

LAW SYSTEM IN JAPAN

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Abstract

This article attempts to present and explain the main features of the Japanese law system. Japanese Law system was reformed during the domination of Tokugawa shogun family. In 1870, Foreign Governmental Systems Study Office was founded. By judicial sentences many French laws were introduced in Japanese law system. Roma-Tokyo-Berlin Alliance (1936) introduced a strong German influence in the law system. The Japanese judicial system has known five periods. In the first (1869-1888) were introduced many reforms; in the second period (1889-1899), the constitution after the German model was introduced -which remained until 1946 and Japanese customs were accepted through a Family code; in the third period (1900-1913) Penal code appeared; the next period (1914-1945) was determined by many constitutional and social reforms; in 1947 the modern Constitution started its legal effects.

Juridical *resemblance* represents the report between two subjects with identical elements. Juridical *relation* represents the essential similitudes which brings together law systems. Japanese system, despite its traditionalism, received new elements. In Asian societies, the life condition is harmony, assured by the respect for the traditional common law. Human behaviour is imposed by the conscience which respects the social ethics, not by the legal stipulation. In Occidental societies, the function of a law system is to assure social peace by a judicial confrontation of contrary and subjective interests. In Asian societies, social peace is ensured by avoiding conflicts by reconciliation. Every law system is the expression of a certain civilisation, with a historical basis.

Japanese Law system was reformed during the domination of Tokugawa *shogun* family. Local tribunals were subordinated to a central tribunal in Edo (Tokyo today). The legislation was divided into secret laws (procedural and political codes for high state clerks) and public laws (for only a social class or another). Legal stipulations were mostly penal norms and the civil ones were identical with fiscal stipulations. This period was until 1868. In 1870, Foreign Governmental Systems Study Office was founded. By judicial sentences many French laws were introduced in Japanese law system. Roma-Tokyo-Berlin Alliance (1936) introduced a strong German influence in the law system. The

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The Japanese *Judicial System* guarantees that "all judges shall be independent in the exercise of their conscience and shall be bound only by this constitution and the Laws". They cannot be removed from the bench "unless judicially declared mentally or physically incompetent to perform official duties". A *Supreme Court* justice may be removed by a majority of voters in a referendum that occurs at the first general election following the justice's appointment and every ten years thereafter.

Japan's court system is divided into four basic levels: There are 438 *Summary Courts* in Japan that mostly handle small claims civil cases and minor criminal offenses. They are only able to imprison defendants in a few special cases, but not for more than three years. Summary Courts are presided over by one judge. Civil cases in the Summary Court are appealed to the District Court (while criminal cases are appealed to the High Court). There is *one District Court* in each prefecture, except for Hokkaido which has four. District Courts have original jurisdiction in felony cases, in some civil cases and bankruptcy hearings. District Court trial is presided over by at least one judge: two associate judges are also called in for appellate cases, or for criminal cases where the maximum penalty would be in excess of 1 year in prison. There are *eight High Courts* (Sapporo, Sendai, Tokyo, Nagoya, Osaka, Hiroshima, Takamatsu, and Fukuoka) that serve defined circuits of several prefectures each; there are "*branch offices*" in Akita, Toyama, Okayama, Matsue, Miyazaki, and Naha; there also exists the *Intellectual Property High Court* in Tokyo,- which is a special branch of Tokyo High Court. Each court is led by a President, appointed by the Cabinet. The *Supreme Court*, located in Tokyo, is the highest court and it has ultimate judicial authority. An appeal to the Supreme Court requires either an error in the interpretation of the Constitution, or an error in the interpretation of case law from the Supreme Court or High Court. It also decides issues of national law and it has the power of judicial review.

There is a *Family Court*, tied to each District Court, as well as in over 200 branch offices throughout the country -and they primarily deal with divorce and juvenile delinquency cases, although their jurisdiction encompasses all forms of domestic disputes. Their power is limited to mediation. The *Supreme Court of Judicature*, organized by the Ministry of Justice in 1875, was comprised of 120 judges in both civil and criminal divisions. The criminal division was the court of first instance for crimes against the Emperor and for high crimes against public

order. The statute of this court was abolished in 1947, when the modern Supreme Court was formed that year.

Civil law or *continental law* is the predominant system of law and as a legal system is often compared with *common law*. The main difference between the two systems is that common law draws abstract rules from specific cases, whereas civil law starts with abstract rules, which judges must then apply to the various cases before them. In the late 19th century, when many Asian nations were introducing civil law, the German Civil Code became the basis for the legal systems of Japan and South Korea. The main body of Japanese statutory law is a collection of the *Six Codes* : the *Civil Code* (1896), the *Commercial Code* (1899), the *Criminal Code* (1907), the *Constitution of Japan* (1946), the *Code of Criminal Procedure* (1948), the *Code of Civil Procedure* (1996). Japan's current corporate law is based upon the *Corporations Code*, implemented in 2006.

In May, 2004 the Japanese government changed the legislation and court system by introducing two major reforms: a new *Intellectual Property Court* was created (a domain with an already high level capability), - in order to be centered on the Tokyo High Court and *the trial by jury in serious criminal cases* was re-introduced in Japan, expected to be implemented in 2009 (Japan did have a jury trial system from 1928 to 1943). *The juries* will consist of six lay persons and 3 judges ruled on technical legal issues and the decisions will be made on the basis of majority vote. This new system is based on Franco-German systems. The criminal cases are those where the defendant could be sentenced to death or life imprisonment, but not including cases of negligence resulting in death. The jurors will also rule on the punishment; they will be 20-70 years of age and may be excused for serious inconvenience in work, childcare or care for the elderly. They must keep confidential personal information or any comments by jury members they learned in the cases and will be fined if they make public the jury deliberations. It is forbidden for ex-prisoners, members of parliament, police officers and members of the Self-Defense Forces to serve as jurors. Japan has decided in 2006 to introduce class action suits, in order to help consumer groups and to enable them to end unfair marketing activities and contracts. The parties are helped by a government advisory body to seek out-of-court settlements.

The Intellectual Property Court started its activity in April 2005 and has as a main objective a greater expertise and unity in intellectual property law in Japan and it handles cases involving company secrets and it can order the parties in litigation not to reveal company secrets learned during the trial. The new plan is modeled on the system in the UK and the court may utilize technical experts as lay judges. Technical experts such as engineers who are not qualified as attorneys could still be working together with regular judges as technical judges. In July, 2003 an amendment to the Code of Civil Procedure concentrated highly technical cases only in the Tokyo and Osaka courts, with the Tokyo High Court as the court of appeal. In the past ten years, the number of such intellectual property cases has

doubled and the Supreme Court has increased the number of such judges and researchers. The government is seeking, by *Unfair Competition Prevention Law* provisions, to permit cases where legal proceedings may be closed to the public (such as cases involving corporations revealing trade secrets and technologies), - although the Japanese Constitution requires that court proceedings be open to the public. The Supreme Court has decided to appoint lay judges with two years initial terms and possibility of re-appointment, to serve on *labor-industrial tribunals* and to handle *labor - management disputes*. Under the system, disputes will be settled at district courts through a regular litigation or arbitration with the labor lay judges. If the settlement isn't admitted, it is still possible to file regular litigation; the settlement could constitute a legally binding document.

The government makes the biggest change to the *Penal Code* in nearly a century, mostly involving strengthening criminal penalties and lengthening the statute of limitations making it more difficult to escape. Excluding the death penalty and life imprisonment, the maximum prison term may be raised to 30 years from 20 years. In addition, in part of its joining the *UN Convention against Transnational Organized Crime*, Japan is likely to amend the *Law for Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters*. Japan's present Penal Code holds liable all parties to a crime, even those not actually carrying it out. But the parties can not be charged until after the crime is executed or serious stages, such as acquiring weapons, are completed. Legal wiretapping is still being utilized by the Japanese police, particularly on drug crimes. The *Tokyo High Court* upheld the legality of the wiretapping even though the wiretapping law only permits it if no other method of determining criminal activity is available. The Japanese government respects the interests of the crimes' victims (by keeping them and their families more informed, by giving them more participation in the actual procedures in the criminal cases and by cooperating with victims of traffic crime, especially when they pursue civil litigation for damages). The protection of the privacy of eye witnesses is very well taken into consideration. Following the successful conclusion of a treaty with the USA Japan has launched negotiations for a similar treaty with South Korea, hoping to make it possible for the police agencies to exchange information. Japanese police authorities have announced plans to build a DNA database of criminals. The first court case in Japan permitting the use of DNA was the Mito District Court in 1992 (the Supreme Court of Japan approved it in 2000).

The *Constitution of Japan* (1947) is based on the Constitution of the US State of Illinois, and Article 9 is very well known for its content- as Japan forever renouncing the use of force. The biggest issue is to seek to amend the Article 9, the war-renouncing clause, in order to permit the exercise of the right of collective defense. In order to actually achieve an amendment to the Constitution, there must be approval of 2/3rds of both the Upper and Lower Houses of the Parliament and then passed by a majority of the voters, in referendum. Another amendment is

being considered, that is the establishment of a court for ruling on *constitutional matters*.

The *Commercial Code* that took effect in April 2003 reduced the quorum requirement for general shareholders and permitted the establishment of compensation, audit and nomination committees to assist the Board of Directors. The committee system is optional and there is no general requirement for outside directors. The proposed revision of the Commercial Code would require only the approval of the representative director to issue bonds so long as the board in advance sets out the maximum interest rates and also make it much easier to establish stock corporations and limited liability companies. It is felt that it is not necessary to impose all the requirements established for large public companies for small and medium-sized firms. No auditors will be required for these firms and only one director will be enough. The Japanese shareholders may be compensated by cash or shares of the parent company, in order to ease the acquisition of Japanese firms by foreign corporations.

Japanese *contract law*, influenced by the German system, is based mostly on the Civil Code, which gives general definitions of “rights” and “obligations” of the parties. Thus, they need not to determine statutory presumptions -as a matter of practice, contracts tend not to be very detailed, and the parties work out complications as they arise. Japan places, like several other civil law states, a great emphasis on the *rights of the tenant*. Landlords are generally not allowed to unilaterally terminate leases without "just cause". Despite this emphasis on tenant rights, the government expropriate land for any public purpose as long as reasonable compensation is afforded (this power was famously used in the World War II). In comparison to other states, Japan has a unique *prosecutorial system*. Almost all criminal defendants are convicted in Japan, by following their own confession. Prosecutors tend to bring charges only with a signed confession from the accused, after a long questioning by the police. The basic forms of criminal punishment in Japan are imprisonment at hard labor, imprisonment, fine, detention (less than 30 days), and minor fine (less than ¥10,000). In 2004, the penalties in the Criminal Law were revised and reinforced.

In April 2005 a new law, regarding *protection of personal information data* went into effect. Therefore, the law required a new regulatory infrastructure for the appropriate protection of personal information by businesses and the government. The Financial Services Agency will create new guidelines suspending the operations of financial institutions if they leak personal information,-as fingerprints, political beliefs, medical history, criminal records and ethnicity/nationality and will determine employees to sign secrecy agreements, to limit employee access to client personal data. In order to achieve such objectives, the agency must seek amendments to the securities, banking and insurance laws. The Ministry of Economy, Trade and Industry also came out with its guidelines for the new 2005 law. Data to be protected include names, physical

address, telephone numbers, email addresses, financial data, employment related info and physical data, sounds and images or video from surveillance cameras. When provided data to other companies, even group companies, the individual's consent should be received. Access to personal data is to be tightly restricted and not used for purposes other than those originally authorized. Outsource companies must be strictly monitored. This new law is not applied to research institutes and there is concern over the abuse of private genetic information. Therefore, the Ministry of Education, Culture, Sports, Science and Technology, the Ministry of Economy, Trade and Industry, and the Ministry of Health, Labor and Welfare made an agreement to establish an experts study group, with the mission of studying a possible new law for these problems. The Ministry of Economy, Trade and Industry planed to expand the law's protection to personal computer schools and marriage ceremony services and to make the largest change to consumer protection laws in 35 years, by permitting consumer groups to file cases on behalf of consumers to enhance consumer information and stop companies from utilizing misleading marketing practices.

References

- Constantinesco, Leontin-Jean. 1997. *Comparative Law Treaty*, All Beck, vol.1, Bucharest
- Constantinesco, Leontin-Jean. 1998. *Comparative Law Treaty*, All Beck, vol. 2, Bucharest
- Constantinesco, Leontin-Jean. 2001. *Comparative Law Treaty*, All Beck, vol. 3, Bucharest
- Ioan Les. 2002. *Comparative Law Systems*, All Beck, Bucharest
- Losano, Mario G. 2005. *Main Law Systems. Introduction into European and extraeuropean Law*, All Beck, Bucharest
- Legrand, Pierre. 2001. *Comparative Law*, LuminaLex, Bucharest