

REZENSIONEN / REVIEWS

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***Glossary of Japanese Criminal Procedure*
– English, German, French and Spanish –**

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The foundations of Japanese criminal procedure law

One of the peculiarities of Japanese criminal procedural law is its historical background, which reveals the significant influence of, and inheritance from, other nations.

Since the beginning of the Meiji era, the time of the modernization of Japan, there have been several versions of the criminal procedure code. The first (1880) and second (1890) codes were strongly influenced by French law because a French law professor assisted in the drafting of those codes.

The third Japanese criminal procedure code, which was implemented in 1922, was strongly influenced by German law and German scholarly works. However, after the Second World War, in 1948, the current and fourth Criminal Procedure Law (CPL) was fully revised in order to ensure its consistency with the new constitutional rights established by the guidance of General Headquarters. In particular, the basic philosophy in the new procedural code was dramatically changed from the German “inquisitorial” system to the Anglo-American “adversarial” system.

However, the latest law still contains many old provisions which have not been abolished or replaced. Many legal terms have remained in place. Therefore, the influence of various nations can be still recognized in the complex characteristics of the Japanese CPL. The former Supreme Court judge and legendary academic, Dr. Shigemitsu Dando, described it in his remarkable textbook as “a blending of Oriental, Continental Europe and Anglo American Law”.¹

This complex background makes the translation of the Japanese CPL quite difficult. Concerning the translation of the Japanese criminal code into English, Professor B. J. George, one of most famous academics of Japanese law, confessed that “finding English-language equivalents to Japanese terminology has not been easy. I have eschewed the use of Anglo-American legal terms in translation because I believe they mislead and impede understanding rather than enhance it”,² when he translated a comprehensive textbook of Japanese criminal law written by Dr. Dando. I would also like to emphasize the difficulties of translating and explaining the Japanese CPL. It must be very hard for

1 S. DANDO (Translated by B. J. George), *Japanese Criminal Procedure* (South B. Rothman, 1965), xv.

2 S. DANDO (Translated by B. J. George), *The Criminal Law of Japan: The General Part* (Littleton, Colorado, 1997) xxiv.

foreign scholars to understand the Japanese criminal procedure law in any foreign language.

I will review only the English part of this glossary. The parts in German, French and Spanish must be reviewed by other specialists.

Long awaited tool

This glossary, published in Germany, includes versions in four languages in one volume. As a tool for a comparative research, this is quite an innovative approach. This publication will be welcomed by foreign scholars and anyone who seeks a basic, yet proper knowledge of Japanese criminal procedure. Needless to say, in this globalized and still-globalizing society, the number of foreign defendants in criminal proceedings is increasing. For the many interpreters and translators working in the criminal justice system in Japan this glossary must be good news because, up until now, there existed only "translation" material, without any commentaries, for each legal term.

The Japanese criminal law and procedural law are also receiving attention from foreign academics because Japanese society has succeeded in having relatively few criminals and a small prison population. This glossary will be helpful for the researchers interested in such matters.

Nowadays, we are certainly able to find some explanation of Japanese criminal procedure and court practice on the web pages promoted by organizations and public sectors such as the Supreme Court,³ UNAFE⁴ and the Bar Association.⁵ However, these materials usually only contain simple descriptions of the system and process. They lack an explanation of legal terms and information on specific provisions of the CPL. This glossary, on the other hand, provides good references to code numbers from the CPL and readers can easily find each provision online.⁶

This glossary provides original kanji characters in the heading of the selected terms, which must be attractive even to those readers who are not familiar with the Japanese script. When a reader starts to study Japanese, the kanji characters would be very helpful for studying the procedure. It means that this glossary can be quite valuable not only for beginners of Japanese law but also for advanced learners.

The glossary also has an index in all four languages and references for publications, journal articles and online law resources. The number of references is limited, but those provided constitute good tips for the readers.

For further improvement

As a scholar of Japanese criminal procedure law, I would like to suggest some specific terms for inclusion in the list. For example, the statute of limitations (*kō-so jikō*,⁷ CPL

3 http://www.courts.go.jp/english/judicial_sys/criminal_contents/criminal_text/index.html.

4 <http://www.unafei.or.jp/english/pages/CriminalJusticeJapan.htm>.

5 http://www.nichibenren.or.jp/en/about/judicial_system/judicial_system.html.

6 <http://www.japaneselawtranslation.go.jp/law/detail?id=2056&vm=04&re=02> (Japanese Law Translation).

7 Dt.: „Strafklageverjährung“ (*d. Red.*).

250 & 337(4)), fitness/competence (*so-shō nōryoku*,⁸ CPL 27 & 314(1)), and judicial review of a non-indictment decision by the prosecutor's office for specific public servant's crimes (*fu-shinpan sei-kyū*,⁹ CPL 262) could be included, and many foreign scholars would find them interesting since they are essential elements for understanding the recent trends in Japanese criminal law and criminal procedure law. Particularly in relation to the statute of limitations, the Japanese parliament in 2010 abolished the time limit for prosecuting specific crimes with capital punishment as possible sentence. This change came from a recent vindictive shift in public opinion in Japan and it is one of most important issues in this field.

Another suggestion is to reconsider the headwords and explanations of some legal terms such as the "hearsay rule (*denbun hōsoku*)"¹⁰, the "right to interview (*sekken kōtsū-ken*)"¹¹, "participation of the victim (*higai-sha sankā seido*)"¹² and "reasonable doubt (*gōritek na utagai*)"¹³. For the hearsay rule, this glossary states that the reason for its implementation is "because it is arguably susceptible to mistakes". However, many Japanese legal textbooks tell us that the reason for the hearsay rule is rather the requirement of a guaranteed opportunity to cross-examine the witness. The second term, "*sekken kōtsū-ken*" (concerning CPL 39), should be mentioned not only as the right to meet the defense counsel but also as the right to send or receive documents and/or other things. For the victim's rights during the criminal procedure (CPL 316-33), this glossary refers to allowing the victim to "actively participate", but, because the CPL permits various actions by the victim and victim's family in that section, it would be more accurate to include the right to question the defendant, presenting the opinion about fact and sentence and providing their impact statement. The headword "reasonable doubt", at the top of the second chapter on "Basic Terminology", should be altered to "beyond reasonable doubt". That might be the suitable entry for the explanation which follows.

The final suggestion from this reviewer concerns the structure of the contents. This glossary has four chapters and the third, "Procedural Terms", covers the wide area from the pre-trial stage to the sentencing stage, and contains a huge number of terms. The terms are not alphabetized; this might give users some difficulty when attempting to locate the word they are searching for. The use of some subordinate categories, such as "investigation stage", "pre-trial stage" and "evidence law", will be helpful.

Recommendation

In 2009, Japan introduced civil participation in the criminal trial process for fact finding and the sentencing of specific crimes with the maximum sentence of capital punishment or an indefinite prison term, and crimes where the victim's death was intended by the defendant. "*Saiban-in*" is the mixed panel composed of three professional judges and six lay judges. Since the Second World War, for over sixty years, there had been no

8 Dt.: „Prozessfähigkeit/Verhandlungsfähigkeit“ (*d. Red.*).

9 Dt.: „Beschwerde gegen eine Einstellungsverfügung“ (*d. Red.*).

10 Dt.: „Regel über [Beweise aufgrund von] Hörensagen“ (*d. Red.*).

11 Dt.: „Umgangsrecht/Verkehrsrecht“ (*d. Red.*).

12 Dt.: „System der Beteiligung/Intervention des Geschädigten“ (*d. Red.*).

13 Dt.: „Vernünftige Zweifel“ (*d. Red.*).

opportunity for civilian participation in the criminal trial. This “revolutionary” alteration of the criminal trial process has triggered academic output even by overseas academics and now there are many articles studying the Japanese lay judge system in English and other foreign languages.

On the other hand, there are still relatively few resources for learning legal terminology, not only of criminal procedure but also of all areas of Japanese law, which can be referred to, even on the Internet. This glossary successfully provides readers studying the Japanese criminal process and its complicated legislative background with ample information on legal terms. In conclusion, this glossary is a recommendable and indispensable tool for all students and scholars of Japanese criminal procedure law. This work is in the real sense “desk-side” material. We cannot thank the editors and collaborators enough.

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