

# Courts in Japan

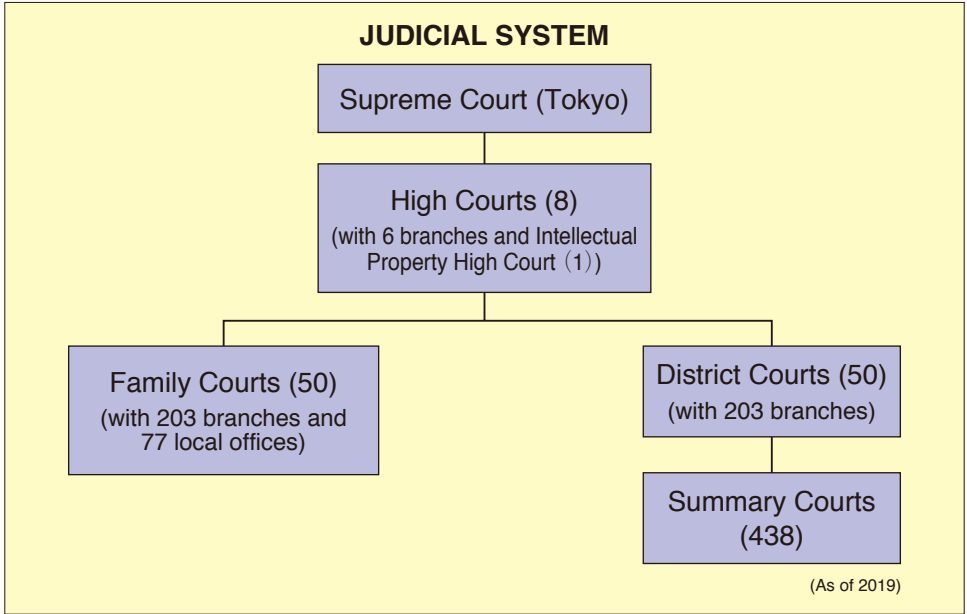
## Table of Contents

1 Constitution of Japan	1
2 Supreme Court	2
3 Courts other than the Supreme Court (Lower Courts)	4
(1) High Courts	4
(2) District Courts	6
(3) Family Courts	7
(4) Summary Courts	8
4 Judicial Proceedings	9
(1) Civil Cases and Administrative Cases	9
(2) Criminal Cases	15
(3) Domestic-Relations Cases and Personal-Status Cases	21
(4) Juvenile Cases	26
5 Justices, Lower-Court Judges, and Court Officials other than Judges	30
(1) Overview of the Personnel Structure	30
(2) Justices of the Supreme Court	30
(3) Lower-Court Judges	31
(4) Court Officials other than Judges	33
6 Public Prosecutors and Attorneys	35
(1) Public Prosecutors	35
(2) Attorneys	35
7 Citizen Participation in the Judicial Process	36
(1) <i>Saiban-ins</i> (Lay Judges)	37
(2) Conciliation Commissioners	38
(3) Labor Tribunal Commissioners	39
(4) Mental Health Adjudication Commissioners and Counselors	39
(5) Technical Advisors	40
(6) Judicial Commissioners	40
(7) Counselors	40
(8) Appraisal Commissioners	41
(9) Members of Committees for the Inquest of Prosecution	41
(10) Members of District and Family Court Committees	42
Appendix 1: Civil Case Proceedings	13
Appendix 2: Criminal Case Proceedings	19
Appendix 3: Domestic-Relations Case Proceedings	23
Appendix 4: Juvenile Case Proceedings	27
Statistical Tables	43

# 1 Constitution of Japan

At the apex of the Japanese legal system is the current Constitution of Japan. Promulgated on November 3, 1946, it entered into force on May 3, 1947. Three Articles are particularly important with regard to the juridical system: the Article on legislative power provides for the Diet as the sole law-making organ of the State; the Article on executive power provides that this authority is vested in the Cabinet; and the Article on judicial power provides that the whole of judicial power is vested in the Supreme Court and in such lower courts as are established by law. Taken together, these constitutional provisions create a governmental structure in Japan that is based on the separation of powers, and provide for checks and balances among the three organs of the State. In doing this, the Supreme Court has been equipped with the power of judicial review.

A rough illustration of the Japanese court system is given in the chart below.



## **2** Supreme Court

The Supreme Court is the highest court in the land. Although the Supreme Court is vested with the power of judicial review, it is not authorized to judge the constitutionality of a particular law separately from a specific, individual case: it is allowed to make a judgment only on a specific dispute as the court of appellate instance. The Supreme Court has jurisdiction to decide on final appeals and on appeals against rulings brought under procedural laws. In addition, the Supreme Court has original and final jurisdiction in any proceedings involving the impeachment of National Personnel Authority Commissioners.

The Supreme Court accepts a final appeal in the following cases: Firstly, an appeal may be lodged against a judgment rendered by a high court as the first instance or the second instance in civil cases, administrative cases and criminal cases. Secondly, a direct appeal may be allowed from the judgment rendered in the first instance by a district court or a family court, or against a judgment in the first instance that a summary court has rendered in a criminal case. Thirdly, if there is a special reason, an appeal filed with a high court may be transferred to the Supreme Court. Fourthly, a special appeal may be allowed to the Supreme Court against a judgment rendered by the high court acting as the court of final appeal in a civil case, if the judgment involves an erroneous interpretation of the Constitution or any other violation of the Constitution. Lastly, an extraordinary appeal may be made by the Prosecutor-General against a final and binding judgment in a criminal case.

An appeal against a ruling to the Supreme Court is permissible in civil, administrative and family cases, if the petition challenges the constitutionality of the ruling or if a high court permits the petition on finding the case to involve an important issue concerning the interpretation of laws and regulations. Also, in a criminal case, a special appeal may be filed with the Supreme Court against an order by a court



*Courtroom of the First Petty Bench of the Supreme Court (July 2018)*

or a direction by a judge in which no appeal is normally permitted, if the grounds for appeal are the involvement of a constitutional violation or a material conflict with judicial precedent.

The grounds for final appeal to the Supreme Court can be summarized as follows: acceptable grounds for final appeal in civil and administrative cases are violation of the Constitution and serious breach of procedural laws and regulations by lower courts, of which the latter type of grounds for final appeal is specified in the Code of Civil Procedure. Besides, upon petition, the Supreme Court may hear a case that it finds to involve a material issue concerning the interpretation of laws and regulations. An appeal is permitted in a criminal case on grounds of (i) a constitutional violation, (ii) a misconstruction in constitutional interpretation, or (iii) a conflict with Supreme Court precedent, or with high court precedent, in its absence. However, as with civil and administrative cases, upon petition, the Supreme Court may hear an appeal that it finds to involve an important issue concerning the interpretation of laws and regulations.

The Supreme Court is composed of a Chief Justice and fourteen other Justices. It is divided into three Petty Benches, and most appeal cases

are adjudicated by one of these. Three Justices constitute a quorum for handling a case. If an appeal involves material issues of constitutional interpretation, the Grand Bench, composed of the Chief Justice and all fourteen other Justices, adjudicates the matter. Nine Justices constitute a quorum for the Grand Bench to handle a case.

Finally, proceedings in the Supreme Court are as follows. Appeal proceedings begin when the complainant submits a petition for final appeal or petition for appeal against ruling (civil, administrative and family cases) or a written application for final appeal or written application for appeal against ruling (criminal cases) against a judgment or a decision by a lower court, most often the high court, or when the Supreme Court rules to accept the case as the final appellate court. The Supreme Court examines questions of law rather than questions of fact, and it does so based only on the records of the courts concerned, after which it enters a judicial decision. If the Supreme Court determines that there are no grounds for appeal, it may dismiss the appeal without hearing oral arguments. In contrast, if it determines that there are grounds for appeal, it hears oral arguments and then renders a decision.

A certain number of judges are assigned to help the Justices of the Supreme Court as judicial research officials in the above procedure.

### **3 Courts other than the Supreme Court (Lower Courts)**

The Constitution empowers the Diet to pass legislation in order to establish lower courts. It was in accordance with this power that the Court Act was enacted on April 16, 1947, establishing the high courts, district courts, family courts, and summary courts. The Constitution of Japan prohibits the establishment of extraordinary courts.

#### **(1) High Courts**

High courts are located in eight major cities in Japan: Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu. Branches



*Three-judge courtroom  
(criminal case)*

- 1 Judges*
- 2 Court Clerk*
- 3 Court Stenographer*
- 4 Court Secretary*
- 5 Public Prosecutor*
- 6 Defense Counsel*
- 7 The Accused*

—six in all—are attached to some of the high courts. In addition, in April 2005, the Intellectual Property High Court was established as a special branch of the Tokyo High Court. Each high court is composed of one president and several judges.

In general, the high courts have jurisdiction over appeals against rulings by the district courts, family courts, and summary courts. They also hear appeals against lower-court rulings, unless the codes of procedure specifically provide for Supreme Court jurisdiction. Incidentally, the procedures of appeals against judgments rendered by summary courts in the first instance differ between civil cases and criminal cases; in criminal cases, the appellant may appeal against the summary court judgment directly to the high court, whereas in civil cases, an appeal against a summary court judgment is first filed with the district court, and later passes to the high court.

The high court also has special jurisdiction in several matters. It has original jurisdiction as the court of first instance in administrative cases related to elections, criminal cases related to insurrections, and actions to revoke decisions of quasi-judicial agencies such as the Japan Marine Accident Tribunal. In addition, the Intellectual Property High Court has exclusive jurisdiction over appeals against district court judgments on actions relating to patents, etc. (so-called technology-related actions relating to patents, utility model rights, layout-design exploitation rights for semiconductor integrated circuits, or the rights of authors for a



*Single-judge courtroom  
(civil case)*

- 1 Judge*
- 2 Court Clerk*
- 3 Court Secretary*
- 4 Plaintiff's Counsel*
- 5 Defendant's Counsel*

computer program work) and suits against appeal/trial decisions made by the Japan Patent Office.

In principle, cases in a high court are handled by a three-judge panel. In cases related to insurrections or to disciplinary and other action against judges, a panel of five judges presides over the trial. Actions against appeal/trial decisions by the Japan Patent Office may be tried by a panel of five judges.

## **(2) District Courts**

District courts are located in 50 cities—one in every prefecture except for Hokkaido, which is divided into four districts—and there are 203 branches throughout the country. District courts are normally the courts of first instance for civil, administrative and criminal cases, except for matters specifically coming under the exclusive original jurisdiction of other types of court. District courts also have jurisdiction over appeals against summary court judgments and rulings in civil cases. Usually a single judge presides over the trial in a district court, but in the following cases, a three-judge panel is required: (i) if a panel has directed that a three-judge panel should sit, (ii) when trying a crime punishable by the death penalty or imprisonment with or without work the minimum term of which is one year or longer, including life imprisonment, with some exceptions (robbery, etc.), (iii) for appeals against judgments rendered by summary courts or appeals against rulings filed against summary court

rulings and orders, and (iv) other cases that must be heard by a panel pursuant to the provisions set forth by law. All district courts and some of their branches hold criminal trials with the participation of *Saiban-ins* (lay judges) in certain serious cases. Under this system, a panel consisting of six *Saiban-ins* and three professional judges handle such cases.

### (3) Family Courts

Family courts are located at the same places as the district courts and their branches. In addition, there are 77 local offices at the same locations as summary courts. The family court was established on January 1, 1949, for the purpose of maintaining peace in the family and enabling juveniles' sound development. They have exclusive jurisdiction over cases involving domestic relations and juvenile delinquency. Domestic-relations cases are cases brought to court to solve disputes concerning relationships between husband and wife, parents and children, and relatives as well as disputes over inheritance. There are two types of domestic-relations cases, adjudication and conciliation, both of which are handled by proceedings closed to the public. Family courts also have jurisdiction over personal-status litigation, which is open to the public unlike adjudication proceedings.

Pursuant to the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction, which entered into force on April 1, 2014, the Tokyo Family Court and Osaka Family Court handle the cases seeking the return of the child under the Act.

Family courts also deal with juvenile cases. They have jurisdiction



*Juvenile case hearing*  
1 Judge  
2 Court Clerk  
3 Family Court Investigating Officer  
4 Court Secretary  
5 Juvenile  
6 Custodians  
7 Attendant



over juveniles aged 14 to 19 who have committed or are likely to commit a crime, and over persons under 14 years old who have violated or are likely to violate penal provisions. The measures taken with regard to such juveniles are not punitive, but rather protective and educational in nature.

Cases brought before the family court are handled by a single judge or a panel of three judges fully utilizing reports prepared by family court investigating officers, as well as the diagnosis of medical technical officials of courts (doctors) versed in psychiatry.

**(4) Summary Courts**

There are 438 summary courts in Japan, and these are the most accessible to the people. Summary courts have jurisdiction over civil cases in which the disputed sum does not exceed 1,400,000 yen, and over crimes punishable by fines or lighter punishment and certain crimes specified by law as those for which summary courts have jurisdiction such as theft and embezzlement. Summary courts are not vested with the power to impose a term of imprisonment without work or heavier punishment. However, imprisonment with work for not more than three years may be imposed as specially permitted under the law. And if a summary court considers that a sentence of imprisonment with work for more than three years is appropriate, the court transfers the case to the district court. It should be noted that all cases in summary court are handled by a single judge.



*Consultation center in a Summary Court*

## **4 Judicial Proceedings**

### **(1) Civil Cases and Administrative Cases**

There are many different types of civil cases, but the majority of them are civil actions, civil conciliation, demands for payment, civil provisional remedies, civil execution, bankruptcy, civil rehabilitation, corporate reorganization proceedings and labor tribunal cases. Some examples of administrative cases are actions for judicial review of administrative dispositions such as actions seeking the revocation of dispositions by administrative agencies involving such matters as an imposition of tax, and citizen actions demanding a declaratory judgment of nullity with regard to an election.

Civil actions and administrative actions commence by the plaintiff filing a complaint with the court. The following gives an outline of the proceedings, using a civil action as the example.

The court sets the first date for oral arguments and summons both parties to appear. It also serves the defendant with a copy of the complaint to give the defense an opportunity to prepare an answer to the plaintiff's claim and the grounds for that claim.

On the first date for oral arguments, the plaintiff presents the complaint in a statement, and the defendant answers the plaintiff's claim and either admits or denies the allegations made by the plaintiff. If the defendant, in this stage, admits the facts alleged by the plaintiff or does not clearly deny or refute them, the court renders a judgment by applying laws and regulations to the undisputed facts, without examining evidence. If the defendant fails to appear on the first date for oral arguments and does not file the answer with the court in spite of having been lawfully summoned, the defendant is deemed to have admitted the allegations made in the complaint. In this case, the court may render a judgment on the basis of the allegations of the plaintiff.

On the other hand, if the defendant disputes the facts alleged by the plaintiff, the parties engage in proceedings for arranging the issues and evidence which are conducted after the first date for oral arguments, in order to verify the disputed facts. In these proceedings, each party makes an assertion and either admits or denies the other party's allegations, and the court examines documentary evidence. Once the disputed facts have become definite through the proceedings for arranging the issues and evidence, the court conducts an examination of witnesses and/or the parties, in order to decide whether the alleged facts can be proved. Such examination is as intensive as possible. The court may recommend the parties to enter into a settlement while these proceedings are underway whenever the court finds such recommendation appropriate. If a judicial settlement is not reached, the court concludes oral arguments after completing the examination of evidence and renders a judgment. A party who is dissatisfied with the judgment may appeal to the court of second instance.

*Preparatory Proceeding by  
TV-Conference System*



In addition to these proceedings, special proceedings are stipulated for civil actions before the summary court, to allow the rapid and simple resolution of claims involving small amounts of money. For monetary

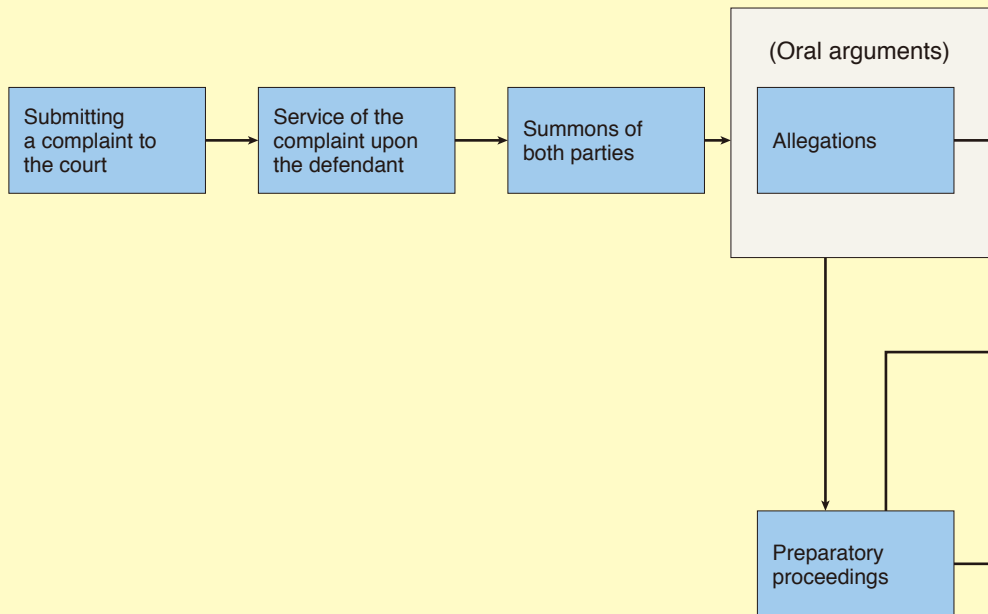
claims not exceeding 600,000 yen, the court may conclude the case and render a judgment on a single date. In the judgment, the court may permit the defendant an appropriate grace period or allow installment payments. These proceedings are called small claims actions. The court clerk may, at the application of a creditor, issue a demand for payment to a debtor without giving the debtor an opportunity for a hearing and without conducting an examination of the evidence (demand for payment proceedings). Under these special proceedings, there is a rule that the action may be transferred to ordinary civil proceedings at the petition of the debtor, etc.

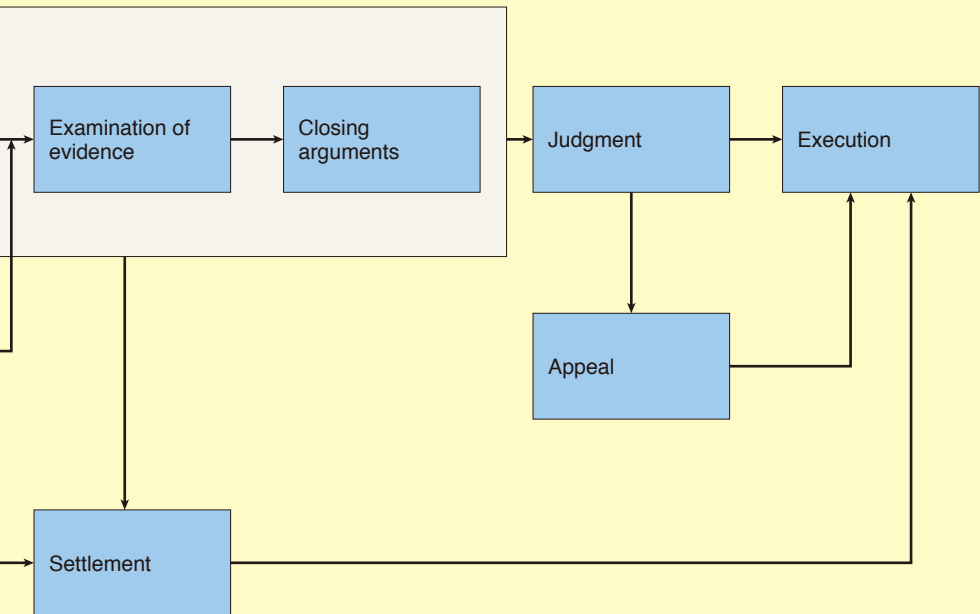


Brochures on summary courts proceedings

Further, Japan also has civil conciliation proceedings as a system for dispute resolution that is every bit as important as proceedings in a civil action. Civil conciliation proceedings are used to settle civil disputes reasonably and in a way that suits the actual circumstances, through concessions by both parties. This type of proceedings is conducted by a conciliation committee composed of one judge or one civil conciliator and two or more other conciliation commissioners. The committee gives a thorough hearing to the allegations of both parties and helps them to reach an agreement. When a conciliation is successfully accomplished, the terms of the conciliation are entered in the record, and carry the same authority and effect as a final and binding judgment. To apply for conciliation proceedings in the summary court, it is necessary to submit a written application. In order to make these proceedings more accessible to the public, copies of an application form have been made available at the filing counters at the summary court.

# CIVIL CASE PROCEEDINGS





## (2) Criminal Cases

In principle, a criminal trial is commenced by the public prosecutor filing a charging sheet with the court. The judges to whom the case is assigned refrain from looking at the content of evidence and forming a determination on the case before it reaches trial, so as not to form prejudices about the case. If the offense with which the accused is charged is punishable by the death penalty or carries a sentence of imprisonment with or without work the maximum term of which is more than three years, including life imprisonment, a trial is not permitted to be held unless the accused is represented by defense counsel. If the accused is unable to appoint a defense counsel due to indigence or other reasons, the court shall appoint a defense counsel on his/her behalf. Additionally, if a suspect not charged yet is under detention and is unable to appoint counsel due to indigence or other reasons, the court shall appoint counsel on behalf of the suspect.

On May 21, 2009, the *Saiban-in* System came into operation. Under this system, six lay judges called *Saiban-in*, who are selected from among the public, participate in the proceedings of criminal trials in the first instance for serious crimes specified by law, forming a panel with three professional judges and engaging in finding whether the accused is guilty or not guilty, and deciding the sentence given to him or her if found guilty.

The trial proceedings in the first instance consist of opening proceedings, the examination of evidence, closing arguments, and pronouncement of the judgment. When necessary, pretrial conference procedures may be held prior to the first trial date for arranging the issues and evidence in the case. These procedures are mandatory in cases subject to *Saiban-in* trials.



Pretrial conference procedures are held in order to narrow down the issues to the core issues of the case, and to allow productive trial proceedings to be carried out consecutively, systematically and speedily. In these procedures, the public prosecutor and the defense counsel express their arguments, disclose evidence to each other and request the examination of evidence, and by having the parties carry out these activities, the court arranges the issues and evidence and decides whether to accept requests for the examination of evidence, as well as deciding the method for examining the evidence. The court also fixes a plan for trial proceedings.

In opening proceedings, firstly the court asks questions to identify the accused, and then the public prosecutor reads the charging sheet aloud. After notifying the accused of the right to remain silent, the court gives the accused and the defense counsel an opportunity to make their statements concerning the case.

In an examination of evidence in ordinary proceedings, firstly the public prosecutor introduces evidence intended to establish proof of the charged facts against the accused beyond a reasonable doubt. Specifically, in the opening statement, the public prosecutor gives an account of the alleged facts to be proved by the evidence and requests the court to examine individual pieces of evidence such as the testimony of witnesses and the articles of evidence. Then the court decides whether to admit each piece of evidence, after hearing the opinions of the defense and considering the admissibility and necessity of each piece of evidence, and examines the evidence it has admitted. Next, the defense introduces its evidence. If the accused does not dispute the charged facts, the defense counsel generally attempts to prove the existence of extenuating circumstances. The court decides whether or not to admit each piece of evidence, after hearing the opinions of the public prosecutor and considering the admissibility and necessity of each piece of evidence, and

examines the evidence it has admitted.

When the examination of evidence has been concluded, the public prosecutor and the defense counsel usually make closing arguments. They state their opinions as to the issues of fact, the application of law, and sentencing. Lastly, the accused makes a final statement. Then, the trial proceedings conclude, and the court renders its judgment.

A party who is dissatisfied with the judgment may file an appeal or a final appeal, depending on the instance in which the judgment has been rendered.

In addition to these proceedings, summary proceedings, wherein the summary court is permitted to impose a fine or a petty fine not exceeding 1,000,000 yen after a documentary examination alone, are used as simple proceedings in minor cases when the accused has no objection. Moreover, speedy trial procedures are conducted in certain cases subject to light punishments in which the alleged facts are not disputed. The court designates an early trial date and renders a judgment on that date in principle through simple examination of evidence, with the consent of the accused and defense. If the court sentences the accused to imprisonment with or without work, it must give a suspension of the sentence.

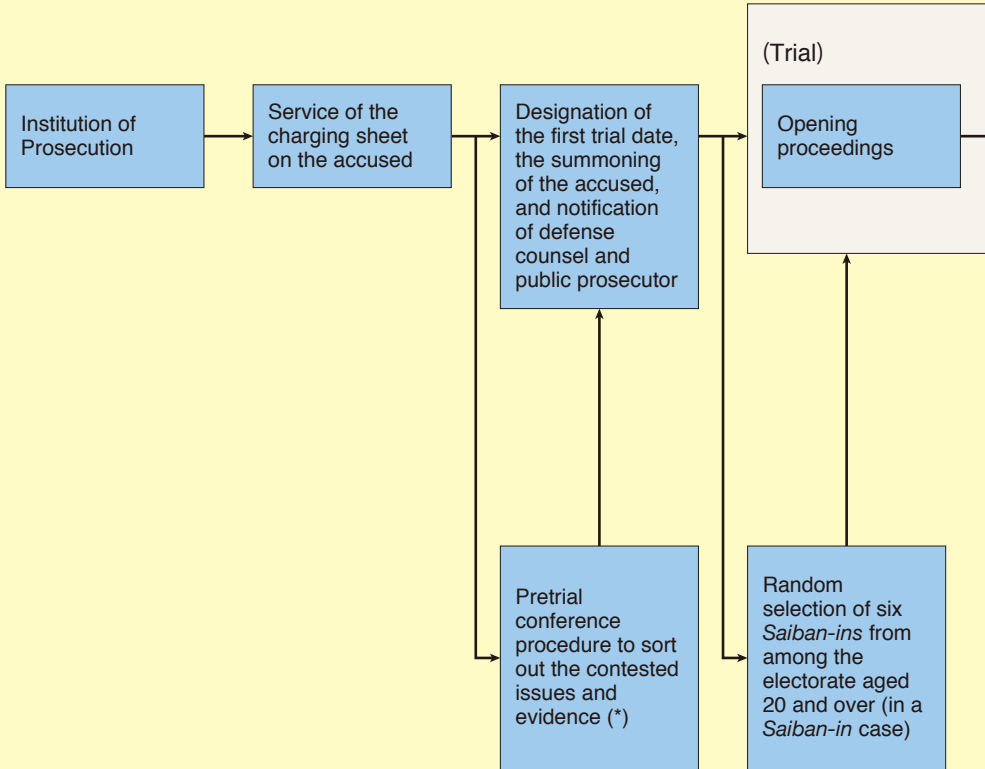
Recently, social concern on the issue of crime victims has been growing in Japan, and protection for crime victims has been strengthened, particularly in criminal trial proceedings. To reduce the burden they must bear during witness' examination, various systems have been introduced, such as allowing witnesses to be accompanied by an attendant, shielding them behind a physical barrier, or examining them via a video-link system. Also, through the introduction of a system that allows the victims of certain types of crimes to participate in

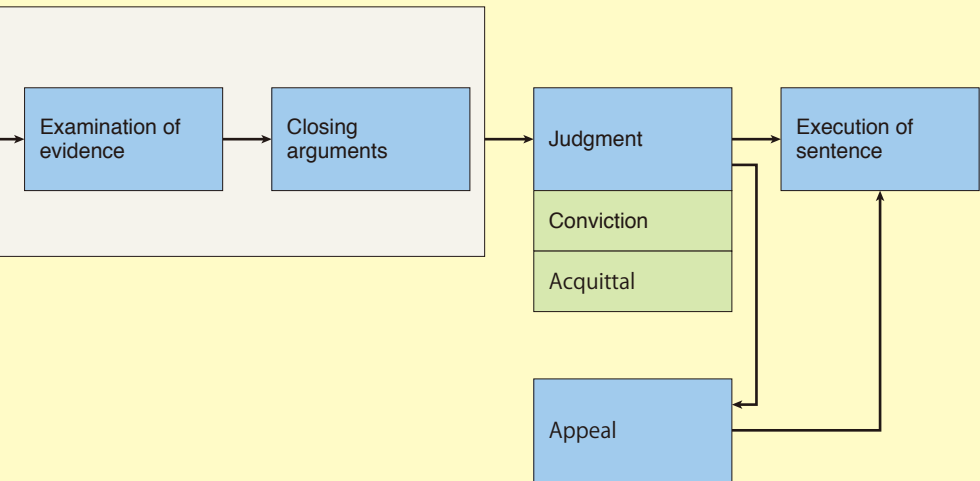
criminal trials and state their opinions, crime victims can now take a relatively active part in the criminal proceedings. For crime victims who wish to participate in the criminal trials but cannot afford to pay the legal costs, a system is in place for the court to appoint an attorney for them at the expense of the State. In addition, provisions to ensure that the victim's name and other personal information will be kept confidential in court proceedings and provisions to support the victim's observation of trial proceedings and to allow him/her to inspect and copy the record of the case have been enacted, and if an agreement on compensation reached between the crime victim and the accused is entered in the trial record, it can be executed. Furthermore, a system has been introduced that allows the courts to settle disputes involving crime victims' claims for damages based on the outcome of criminal trials, in connection with certain types of criminal cases that have been heard by the district court.



*Panel reaching a verdict (from the PR film, “Saiban-in”)*

# CRIMINAL CASE PROCEEDINGS





※ It is mandatory for pretrial conference procedure to be held in *Saiban-in* cases, whereas it is left to the court's discretion in other cases.

### **(3) Domestic-Relations Cases and Personal-Status Cases**

Proceedings in domestic-relations cases are divided broadly into two types: adjudication proceedings and conciliation proceedings.

Both types of proceedings are commenced upon application or by the court's own authority.

Domestic-relations adjudication proceedings are available in cases which do not involve parties who are in an adversarial relationship (e.g., cases regarding guardianship of adults and cases seeking permission for a change of surname or name). The judge renders a decision based upon the documents submitted by the parties, the results of the investigation by the family court investigating officer, and the results of the hearings conducted by the judge. The judge may order a family court counselor who is chosen from among the general public to attend the hearing, and may take the counselor's opinion into consideration.

In domestic-relations conciliation, a domestic-relations conciliation committee, composed of one judge or one domestic-relations conciliator and two or more conciliation commissioners chosen from the general public, tries to arrive at a suitable and appropriate resolution agreed to by the parties, while giving a sufficient hearing to the opinions of the parties. In cases which involve parties who are in an adversarial relationship (e.g., cases relating to child custody and cases relating to division of estate), both adjudication and conciliation proceedings are available, but in order to promote amicable resolution of the dispute, the parties are in principle recommended to go through conciliation proceedings first. If there is a severe dispute between the parties or the facts are complicated, a family court investigating officer who is a specialist in the field of behavioral sciences may be ordered to investigate the facts. If a party is psychologically unstable and cannot discuss the matter calmly, a family court investigating officer may be ordered to

render psychological assistance. When the parties in the conciliation proceedings reach an agreement, the contents of the agreement are entered in the court's case record and have the same effect as a final and binding judgment or adjudication. If it seems very difficult to reach any agreement, the domestic-relations conciliation committee ends the conciliation proceedings. In that event, some cases are transferred to adjudication proceedings, and other cases are taken to a district or a family court upon the filing of an action by one of the parties.

Depending on the type of case in adjudication proceedings, a party who is dissatisfied with the adjudication may file an immediate appeal with the high court.

*Domestic-relations conciliation proceedings*

- 1 Judge(or conciliator)
- 2 Conciliation commissioners
- 3 Family court investigating officer
- 4 Court clerk
- 5 Parties



# DOMESTIC-RELATIONS CASE PROCEEDINGS

Adjudication proceedings

Petition

Adjudication

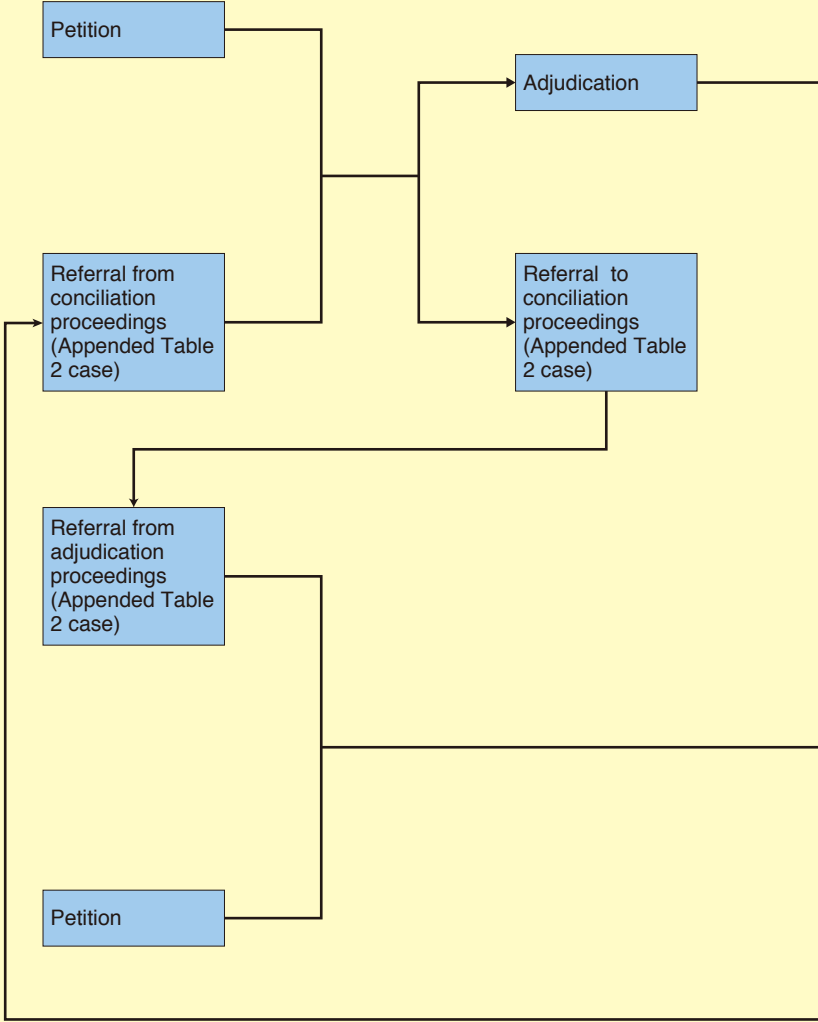
Referral from conciliation proceedings (Appended Table 2 case)

Referral to conciliation proceedings (Appended Table 2 case)

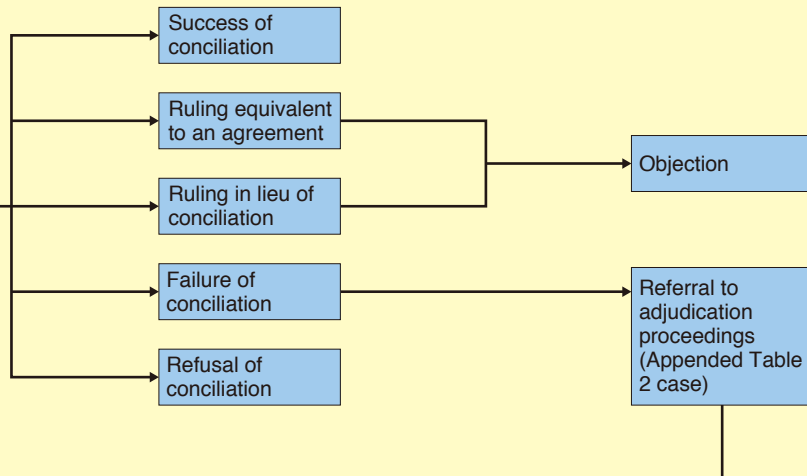
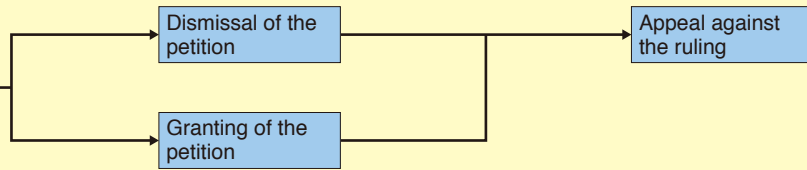
Conciliation proceedings

Referral from adjudication proceedings (Appended Table 2 case)

Petition







\* A judge may have a family court investigating officer investigate the facts at any stage of the proceedings.

Furthermore, if a party fails to perform an obligation such as to pay money imposed by an adjudication or an agreement reached in conciliation proceedings, the family court may, at the application of the obligee and after investigation of the facts, recommend or order the obligor to perform the obligation. These measures are intended to ensure the performance of obligations determined by the family court expeditiously, with the family court in a supervisory role. Similar proceedings are in place for payments involved in the equitable distribution of property or child support imposed by a judgment or a judicial settlement in personal status cases.

Personal-status cases basically use the same procedure as civil actions, but family court counselors may participate in the hearing or settlement process and give their opinions. Furthermore, in cases such as those for designating the person who has parental authority, family court investigating officers may be ordered to carry out an investigation of the facts.

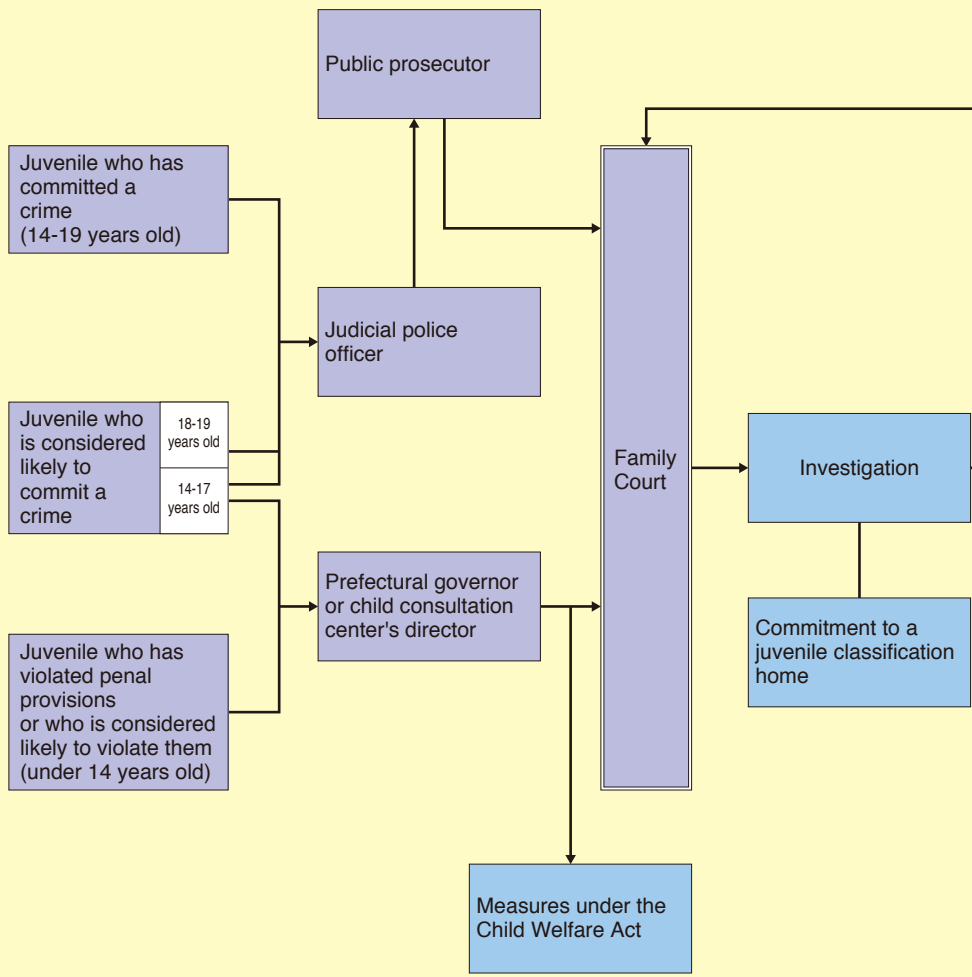
#### **(4) Juvenile Cases**

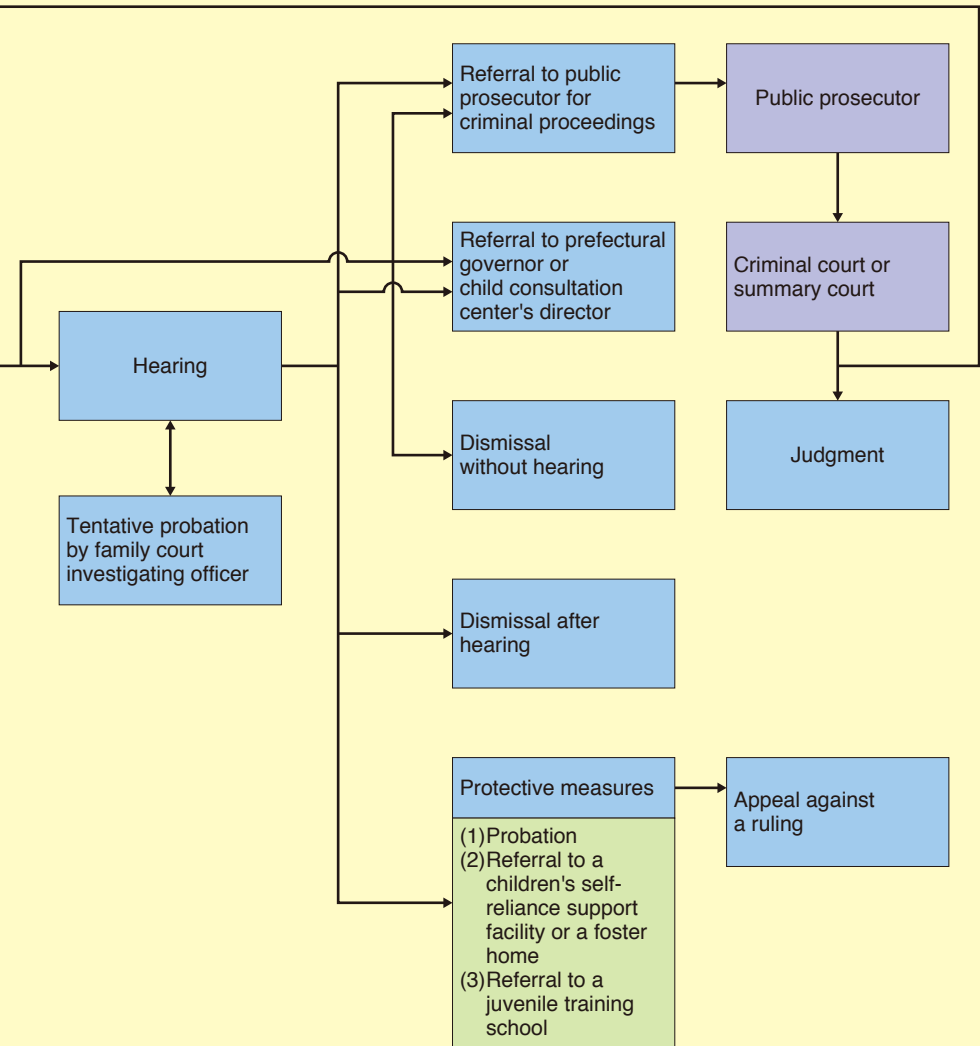
Juvenile cases are usually commenced by referral from officials such as police officers, public prosecutors, and directors of child consultation centers, or by a notification the family court receives from the public.

When a case is accepted by the family court, the judge orders a family court investigating officer to conduct an investigation. The investigation is conducted into the personality, behavior, personal history, environment, etc. of the juvenile, utilizing the family court investigating officer's expertise in psychology, sociology, pedagogy, social welfare, and others, by such means as interviewing the juvenile and his/her parents or guardian and conducting psychological tests. Furthermore, if the court finds it appropriate to obtain a more detailed evaluation of the juvenile's physical and mental condition in order to decide the appropriate disposition for the juvenile, it may order the juvenile's commitment to a juvenile classification home where facilities for scientific examination or analysis are provided. The period of protective detention is generally four weeks at maximum, but it may be extended to eight weeks at maximum in case the examination of evidence is necessary.

The judge decides whether or not it is necessary to hear a case on the basis of the report submitted by the family court investigating officer. The juvenile and his/her parents or guardian attend the hearing, and sometimes other attendants such as attorneys are also present. Furthermore, the court may allow the public prosecutor to attend the hearing for certain serious cases if the juvenile disputes the allegations of delinquency. Juvenile hearing proceedings are closed to the public. However, in some serious cases, the family court may allow the victims to observe the proceedings.

# JUVENILE CASE PROCEEDINGS







The judge reaches a disposition with regard to the juvenile based on the results of the investigation and the hearing. Such dispositions include protective measures such as placing the juvenile on probation under a Probation Officer or referring the juvenile to a juvenile training school. Even when protective measures are not made, the judge or other officials may give the juvenile directions and encourage him/her to participate in a community service program.

If a juvenile is aged 14 or over and the juvenile's past delinquencies, his/her mental and physical maturity, his/her personality, the details of the case, etc. indicate that it is appropriate to sentence the juvenile in criminal proceedings, the case may be referred to the public prosecutor. In this case, the public prosecutor must institute prosecution against the juvenile at a district court or a summary court, aside from certain exceptions.

Besides the final disposition as mentioned above, the court may take "tentative probation" measures as an intermediate disposition, with the court reaching a final decision after observing the behavior of the juvenile under the supervision of the family court investigating officer for a certain period of time.

## **5 Justices, Lower-Court Judges, and Court Officials other than Judges**

### **(1) Overview of the Personnel Structure**

The personnel resources of the Japanese court system are explained in this Chapter. The most important point is that, as stipulated in the Constitution, all Justices and judges “shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.” A Justice or judge shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. Additionally, any disciplinary action related to dereliction of duty or misconduct must be taken pursuant to a disciplinary decision by the Supreme Court or the high court.

### **(2) Justices of the Supreme Court**

The Chief Justice, who stands at the same level as the Prime Minister in the government hierarchy, is appointed by the Emperor following designation by the Cabinet. Other Justices, who are equal in rank to Cabinet Ministers, are also appointed by the Cabinet and then approved by the Emperor. To qualify for the position, they must be “persons with insight and extensive knowledge of law.” Supreme Court Justices are not necessarily professional or career judges. However, at least ten Justices must be selected from among judges, public prosecutors, attorneys, and professors or associate professors of law at universities provided for in the School Education Act which have graduate schools and at universities provided for in the University Order.

The appointment of Supreme Court Justices is reviewed by the people at the first general election for the Members of the House of Representatives following their appointment. This review continues to be carried out every ten years. A Justice whose dismissal is favored by a majority of voters is automatically dismissed, but so far, this has never happened. Justices retire at the age of 70.

### (3) Lower-Court Judges

Lower-court judges are classified into presidents of high courts, judges, assistant judges, and summary court judges. They are all appointed by the Cabinet from lists of candidates nominated by the Supreme Court. The appointment of the president of a high court is approved by the Emperor. As a rule, the nomination of lower-court judges requires the advice of the Advisory Committee for the Nomination of Lower-Court Judges. As of 2019, there are eight presidents of high courts, 2,125 judges, 927 assistant judges and 806 summary court judges.

Most lower-court judges except for summary court judges begin their career by serving as assistant judges based on appointment by the Cabinet. Assistant judges are appointed from among people who have passed the National Bar Examination, completed one-year training at the Legal Training and Research Institute, and then passed the final qualifying examination. Lower-court judges except for summary court judges shall hold the office for a term of ten years and may be reappointed. They retire at the age of 65.

Assistant judges are allowed on the bench, but are not authorized to render a judgment on a case as a single-judge panel. They sit as a member of a three-judge panel. Exceptionally, the Supreme Court may appoint an assistant judge to hear a case as a single-judge panel on condition that the judge has experience of at least five years as a qualified jurist. Judges are appointed from among assistant judges, public prosecutors, attorneys, and professors of law, with at least ten years' experience in their profession.

As for summary court judges, while those who have been the president of high court or judges, or who have practiced law for three years or more as assistant judges, public prosecutors, or attorneys may be appointed by the Cabinet, people of ability, other than qualified jurists, who have long experience in judicial practice or the academic experience necessary for the professional duties of a summary court judge may also be appointed through selection by the Selection Committee for Summary



Court Judges. The term for summary court judges is 10 years, and they can be reappointed. They retire at the age of 70.

It is probably proper to make a brief reference to the part-time judicial officers called “conciliators” who settle civil- and domestic-relations disputes through conciliation proceedings in which they have the same level of authority as a judge. They are appointed from among attorneys with at least five years’ experience in practice.



*Judge's badge*



*Judicial robes (left: for male; right: for female)*

#### **(4) Court Officials other than Judges**

Besides judges, officers of the court include Judicial Research Officials, Court Clerks, Family Court Investigating Officers, Court Stenographers, Court Secretaries, and Court Execution Officers. As of 2019, the total number of such court officials is about 22,000. Among these, about 9,900 are Court Clerks, about 1,600 are Family Court Investigating Officers, about 200 are Court Stenographers, and about 9,400 are Court Secretaries.

##### **i Judicial Research Officials**

The judicial research official's duty is to research procedure and decisions in specific cases as ordered by the Justices or lower-court judges. They are recruited from among specialists in the field of intellectual property and experts in other specialized fields, as well as from among jurists.

##### **ii Court Clerks**

Court Clerks, who are judicial experts with highly sophisticated legal education, are responsible for being present at court proceedings and keeping detailed judicial records (authentication of court proceedings) in order to ensure due process of law. Additionally, they assist the judges in research of laws, orders and judicial precedents and perform other duties stipulated by relevant laws. Moreover, court clerks make the preparatory arrangements between the dates of the court proceedings, which place them in a position of significant responsibility, and take an active role in administering litigation in cooperation with judges in order to realize prompt and proper justice.

##### **iii Family Court Investigating Officers**

Family Court Investigating Officers conduct investigations of facts and coordination involving interpersonal relationships, and then submit reports to the judge, so as to ensure that the right decisions are made in

domestic dispute cases, cases seeking the return of the child under the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction, personal-status cases, and juvenile cases. They are specialists in the behavioral science fields such as psychology, sociology and pedagogy, and serve a role in the scientific function of the family court.

#### **iv Court Stenographers**

Court Stenographers are in charge of making stenographic records of court proceedings and performing other related work.

#### **v Court Secretaries**

Court Secretaries handle the administrative work involved in judicial administration, and assist in work related to handling cases filed with the courts.

#### **vi Court Execution Officers**

Court Execution Officers execute civil judgments. In addition, they conduct investigations of auctioned real properties in the compulsory auction procedure which the courts commence.



*Training and Research Institute for Court Officials*

*The Training and Research Institute for Court Officials is an affiliated organization of the Supreme Court. It trains court clerks and family court investigating officers.*

*Furthermore, it conducts research on theory and practice necessary for works and provides training for acquiring knowledge of such research and cultivating character and insight for court officials other than judges, such as court clerks, family court investigating officers, and court secretaries.*

## **6 Public Prosecutors and Attorneys**

### **(1) Public Prosecutors**

The qualifications required are the same as those required of an assistant judge. Public prosecutors in Japan fall within the system of lifetime employment. Public prosecutors as a whole have the exclusive power to institute prosecution, and this is why they are placed under the general supervision and control of the Minister of Justice. However, the Minister may only direct the Prosecutor-General with regard to the investigation or disposition of any individual case. Prosecutors are civil servants, asking the court to apply the law in a fair manner and supervising the execution of judgments.

### **(2) Attorneys**

Attorneys participate in judicial proceedings in the capacity of either counsel to the parties in a civil case or defense counsel in a criminal trial. Most of them have also passed the National Bar Examination, completed training at the Legal Training and Research Institute, and then passed the final qualifying examination. After passing the final qualifying examination, they register with one of their local bar associations as an attorney. Once registered, an attorney is allowed to argue cases before any court in Japan. There is no distinction such as is made in the United Kingdom between a barrister and a solicitor. Every attorney belongs to one of the local bar associations organized in each jurisdiction of the district court, and at the same time to the Japan Federation of Bar Associations, which is composed of the local bar associations and all individual attorneys.



*Legal Training and Research Institute*

*The Legal Training and Research Institute is an affiliated organization of the Supreme Court. It primarily organizes and operates training or research programs for judges, and additionally provides training or education to legal apprentices whom the Supreme Court employs from among those who have passed the National Bar Examination to allow them to become legal professionals (judge, public prosecutor, and attorneys). As a rule, the training and successful completion of the final qualifying examination are required to become qualified to engage in the legal profession.*



*Classroom*

## **7 Citizen Participation in the Judicial Process**

Citizen participation has been a key concept in the judicial reforms of the 21st century. The citizenry's active participation in the judicial process allows for their views to be reflected in the contents of courts' activities, which in turn, deepens people's understanding of the judicial system and strengthens popular support for the judiciary. This gives rise to a strong democratic foundation as a country operating under the rule of law. Thus, judicial reforms are underway, based on a firm belief in the importance of the people's access to justice.

Even before the reforms started, there were systems in place that allowed citizens to participate in the judicial process by acting as conciliation commissioners, judicial commissioners, counselors, and members of Committees for the Inquest of Prosecution. The Judicial Reform Council held a conference in June 2001, and published a summary of proposed reforms. In accordance with the discussions at the conference, the *Saiban-in* (lay judge) system started on May 21, 2009, a new technical adviser system was introduced, the systems for conciliation commissioners, judicial commissioners, counselors, and the Committees for the Inquest of Prosecution were expanded, and the people were given many opportunities to have their opinions reflected in judiciary. The following is an explanation of the major systems involving citizen participation.

### **(1) *Saiban-ins* (Lay Judges)**

The *Saiban-in* system started on May 21, 2009. It has points in common with a jury systems. Persons eligible to be *Saiban-ins* are Japanese nationals aged 20 and over who are selected at random from among those registered in the list of voters for the members of the House of Representatives. *Saiban-ins* participate in criminal trials in the district court, trying serious cases, involving offenses punishable with the death penalty or life imprisonment with or without work, or involving offenses that have caused a victim to die by intentional criminal acts.



*Saiban-in courtroom*

- 1 Judges
- 2 Saiban-ins
- 3 Court Clerk
- 4 Public Prosecutor(s)
- 5 Defense Counsel
- 6 The Accused
- 7 Court Stenographer
- 8 Court Secretary



Six *Saiban-ins* are selected to form a panel together with three professional judges. The nine panel members decide whether the accused is guilty or not, as well as the sentence, by a majority vote. The majority opinion of the *Saiban-ins* alone cannot form the basis for a conviction, but must be supported by at least one professional judge.

From January 1 to December 31, 2018, 1,090 persons were charged under the *Saiban-in* system, accounting for 1.6% of the total number of persons charged in the first instance through ordinary criminal proceedings during the same year (69,028).

## **(2) Conciliation Commissioners**

Conciliation commissioners are selected from among citizens of good character and discernment who have specialized knowledge or extensive experience in societal life. The conciliation committee, which is composed of one judge or one conciliator and two or more conciliation

commissioners, encourages the parties to reach an amicable settlement in various types of civil and domestic disputes. The conciliation committee works to facilitate mutual agreement between relevant parties through encouraging discussions and proposing solutions considered by the committee. Civil conciliations are available at both district courts and summary courts, but are mostly handled by summary courts. Conciliation in domestic-relations cases (such as divorce) is available at the family court.

### **(3) Labor Tribunal Commissioners**

Labor Tribunal Commissioners are selected from among people with specialized knowledge and experience in labor relations in accordance with the provisions of the Labor Tribunal Act developed as part of the judicial reforms. Labor tribunal proceedings are designed for the prompt, proper, and effective resolution of disputes arising between individual employees and employers in connection with their labor relations, and they are conducted by a labor tribunal composed of one labor tribunal judge and two labor tribunal commissioners. The labor tribunal attempts conciliation between the parties, and if the parties do not reach conciliation, it renders a labor tribunal decision in order to put a legal end to the dispute.

### **(4) Mental Health Adjudication Commissioners and Counselors**

If a person who has committed a serious crime while insane or under diminished capacity is not prosecuted, is acquitted, or is given a reduced sentence, a panel of one judge and one Mental Health Adjudication Commissioner decides whether any special treatment is needed, and if necessary, the details of such treatment. If they consider that the opinion of a Mental Health Adjudication Counselor is needed to make the decision, they hold a hearing with the Adjudication Counselor. Commissioners are selected from among psychiatrists, and counselors are selected from among mental health and welfare experts.



**(5) Technical Advisors**

Technical Advisors are experts in specialized areas, such as medicine, construction, or intellectual property. Technical Advisors are involved in cases where expert knowledge is needed in order to solve legal disputes. They give explanations to the court about the allegations and evidence produced by the parties at any stage of court proceedings, including during proceedings for arranging issues and evidence and during the examination of the evidence. They help the judges to settle disputes properly and expeditiously when expert knowledge is needed.

**(6) Judicial Commissioners**

Judicial Commissioners are selected from among citizens. They assist the summary court judges in judges' attempts to arrange a settlement, and attend civil proceedings in the summary court to express their opinions to the judges.

**(7) Counselors**

Counselors are selected from among citizens with a broad range of knowledge and experience, and they attend hearings and state their opinions to the judges when the family court deals with domestic-relations cases (e.g., commencement of guardianship, supervision of a guardian, change of first name, change of surname), or with personal-status cases (e.g., divorce). In some types of cases, counselors are allowed to have a petitioner explain to them the materials the petitioner has submitted, in order to be able to state an opinion.

*Oral proceedings in a small claims action in a summary court with the participation of a judicial commissioner*

- 1 Judge
- 2 Judicial Commissioner
- 3 Plaintiff
- 4 Defendant
- 5 Court Clerk



### **(8) Appraisal Commissioners**

Appraisal Commissioners are selected from among citizens with professional knowledge and experience in the field of law and real property. In non-contentious cases between landlords and tenants, the judge may hear the opinion of an appraisal committee composed of three or more appraisal commissioners.

### **(9) Members of Committees for the Inquest of Prosecution**

Across the country, there are 165 Committees for the Inquest of Prosecution established as independent organs, each consisting of 11 members selected at random from among Japanese nationals aged 20 and over who have the right to vote for members of the Diet's House of Representatives. The Committee's primary duty is to examine whether or not a public prosecutor's disposition not to institute prosecution of a case is appropriate, and if the Committee concludes that the case should be prosecuted, the public prosecutor considers whether or not to prosecute the suspect. If the public prosecutor again renders a disposition not to institute prosecution, the committee may render the second decision that the case should be prosecuted. If this happens, an attorney designated by the court performs the duty to prosecute the suspect.



*Meeting of a Committee for the Inquest of Prosecution*

### **(10) Members of District and Family Court Committees**

District and Family Court Committees were first established in 2003. Every district court and family court has its own court committee, and this has the aim of ensuring that the good sense, specialized knowledge, and experience of the people will be reflected in the operation of the courts. Each committee is composed of members selected from among citizens with relevant knowledge and experience and who play a leading role in various sectors of the community, and members of the legal profession selected from among judges, public prosecutors, and attorneys. These members give their frank and constructive opinions concerning the operation of the court through exchanges of opinions. Through these exchanges of opinions with the committee members, the court is able to keep in touch with public opinion, and takes these opinions into consideration in the actual operation of the court.