International Association of Judges: First Study Commission

“Ways to identify and classify criteria, objective and subjective, by reference to which the independence of the judiciary may be assessed.”

(1) Does your country’s judiciary include prosecutors (or equivalent)? If so, do prosecutors benefit from the same guarantees of judicial independence as other judges?

Our country’s judiciary does not include prosecutors or equivalent.

(2) How would you define “judicial independence” in the context of the political and social system of your country today?

We would define “judicial independence” as meaning that the judicial power is independent from the legislative power and the administrative power, and that judges are independent in exercising their authority to make judicial decisions.

(3) Which objective criteria would you identify as indicating that the judiciary of your country is independent and why?

We consider that the core of judicial independence exists in the judges’ independence in exercising their authority. The Constitution of Japan declares judges’ independence in exercising their authority, by providing that all judges shall independently exercise their authority according to their own conscience, and shall be bound only by the Constitution and laws (Article 76, paragraph (3)). In order for the independence of judges to be secured, they are given constitutional guarantee of their status: (i) Judges shall not be removed except by public impeachment, unless judicially declared mentally or physically incompetent to perform official duties (the first sentence of Article 78); (ii) All judges shall receive, at regular stated intervals, adequate compensation that shall not be decreased during their terms of office (Article 79, paragraph (6), Article 80, paragraph (2)); (iii) Judges of the Supreme Court shall hold office until they reach the age set by law (Article 79, paragraph (5); the age of 70 years, set by the Court Act), and judges of inferior courts shall hold office for a term of ten years (Article 80, paragraph (1)).

The Constitution of Japan also secures the autonomy of courts under the following provisions: (i) The Supreme Court shall be vested with rule-making power under which it determines the rules of procedure and of practice, and of matters relating to
attorneys, the internal discipline of the courts and the administration of judicial affairs (Article 77, paragraph (1)); (ii) No disciplinary action against judges shall be administered by any executive organ or agency (the second sentence of Article 78); (iii) Judges of inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court (Article 80, paragraph (1)). Courts are construed to be also vested with the power of judicial administration in order to effectively protect judicial independence. With this power, courts decide on the promotions of judicial officials and arrange judicial training, independently of other organs of the state.

We consider that these objective criteria indicate that the judiciary of our country is independent.

(4) Which subjective criteria would you identify as indicating that the judiciary of your country is independent and why?

The courts of our country have gained public trust through judicial independence guaranteed under the system of separation of powers, and through the qualities of judges and other judicial officials, such as their fairness, impartiality, integrity—or in other words, by playing their roles appropriately.

We consider that these subjective criteria indicate that the judiciary of our country is independent.

(5) If you have to identify the three most important criteria for indicating judicial independence in your country, what would they be and why?

As mentioned above, in Japan, the core of judicial independence is deemed to exist in judges’ independence in exercising their authority. We would therefore say that the most important criterion indicating judicial independence in our country is the constitutional guarantee of judges’ independence in exercising their authority.

Other important criteria, among that mentioned above, would be the constitutional arrangements for securing the status of judges in order to secure judicial independence in exercising their authority.