

GHQ/SCAP Records (RG 331, National Archives and Records Service)

Description of contents

- (1) Box no. 2986
- (2) Folder title/number: (61)
Miscellaneous

(3) Date: ?

(4) Subject:

Classification	Type of record
325	e

(5) Item description and comment:

(6) Reproduction: Yes No

(7) Film no. Sheet no.

(Compiled by *National Diet Library*)

L-59

C O P YINSTRUCTIONS FOR EXPEDITING TRIALS

During recent years there has been a sharp increase in the number of civil and criminal cases to be tried by Japanese Courts. The Supreme Court has been conscious of the necessity of taking measures to counteract the growing backlog of pending cases by streamlining court procedures. It appointed a committee to draft recommendations for expediting trials last July. This committee made its final recommendations on 17 October. The very next day SCAPIN 2127 was issued extending the criminal jurisdiction of Japanese courts to United Nations nationals in Japan except for Occupation personnel. Paragraph 12 of this SCAPIN directs the Japanese government to take immediate action to expedite the trial of all criminal and civil cases.

In order to comply with this directive the Supreme Court is immediately preparing to enact new rules and will take the initiative to request the Cabinet and the Diet to enact legislation to expedite trials.

However, the situation is so pressing that we cannot wait for the completion of changes in the rules and laws. As soon as rules can be enacted, the Supreme Court will issue more detailed instructions. In the meantime each court is directed to do its utmost within its existing powers to expedite the disposal of pending cases, giving special consideration to the following instructions.

Each court will immediately convene its Judicial Assembly to determine concrete measures for applying these instructions. The decisions of the Judicial Assembly will be reported to the Supreme Court.

1. As to both civil and criminal cases:
 - a. As far as possible cases shall be handled by a single judge rather than a Collegiate Court.
 - b. For the purpose of simplifying the issues and expediting the trial more frequent use shall be made of the preparatory procedures described in Articles 249-50 of the Code of Civil Procedure and Articles 194-5 of the Rule of Criminal Procedure. More experienced judges shall take charge of such procedure as far as possible.
 - c. In cases where the trial takes more than one day, it shall be continued from day to day as far as possible until completion, or at least the intervals between hearings shall be as short as possible.
 - d. Alterations in trial dates shall not be permitted except in unavoidable circumstances. Attention is directed to Art. 277 of the Code of Criminal Procedure and Arts. 180-186 of the Rule of Criminal Procedure.

e. Both sides shall be encouraged to take the responsibility of investigating the facts of the case, by examining witnesses and other evidence before the trial, and to take the initiative in presenting the case, including the introduction of necessary evidence at the trial, as far as possible without relying on the court to act ex officio. In civil cases, Article 128 of the Code of Civil Procedure should be more fully utilized and Articles 224 and 244 of the same Code should be strictly enforced. In particular, the presiding judge shall require preliminary pleadings by the defendant more frequently, and shall request witnesses to appear at the first hearing. In criminal cases, attention is directed to Articles 157-159, 179-180, 281, 304-9, and 327 of the Code of Criminal Procedure and Arts. 193-199, 201, 203-208, and 212 of the Rule of Criminal Procedure.

f. Both sides shall be requested to make every effort to cause witnesses and others to attend court promptly, and where a witness, etc. fails to appear without good reason Articles 277, 277-2 and 278 of the Code of Civil Procedure and Articles 150 to 152 of the new Code of Criminal Procedure or Articles 190 to 191 of the old Code of Criminal Procedure shall be strictly enforced.

g. If the accused cannot be located, or if he fails to appear when summoned, the court shall cause the procurators to investigate and if possible have him produced in accordance with Article 58 of the new Code of Criminal Procedure or Articles 86 to 87 of the old Code of Criminal Procedure.

h. Depending upon the existing work-load and other circumstances such steps as temporary substitution of judges in accordance with Articles 19, 28 and 36 of the Court Organization Law should be fully utilized.

i. Depending upon the existing work-load and other circumstances appropriate redistribution of work among judges of each court, of branch courts, and of other courts should be effected.

j. Depending upon the existing work-load and other circumstances special divisions should be created within courts to concentrate on disposition of certain types of cases, such as old Code criminal cases or cases when there has been undue delay in trial.

k. As far as possible more able persons should be assigned as court clerks and depending upon existing circumstances mutual assistance of court clerks and their assistants shall be utilized in carrying out duties mentioned in Article 11 of the Supreme Court Rule for Disposition of Business of Inferior Courts.

l. Requests for increase of the fixed number of assigned personnel authorized by Supreme Court General Affairs Bureau, Second Section, Notification No. 25 should be fully utilized.

m. The court should reject any questions asked or statements made at the trial which are unnecessary, repetitive, or are irrelevant to the issues of the case. Article 295 of the Code of Criminal Procedure should be fully utilized.

n. The court should place proper limitation on argument which is not based on the evidence, is unnecessarily repeated, or is irrelevant to the issues of the case, and, where appropriate on the period of time allowed for argument. Article 212 of the Rule of Criminal Procedure should be utilized in this connection.

2. As to old Code criminal cases:

Inasmuch as nearly two years have elapsed since the New Code of Criminal Procedure went into effect, it is important that the 18,000 cases still pending under the Old Criminal Code of Procedure be speedily disposed of. Each court should set 30 June 1951 as its goal for completing the second instance trial of these cases.

(1) As to procedures in the first instance:

a. The court should concentrate the trial on issues contested by the accused as far as possible so as to effect efficient disposition of the case.

b. In order to simplify the protocol, the provisions of Article 49 of the Rule of Criminal Procedure which is made applicable to old Code cases by Item 1, Article 3 of the Rule for Enforcement of the Rule of Criminal Procedure, and the provisions of Item 2, Article 3 of the said Rule for Enforcement, should be fully utilized.

c. In order to simplify the judgment, the provisions of Item 4, Article 3 of the Rule for Enforcement of the Rule of Criminal Procedure permitting the citation of facts stated in the indictment, Item 5, permitting an inventory of the evidence and laws and ordinances applicable, Item 6 permitting the use of the protocol of public trial as a substitute for written judgment, and paragraph 2, Article 57 of the Rule of the Criminal Procedure which is made applicable by Item 1, Article 3 of the Rule for Enforcement permitting an extract from a written judgment for summary execution shall be fully utilized.

d. The protocol of a case finally disposed of should be especially simplified.

(2) As to Koso Appeal Procedures:

a. The court shall ask the appellant to state orally or in writing the matters of which he complains in the first instance judgment, and shall concentrate the hearing upon the contested issues, in order to effect efficient disposition of the case.

b. The court shall more frequently summarize documentary evidence already examined in first instance in accordance with Article 340 of the old Code of Criminal Procedure instead of causing it to be read aloud.

c. In order to simplify the protocol, the provisions of Article 49 of the Rule of Criminal Procedure which are made applicable by Item 1, Article 3 of the Rule for Enforcement of the Rule of Criminal Procedure, should be fully utilized.

d. In order to simplify the judgement, the provisions of paragraph 2, Article 57 of the Rule of Criminal Procedure, which is made applicable by Item 1, Article 3 of the Rule for Enforcement of the Rule of Criminal Procedure, and the provisions of the Article 405 of the old Code of Criminal Procedure permitting the citing of facts and evidence from the decision in first instance should be fully utilized.

e. Where the accused fails to appear without good reason after receiving a second subpoena, the provisions of Article 404 of the Old Code of Criminal Procedure permitting decision in his absence should be fully utilized.

3. Reports

The High Courts shall supervise the carrying out of the foregoing instructions within their respective areas and shall submit monthly reports to the Supreme Court. Whenever a particular court is discovered to have fallen especially far behind in its docket, a special report shall be made setting forth, for example, the number of continuances being granted in pending cases, the intervals between final hearing and pronouncement of judgment. Judges who fail to write their opinion within 30 days after the conclusion of trial shall report in detail the reason for such failure directly to the Supreme Court.

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