual cases and teach them how corruption could destroy the suspect's life. They need to realize from the bottom of their heart that the results of corruption are enormous and irreparable. By learning these cases, I believe, they can finally associate them with their own lives more directly.

And this is completely my personal opinion, and someone may strongly disagree, but, to some extent, we may need to think of raising salaries of young public servants so that they would be commensurate with their workload. It is said that some young public servants are quitting their jobs early because they think they are not paid enough for their work, especially for overtime, compared to their peers in the private sector. In fact, after WWII, the system of the salaries of the public servants in Japan was reformed, and the salaries of police officers became higher than those of other public servants. That led to the decrease of the amount of corruption committed by police officers. Until then, in some prefectures, surprisingly, five per cent of police officers received the sanction of disciplinary dismissal due to their wrongdoing in just one year² (currently, it is less than 0.0001%).

It is not clear whether the amount of salary is directly connected to corruption for the moment (however, the officials of the METI and the National Tax Bureau, who committed fraud in Covid-19-related cases, were all in their 20s), and we may need to consider budgetary issues in advance, but if they receive salaries which they view as being commensurate with their own work, it could dissuade them from becoming engaged in corruption in the future.

² *Keisatsugaku Ronshu* (The Journal of Police Science) Vol. 65, No. 9, p. 108.