

# **Prosecution Reform Initiatives in the Past Three Years**

## **The Principles of Prosecution and Practice**

### **I. Introduction**

The Supreme Public Prosecutors Office has been promoting the reform of the Prosecution Service through various initiatives while maintaining necessary cooperation with High Public Prosecutors Offices and District Public Prosecutors Offices. The reform is a response to the issuance of “Toward Rehabilitation of the Prosecution Service” (March 31, 2011), a recommendation by the Advisory Panel to Study the Role of Prosecution, which was established in response to, inter alia, a case in which a former director-general at the Ministry of Health, Labour and Welfare was found not guilty after being prosecuted (hereinafter referred to as the “ex-MHLW director-general acquittal case”), and “Initiatives toward Rehabilitation of the Prosecution Service” (April 8, 2011), an instruction by the Minister of Justice. During the reform process, based on the results of discussions involving members of the Prosecution Service across Japan, the Principles of Prosecution were formulated as the basic principles that clarify the missions and roles of the Prosecution Service and specify the basic mindset that should serve as a guideline for members of the Service when performing their duties. In addition, the progress made in the reform of the Prosecution Service through these initiatives was publicized on April 5, 2012, around one year after the start of the reform, in a document titled "Status of Progress in Public Prosecutors Office Reforms," which also incorporated the progress made through the initiatives conducted by the Ministry of Justice.

Subsequently, the Supreme Public Prosecutors Office encouraged High Public Prosecutors Offices and District Public Prosecutors Offices to communicate the Principles of Prosecution throughout their organizations and put them into practice from the perspective of dealing with the issues mentioned in “Toward Rehabilitation of the Prosecution Service” and “Initiative toward Rehabilitation of the Prosecution Service” based on those principles, and called on them to make further reform efforts on such occasions as meetings and training sessions. As a result, seminars and meetings for exchanges of opinions concerning the Principles of Prosecution were held at prosecutors offices across Japan. Consequently, members of the Prosecution Service came to a shared perspective on problems and started to make efforts to put the Principles of Prosecution into practice when performing their day-to-day duties. This has led to the implementation of various specific initiatives toward reform. In particular, in addition to the reform of the Special Investigation Department, which led to the ongoing reform of Public Prosecutors

Offices as a whole, and the expanded use of voice and video recording of interrogations, various initiatives contributing to improvement of the capability to conduct investigations and trial proceedings and to enforcement of criminal justice are being carried out, with a view to adapting to the times, with society as a whole undergoing drastic changes. Initiatives that lead to the enhancement of organizational management to promote these reform measures have steadily been implemented.

Accordingly, three years after the issuance of “Toward Rehabilitation of the Prosecution Service” and “Initiatives toward Rehabilitation of the Prosecution Service” we have reviewed the initiatives conducted so far and compiled and decided to publish a report on the progress made in the three years on the reform of the Prosecution Service with regard to each issue, mainly in relation to the initiatives implemented by the Prosecution Service that may be described as the realization of the Principles of Prosecution. The report is intended to serve as a basic material for the future management of the Prosecution Service.

## **II. Reform of the Special Investigation Department**

### **1. Review of the organization of the Special Investigation Department**

(1) Regarding the review of the organization of the Special Investigation Department, it was recommended in “Toward the Rehabilitation of the Prosecution Service” that “a review should be conducted with a view to reforming the organization, including its name, organizational system and framework, and staffing in order to enhance its investigation capability and strengthen the function of checks and balances against the Special Investigation Department”. In response, on July 8, 2011, the Supreme Public Prosecutors Office decided that the Special Investigation Department should further strengthen its measures to deal with cases related to finance and economics, and improve expertise in collaboration with expert committees on finance and securities and other areas. In addition, the Supreme Public Prosecutors Office instructed that the Special Investigation Department should also further deepen its ties with national taxation bureaus, the Securities and Exchange Surveillance Commission, police and other relevant organizations, and should implement reorganization accordingly.

\*Based on this policy, the Special Investigation Departments of the Tokyo, Osaka and Nagoya District Public Prosecutors Offices made revisions such as strengthening the organization for investigating and processing cases related to finance and economics.

A. On October 1, 2011, the Special Investigation Department of the Tokyo District Public Prosecutors Office shifted from the previous four-team system composed of (i) Team 1 dealing with special cases, (ii) Team 2 dealing with special cases, (iii) Team dealing with financial and economic cases and (iv) Team dealing with private

accusation cases to a three-team system composed of ( i) Team dealing with financial cases, (ii) Team dealing with economic cases and (iii) Team dealing with special cases (including prosecutors responsible for receiving private accusation). Before the reorganization, the Finance and Economic Team processed tax evasion cases filed by regional taxation bureaus and cases of violation of the Financial Instruments and Exchange Act and other cases filed by the Securities and Exchange Surveillance Commission. After the reorganization, the Financial Team is mainly responsible for processing cases filed by regional taxation bureaus, while the Economics Team is responsible for processing cases filed by the Securities and Exchange Surveillance Commission as well as cases filed by the Fair Trade Commission and cases referred by the Criminal Investigation Bureau of the Metropolitan Police Department, 2nd Division, which the Criminal Investigation Department was previously handling. These reorganization measures, coupled with the enhancement of the staffing of the Financial Team and the Economics Team has made it possible to smoothly conduct investigations of cases related to finance and economics. In addition, because the Economics Team has become the unified liaison point with relevant organizations other than regional taxation bureaus, the Special Investigation Department of the Tokyo District Public Prosecutors Office has become capable of overseeing cases in which it, the Securities and Exchange Surveillance Commission and the Criminal Investigation Bureau of the Metropolitan Police Department, 2nd Division, are conducting investigations and surveys simultaneously, for example. Thus, closer cooperation with relevant organizations than before the reorganization has become possible.

- B. On August 31, 2011, the Special Investigation Department of the Osaka District Public Prosecutors Office included cases referred by the Criminal Investigation Bureau of the Osaka Prefectural Police Department Headquarters, 2nd Division, in the scope of affairs under the jurisdiction of the Special Investigation Department. At the same time, the Special Investigation Department, which previously did not have a team system, was changed into a two-team system comprised of Team 1 and Team 2, with Team 1 responsible for cases related to finance and economics and cases referred by the Criminal Investigation Bureau of the Osaka Prefectural Police Department Headquarters, 2nd Division, and with Team 2 responsible for private accusation cases. Moreover, the Osaka District Public Prosecutors Office enhanced the staffing of the Special Investigation Department and implemented measures to strengthen cooperation with relevant organizations, including regional taxation bureaus, the Securities and Exchange Surveillance Commission and the Criminal Investigation Bureau of the Osaka Prefectural Police Department Headquarters, 2nd

Division.

C. The Special Investigation Department of the Nagoya District Public Prosecutors Office previously appointed several prosecutors responsible for each of private accusation cases and cases related to finance and economics from among prosecutors belonging to the Special Investigation Department. On August 1, 2011, it appointed all prosecutors belonging to the Special Investigation Department except for the director of the department as prosecutors responsible for cases related to finance, politics and economics (including one prosecutor who is concurrently responsible for private accusation cases), thereby expanding the lineup of prosecutors responsible for such cases). As the Special Investigation Department of the Nagoya District Public Prosecutors Office had already been responsible for cases referred by the Criminal Investigation Bureau of the Aichi Prefectural Police Department Headquarters, 2nd Division, it was not reorganized into a team system in light of its size.

## **2. Establishing the organizational system of checking investigations and court proceedings**

(1) Superintendent prosecutor direction system and appointment of prosecutors at High Public Prosecutors Offices and the Supreme Public Prosecutors Office at High Public Prosecutors Offices, who are responsible for checking the activities of the Special Investigation Department of the District Public Prosecutors Offices.

A. As of February 28, 2011, in order to improve the processing of custody cases handled by the Special Investigation Department of the District Public Prosecutors Office, the so-called superintendent prosecutor direction system was introduced. Under this system, in custody cases (where the suspect is arrested or detained) handled by the Special Investigation Department of the district public prosecutors office, the chief prosecutor of that public prosecutors office is required to be directed beforehand by the superintendent prosecutor of the High Public Prosecutors Office when instituting indictment or dismissing cases.

B. In addition, in order to appropriately assist the direction by the superintendent prosecutor of the High Public Prosecutors Office and sufficiently examine evidence, prosecutors responsible for cases handled exclusively by the Special Investigation Department of the District Public Prosecutors Office have been appointed at the Tokyo, Osaka and Nagoya High Public Prosecutors Offices. Prosecutors at High Public Prosecutors Offices, who are responsible for checking the activities of the Special Investigation Department of the district public prosecutors office, identify objective evidence, including physical evidence, regarding cases handled exclusively

by the Special Investigation Department in which suspects are arrested, and check written statements. In cases in which voice and video recording of interrogations is made, the prosecutors at High Public Prosecutors Offices identify evidence in general through means such as checking the recording media used in the recording (hereinafter referred to as “DVDs, etc.”) and then give instructions to the Special Investigation Department of the district public prosecutors office as necessary and make necessary reports to their superiors, including the superintendent prosecutor of the High Public Prosecutors Office, thereby making it possible for the superintendent prosecutor to make directional judgment effectively and appropriately. In addition, prosecutors responsible for checking the activities of the Special Investigation Department of the district public prosecutors office have also been appointed at the Supreme Public Prosecutors Office. They receive reports regarding cases directed by the superintendent prosecutor of the High Public Prosecutors Office and provide that High Public Prosecutors Office and the relevant district public prosecutors office with instructions necessary in investigations and court proceedings.

\*The” cases handled exclusively by the Special Investigation Department” as referred to herein include those filed by relevant organizations such as the Fair Trade Commission.

C. The number of cases directed by superintendent prosecutors of High Public Prosecutors

Offices by the end of March 2014 came to 105.

\*Comprehensive examination prosecutor system (establishment of a horizontal checking system)

A. It was recommended in “Toward the Rehabilitation of the Prosecution Service” that “regarding cases handled exclusively by the Special Investigation Department, the self-contained system in which investigations and decision-making are entirely implemented internally within the department should be reformed and a horizontal checking system should be established”. Accordingly, it was decided to establish and operate the comprehensive examination prosecutor system, starting on May 1, 2011, as a horizontal checking system against cases handled exclusively by the Special Investigation Department.

B. In other words, it was decided that when the Special Investigation Department is investigating cases recognized as being large-scale and/or complicated and difficult at the Tokyo District Public Prosecutors Office, the Osaka District Public Prosecutors Office or the Nagoya District Public Prosecutors Office, the chief prosecutor of the district public prosecutors office should appoint the comprehensive examination prosecutor from among prosecutors belonging to the Court Proceedings Department

or the Special Court Proceedings Department of that district public prosecutors office. The following decisions were also made:

- (i) At the same time as the ongoing investigation of the case, the comprehensive examination prosecutor should identify all evidence on the case, organize and analyze it, and then examine, from a standpoint different from that of the examining prosecutor in the Special Investigation Department, whether that examining prosecutor is making appropriate judgment as to the recognition of facts or interpretation of laws, while also maintaining the viewpoint of defense attorneys involved in the court proceedings.
- (ii) The comprehensive examination prosecutor should state necessary opinions to the examining prosecutor in the Special Investigation Department based on the examination results.
- (iii) In order to enable the officer making the final decision to do so based on proper understanding of the issues involved in the case, the comprehensive examination prosecutor should indicate his/her opinions on whether there are issues related to the recognition of facts and interpretation of laws by attending the decision-making meeting in which the decision on the case is given to the examining prosecutor of the case in the Special Investigation Department, or via other suitable means. The comprehensive examination prosecutor should also indicate opinions as necessary or provide requested reports when requested by the chief prosecutor and/or deputy chief prosecutor of the district public prosecutors office, director and/or sub-director of the Special Investigation Department, or prosecutors at higher Public prosecutors Offices who are responsible for checking the activities of the Special Investigation Department of the district public prosecutors office, and such indication of opinions or making of reports is recognized as suitable given the circumstances.
- (iv) The comprehensive examination prosecutor should carry out the court proceedings for the case by himself/herself if the suspect in the case is indicted. Prior to the indictment, the comprehensive examination prosecutor is authorized to carry out tasks necessary for preparing for the court proceedings if an indictment is made, such as checking statements by persons believed to function as important witnesses, with the consent of the examining prosecutor of the case in the Special Investigation Department.

C. In 49 of all of the cases processed by the end of March 2014 by the Tokyo, Osaka and Nagoya District Public Prosecutors Offices, comprehensive examination prosecutors conducted examination. As two or more comprehensive examination prosecutors may be appointed in one case depending on the circumstances of the

case, a total of 53 comprehensive examination prosecutors were appointed in those cases.

D. As described above, comprehensive examination prosecutors have been appointed and conducted examination in a substantial number of cases. Comprehensive examination prosecutors conduct examination while looking at the same evidence as the examining prosecutors in the Special do and closely communicating with the examining prosecutors in the Special and other officials. Therefore, it is presumed that the comprehensive examination prosecutor system is exercising the expected horizontal checking function, making it easier to identify negative evidence and problems and to express necessary opinions to the examining prosecutor in the Special, for example. There is another merit: as a result of appointing the prosecutors responsible for court proceedings as comprehensive examination prosecutors, it becomes possible to grasp the full picture of the case and identify problems before the institution of prosecution and to quickly formulate evidence presentation plans after the request for court proceedings and deal with the problems.

Meanwhile, prosecutors appointed as comprehensive examination prosecutors belong to the Court Proceeding Department or the Special Court Proceeding Department and engage in court proceeding activities in a number of cases as a routine or are dedicated to court proceeding activities in specific serious cases. It is necessary to conduct a further study on the comprehensive examination prosecutor system because the following problem has emerged: prosecutors appointed as comprehensive examination prosecutors face a heavy burden because they are made responsible for examination of cases being investigated by the Special Investigation Department and closely surveying a vast volume of records in addition to performing their regular job duties.

\*Use of expert knowledge in cases handled by the Special Investigation Department

A. It is recommended in “Toward the Rehabilitation of the Prosecution Service” that “a system to use expert knowledge and experience-based knowledge should be developed” as one of the prosecution service’s systems of checking investigations and court proceedings. Accordingly, a substantial number of prosecutors responsible for processing cases handled by the Special Investigation Department of the Tokyo District Public Prosecutors Office (prosecutors at the Tokyo High Public Prosecutors Office and the Supreme Public Prosecutors Office, who are responsible for checking the activities of the Special Investigation Department of the Tokyo District Public Prosecutors Office), including the Sub-director of the department, belong to the Expert Committee on Finance and Securities and other

expert committees and use expert knowledge cultivated at the committees and experience-based knowledge acquired through past cases when making decisions in cases handled by the Special Investigation Department. The contents of reference materials collected and studied by expert committees and lectures given by experts are used by prosecutors' offices across the nation in the process of making decisions in investigations and court proceedings.

B. Moreover, in light of the significant growth in the importance of electromagnetic records as evidence due to the advance of information and communication technology and based on the lessons of the floppy disk record falsification incident, the Digital Forensic (DF) Group was established at the Special Investigation Department of each of the Tokyo, Osaka and Nagoya District Public Prosecutors Offices as an expert organization responsible for appropriately collecting, preserving and analyzing electromagnetic records. When examining and studying the contents of confiscated electromagnetic records, the DF Group uses copies of the records instead of the originals. The DF Group also performs jobs related to cases referred by police as necessary. In particular, as recent cases investigated by the Special Investigation Department involve electromagnetic records almost without exception, the DF Group's activities are essential to investigations conducted by the department.

\*Establishment of the organizational checking system during the court proceeding phase

A. It is recommended in "Toward the Rehabilitation of the Prosecution Service" that "in order to practice the "courage to go back" in the court proceeding phase, an organizational checking system in the court proceeding phase should be established, for example by holding consultations involving High Public Prosecutors Offices under certain conditions." Accordingly, it was decided to put in place the following system starting on April 26, 2011, regarding court proceedings of cases for which the Special Investigation Department institutes prosecution.

(i) Concerning cases for which the Special Investigation Department institutes prosecution, the prosecutor in charge of the court proceeding of those cases should notify the Director of the Special Investigation Department of the status of pretrial arrangement proceedings and court proceedings as necessary via an appropriate method and report to prosecutors at High Public Prosecutors Offices, who are responsible for checking the activities of the Special Investigation Department, and, if necessary, to prosecutors with similar responsibility at the Supreme Public Prosecutors Office as well.

(ii) Concerning cases for which the Special Investigation Department institutes prosecution and for which the superintendent prosecutor of High Public Prosecutors Office gives instructions to the chief prosecutor of the district public prosecutors office, the Directors or Sub-directors of the Special Investigation Department and the Court Proceeding Department of the district public prosecutors office, the examining prosecutor of the case and the prosecutor in charge of the court proceedings of that case will discuss, according to the progress of pretrial arrangement proceedings if such proceedings are designated for the case, the policies for carrying out the court proceedings afterwards, whether there are problems regarding the recognition of facts or interpretation of laws, the policies for dealing with assertions and/or evidence presentation by the defense attorney, etc.. The process and outcomes of the discussions will be reported to the public prosecutor at the High Public prosecutors Office, who are responsible for checking the activities of the Special Investigation department of the district public prosecutors office and, if necessary, to public prosecutors with similar responsibility at the Supreme Public Prosecutors Office as well.

B. Since the start of the reform of public prosecutors offices, a judgment of acquittal was finalized in one case for which the Special Investigation Department instituted prosecution. In this case, requests for evidence survey related to neither written confessions by the suspect nor written statements by witnesses were rejected.

C. Regarding court proceedings in cases other than those for which the Special Investigation Department instituted prosecution, the following arrangement was adopted starting on July 8, 2011. If a serious problem that meets certain conditions arises for a case in the first instance (e.g. cases where the admissibility of written confessions given by the suspect during the investigation phase, which are the key to the evidence presentation to prove guilt, is denied and a request for evidence survey is rejected, or where a witness who is the key to the evidence presentation to prove guilt provides different testimony compared with the investigation phase and a request for evidence survey related to the records of investigation prepared for the witness in front of the public prosecutor is rejected), the deputy chief prosecutor of the District Public Prosecutors Office should report promptly to the prosecutor in charge at a High Public Prosecutors Office and hold consultations on policies for performing the court proceedings, including the need to dismiss the prosecution or state innocence, while at the same time reporting on the process and outcomes of the consultation to the public prosecutor in charge at the Supreme Public Prosecutors Office. By the end of

March 2014, in a total of 34 cases, consultations with prosecutors in charge at high public prosecutors offices were held, and prosecution was dismissed in six of those cases and innocence was stated in four of them (excluding cases for which prosecution was instituted due to false statements deliberately given to the investigative organization, such as those made by persons pretending to be the offender).

### **3. Special Investigation Department's attitude in investigation**

#### **(1) Reflecting the Principles of Prosecution**

A. The Special Investigation Department is striving to break away from the approach of overly relying on written statements in its investigation, which has been drawing criticism, and to conduct investigation with increased emphasis on objective evidence based on the following principles proclaimed in the Principles of Prosecution:

\*"We shall strive to the utmost to discover the truth in each case with all our knowledge and skills to ensure that no innocent parties are found guilty and all those responsible are brought to justice." (Principle 3)

\*"We shall pay due attention to the assertions of suspects or defendants, endeavor to collect all relevant evidence, both incriminating and exculpatory, aggravating and mitigating, and make rational and sensible evaluation of evidence from various perspectives." (Principle 4)

In particular, because of the significant growth in the importance of electromagnetic records and the improvement of the evidence preservation capability due to digital forensics, the volume of objective evidence collected has increased steeply, and there are cases in which destructed conclusive evidence is found through the restoration of deleted data based on digital forensics.

Under such circumstances, the Special Investigation Department's investigation approach is shifting toward collecting as much objective evidence as possible through the allocation of increased investigation resources to the work, implementing such measures as searches and confiscation at an early stage, taking time to analyze and examine collected evidence and conducting investigation from the perspective of to what degree guilt can be proved based on objective evidence without relying on statements in principle.

B. Regarding interrogations, the Principles of Prosecution stipulates that "we shall strive to obtain true statements while securing their voluntary nature and the fairness of the questioning" (Principle 5). In most cases, voice and video recording of interrogations are made, and in many of those cases, the entire process is voice- and video-recorded. As a result, the number of cases in which people interrogated and

interrogating prosecutors disagree about what is said during interrogations has been declining. In an overwhelming majority of cases, viewing of DVDs, etc. makes it easy to make judgment as to the admissibility and credibility of statements made in interrogations.

On the other hand, the Special Investigation Department makes voice and video recording of interrogations in the live format (\*) and secures sufficient time for interrogations. In voice- and video-recorded interrogations, there is no change in prosecutors' approach of striving to obtain truthful statements while patiently pursuing points which should be pursued.

\*In the live format, interrogations are conducted in a usual manner while voice and video recording is made. It is distinguished from the review format, in which the process of confirming the contents of past interrogations is voice- and video-recorded toward the end of the detention period, and the reading-and-review format, in which the process of the prosecutor reading recorded statements and asking for confirmation is voice- and video-recorded.

\*Change in mindset

- A. "Message regarding the Reform of the Prosecution Service," which was issued by the Prosecutor-General on July 8, 2011, pointed out that the approach of placing excessive priority on investigations conducted exclusively by the Special Investigation Department could put too much pressure on prosecutors involved in the investigations and distort the appropriateness of the investigations and warned against developing a misguided elitist mindset and becoming arrogant.
- B. Regarding the Special Investigation Department, various reforms have been carried out, including further strengthening its measures to deal with cases related to finance and economics through reorganization. Through the reforms, a change is occurring in the mindset of public prosecutors and assistant officers belonging to the Special Investigation Department. Namely, since the start of the reform of the prosecution service, the Special Investigation Department has been striving to enable relevant organizations to exercise their capabilities by coordinating their cooperation as their vital link with each other. As a result, the awareness has grown that quickly and accurately investigating large-scale cases related to economics is also an important role to be played by the Special Investigation Department. The importance of objective evidence, including electromagnetic records, has also been recognized anew.
- C. The mindset reform cannot be achieved overnight, and it is difficult to quantitatively measure the degree of achievement. However, the Special Investigation Department is striving to ensure that the mindset reform takes hold, with senior members repeatedly setting an example of reform during the

performance of their day-to-day job duties.

### **III. Expansion of Voice and Video Recording of Interrogations of Suspects**

#### **1. Background to the trial of voice and video recordings**

(1) Since April 1, 2009, public prosecutors offices have made voice and video recordings of interrogations of suspects as appropriate with regard to cases tried by courts involving saiban-in, or lay judges (hereinafter referred to as “Saiban-in Trials), in order to ensure effective and efficient evidence presentation.

The ex-MHLW director-general acquittal case led to the decision that the Special Investigation Departments of the Tokyo, Osaka and Nagoya District Public Prosecutors Offices should make voice and video recordings, on a trial basis, of interrogations in cases exclusively conducted by the departments in which suspects have been arrested by prosecutors of the departments, starting on March 18, 2011.

(2) Subsequently, in response to “Toward the Rehabilitation of the Prosecution Service,” the Principles of Prosecution stipulated that “we shall strive to obtain true statements while securing their voluntary nature and the fairness of the questioning” (Principle 5), as mentioned earlier.

It was decided to apply the trial of voice and video recording of interrogations to the entire process of interrogation conducted by the Special Investigation Department. It was also decided to expand the application of the trial to cases handled exclusively by the Special Criminal Department at each of 10 other district public prosecutors offices across Japan (Yokohama, Saitama, Chiba, Kyoto, Kobe, Hiroshima, Fukuoka, Sendai, Sapporo and Takamatsu), starting on July 8, 2011. On November 1, 2012, the application of the trial was expanded to cases handled exclusively by departments other than the Special Investigation Department and the Special Criminal Department.

Meanwhile, following a pilot trial at the Tokyo District Public Prosecutors Office and other offices that started in April 2011, the trial of voice and video recording began on July 8, 2011, with regard to interrogations of suspects in cases related to suspects with intellectual disabilities and communication problems (hereinafter referred to as “cases related to people with intellectual disabilities”) mainly at the Tokyo, Osaka and Nagoya District Public Prosecutors Offices. The trial has been expanded to all other public prosecutors offices since October 2011.

(3) On August 8, 2011, the Minister of Justice instructed that the coverage of the voice and video recording of interrogations of suspects in cases of Saiban-in Trials should be expanded on a trial basis. Accordingly, such recording was expanded to cover not only cases in which suspects have confessed their guilt but also cases in which suspects have denied their guilt or remained silent, and the live format (which records an ongoing

interview, rather than spoken remarks made according to a written statement) was introduced on a trial basis.

(4)\*Moreover, since November 1, 2012, the trial of the voice and video recording of interrogations of suspects has been conducted in cases related to suspects whose criminal responsibility is suspected to have been partially or completely lost due to mental disorders (hereinafter referred to as “cases related to persons with mental disorders”).

## **2. Implementation status**

(1) Voice and video recording of interrogations of suspects in cases of Saiban-in Trials

### **A. Number of recorded cases and the recording ratio**

In the three years from April 2011 to the end of March 2014, voice and video recording of interrogations was made in 10,021 out of the 11,886 reported cases that were subject to such recording (which translated into a recording ratio of approx. 84.3%). The number of cases in which voice and video recording was not made at all was 1,865 (approx. 15.7%).

As for the number of recorded cases and the recording ratio on an annual basis, the number was 2,505 and the ratio was approximately 63.5% in the first year (from April 2011 to March 2012), 3,680 and approximately 90.8% in the second year (from April 2012 to March 2013), and 3,836 and approximately 98.6% in the third year (from April 2013 to March 2014).

### **B. Breakdown of voice and video recording by recording scope**

Of the 9,173 cases in which voice and video recording was made between September 2011 and the end of March 2014, the entire interrogation process was recorded (full recording) in 5,166 cases (approx. 55.8% of the total), while some parts of the process were recorded (partial recording) in 4,057 cases (approx. 44.2% of the total).

On an annual basis, the number of full recording cases was 333 (approx. 20.1%) and the number of partial recording cases was 1,324 (approx. 79.9%) in the first year (a seven-month period from September 2011 to March 2012), 1,890 (approx. 51.4%) and 1,790 (approx. 48.6%) in the second year, and 2,893 (approx. 75.4%) and 943 (approx. 24.6%) in the third year.

### **C. The ratio of voice and video recording time to the interrogation time**

In cases in which voice and video recording was made, the ratio of recording time to the overall interrogation time was approximately 51.7% in the first year (a seven-month period from September 2011 to March 2012), approximately 74.3% in the second year, and approximately 94.2% in the third year.

### **D. Summary**

As shown above, the ratio of cases in which video and sound recording of interrogation of suspects was made reached approximately 98.6% in the third year. As the ratio of full recording cases and the ratio of voice and video recording time to the interrogation time have also been rising year after year, it can be assessed that voice and video recording is being made actively.

Among the reported reasons for non-implementation (including partial non-implementation) of voice and video recording apart from the absence of the possibility of requesting court proceedings under charges eligible for Saiban-in Trials were that (i) voice and video recording was impossible due to the absence of recording equipment at the facility where the interrogation was conducted; (ii) the suspects refused the use of recording; (iii) implementation and continuation of voice and video recording would have made it difficult to resolve the case because there were circumstances that made it difficult for the suspects to make statements regarding matters related to their organizations or accomplices; and (iv) there was a strong need to protect the honor and privacy of the victims.

\*Voice and video recording of interrogations of suspects in cases related to persons with intellectual disabilities

#### A. Number of recorded cases and the recording ratio

In the three years from April 2011 to the end of March 2014, voice and video recording of interrogations was made in 2,625 out of the 2,674 reported cases that were subject to such recording (which translated into a recording ratio of approx. 98.2%). The number of cases in which voice and video recording was not made at all was 49 (approx. 1.8%).

As for the number of recorded cases and the recording ratio on an annual basis, the number was 489 and the ratio was approximately 97.8% in the first year (from April 2011 to March 2012), 1,054 and approximately 97.9% in the second year (from April 2012 to March 2013), and 1,082 and approximately 98.6% in the third year (from April 2013 to March 2014).

#### B. Breakdown of voice and video recording by recording scope

Of the 2,625 cases in which voice and video recording was made between April 2011 and the end of March 2014, the number of full recording cases was 1,475 (approx. 56.2% of the total), while the number of semi-full recording cases\* was 401 (approx. 15.3% of the total), and the number of partial recording cases was 749 (approx. 28.5% of the total).

On an annual basis, the number of full recording cases was 171 (approx. 35.0%), the number of semi-full recording cases was 92 (approx. 18.8%) and the number of partial recording cases was 226 (approx. 46.2%) in the first year, 619 (approx.

58.7%), 163 (approx. 15.5%) and 272 (approx. 25.8%) in the second year, and 685 (approx. 63.3%), 146 (approx. 13.5%) and 251 (approx. 23.2%) in the third year.

\*In "semi-full recording" cases, voice and video recording was not made initially after the referral of the cases to a public prosecutors' office because the suspects' communication problems due to intellectual disabilities had not been recognized, but the interrogations conducted by the prosecutors after the problems were recognized were entirely recorded.

#### C. The ratio of voice and video recording time to the interrogation time

In cases in which voice and video recording was made, the ratio of recording time to the interrogation time was approximately 64.9% in the first year, approximately 83.3% in the second year, and approximately 91.2% in the third year.

#### D. Advice from and attendance at interrogation sessions by psychiatric and welfare experts

It was recommended in "Toward the Rehabilitation of the Prosecution Service" that in interrogations of suspects with communications problems due to intellectual disabilities, various measures should be tried, including requesting attendance by psychiatric and welfare experts. Accordingly, in such interrogations, public prosecutors offices are conducting trials of various measures, including soliciting advice from such experts on the characteristics of statements made by persons with intellectual disabilities and questioning methods and having such experts attend interrogation sessions. By the end of March 2014, both solicitation of advice from and attendance by psychiatric and welfare experts were implemented in 24 cases. In a substantial number of cases, advice was solicited, although it is difficult to accurately identify the number statistically.

#### E. Summary

As described above, in cases related to persons with intellectual disabilities as well, the ratio of cases in which video and sound recording of interrogations was made consistently exceeded 97% of all cases subject to recording. In addition, as the ratio of full recording and semi-full recording cases and the ratio of voice and video recording time to the interrogation time have also been rising year after year, it can be assessed that voice and video recording is being made actively.

Among the reported reasons for non-implementation (including partial non-implementation) of voice and video recording apart from the absence of the possibility of requesting court proceedings was that it was not necessary to record interrogations because it was concluded from what the suspects said and how they behaved during interrogations that they had no communication problem. Reasons similar to the ones described in (1) D (i) and (iv) above were also reported.

\*Voice and video recording of interrogations in cases related to persons with mental

disorders

A. Number of recorded cases and the recording ratio

In the three years from November 2012 to the end of March 2014, voice and video recording of interrogations was made in 3,542 out of the 3,615 reported cases that were subject to such recording (which translated into a recording ratio of approx. 98.0%). The number of cases in which voice and video recording was not made at all was 73 (approx. 2.0%).

As for the number of recorded cases and the recording ratio on an annual basis, the number was 783 and the ratio was approximately 97.5% in the first year (a five-month period from November 2012 to March 2013), and 2,759 and approximately 98.1% in the second year (from April 2013 to March 2014).

B. Breakdown of voice and video recording by recording scope

Of the 3,542 cases in which voice and video recording was made between November 2012 and the end of March 2014, the number of full recording cases was 1,685 (approx. 47.6% of the total), the number of semi-full recording cases\* was 612 (approx. 17.3% of the total), and the number of partial recording cases was 1,245 (approx. 35.1% of the total).

On an annual basis, the number of full recording cases was 336 (approx. 42.9%), the number of semi-full recording cases was 135 (approx. 17.3%) and the number of partial recording cases was 312 (approx. 39.8%) in the first year, and 1,349 (approx. 48.9%), 477 (approx. 17.3%) and 933 (approx. 33.8%) in the second year.

\*In "semi-full recording" cases, voice and video recording was not made initially after the referral of the cases because the possibility of the suspects having lost criminal responsibility partially or completely due to mental disorders had not been recognized but the interrogations conducted by the prosecutors after the possibility was recognized were entirely recorded.

C. The ratio of voice and video recording time to the interrogation time

In cases in which voice and video recording was made, the ratio of recording time to the interrogation time was approximately 80.8% in the first year and approximately 83.7% in the second year.

D. Summary

As shown above, the ratio of cases related to persons with mental disorders in which video and sound recording of interrogation of suspects was made already exceeded 97% in the first year. As the ratio of full recording and semi-full recording cases and the ratio of voice and video recording time to the interrogation time have also been high, it can be assessed that voice and video recording is being made actively.

Among the reported reasons for non-implementation (including partial non-implementation) of voice and video recording are the reason described in E. above and that it was not necessary to record interrogations because partial or complete loss of the suspects' criminal responsibility was not recognized as a result of psychiatric tests, etc.

\*Voice and video recording of interrogations of suspects in cases exclusively conducted by public prosecutors offices

#### A. Number of recorded cases and the recording ratio

In the three years from April 2011 to the end of March 2014, voice and video recording of interrogations was made in 342 out of the 355 reported cases that were subject to such recording (which translated into a recording ratio of approx. 96.3%). The number of cases in which voice and video recording was not made at all was 13 (approx. 3.7%).

As for the number of recorded cases and the recording ratio on an annual basis, the number was 91 and the ratio was approximately 92.9% in the first year (from April 2011 to March 2012), 128 and approximately 95.5% in the second year (from April 2012 to March 2013), and 123 and 100% in the third year (from April 2013 to March 2014).

#### B. Breakdown of voice and video recording by recording scope

Of the 342 cases in which voice and video recording was made between April 2011 and the end of March 2014, the number of full recording cases was 219 (approx. 64.0% of the total) and the number of partial recording cases was 123 (approx. 36.0% of the total).

On an annual basis, the number of full recording cases was 39 (approx. 42.9%) and the number of partial recording cases was 52 (approx. 57.1%) in the first year, 85 (approx. 66.4%) and 43 (approx. 33.6%) in the second year, and 95 (approx. 77.2%) and 28 (approx. 22.8%) in the third year.

#### C. The ratio of voice and video recording time to the interrogation time

In cases in which voice and video recording was made, the ratio of recording time to the interrogation time was approximately 51.4% in the first year, approximately 73.6% in the second year and approximately 90.0% in the third year.

#### D. Summary

As shown above, the ratio of cases conducted exclusively by public prosecutors offices in which video and sound recording of interrogation of suspects was made reached 100% in the third year. As the ratio of full recording cases and the ratio of voice and video recording time to the interrogation time have also been rising year after year, it can be assessed that voice and video recording is being made actively.

Among the reported reasons (including partial non-implementation) for non-implementation of voice and video recording were reasons similar to the ones described in (1) D (i) and (iv) above.

### **3. Merits and problems of voice and video recording**

#### **(1) Merits of voice and video recording**

As a result of the trials, voice and video recording of interrogations was found to have the following merits:

- A. As the contents of interrogators' questions and suspects' responses, including their attitudes when making statements, are objectively recorded, it becomes easier to assess the statements, contributing to judgment as to the admissibility and credibility of suspects' statements in the investigation phase.
- In judgments made in cases of Saiban-in Trials in which the admissibility of the suspect's written statements in the investigation phase was a point of dispute and DVDs, etc. were adopted as evidence, one judgment stated that "DVDs contain records of scenes in which the suspect sufficiently checked the contents of the written statement and proactively said that what was written did not contravene facts when asked to speak frankly by the prosecutor, and from the suspect's attitude, facial expressions and tone of voice, the atmosphere did not at all appear to make it difficult to make statements voluntarily in the interrogation by the prosecutor" (a case in which the read-and-review format [which records spoken remarks made according to a written statement]). Another judgment stated that "in the interrogation, the interrogating prosecutor explained that the suspect may make statements according to what was remembered at the moment because police and the Prosecution Service are different organizations, that the suspect may refuse to make statements and that the suspect may appeal for corrections. Indeed, the suspect responded to the prosecutor by denying a murderous intent, made his (her) own assertions regarding important parts of the charges and circumstances, and appealed for corrections of the written statement before signing and fingerprinting it. In addition, it can be recognized that the suspect expressed a complaint against police officers, which would have been difficult to express under the influence of the police officers, regarding the interrogations of relevant persons and the way of questioning the suspect as to the presence or absence of a murderous intent. Moreover, in light of the suspect's frank way of speaking, facial expressions and attitude at the time of the interrogation, the suspect was able to make denials on his (her) own judgment, so it cannot be recognized that the suspect was under the influence of the police interrogation" (a case in which the live format was adopted). In both cases, the admissibility of the written statement was recognized.

On the other hand, in a robbery-murder case in which the admissibility and credibility of the suspect's written confession of the intent of robbery was an issue of dispute, the judgment recognized the admissibility on the grounds that it was inconceivable in light of the DVDs that the written confession was made involuntarily. However, the judgment observed that the suspect's talkativeness as recorded by the DVDs, etc. appeared to be an attempt to please the prosecutor. The judgment also observed that when encouraged to state the fundamental motivation for murdering the victim or the reason for the confession, the suspect turned taciturn and only concurred in response to leading questions from the prosecutor or appeared to be talking while being concerned over the contents of the written statement. Regarding what the suspect felt when taking out the knife, it appeared that the written confession was made based on the answer selected by the suspect from the two options proposed by the prosecutor, according to the judgment. As a result, the credibility of the written confession was denied.

- There was a reported case related to a person with an intellectual disability in which the admissibility and credibility of statements was ensured because voice and video recording made clear that the prosecutor had not asked leading questions or suggestive remarks in the interrogation and that the suspect clearly distinguished between what was remembered and what was not remembered in making statements. There was also a reported case related to a person with a mental disorder in which although the suspect made an inscrutable statement to the effect that he (she) had heard a voice urging robbery in an interrogation after extension of the detention period, the voice and video recording of the entire interrogation process made it clear that the suspect had not made such a statement in the previous interrogation and that the reason given for not making such a statement previously was unreasonable.
- B. In cases where the suspect refuses to sign and fingerprint the written statement while responding to the interrogation, the statement can be recorded.
  - For example, in a case related to arson of an inhabited building, although after admitting to the crime initially in the investigation phase, the suspect later resorted to silence and denial. As a result, the DVDs, etc. compiled in the initial interrogation were the only evidence that recorded specific statements regarding the development of the motivation and the circumstances of the crime, so the prosecutor requested examination of the DVDs, etc. in addition to the concise written confession made by the suspect in front of a police officer for the purpose of presenting evidence regarding the sequence of events leading to the crime and the circumstances of the crime. The DVDs, etc. were adopted as evidence to clarify

the facts and circumstances of the crime (substantial evidence) and were indicated in the evidence list.

C. In some cases, as a result of the disclosure of evidence, including DVDs, etc., to defense attorneys, the question of admissibility of and/or whether or not the suspect stated what was included in the written statement is prevented from becoming an issue of dispute, leading to the enhancement and speeding-up of court examinations.

- For example, there was a reported case in which the suspect refused to sign or fingerprint the written statement compiled based on an interrogation which was being voice-and video-recorded but consent was given to adopting the written statement as evidence in the court proceeding. There was also a reported case in which a defense attorney reserved an evidence opinion regarding an accomplice's written statement but consent was given to the written statement after the disclosure of DVDs on which were recorded the interrogation of the accomplice and the credibility was not disputed.

D. The interrogation situation is objectively recorded, contributing to ensuring the appropriateness of the interrogation.

- For example, there was a reported case in which a notification was submitted to the effect that a written statement was not corrected despite repeated requests for correction, that the suspect had no option but to sign and fingerprint the written statement because of exhaustion due to long hours of interrogations and that the defense planned to dispute the admissibility and credibility of the statement but in which it was clear from DVDs, etc. that such a situation did not exist.

E. In cases related to persons with intellectual disabilities or mental disorders, voice and video records may constitute useful evidence to judge the presence or absence and the degree of disabilities and disorders and to prove facts.

- For example, the following cases were reported:

- \*Voice and video recording of the attitude of the suspect that was difficult to describe in a written statement made it possible to provide accurate and appropriate materials for assessment.

- \*The suspect refused to be subjected to simple mental diagnosis but DVDs, etc. on which were recorded extraordinary remarks and behavior of the suspect made it objectively clear that the suspect's criminal responsibility was doubtful.

- \*The suspect appeared to be suffering from a severe degree of mental disorder during the detention period because of withdrawal due to alcoholism but DVDs, etc. showed that initially after the arrest, the appearance of the

suspect did not indicate the presence of a mental disorder and they were used as evidence to provide useful material for judging the suspect's criminal responsibility.

F. In cases related to persons with intellectual disabilities, it is possible to obtain advice regarding interrogation from psychiatric and welfare experts by showing DVDs, etc. to them.

○ For example, there were reported cases in which it became possible to receive advice from psychiatric and welfare experts with regard to the characteristics of the suspects' disabilities and statements at an early time by showing them DVDs, etc. on which were recorded the procedure for recording explanatory statements and in which the voice and video records were useful from the perspective of selecting the method of questioning the suspects in subsequent interrogations and ensuring the admissibility of statements.

G. It is possible to identify problems in individual prosecutors' interrogations and to provide practical instructions that suit their respective qualities.

## (2) Problems of voice and video recording

As a result of the trials, the following problems of voice and video recording were identified:

A. In voice- and video-recorded interrogations, depending on the nature of the cases and the characteristics of the suspects, suspects may find it difficult to make statements based on their own free will, or may change their attitude or tone down their statements as a result of becoming nervous or becoming wary about their statements and attitude being recorded as they are (and the records may be seen by other people in the future) due to fears about retaliation from their organizations.

○ For example, the following cases were reported:

\*The suspect made statements regarding the background to the crime in the non-custodial investigation stage but denied factual matters or remained silent after voice and video recording started following the arrest.

\*The suspect made explanatory statements profusely in the non-custodial investigation stage but made few statements and kept looking down after voice and video recording started following the arrest.

\*The suspects confessed to their guilt in the post-arrest interrogation but downplayed their involvement in interrogations that were being voice- and video-recorded or refused to make statements regarding the crime motivation or the usage of money.

B. In some cases, it is difficult for the prosecutor to develop a relationship of trust with the suspect in interrogations that are being voice- and video-recorded

because the prosecutor finds it hard to talk to the suspect with compassion out of consideration for the victim, for example. In other cases, the prosecutor may fail to thoroughly question the suspect making irrational assertions about points of contraction due to concerns over how his/her remarks and behavior are evaluated later, a situation which may impede the clarification of the facts of the case.

- C. If the suspect made a statement regarding personal information concerning relevant people (the statement may contain both facts and fictions), such information is entirely recorded. As a result, there is the risk that the relevant people's honor or privacy may be significantly infringed if DVDs, etc. are disclosed.
- D. As a result of the expansion of trials of voice and video recording of interrogations, including of the entire interrogation process, the number of hours of voice and video recording have increased, imposing a heavy burden on prosecutors who review the records, including officers responsible for making final decisions and prosecutors in charge of examining a case and/or its court proceedings. In particular, in cases conducted exclusively by public prosecutors offices, making long hours of voice and video recording is a usual practice, and as a result, the officer responsible for making final decisions needs to spend long hours reviewing DVDs, etc. This burden is so heavy that its effects on the entire investigation cannot be ignored.

It is necessary to pay attention to these problems when making voice and video recording of interrogations.

#### **4 New policy for voice and video recording of interrogations**

The current trials are applied to four types of cases, including cases of Saiban-in Trials. Although the abovementioned problems were observed in some cases, it is recognized that voice and video recording generally made some achievements in realizing fair court trials, as DVDs, etc. contributed to judgment as to the admissibility and credibility of statements made in the investigation phase as reference materials that objectively recorded the interrogation situation regardless of whether the statements are favorable or unfavorable for the prosecutors. Therefore, it is presumed that voice and video recording of interrogations should be made more actively based on the results of the trials so far conducted. From now on, the following two new initiatives will be conducted:

##### **(1) Shift from trial to full implementation**

Voice and video recording of interrogations will shift from the trial to full implementation with regard to the cases to which it is now applied, including (i) cases of Saiban-in Trials, (ii) cases related to persons with intellectual disabilities, (iii) cases related to persons with mental disorders, and (iv) cases conducted exclusively

by public prosecutors' offices will shift from trial to full implementation under the same framework.

\*New trial (expansion of the scope of cases to which voice and video recording of interrogation is applied)

Recently, it has been recognized that DVDs, etc. are the most suitable evidence to prove the interrogation situation, so when a dispute arises as to the admissibility and credibility of statements made in the investigation phase, it is necessary to accurately prove the situation using DVDs, etc. on which the interrogation is recorded. In light of this, in order for prosecutors who have the burden of proof in court proceedings to make such proof, voice and video recording of interrogations of persons making statements is made in the following cases, with care taken not to hinder the fact-clarifying function of the interrogation:

- (i) Cases for which voice and video recording of the interrogation of the suspect is deemed necessary, such as custody cases in which a request for court proceedings is expected and in which a statement made by the victim is important for proving facts in light of the nature of the case and evidence and other materials and cases in which a dispute may arise as to the situation of the interrogation of the suspect in light of evidence and other materials as well as the statement situation
- (ii) Cases in which a request for court proceedings is expected and in which voice and video recording of the interrogation of the victim and witnesses is necessary due to specific circumstances such as that statements by the suspect and witnesses are expected to constitute the core of the evidence presentation to prove facts.

#### **IV. Enhancing the Capability to Execute Investigations and Court Proceedings in Order to Respond to Changes of the Time**

Amid significant changes in the environment surrounding investigations and court proceedings, including the introduction of Saiban-in Trials, expansion of voice and video recording of interrogations, the advance of science and technology and the development of information and communication technology, enhancing the capability to execute investigations and public proceeding has become a major task. In "Toward the Rehabilitation of the Prosecution Service," it was pointed out that the Prosecution Service should always pay attention to society and acquire the capability to detect social changes and look toward the future. Accordingly, the Prosecution Service stipulated in the Principles of Prosecution that "we shall continue our efforts to acquire and improve our knowledge and skills on laws and legal issues and seek to attain broader knowledge and education which will enable us to cope with diverse and evolving issues (Principle 9) and

has been conducting a study on ways of improving scientific investigation methods and compiling written statements in the new era and has been conducting various initiatives to enhance the internationality of public prosecutors offices. At the same time, the Prosecution Service, in cooperation with the Ministry of Justice, has been expanding various relevant training programs, etc.

## **1. Improvement of scientific investigation methods**

### **(1) Activities of the Expert Committee on Forensic Science and feedback to the frontlines of investigation**

Following the introduction of Saiban-in Trials, there has been a tendency among courts to strictly evaluate the credibility of statements and evidence. In addition, in some cases, written statements are judged to be unnecessary and are not adopted. As a result, investigation that does not overly rely on written statements has become important, resulting in increased importance of objective evidence. On the other hand, in line with the advance of science and technology, forensic assessment technology has improved and forensic assessment has been adopted in various fields. Moreover, due to the development of information and communication technology, computers and smart phones have become social life infrastructure, making it possible to collect a great variety of objective evidence, including electromagnetic records. While objective evidence obtained through scientific investigation methods plays an important role in the clarification of facts and evidence presentation to prove facts in court proceedings, there are many cases in which the defendants and their defense attorneys actively make objective evidence and evaluation thereof a point of dispute. While objective evidence may serve as positive evidence, it may also be used as conclusive negative evidence. In light of this, it is important to strive to appropriately collect, analyze and evaluate objective evidence based on the most up-to-date knowledge and technology.

In view of these circumstances, on July 8, 2011, in order to collect and make effective use of knowledge concerning forensic science, the Expert Committee on Forensic Science was established at the Supreme Public Prosecutors Office. This committee is comprised of members who have expert knowledge and experience in a wide range of fields, including prosecutors with the experience of working at the criminal forensic division of the National Police Agency and prosecutors' assistant officers belonging to the Digital Forensic (DF) Group. So far, the committee has strived to collect the most up-to-date information concerning forensic science by conducting observations of and exchanging opinions with external organizations, including the National Research Institute of Police Science and the Fingerprint Center under the National Police Agency. The Expert Committee on Forensic Science collects

cases investigated and processed using knowledge concerning forensic science and cases in which such knowledge was used for evidence presentation to prove facts in court proceedings and feeds back information to public prosecutors offices with explanations of basic knowledge and points of attention concerning various forensic assessments to facilitate information sharing so that prosecutors can easily acquire advanced knowledge concerning forensic science. Fields covered by feedback information are wide ranging, including matters related to various forensic assessments, such as DNA type, illegal drugs/toxic substances, voice prints, facial features, fingerprints, firearms and handwriting as well as matters related to cybercrimes and digital forensics. Public prosecutors offices use knowledge concerning scientific investigation not only as reference materials when giving instructions to police or soliciting opinions from university professors but also as materials for seminars. The feedback is thus used to improve the expert knowledge of prosecutors and other prosecution staff in general concerning forensic science.

\*Response to digital forensics and cybercrimes

As mentioned in II2\*B, the DF Group was established in April 2011 at the Special Investigation Department of each of the Tokyo, Osaka and Nagoya District Public Prosecutors Offices. The DF Group is responsible for appropriately collecting, preserving and analyzing electromagnetic records, mainly in cases investigated exclusively by the Special Investigation Department. Efforts are made to share the most up-to-date knowledge and technology concerning digital forensics by organizing information exchange meetings between the DF Groups of the three district public prosecutors offices and by having DF Group members attend consultation meetings with digital forensic personnel organized by relevant organizations. Some prosecutors' assistant officers belonging to the DF Group of the Tokyo District Public Prosecutors Office are also members of the Expert Committee on Forensic Science, and they strive to acquire expert knowledge and experience-based knowledge in coordination with the activities of the expert committee. Moreover, the DF Promotion Group was established on April 1, 2012, at the Supreme Public Prosecutors Office in order for public prosecutors in general to acquire and share knowledge and technology concerning digital forensics. The DF Promotion Group at the Supreme Public Prosecutors Office strives to acquire the most up-to-date information and technology concerning digital forensics by actively participating in lecture sessions and equipment explanation meetings organized by private companies for law enforcement agencies. It also feeds back knowledge and technology in the form of advice and technical support provided in response to inquiries from public prosecutors offices.

Since fiscal 2012, the Ministry of Justice, with cooperation such as dispatch of

lecturers from the DF Promotion Group of the Supreme Public Prosecutors Office, has been implementing digital forensic training programs for prosecutors and prosecutors' assistant officers at public prosecutors offices across the country in order to help them acquire basic knowledge concerning digital forensics and practical techniques for appropriately collecting, preserving and analyzing electromagnetic records in criminal cases. Since fiscal 2013, the ministry has been implementing a digital forensic practical training program for prosecutors' assistant officers who have basic knowledge, including those who have finished the digital forensic training program, in order to help them acquire more advanced expert knowledge and technology.

Meanwhile, in response to the so-called personal computer remote control incident, a prosecutor in charge of cybercrimes was appointed at the Expert Committee on Forensic Science of the Supreme Public Prosecutors Office and prosecutors in charge of cyber-related matters were appointed at the Tokyo and Osaka District Public Prosecutors Offices. In addition, by the end of July 2013, a total of 18 prosecutors in charge of cyber-related matters were appointed at 13 public prosecutors offices of a relatively large size (Tokyo, Yokohama, Saitama, Chiba, Osaka, Kyoto, Kobe, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo and Takamatsu), resulting in the development of a nationwide system to deal with cybercrimes. Moreover, the Supreme Public Prosecutors Office has held seminars, attended by prosecutors in charge of cyber-related matters at those district public prosecutors offices, to share knowledge that should be acquired in light of the actual circumstances of cyber and other crimes reflecting the sophistication of information processing in recent years. It has also developed a system that can adapt to the increasing specialization and sophistication of investigation methods by establishing a network of prosecutors in charge of cyber-related matters at district public prosecutors offices in order to share information concerning cybercrime techniques and their characteristics identified during investigation of individual cases and to more accurately deal with cases through mutual cooperation. In March 2014, several personnel of the Supreme Public Prosecutors Office, including the prosecutor in charge of cybercrimes, conducted observations of and exchanged opinions with relevant U.S. organizations, thereby deepening knowledge concerning ways of dealing with cybercrimes in Japan.

The Ministry of Justice implements an information system expert training program for prosecutors at public prosecutors offices across the country in order to help them understand the basic mechanisms of computer networks and security systems and techniques used in cybercrimes and acquire basic knowledge concerning investigation methods, including log analysis. In this program, specialist private companies provide lectures and practical training concerning computer networking, illegal access,

invasion methods and countermeasures as well as examination of attacked computers and log analysis. In addition, prosecutors and police officers provide lectures concerning high-tech crime investigation.

## **2. Study on ways of conducting interrogations and compiling written statements**

As part of the review of investigation and court proceedings overly relying on interrogations and written statements, a problem which was pointed out in “Toward the Rehabilitation of the Prosecution Service,” the Supreme Public Prosecutors Office compiled and published a report titled “Verification of Voice and Video Recording of Interrogations by the Prosecution Service” on July 4, 2012, and established the “Study Team on Interrogations in a New Era.” Amid drastic changes in the environment surrounding investigations and court proceedings, particularly the improvement of scientific investigation methods, the study team conducted a series of studies based on an exchange of opinions with prosecutors across the country in order to “strive to the utmost to discover the truth in each case with all our knowledge and skills (Principle 3) while practicing the principles prescribed in the Principles of Prosecution, such as ”We shall pay due attention to the assertions of suspects or defendants, endeavor to collect all relevant evidence, both incriminating and exculpatory, aggravating and mitigating, and make rational and sensible evaluation of evidence from various perspectives” (Principle 4) and “In interviewing witnesses and suspects, we shall strive to obtain true statements, while securing their voluntary nature and the fairness of the questioning” (Principle 5). As a result, on April 9, 2013, the Supreme Public Prosecutors Office sent a report titled “Regarding Ways of Interrogating Suspects and Compiling Written Statements,” which summarized mainly the basic concept concerning ways of interrogating suspects and compiling written statements and general points of attention, to public prosecutors offices of a relatively large size and instructed them to enhance their interrogation capability through the practice of appropriate interrogations suited to individual cases. Regarding the basic approach to interrogation, this report stipulates as follows:

\*Although interrogation is important for clarifying the facts of a case, it should not be conducted solely for the purpose of obtaining a confession (statements admitting to suspected facts).

\*Interrogation is no more than one of the investigation methods and it can exercise its fact-clarifying function only if it is conducted in close coordination with other investigation methods.

The report points out that it is important to make sufficient preparations, develop relationship that makes it easier for the suspect to talk and adequately listen to what the suspect has to say, and it also examines ways of pursuing questions and persuading and how written statements should be compiled.

Based on the recognition that in order to enhance the investigation capability of the Prosecution Service as a whole while practicing the points cited in the report, it is essential for officers responsible for making final decisions to continue to provide practical instructions and training, the Supreme Public Prosecutors Office established the “Study Team on Training and Instructions concerning Ways of Interrogating Suspects and Compiling Written Statements” in October 2013. This study team, in cooperation with the Ministry of Justice, studied curriculums that contribute to the improvement of interrogations and scientific investigation methods in various training programs for public prosecutors, assistant public prosecutors and assistant officers and enhanced the contents of the programs. In addition, in order to optimize investigation techniques in ways that suit voice- and video-recorded interrogations, the study team conducted such initiatives as holding meetings to exchange opinions with psychology experts regarding questioning techniques while viewing DVDs on which interrogations useful as a reference were recorded, sending prosecutors abroad to participate in training programs in order to foster interrogation instructors (in fiscal 2014, senior prosecutors participated in interrogation training in the United Kingdom), and studying how to feed back information to be used in the training of prosecutors and assistant officers and how officers responsible for making final decisions should give instructions.

### **3. Enhancement of the internationality of the Prosecution Service**

In recent years, cross-border crimes have increased in line with the advance of globalization and the development of IT technology. To cope with this situation, the Prosecution Service should not only develop a system to appropriately deal with international crimes but also enhance its internationalization by deepening mutual understanding with organizations in other countries. In light of these circumstances, the Expert Committee on International Affairs was established at the Supreme Public Prosecutors Office on July 8, 2011. This expert committee collects knowledge necessary for engaging in the Prosecution Service’s various international operations and studies ways of making effective use of such knowledge. It also studies issues related to international investigations through exchanges of opinions with relevant organizations and its own discussions.

Moreover, in order to go beyond the scope of the expert committee’s activities, such as collecting, accumulating and providing knowledge, and plan specific initiatives to enhance the internationality of the Prosecution Service, a prosecutor in charge of international affairs was appointed at the Supreme Public Prosecutors Office on October 1, 2013. In addition to planning specific initiatives to enhance the internationality of the Prosecution Service, the prosecutor in charge of international affairs at the Supreme Public Prosecutors Office engages in such activities as overall

coordination between the Prosecution Service and a diverse range of relevant organizations. Furthermore, on January 31, 2014, a total of 17 prosecutors in charge of international affairs were appointed at 13 district public prosecutors offices of a relatively large size. On May 1, a prosecutor in charge of international affairs was also appointed at the Okinawa District Public Prosecutors Office as well. The job duties performed by prosecutors in charge of international affairs at the district public prosecutors offices include: (i) acting as a liaison with the International Affairs Division, Criminal Affairs Bureau of the Ministry of Justice and the prosecutor in charge of international affairs at the Supreme Public Prosecutors Office; (ii) collecting and accumulating information concerning mutual legal assistance, etc. provided by the International Affairs Division, Criminal Affairs Bureau of the Ministry of Justice and the prosecutor in charge of international affairs at the Supreme Public Prosecutors Office, improving relevant knowledge and communicating it to prosecutors and other prosecution staff as appropriate; (iii) holding liaison consultations with the International Affairs Division Criminal Affairs Bureau, Ministry of Justice and giving advice to other prosecutors and prosecution staff when mutual legal assistance is deemed to be necessary; and (iv) handling matters related to visits by personnel from foreign investigative organizations.

The Supreme Public Prosecutors Office is striving to enhance the expert knowledge of prosecutors in charge by securing a system for close liaison with prosecutors in charge of international affairs at district public prosecutors offices of a relatively large size, the International Affairs Division Criminal Affairs Bureau, Ministry of Justice, etc., holding consultation meetings to consider response to international crimes and check ways of cooperation, and sharing information on procedures for and problems with mutual legal assistance through consultations and exchanges of opinions concerning various problems based on specific example cases of such assistance.

#### **4. Enhancement of various training programs**

It was recommended in “Toward the Rehabilitation of the Prosecution Service” that it is necessary to strengthen prosecutors’ basic capabilities, centralize and utilize advanced expert knowledge systematically, change senior prosecutors’ mindsets and improve and reform leadership. In light of the recommendation and in order to strengthen the capability to execute investigations and court proceedings, the Ministry of Justice and the Prosecution Service are enhancing various training programs. Accordingly, individual public prosecutors offices are conducting various initiatives.

- (1) Enhancement of training programs for prosecutors and assistant prosecutors to strengthen the basic capabilities

From the perspective of making prosecutors recognize anew the mission and role of

the Prosecution Service and ensuring thorough awareness about the Principles of Prosecution, training programs for prosecutors and assistant public prosecutors incorporate many lectures by prosecutors belonging to the Public Prosecution Reform Promotion Office of the Supreme Public Prosecutors Office, which was involved in the development of those principles as well as lectures related to the reform of the Prosecution Service. In addition, in light of the status of the study conducted by the “Study Team on Interrogations in a New Era,” it is recognized that the basic fact-clarifying capabilities required of prosecutors are the capability to accurately understand changing points of dispute and evidence of a case in the investigation phase, the capability to identify evidence that should be collected and facts that should be recognized and collected, the capability to analyze and evaluate objective evidence based on these capabilities, and the interrogation capability in terms of obtaining appropriate statements as evidence. Based on this recognition, the contents of lectures and seminars concerning the recognition of facts (including consideration of acquittal cases), methods of collecting objective evidence (including scientific and laboratory investigation as well as forensic assessment), the approach to interrogation and questioning techniques have been improved so as to contribute to strengthening basic capabilities through an increase in the number of lessons and upgrading of the contents according to the training level. In addition, there are initiatives to strengthen the basic capabilities by having trainees recognize and reflect on the level of their own growth through mutual comparison between them, for example through the introduction of seminar-type curriculums and indictment drafting curriculums in which participants consider mock processes and decisions using simulated case records and sort out evidence and then hold debates and evaluate the results, in preparation for OJT at individual public prosecutors offices following the training program.

In light of the recommendation in “Toward the Rehabilitation of the Prosecution Service” that “in order to strengthen individual prosecutors’ job performance capability and improve their skills, ways of passing competent prosecutors’ job capabilities on to future generations and institutionally sharing them should be devised,” officers responsible for making final decisions and senior prosecutors at many individual public prosecutors offices are playing the leading role in further enhancing existing periodic study meetings. Regarding the office space arrangement under which each pair of prosecutor and assistant officer work in an individual office room, an increasing number of public prosecutors offices have shifted to an arrangement under which two or more prosecutors, assistant prosecutors and assistant officers – the number of personnel sharing the room depends on the floor space size – perform job duties in a common office room while sharing information. There is also an initiative to share

knowledge and experiences, including regarding various investigation methods and interrogation techniques, through a system under which a senior prosecutor can be easily consulted as a mentor by several young prosecutors across office walls, and through periodic meetings of prosecutors, assistant prosecutors and assistant officers at large prosecutors offices operating on a group system under which they bring together their respective cases and consider them together to explore solutions.

(2) Enhancement of the prosecutor dispatch system and the law office experience system

The Ministry of Justice is operating a prosecutor dispatch system under which prosecutors are dispatched to work at private companies, private organizations engaging in public interest activities and local governments for a certain period of time in order to cultivate a broad perspective and knowledge through opportunities to interact and exchange opinions with diverse people. Under this system, three prosecutors were dispatched in fiscal 2010, followed by the dispatch of four in fiscal 2011, six in fiscal 2012, and six in fiscal 2013, to work at private companies in various industries and private organizations engaging in public interest activities (an organization supporting crime victims, a child consultation center, etc.).

The Ministry of Justice is also operating the law office experience system under which prosecutors work at law offices for a certain period of time in order to further enhance their capabilities and qualities as prosecutors through the experience of working as lawyers. Under this system, five prosecutors worked at law firms in fiscal 2010, followed by six in fiscal 2011, seven in fiscal 2012, and eight in fiscal 2013, with each of them engaging in the lawyer's job for two years.

(3) Enhancement of training of senior prosecutors

The Supreme Public Prosecutors Office and the Ministry of Justice are implementing the prosecution management seminar for new chief prosecutors of district public prosecutors offices. In this seminar, trainees receive lectures that contribute to cultivating leadership, which is the objective of this seminar, including external lecturers' lectures concerning organizational management. In fiscal 2013, the curriculum was so formulated as to enable new chief prosecutors to deepen their recognition of various matters which have recently been required of the Prosecution Service and enhance their organizational management capability, which forms the foundation of investigation and court proceedings activities. For example, new chief prosecutors received not only lectures concerning leadership and human resource development but also lectures given by external experts with regard to prosecutors' court proceedings activities and handling of victims as seen from the viewpoints of judges and defense attorneys and lectures concerning cybercrimes and criminal policy-related initiatives conducted by public prosecutors offices and other relevant

organizations.

In addition, the Supreme Public Prosecutors Office and the Ministry of Justice are implementing a seminar for new officers responsible for making final decisions. In the seminar, practical lectures (e.g., coaching), including concerning how to give instructions to subordinates and how to make final decisions, are given. Moreover, since fiscal 2013, a training program for deputy chief prosecutors of district public prosecutors offices has been implemented for new deputy chief prosecutors who participated in the seminar for new officers responsible for making final decisions in the previous year. This program is provided as follow-up training for those who have served as new deputy chief prosecutors for several months. It incorporates a mechanism to check the job performance capability of trainees as officers responsible for making final decisions through practical methods, such as final decision-making exercises.

## **V. Initiatives Contributing to Criminal Policies**

### **1 Support for social rehabilitation of suspects and defendants intended to prevent repeat offenses**

The Prosecution Service characterized contributing to the objectives of criminal policy, such as prevention of repeat offenses, as an important task due to the following circumstances:

\* At a meeting of cabinet ministers on countermeasures against crimes on July 20, 2012, the “Comprehensive Package of Measures Intended to Prevent Repeat Offenses” was adopted, so the need for initiatives to prevent repeat offenses grew.

\*There is widespread awareness about the importance of providing welfare support to disabled and elderly people not only when they are released from correction facilities but also when they are suspects or defendants, and as a result, collaboration between criminal justice and welfare services has started.

\*It is stipulated in the Principles of Prosecution that “Obtaining conviction by any means in all cases is not our goal, nor should we seek to impose harsh sentences without regard to the nature of the case. Our objective is to achieve proper dispositions and proper sentencing for each case, corresponding to its nature and representing the common sense of the people” (preamble) and that “We shall endeavor to contribute to the prevention of crime, the rehabilitation of offenders and other aims of criminal justice, in cooperation with police and other law enforcement authorities, correctional and probation services and other relevant agencies and organizations” (Principle 8).

In light of this situation, the Supreme Public Prosecutors Office established the Expert Committee on Criminal Policy on June 12, 2012, as a major pillar of the initiative to prevent repeat offenses and is obtaining and feeding back information

concerning individual prosecutors offices' activities to prevent repeat offenses and other up-to-date information to public prosecutors offices across the country while conducting various studies in cooperation with relevant organizations.

Moreover, individual public prosecutors offices provide advice and perform coordination work regarding the treatment of disabled and elderly people who have committed crimes in specific cases in accordance with their own circumstances. For example, they may employ social workers as social welfare advisers on a part-time basis in order to enhance support for social rehabilitation by securing places ready to accept such people following their release due to dismissal of the case or conviction with a suspended sentence. In addition, public prosecutors offices are making efforts to strengthen systems, including by seeking closer cooperation with probation offices and welfare organizations. Meanwhile, during investigations and court proceedings, public prosecutors offices study the possibility of preventing repeat offenses through such support on a case-by-case basis in accordance with the specific contents of the cases and make decisions and demand punishment so as to ensure that measures suited to the cases are implemented.

## **2. Support for victims**

Regarding the protection of and support for crime victims, public prosecutors offices across the country have been conducting various initiatives based on the Basic Act on Crime Victims and the Second Crime Victim, etc. Basic Plan. In light of the importance of the growing move to support crime victims, the Prosecution Service has stipulated in the Principles of Prosecution that “We shall pay due attention to the opinions and views of victims of crime or their family members and uphold their legitimate rights and interests (Principle 6). Based on the recognition that supporting victims is one of the most important tasks for the Prosecution Service, the Supreme Public Prosecutors Office has adopted prevention of repeat offenses and support for victims as the two major initiatives of the Expert Committee on Criminal Policy. It is obtaining information concerning various victim support initiatives conducted within and outside the Prosecution Service and new initiatives and, after analysis and evaluation, is feeding back information concerning useful initiatives to public prosecutors offices across the country. The Supreme Public Prosecutors Office is also enhancing training concerning support for victims and cooperation with relevant organizations so as to be able to quickly respond to new movements related to support for victims.

In order to put into practice the principle of “paying due attention to the opinions and views of victims of crime or their family members,” which is among the Principles of Prosecution, individual public prosecutors offices support crime victims, adequately hear from them on the actual status of crime damage, make use of the results for investigating

and processing the cases and reflect them in court proceedings activities. Moreover, they are conducting such initiatives as providing explanations concerning criminal proceedings in general and explanations at each stage of the proceedings and explanations concerning various programs to support victims; appointing victim-supporting officers and opening a hotline for victims; operating a system to notify victims of matters related to criminal proceedings; making records of non-prosecuted cases available for viewing; protecting victims in questioning of witnesses; operating a victim participation system; enhancing training concerning support for victims; and cooperating with relevant organizations regarding support for victims. Large public prosecutors offices are organizationally strengthening support for victims by establishing a new section dedicated to support for victims in order to systematically and efficiently conduct victim support activities and implement cooperation with relevant organizations.

## **VI. Reform Intended to Enhance Organizational Management**

### **1. Establishment of the Public Prosecution Reform Promotion Office and outline of activities**

The reform of the Prosecution Service can be realized only if public prosecutors offices make continuous reform efforts. To that end, it is necessary to establish a section dedicated to promoting reform of the Prosecution Service, as was pointed out in “Toward the Rehabilitation of the Prosecution Service”. Accordingly, on April 8, 2011, the Public Prosecution Reform Promotion Office was established at the Supreme Public Prosecutors Office. The Public Prosecution Reform Promotion Office, which aims to actively and steadily promote reform of the Prosecution Service, promotes reform measures while periodically verifying the implementation of reform measures and making necessary revisions. It is also continuously conducting initiatives to ensure organizational management that puts into practice Principle 10 of the Principles of Prosecution: “We shall act with constant reflection on past experience and build an organization with vitality and with a culture of free and active discussion, as well as mutual assistance and cooperation.” Its main initiatives are conducting the Survey on the Status of Organizational Operations, which is intended to improve prosecution organizations in general, and establishing and operating expert committees, which are intended to enhance expertise.

#### **(1) Conducting the Survey on the Status of Organizational Operations**

Since fiscal 2012, the Public Prosecution Reform Promotion Office has been conducting the Survey on the Status of Organizational Operations and the opinion survey on subordinates concerning senior prosecutors and has analyzed the survey results.

The Survey on the Status of Organizational Operations is intended to identify the current status of organizational operations and problems by surveying the attitudes and opinions of prosecutors and other prosecution staff at individual public prosecutors offices with regard to such matters as communication between seniors and subordinates and between colleagues, response to harassment practices and the division of work and to contribute to the improvement of organizational operations by feeding back the results to senior prosecutors responsible for organizational operations.. Individual public prosecutors offices receive feedback of the survey results, which are analyzed by senior prosecutors and communicated to prosecutors and other prosecution staff. In addition, individual public prosecutors offices are continuously conducting improvement initiatives by establishing study councils on organizational operations and project teams for improving organizational operations and by holding rank-by-rank meetings among prosecutors and other prosecution staff. Moreover, high public prosecutors offices actively use the survey results for diverse purposes by holding consultations and exchanging opinions with district public prosecutors offices in the areas under their jurisdiction at various meetings. Therefore, it is presumed that improvements are being made in line with the purpose of creating energetic organizations in which free-wheeling discussion and mutual support are possible.

The opinion survey on subordinates concerning senior prosecutors is intended to help senior prosecutors cultivate and enhance their organizational operation capability by identifying the opinions of subordinates with regard to such matters as the appropriateness of their judgment, advice and guidance regarding job execution and by giving the feedback to senior prosecutors so as to enable them to reflect on their daily activities, consider improvements and solutions and reflect the results in future activities. Many senior prosecutors appear to be taking opinions expressed by subordinates seriously and using the feedback for making decisions. Therefore, this survey is also presumed to be useful for human resource development.

The status of implementing the surveys concerning organizational operations is as follows:

A. Fiscal 2012

(i) Survey on the Status of Organizational Operations

Conducted at the Supreme Public Prosecutors Office and 23 public prosecutors offices in the areas under the jurisdiction of the Tokyo, Sapporo and Takamatsu High Public Prosecutors Offices

(ii) Opinion survey on subordinates concerning senior prosecutors

Conducted with regard to a total of 104 senior prosecutors at district public

prosecutor offices in the areas under the jurisdiction of the Osaka, Nagoya, Hiroshima, Fukuoka and Sendai High Public Prosecutors Offices

B. Fiscal 2013

(i) Survey on the Status of Organizational Operations

Conducted at 36 public prosecutors offices in the areas under the jurisdiction of the Osaka, Nagoya, Hiroshima, Fukuoka and Sendai High Public Prosecutors Offices

(ii) Opinion survey on subordinates concerning senior prosecutors

Conducted with regard to a total of 201 executives at all district public prosecutors offices

C. Fiscal 2014 (planned)

(i) Survey on the Status of Organizational Operations

To be conducted at the Supreme Public Prosecutors Office and 23 public prosecutors offices in the areas under the jurisdiction of the Tokyo, Sapporo and Takamatsu High Public Prosecutors Offices

(ii) Opinion survey on subordinates concerning senior prosecutors

To be conducted with regard to senior prosecutors at all district public prosecutors offices.

(2) Field-specific expert committees

Regarding field-specific expert committees, it was recommended in “Toward the Rehabilitation of the Prosecution Service” that “in order to collect and utilize advanced expert knowledge systematically, field-specific expert committees which have the think tank function in expert fields such as finance and securities should be established.” Accordingly, on July 8, 2011, expert committees consisting of public prosecutors and other prosecution staff were established at the Supreme Public Prosecutors Office with regard to finance and securities, special negligence, forensic science, intellectual disabilities, international affairs and organizational management. In addition, on June 12, 2012, an expert committee on criminal policy was established. The expert committees have been conducting various activities in order to accumulate necessary expert knowledge through exchanges of opinions with advisers, who are external experts, lecture meetings, and collection and analysis of reference cases and related materials and to use such knowledge for supporting prosecution operations at worksites in various fields and for developing human resources.

**2. Establishment of the Inspection Department and records of inspection**

(1) Establishment of the Inspection Department and the outline of activities

It was recommended in “Toward the Rehabilitation of the Prosecution Service” that “it is necessary to develop an inspection system to receive complaints about illegal and

inappropriate acts conducted by prosecutors and other prosecution staff from both within and outside the Prosecution Service, examine facts and take appropriate measures by establishing within the Prosecution Service a section in charge of monitoring illegal and inappropriate acts. It is also necessary to develop a mechanism to obtain opinions and advice from external experts with regard to the status of activities of such a section.” Accordingly, the Inspection Department was established at the Supreme Public Prosecutors Office on July 8, 2011.

The Inspection Department identifies and collects information, from both within and outside the Prosecution Service, concerning wrong acts conducted by prosecutors and assistant officers in relation to their job duties, mainly illegal and inappropriate acts related to investigations and court proceedings and acts that are suspected to be illegal and inappropriate, analyzes and examines such information and conducts inspection if necessary. The Department reports the inspection results periodically, mostly on a quarterly basis, or as necessary to advisers who are external experts, and writes reports on the inspection results while receiving opinions and advice from them. It sends the reports to the public prosecutors offices to which relevant prosecutors and other prosecution staff belong and provides guidance on making improvements so as to prevent the recurrence of similar illegal and inappropriate acts. During the two years and 10 months from the establishment of the Department to April 30, 2014, 3,187 reports were received, as will be mentioned again later. The 447 reports, which remained after excluding those whose contents were unclear and those which do not constitute incidents subject to inspection, were filed as inspection cases. After necessary inspection, instructions for improvements, etc. (22 cases) and alerts intended to prevent recurrence (35 cases) were issued. Regarding cases for which continuous efforts are regarded as necessary, the public prosecutors offices to which relevant prosecutors and other prosecution staff belong were required to report on the status of efforts and the status of improvement by around one year later so as to ensure that guidance for improvement is provided. The Inspection Department compiles reference materials that summarize the key points of reports on the inspection results on a quarterly basis and sends them to deputy chief prosecutors of high and district public prosecutors offices. In light of the inspection results, at various meetings the Department also calls attention to the points to which attention should be paid when senior prosecutors provide guidance to and supervise subordinates.

As will be mentioned later, if reports received by the Inspection Department are sorted by type, “Complaints about interrogations” accounts for a substantial proportion of the reports. Therefore, in inspection related to such reports, the Inspection Department also conducts inspection regarding a wide range of matters other than the points mentioned in the reports, points out problems and provides advice and guidance

regarding improvement measures and recurrence prevention measures that may be taken by the public prosecutors offices to which relevant prosecutors and other prosecution staff belong. In this way, the Department is conducting inspection and providing guidance mainly for the purpose of making interrogations more appropriate. Moreover, in the training of prosecutors, assistant public prosecutors and assistant officers, the Inspection Department places emphasis on sharing of information concerning inspection results and education and awareness-raising activities, providing guidance mainly on how to deal with defense attorneys, victims, etc.

Through these activities, the Inspection Department is promoting initiatives to ensure that the Prosecution Service as a whole appropriately conducts investigation and court proceedings activities and appropriately performs job duties. It can be recognized that such initiatives are taking hold at public prosecutors offices across the country and that prosecutors and assistant officers are conducting interrogations, investigation and court proceedings activities while being conscious of the Inspection Department's viewpoints of inspection and guidance.

\*Records of inspection, etc.

A. By source, of the total of 3,187 reports received during the two years and 10 months between the establishment of the Inspection Department and April 30, 2014, 2,249 reports (approx. 71%) came via email, letter, telephone, etc. in the form of direct provision of information from external sources, while 938 reports (approx. 29%) came from within the Prosecution Service. By type, 505 reports indicated "Complaints about interrogations" and 506 indicated "Complaints about investigation and processing of cases and court proceedings activities," with each of the two accounting for approximately 16% of the total. The 2,087 reports (approx. 65%) that were classified as "others" included a substantial number of reports whose contents were too unclear to be classified.

B. Of the total of 3,187 reports received, 447 (approx. 14%) were adopted as inspection cases and inspection was started. As of April 30, 2014, a total of 61 cases were pending, which means that what to do with them remained undecided because information was still being collected.

C. By source, of the 447 reports regarding which inspection was started, the largest number, 343 (approx. 77%), came from defense attorneys, while by type, the largest number, 358 (approx. 80%), indicated complaints about interrogations. As of April 30, 2014, 10 cases were under inspection (pending).

As for the inspection results, in 22 cases (approx. 5%), the Prosecutor-General issued instructions for improvement to the chief prosecutor the district public prosecutors office, and in 35 cases (approx. 8%), the Prosecutor-General issued a written alert regarding the

inspection results to the chief prosecutors. In 92 cases (approx. 21%), measures such as provision of guidance by the Supreme Public Prosecutors Office were judged to be unnecessary because caution and guidance had already been issued to relevant prosecutors and other prosecution staff by the public prosecutors offices to which they belong. In 288 cases (approx. 64%), taking measures was judged to be unnecessary because the presence of an illegal or inappropriate act was not recognized.

### **3. Employment of competent personnel from a wide range of fields and assignment of personnel**

Regarding the employment and assignment of personnel, it was recommended in “Toward the Rehabilitation of the Prosecution Service” that “it is necessary to diversify personnel by employing competent persons from a wide range of fields and promoting the appointment of female employees to senior positions, and it is also necessary to consider the assignment of personnel from a nationwide perspective.” Accordingly, in order to diversify personnel of the Prosecution Service, the Ministry of Justice set the goal of increasing the proportion of women in persons employed as prosecutors and assistant officers to more than 30% by the end of fiscal 2015 in the “Plan for Expanding Employment and Appointment of Female Employees at the Ministry of Justice,” which was adopted on November 22, 2011. The Ministry of Justice is striving to expand the employment of women as prosecutors and assistant officers and the appointment of women to senior posts by steadily implementing the plan. The proportion of women in people employed as prosecutors was 30.6% in fiscal 2012 and 37.8% in fiscal 2013, while the proportion of women in people employed as assistant officers was 38.3% in fiscal 2012 and 38.4% in fiscal 2013. These figures attained the employment goal. Taking account of the government’s goal of increasing the proportion of women in leadership positions, the Ministry of Justice will strive to continue to expand employment and appointment of female employees. The Ministry of Justice is also striving to employ people with expert knowledge and experience working at private companies.

From the perspective of promoting gender equality in the Prosecution Service as well, various initiatives are being conducted. At the Supreme Public Prosecutors Office, the Committee on Promotion of Gender Equality in Public Prosecutors Offices was established as an advisory body to the Prosecutor-General. After listening to the opinions of prosecutors and other prosecution staff across the country, this committee submitted to the Prosecutor-General on February 19, 2013 a recommendation report titled “Toward Further Promoting Gender Equality in the Prosecution Service.” In the recommendation report, the committee stated that the Prosecution Service should tackle three additional tasks: promoting career formation for female prosecutors and other

prosecution staff, facilitating mutual support in order to realize an appropriate work-life balance, and developing a working environment friendly for women. In light of this recommendation, public prosecutors offices across the country are conducting specific initiatives, including revising the way that female staff are assigned so as to assign women to jobs to which few women have previously been assigned, holding discussion and lecture meetings intended to raise the morale of female staff and improving the system for support, including support for returning to work after a long leave, after identifying their own respective circumstances.

As for personnel assignment, it is required that during the education period of five years or so after joining the Prosecution Service, prosecutors be assigned to public prosecutors offices located in the areas of jurisdiction of three different high public prosecutors offices in order to better enforce the personnel assignment policy of placing the right person in the right job from a nationwide perspective. Subsequently, it is required that prosecutors be assigned to areas under the jurisdiction of high public prosecutors offices other than those of their own preference twice or more before they become officers responsible for making final decisions (deputy chief prosecutors at small and medium-size public prosecutors offices and directors of departments at large public prosecutors offices). It is also required that plans for the appointment of officers responsible for making final decisions be considered centrally from a nationwide perspective.

#### **4. Meetings of the Advisers' Board on Overall Public Prosecution Operations**

Regarding overall public prosecution operations, it was recommended in “Toward the Rehabilitation of the Prosecution Service” that “it is necessary to establish a mechanism to report the actual situation of the general public prosecution operations to external experts and to obtain appropriate opinions and advice with regard to public prosecution operations that take into consideration changes in the social and economic situations as well as changes in people’s consciousness.” It was also pointed out that it was necessary to continuously and periodically incorporate external viewpoints and trends into general public prosecution operations. Accordingly, on July 8, 2011, the Supreme Public Prosecutors Office decided to hold meetings of the Advisers' Board on Overall Public Prosecution Operations. So far, six such meetings (on September 15, 2011, March 15, June 19 and November 27, 2012, and April 11 and December 10, 2013). At the meetings, the actual situation of overall public prosecution operations, including the status of the reform of the Prosecution Service, was reported to advisers. At the same time, opinions and advice regarding overall prosecution operations were obtained from the advisers. The Supreme Public Prosecutors Office will continuously and periodically hold meetings of the Advisers' Board on Overall Public Prosecution

Operations in order to incorporate external viewpoints and trends.

As of the end of May 2014, the advisers participating in the meeting were as follows:

Hitoshi Saeki, professor, Graduate Schools for Law and Politics, University of Tokyo

Hiroaki Jin, lawyer

Shunsuke Takahashi, project professor, Graduate School of Media and Governance, Keio University

Yoshiaki Tajima, board member, Nankoairinkai (social welfare corporation)

Masakazu Hayashi, chairperson of the board of directors, Japan Exchange Group Inc.

Kunio Harada, lawyer

Atsushi Yamaguchi, professor, Law School, Waseda University

Yozo Yokota, director, Center for Human Rights Affairs, special adviser to the Ministry of Justice.