

ANTI-CORRUPTION MEASURES: A SHORT HISTORY IN JAPAN

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I. INTRODUCTION

The theme of this lecture is Japanese anticorruption measures. Japan is sometimes referred to as a successful country with regard to combating corruption. Yes, as I indicate later, the number of corruption cases has decreased in recent years, but Japan does not have any agencies specialized in combating corruption. Moreover, Japan still has not ratified the United Nations Convention against Corruption, and some quite useful tools of investigation are lacking in the Japanese criminal procedure. These tools include wiretapping and plea bargaining in corruption cases. If asked what is the important element in Japanese criminal procedure to combat against corruption, I would say that the continuous efforts of the Japanese prosecutors have played a vital role. Thus, in my presentation, I will highlight some issues in our experience in Japanese history to fight against corruption, especially with regard to the relationship between corruption and politics.

II. ANTI-CORRUPTION MEASURES BEFORE WORLD WAR II

I understand that there are many UNAFEI alumni here, and you have learned at UNAFEI about the Japanese criminal justice system. As for criminal procedure, Japan first introduced the continental legal system, such as in France or Germany, but after World War II, Japan was occupied by the United States, and our criminal procedure was heavily affected and drastically changed by the common law system. Although I will not go into the specific changes here, I would like to start my presentation by focusing on actual cases of corruption experienced in Japan before World War II.

A. The First Major Corruption Case and Some Background Information

The first major corruption case which appeared in Japanese history was the “Nitto” case, which was revealed in 1909, more than 100 years ago. As the political and economic climate in Japan contributed to the corruption case, both of these factors deserve brief mention here. In 1867, a “new” or modernized Japanese government was formed. Before that, Japan was in the Samurai era, during which Japan was, in principle, closed to international commerce and immigration. At that time, European countries and the US struggled with each other to acquire colonies, and the new government of Japan emerged to form a modernized legal system to be recognized as an independent nation. Thus, it enacted many laws, including the “Meiji” Constitution in 1889. It also made several laws and regulations in the criminal justice field, and the Penal Code enacted in 1907 was one of those efforts. Actually, this Penal Code is still in force today, although it has been amend many times. The first major corruption case arose just after the enactment of the current Penal Code. From the late 19th century to the beginning of the 20th century, Japan fought wars against China and then Russia. The Russo-Japan War took place from 1904 to 1905, and the war was fought in northeastern China. This war exhausted the Japanese economy, and after the war ended Japan suffered a severe depression. Many companies struggled during this period, and one of those companies was the Nitto Company, which had a big share in the market for sugar.

B. The Nitto Case

Representatives of Nitto gave bribes to the parliament representatives to enact laws related to sugar products. First, a law about taxes over sugar products was successfully passed through the parliament, but a bill to establish a national sugar company failed. The Nitto Company made efforts to field candidates for the

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parliament election to obtain some influence in the parliament.

At that time, police and prosecutors were authorized to conduct investigations, and in this case prosecutors took the initiative to investigate. It is said that this was the first real case in which prosecutors took charge of an investigation, and the prosecutors conducted the investigation independently from the police. They succeeded in prosecuting many members of parliament and executives of the company.

This was a very big case at that time, and prosecutors had found other evidence which suggested that another oil company also tried to influence the parliament and bribed some of its members. Prosecutors were actually proceeding with the investigation against this company and other politicians, but suddenly the investigation was terminated. It was reported that the Prime Minister called the Prosecutor General to stop the investigation. As far as I know, there was no legislation or regulation authorizing the Prime Minister to terminate investigations. But at that time, the Prosecutor General was appointed by the Cabinet, so he had no choice but to follow the instruction.

C. The Navy Corruption Case

Although the Nitto investigation was terminated, after a few years prosecutors found another big corruption case in the Japanese Navy. This was just before World War I and the Japanese Navy was eager to buy weapons, ships and other equipment from European companies. There was evidence that Siemens and Vickers, both European weapon companies at that time, bribed some high officials in the Japanese Navy to sell their products. Prosecutors conducted an investigation under the leadership of the Prosecutor General, who had been the Head of the Tokyo Appellate Prosecutors' Office, which conducted the Nitto case investigation. This investigation was successful and some high officials were prosecuted. This case also raised a serious question about the budget of the Navy and caused a political dispute in the parliament. The Prime Minister was, unluckily enough, from the Navy. As a result of the dispute he failed to pass the budget bill in the parliament and had to resign his position.

D. Observations

Even in this early stage of the history of the Japanese prosecution service, prosecutors were quite eager to investigate these corruption cases. Their proactive attitude was also supported by the public. At the time when the Navy case was revealed, there were several public demonstrations in support of the investigators and protesting against the Cabinet and Navy. Prosecutors were admired in Japan. After these cases, the system of nomination of the Prosecutor General was altered so that the Emperor would directly appoint the Prosecutor General, instead of the Cabinet. This was an honourable solution for the Japanese people because the Emperor at that time was the most powerful figure in the country.

Regarding the influences on politics, the first major investigation, as mentioned above, was terminated by the order of the Prime Minister, who was a politician. Also, the Navy case showed that the investigation could heavily affect political disputes. Actually, the authority of investigation is quite powerful, and it can be easily abused. Our history just before World War II tells us that such authority can be abused to suppress political opinions, which resulted in Japan's engagement in the tragic World War II.

III. ANTI-CORRUPTION MEASURES AFTER WORLD WAR II

As mentioned, Japan was occupied by the United States, and the US headquarters ordered the Japanese to modify their criminal procedure under the influence of the American legal system. In practice, the post-war period in Japan experienced quite a lot of criminal cases.

A. Creation of the Special Investigation Department

One case involved the misappropriation of the equipment of the Japanese Army and Navy after the war. The US headquarters ordered the seizure of the equipment, but much of it was lost. In 1947, a special division to investigate such misappropriation cases was established in the Tokyo District Prosecutors' Office, and capable prosecutors were engaged in the investigation. Later, this special division changed its name to the Special Investigation Department, which is generally in charge of economic crimes, tax evasion cases and also corruption cases.

This Special Investigation Department was created first in Tokyo, then in Osaka and Nagoya. As you

probably know, Japan does not have any special agency focusing on the investigation of corruption cases, but these Special Investigation Departments have played a major role in the investigation of corruption cases. Prosecutors assigned to SIDs are known in Japan as specialists in investigation, especially against political corruption, and it is also known that most cases they prosecute result in conviction. There are many high-profile cases handled by this Department, such as the Lockheed case in which the SID arrested the Prime Minister.

B. Independence from Politics

After World War II, a new law was enacted, which clearly stated that only the Minister of Justice has the authority to designate the Prosecutor General to take action with respect to a particular case. So now, in a legal sense, the Prime Minister cannot directly instruct prosecutors to take action on a case, and even the Justice Minister cannot order individual prosecutors to handle a case in a particular way.

The Justice Minister is also a politician, as he or she is nominated by the Prime Minister from among the members of parliament belonging to the ruling party. It might be easy to conclude that the Justice Minister would allow political circumstances to influence an ongoing investigation. This actually happened in 1954, but since then there are no other cases in which this authority was exercised.

C. Corruption Case in 1954

This case involved a shipbuilding company that bribed high-level government officials and members of parliament. The Special Investigation Department in the Tokyo Prosecutors Office conducted the investigation, and four members of parliament were arrested and prosecuted.

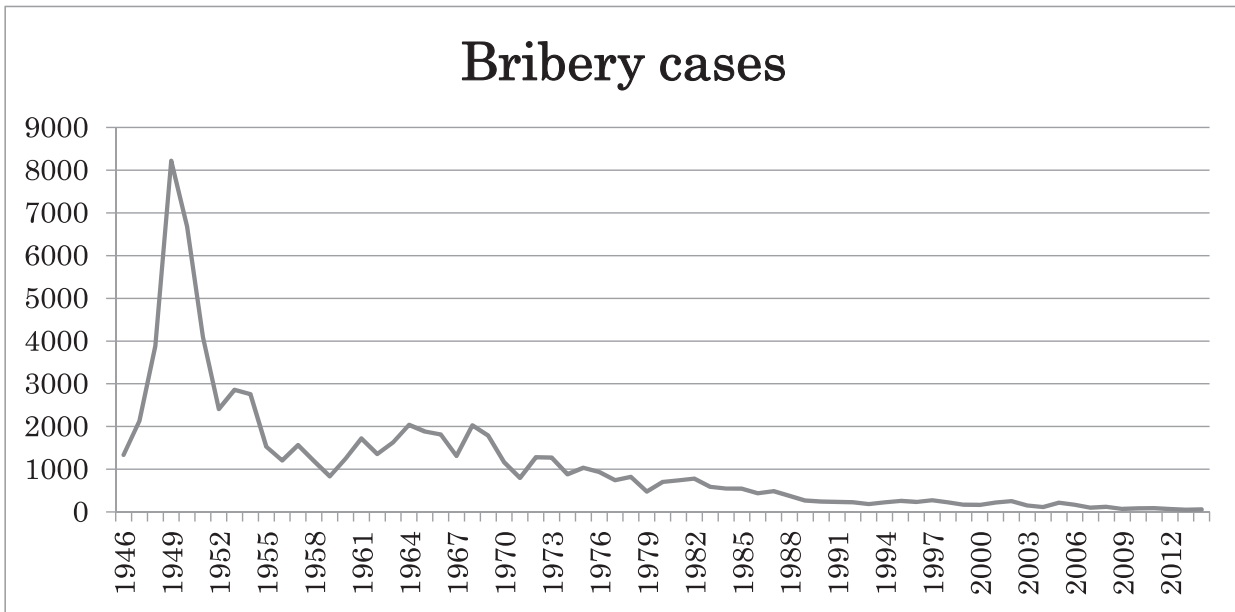
The next target of the SID was the Secretary General of the ruling party, who was suspected to have received money from the shipbuilding company. It is said that the prime minister strongly advised the Justice Minister to exercise his authority to terminate the investigation. In May 1954, the Justice Minister ordered the Prosecutor General not to arrest the secretary General, and right after he exercised this authority the Justice Minister resigned his position. This also caused a dispute in the parliament, and the Prosecutor General was called to the parliament to testify about his conduct. The public strongly opposed his conduct, and therefore this authority has never been exercised again.

D. Observations

Even after World War II, the prosecutors' proactive attitude against corruption remained the same. This attitude is also widely supported by the public, which even hinders the exercise of the authority that has been clearly delegated to the Justice Minister by law. As a result, prosecutors have achieved de facto independence from politics. The authority to investigate and prosecute cases may be strong enough to affect politics, but prosecutors in Japan after World War II have been careful not to influence politics. They prosecute the cases in which evidence is sufficient to obtain a conviction, regardless of the political party that the suspects belong to.

E. Current Situation of Anti-corruption Measures in Japan

Below are some statistics, which indicate the number of bribery cases handled in Japan. The number was quite high right after the war, but it has decreased significantly since then. In recent years, statistics show that there are only 30 or 40 bribery cases a year.



Then, what kind of tools do we have in order to investigate corruption cases? Wiretapping, undercover operations, or plea agreement — these are recognized as quite effective tools to investigate corruption cases, but in Japan these measures are not allowed. We have some laws that allow wiretapping, but this tool is quite restricted and used only in drug dealing cases in practice. Thus, Japanese prosecutors rely on traditional measures such as financial investigation, search and seizure, and interrogation of suspects.

F. Financial Investigation

What makes the SID of the Tokyo Prosecutors' Office the most special one is its techniques for conducting financial investigation. The Japanese Code of Criminal Procedure authorizes prosecutors to ask private or public entities without a warrant, as a non-compulsory measure, to provide financial records. Even on a voluntary basis, when prosecutors ask banks for certain account information, banks are very cooperative in providing it. The prosecutors use this method for seeking account information and bank records quite often. We refer to it internally as "opening the account", which means to ask the bank for account information. There are many other methods for conducting financial investigation. One of those methods is to cooperate with tax agencies, which have a lot of information about transactions that taxpayers in Japan engage in. Tokyo SID is in charge of tax evasion cases, and it is quite good at cooperating with the Tokyo Tax Agency.

G. Recent Legislation

Lastly, I would like to touch upon legislation in Japan. Some important conventions on corruption have been adopted over the past two decades. One of them is the 1997 OECD convention against bribing foreign public officials. Japan ratified this convention and amended its domestic law to criminalize the act of giving bribes to foreign public officials.

There is also an important UN convention, which is the United Nations Convention against Corruption. Japan signed the convention in 2003 but has not yet ratified it, because the amendment of criminal law and procedure to ensure the domestic legislation compatible to the Convention was the subject of a hot dispute in the parliament. This amendment was just adopted in the parliament last week, so I am sure that the Japanese Government will ratify this convention very soon.

Also recently, there was an amendment to the Code of Criminal Procedure which passed the parliament last fall, which introduces the plea agreement into Japanese criminal procedure. Before that, plea agreements were prohibited in Japan. Of course, plea agreements are quite useful tools to accomplish fruitful investigations, like in Operation Lava Jato or other cases in Brazil. This amendment will enter into force in 2018, and I hope this tool will be utilized properly in Japan. This amendment refers also to issues such as extending the list of crimes subject to wiretapping, but corruption crimes still fall outside the scope of wiretapping in Japan.

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This is the end of my presentation. I believe that this seminar has allowed us to better understand each other in order to strengthen future cooperation in the fight against corruption.