
REMARKS BY PROGRAMMING OFFICER

1. The 107th International Training Course was conducted at UNAFEI from 1 September to 20 November 1997 with the main theme, “The Role and Function of Prosecution.” Twenty-nine participants (overseas: 18, Japanese: 11) attended the Course from various regions of the world.

2. Fundamentally, the rationale of the main theme can be summarized as follows:

The prosecution of offenders and the appropriate request of punishment are indispensable procedures in the realization of criminal justice. These prosecutorial functions are commonly established in the criminal procedure of many countries. However, the personnel and organization authorized to assume these functions, the breadth of their authority, and the actual practices of prosecution differ among the various criminal justice systems worldwide. Since prosecution is a fundamental component of the criminal justice system, it is essential to deliberate on issues related with its proper role and function in order to seek a better prosecution system and ultimately a better criminal justice system.

Moreover, the role played by the prosecution system in each country has grown even more important as crime becomes more sophisticated and organized or new criminal phenomena appear. Thus there is a great need for the involvement of prosecutors in the promotion and development of national criminal policy by such means as planning and drafting legislation related to criminal justice.

3. UNAFEI usually selects themes which relate to all fields of criminal justice, invites participants from these different fields, and discusses issues from much broader perspectives. This method is commonly called the “integrated approach”. However, in this 107th International Training Course, in consideration of participant evaluations in past programmes, UNAFEI selected the above main theme focusing only on prosecution. Moreover, the Institute invited overseas participants who were prosecutors or whose profession was closely related to this field.

Prosecutors selected from prosecutorial organizations attended from such countries as China, Costa Rica, Indonesia, the Philippines, the Republic of Korea, Sri Lanka and Singapore. Police prosecutors participated from such nations as Kenya, Ghana and Zambia. From such countries as Cameroon, India, Malaysia, Nepal and Pakistan, participants had prosecution-related duties in their respective Ministry of Justice, Ministry of Interior, Criminal Investigation Department of Police and so on.

Eminent experts were invited from abroad as well as Japan to share their knowledge and experiences. They too were mainly from the prosecution field.

4. Participants actively engaged in discussions during the Individual Presentations, lectures by experts and UNAFEI faculty, and the Group Workshop sessions regarding the role and function of prosecutors at the stages of investigation, initiation of prosecution, trial and so on. Discussion results are summarized as follows:

a. In regards to the investigation authority of prosecutors, there are mainly three types of legal systems: one which grants them authority to investigate all kinds of crimes (Japan and the Republic of Korea); one which allows prosecutors to investigate specific types of crimes (China and Indonesia); and one which does not provide prosecutors with the authority to investigate (Ghana, India, Malaysia, Pakistan, Singapore, Sri Lanka, Thailand and Zambia). Incidentally, Cameroon adopts a dual system: in the region of so-called English-speaking Cameroon, the third system applies and in the region of so-called French-speaking Cameroon, the second system prevails.

Also there are countries which have the system of police prosecutors, namely, India, Ghana, Malaysia, Pakistan, Singapore, Sri Lanka and Zambia; while other countries are strangers to such system, that is, China, Costa Rica, Japan and the Republic of Korea.

In whatever system, when prosecutors give appropriate instructions and supervision based on their ample legal knowledge and experience, the standard of quality of police investigation is enhanced. The police can obtain from prosecutors precise guidelines as to what criminal facts can be deduced, what evidence should be collected, and who should be prosecuted. Moreover, prosecutors prevent illegal investigation activities as well as the undue infringement of human rights.

There are countries where prosecutors are given investigation authority and they independently exercise it. This system helps to preclude political influence on the development of investigation and prosecution.

b. It is a fundamental mission of the police and prosecutors to select cases which should proceed to criminal trial. In order to realize criminal justice, prosecution must be initiated decisively and expeditiously when there is sufficient incriminating evidence against the accused and criminal punishment is warranted. At the same time, proceedings should not be taken against a person who is not likely to be found guilty.

The evidentiary standard is not uniform as to when prosecution or non-prosecution is determined: prima facie (India, Kenya, Pakistan and Sri Lanka); reasonable prospect for obtaining guilty judgment (Singapore); and proof beyond reasonable doubt (China, Japan and the Republic of Korea).

Prosecutors should make this selection of prosecution or non-prosecution objectively, legally and independently. The establishment of an independent prosecutorial organization contributes to guarantee such desirable exercise of prosecution powers. It is also important to improve the internal and external checking systems for prosecutorial abuse; to guarantee the systematic independence of prosecution; and to secure capable human resources through sound appointment practices and continued education.

Even if there is sufficient evidence to prove the accused guilty, it may not always necessary to impose punishment on him. In such cases, the system of suspension of prosecution is of great use, as is employed in such countries as Japan and the Republic of Korea. Such a decision is made by public prosecutors on the merits of each individual case. Said system has contributed to preventing the unnecessary imposition of punishment, reducing the number of cases handled by the courts, and mitigating the overcrowding situation in prisons and jails. Therefore, barring insurmountable hindrances, it is worthwhile for some countries to introduce this system.

c. In regards to judgment by the courts, some jurisdictions enjoy a high conviction rate (Indonesia, Japan and the Republic Korea), but others suffer from a low conviction rate (India, Nepal, Pakistan and Sri Lanka). There are conceivable circumstances which lead to such differences: the ability of investigation agencies to collect evidence; the evidentiary standard for indicting a suspect; the exactness of selection of cases by prosecutors for bringing cases to the courts; the strictness of rules of evidence; the credibility of witness testimony; and the speediness of trial.

The conviction rate cannot be the sole and absolute standard, but it is an indicator for measuring how effectively the criminal justice system functions. It shows the results of effective investigation, the precise selection of cases for trial, and the prosecution's appropriate performance in the courts. Too low of a conviction rate reflects unsuccessful endeavors at any of these stages.

Prosecutors must play an important role in realizing speedy trial. The causes of trial delays are manifold. For example, some derive from the

court's organization and its administration of cases (shortage of judges, sporadic trial dates, etc.); others relate to prosecution's activities (lack of preparation, inappropriate assessment of cases, etc.); some are caused causes by the defence (dilatory tactics, uncooperative attitude, etc.); and others include such issues as the non-appearance of witnesses. Whatever the circumstances, prosecutors are required to make a plan for establishing their case, to sufficiently prepare the necessary proof, and to secure witnesses to appear in the courts.

In addition, prosecutors should contribute to securing an appropriate sentence by proffering sufficient evidence to the court of first instance to assist in its decision-making or even, when necessary, making an appeal to a higher court.

5. It is my firm belief that, by creating a forum of participants mainly from the prosecution field, the 107th International Training Course profoundly and substantially discussed the current problems in the area of prosecution and successfully identified some effective countermeasures. In particular, the participants comparatively studied the characteristic features of the various prosecution systems represented in the Course, and compiled concrete means for the improvement of their own respective systems.

The materials provided in this volume carry salient features of the Course materials and discussion results, but of course are not exhaustive of the entire results of the Course. As to administrative information concerning this Course, please refer to UNAFEI Newsletter No. 94.

I applaud all the participants of the 107th International Training Course for their tireless dedication to achieve better training results, thereby contributing to the development of criminal justice throughout the world. I also extend my deep appreciation to all the people concerned who provided valuable assistance to the successful completion of the Course.

I sincerely hope that the day will come in the near future when the seeds of knowledge sown during the 107th International Training Course bear fruit in the form of the better administration of criminal justice in the respective countries of the participants.

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