

# Grand jury system comes to Japan

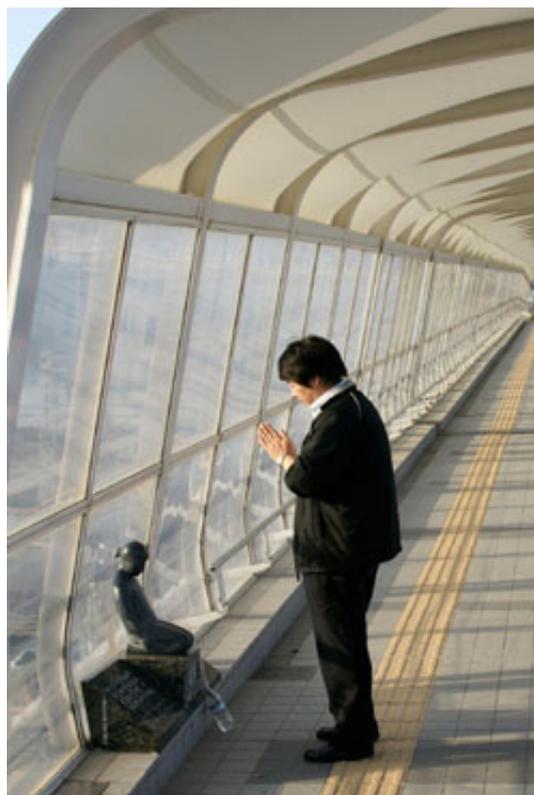
## Prosecutors' long-held control over indictments is handed over to panels of 11 citizens

By STUART BIGGS and MASATSUGU HORIE  
Bloomberg

Eight years ago, Seiji Shimomura could only watch as his 2-year-old son Tomohito was crushed to death by crowds at a fireworks show in Hyogo Prefecture. Ever since, he has campaigned for high-ranking police officials to be indicted over their role in the matter.

"We want the truth to be judged in public by the court," Shimomura said in Akashi, where his son and 10 others died July 21, 2001. "Pursuing this can help to prevent this kind of incident happening again."

Prosecutors have three times refused to pursue the police chief and his deputy over the planning of the event. Now, they may have no choice. A law that took effect Thursday ends prosecutors' long-held control over indictments and hands it to a panel of 11 citizens, effectively a grand jury.



**Looking for justice: Seiji Shimomura, 50, prays on the footbridge in Akashi, Hyogo Prefecture, where his 2-year-old son was killed in 2001 in a crush of people.** BLOOMBERG PHOTO

The law is part of reforms aimed at restoring public trust after miscarriages of justice undermined a system that produces guilty verdicts 99.7 percent of the time in criminal trials.

In addition to the grand juries, known officially as Prosecutorial Review Commissions, ordinary people will sit alongside professional judges in serious criminal cases, including rape and murder, in the lay judge system.

"The PRC is the better of the two in terms of the potential to democratize Japanese society," said Hiroshi Fukurai, a sociology professor at the University of California, Santa Cruz. The citizens on these commissions won't be influenced as their peers on trial juries will be by judges, he said.

Shimomura says he will take his case to the local commission right away. He has already won two nonbinding rulings from earlier commissions, which have reviewed cases since 1948.

The Hyogo Prefectural Police and the Kobe District Public Prosecutor's Office, which have jurisdiction over the city of Akashi, declined interview requests.

Shimomura and his son were among thousands of people who became trapped on a 100-meter footbridge. They were unable to move forward and were crushed by more arriving from behind.

The tragedy should have been avoided, Shimomura's lawyer Yoshiyasu Watanabe says, because overcrowding had occurred in the same place six months earlier, without casualties, for a crowd of 55,000.

An officer in charge of the police force during the event was found guilty in 2002 of negligence resulting in injury causing death and is appealing through the Supreme Court.

The case typifies problems stemming from a lack of oversight of police, prosecutors and courts, according to Watanabe.

Guilt is decided before cases reach trial because prosecutors control indictments and courts rarely return not-guilty verdicts, he said.

District courts had a conviction rate of 99.7 percent in 2006, the latest figures available, according to the internal affairs ministry. That compares with a 2007 rate of 89.7 percent in the U.S. and 81.3 percent in the U.K., according to the U.S. Administrative Office of the Courts and the U.K.'s Ministry of Justice.

Japan's judicial system has a presumption of guilt and relies too much on confessions obtained during weeks of police interrogation, human rights group Amnesty International says.

In 2007, a man in northern Japan had his rape conviction overturned after almost three years in prison after another man confessed.

Lawyers campaigning for trial by juries gained support in the 1980s after four men, including Sakae Menda, appealed convictions and were released from death row. Menda spent 34 years in prison after police coerced him into confessing to a double murder he didn't commit.

Then Prime Minister Junichiro Koizumi changed the law in 2004 to introduce lay judges after five years. From this point forward, six citizens will be added to existing panels of three professional judges to rule on more than 3,000 cases a year involving murder, rape and other serious crimes.

The government promoted the plan by dressing former Justice Minister Kunio Hatoyama as a green cartoon parakeet known as "Saiban-Inko," a play on the Japanese words for "lay judge" and "parakeet," the new system's official mascot. Seventy-nine percent of people don't want to serve as jurors, according to a Yomiuri Shimbun survey on May 4.

Their impact may be reduced by limitations included by the government, says Matthew Wilson, general counsel at Temple University in Tokyo and adviser to the national bar association on jury trials.

Victims will be allowed to petition the court for stiffer punishments during trials, increasing the risk that emotions affect the verdicts, he said.

Three of the nation's more than 50 bar associations — the majority of which support the overhaul — called for a delay in implementing the law, arguing the public isn't ready to judge criminal cases and may increase the number of death sentences.

"We're likely to see a continuation of high conviction rates," Wilson said, adding that if convictions decrease from the current level, it would "call into question the system that has been built in Japan over the last 60 or 70 years."

The limitations reflect the judiciary's view that significant changes aren't necessary beyond increasing transparency, Wilson said. The Supreme Court opposed full juries and was instrumental in the adoption of the mixed jury system of citizens and professional judges, official records show.

It's not a view shared by Shimomura. Standing next to a shrine for his son and the other children who died, he's adamant the police have to answer in court and says a lack of oversight over Japan's judiciary has prevented it from happening.

"I thought prosecutors should be on the side of the victims, but they weren't in our case," Shimomura said. "This is something I can never let go."

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