Fighting Domestic Violence - Japan

5. Prosecutorial considerations

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# 5.1 Police procedures

Japanese law does not explicitly provide for domestic violence in terms of prosecutorial considerations. Considering the definition of domestic violence in Section 3 above, however, there are a number of pertinent crimes stated in the Penal Code, including the following: (i) assault;[6] (ii) injury;[7] (iii) injury causing death;[8] and (iv) forcible sexual intercourse.[9] These crimes apply in the context of violence that is both domestic and not domestic.

# 5.1.1 When do the police get involved in domestic disputes or legal actions?

A victim may report domestic disputes by calling 110 (in cases of emergency) or #9110, or by reporting such incidents to the police in person, i.e., at a police station. Following the report, the police will then commence their investigation and take any necessary measures, including arresting an offender. Relatedly, the police may also provide guidance or warnings to offenders to prevent further domestic violence and protect victims by introducing spousal violence counseling and support centers. However, the police are not obliged to investigate when an incident is reported; hence, they sometimes fail to prevent serious domestic violence by underestimating the seriousness of the violence.

# 5.1.2 What circumstances effect law firm involvement?

Although police and prosecutors take a major role in prosecutorial procedure, law firms may also provide certain support to victims. Law firms typically provide the following support: (i) liaising with police and prosecutors; (ii) negotiating with victims for settlement on behalf of victims; and (iii) representing victims of certain crimes (such as injury, injury causing death and forcible sexual intercourse)[10] in criminal court procedures to question the accused and witnesses in cross-examination and expressing opinions to the court.[11] Relatedly, the Japan Legal Support Center (Hou-terrace) provides a free consultation service for victims of domestic violence who cannot afford legal fees.

# 5.2 Standard of proof

# 5.2.1 Is proof required by any legal means?

Yes. Victims of domestic violence can file a criminal case without evidence against an abuser to the police, but a successful prosecution will require evidence to support the facts underpinning the case.

 For the proof required for civil protection orders, please refer to Section 4.2.

# 5.2.2 Are there any requirements regarding evidence and documents?

Yes, albeit the types of evidence required to build a case vary from case to case.

For assault, evidence typically consists of circumstantial evidence, such as evidence establishing an intention to assault, in addition to evidence to prove the assault objectively.[12]

For injury and injury causing death, in addition to the aforementioned assault-related evidence, evidence that a person was injured or died (e.g., a medical certificate), as well as evidence showing a causal relationship between the assault and the injury or death,[13] is required.

For forcible sexual intercourse, evidence that objectively proves the nonexistence of consent is also required.[14]

# 5.2.3 Is proof "beyond a reasonable doubt" required?

Yes. In order to prosecute an abuser in the criminal courts successfully, the crime must be proven beyond a reasonable doubt.

# 5.2.4 Is the standard of proof different for ex parte orders?

*Ex parte* orders are not available for criminal procedures in Japan.

# 5.3 Affirmative defenses

# 5.3.1 Are affirmative defenses available to the accused?

Yes, the Penal Code sets out certain types of affirmative defense for criminal cases, including the following: (i) justifiable acts;[15] (ii) self-defense; (iii) averting present danger;[16] and (iv) insanity and diminished capacity.

# 5.3.2 Is willful intent required?

Willful intent is required to charge the perpetrator for the above-mentioned crimes, as set out below. For assault, injury and injury causing death, the accused must have an intent to commit an assault, but an intent to cause injury or death is not required. For forcible sexual intercourse, the accused must have an intention to have sexual intercourse without the consent of the victim.

# 5.3.3 Are false accusations punishable for the victim?

Yes. For criminal accusations, the Penal Code[17] states that persons who have filed a false complaint with the aim being the imposition of a punishment may be subject to imprisonment with work for between three months and 10 years. With regard to civil protection orders, the Prevention of Spousal Violence Act[18] states that persons who have filed a petition for a protection order with a written petition containing a false entry may be subject to a civil fine of not more than JPY 100,000.

# 5.3.4 How is consent discussed in the law?

A lack of consent from a victim is necessary to charge the accused with forcible sexual intercourse. In this context, "forcible sexual intercourse" means to have sexual intercourse with a victim in circumstances where it is impossible or extremely difficult to refuse it. Here, "possibility" is examined based on circumstantial evidence such as an assault or threat made to the victim, relationship, surrounding environment or any other specific circumstances. In some cases, the court may find the accused not guilty despite the victim claiming no consent when a judge cannot eliminate the possibility that the victim agreed to have sexual intercourse.

 For assault, injury and injury causing death, neither the Penal Code nor precedents contain specific standards, but the accused is likely to face punishment when severe injury or death occurs, even if the victim provided consent.

# 5.3.5 Is self-defense or insanity a defense?

Yes. If an act of the accused falls under self-defense or insanity, such act is not punishable. The following elements must exist with respect to self-defense or insanity.

**Self-defense**[19]

In practice, the act of the accused must be carried out to protect themselves or others from violence, without the intention to actively harm the victim. If the act of the accused does not fall under this paragraph, such act is not regarded as self-defense and is punishable. In addition, the act of the accused will not exceed the limits of self-defense, i.e., using excessive violence compared to the original assault, albeit the punishment for an act exceeding such limits may be reduced or be exculpated at a judge's discretion.

**Insanity**[20]

 In this context, insanity means a complete lack of ability to make decisions and control one's behavior. This includes both mental illnesses and a temporary lack of ability, such as when under the influence of alcohol. If the accused is found to have an extremely low ability to either make decisions or control one's behavior during domestic violence, the accused is considered to have diminished capacity and the punishment will likely be reduced.

# 5.4 Witness status

# 5.4.1 What is a witness's duty to testify honestly and completely?

Witnesses must swear an oath to tell the truth before giving evidence and before examination in the court.[21] In this regard, the court will advise witnesses of the punishment for perjury[22] should a false testimony be offered.

# 5.4.2 Who may abstain from testifying in certain situations?

Witnesses, including the victim, do not have a right to refuse to testify unless there is a justifiable reason for refusing (as noted in the next question). In practice, however, prosecutors rarely compel witnesses to testify when they do not wish to do so.

# 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

Witnesses, including the victim, are entitled to refuse to give testimony where this may result in criminal prosecution or the conviction of the witnesses or their relatives.[23]

# 5.4.4 What is the impact of domestic violence on witnesses who are children?

Judges typically consider the impact of providing an interview in connection with a domestic violence case on children, together with the risk of influence or "contamination" by an interviewer toward the children, especially when the abuser is a relative of the child witness.

# 5.4.5 Can children be called upon to testify?

Yes. The Code of Criminal Procedure allows the court to call upon individuals to testify regardless of their age.[24]

# 5.4.6 What is the effect of a child victim on the charges against the offender?

As noted above, a child victim may testify. The court carefully assesses the credibility of any testimony given by the victim regardless of his/her age. With respect to child victims in particular, however, the court may consider that there is a reasonable doubt of the child telling the truth or accurately remembering the incident and that their evidence is insufficient by itself to establish a criminal charge against the offender — unless there is corroborating objective evidence to support the credibility of his/her statement. Further, there is no particular rule that requires the court to put any more or less weight on a child victim's statement compared to any other testifying individual.

# 5.5 Penalties and sentencing; penalty enhancements

# 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

Generally, first-time offenders receive penalties and sentences that are more lenient compared with those who have been charged several times. In this section, we will provide detailed responses regarding penalties and sentences.

# 5.5.2 Are there criminal penalties?

As stated in Section 5 above, Japanese law does not expressly provide criminal penalties for domestic violence. The court may impose the following penalties for crimes related to domestic violence under the Penal Code:

Assault: This may entail imprisonment with work for not more than two years, a fine of not more than JPY 300,000, or misdemeanor imprisonment without work or a petty fine.[25]

Injury: This may entail imprisonment with work for not more than 15 years or a fine of not more than JPY 500,000.[26] Typically, imprisonment may be between six months and three years with two to five years of probation, depending on the severity of the crime.

Injury causing death: This may entail imprisonment for a definite term of not less than three years.[27] Typically, sentences may be between three years and five years for domestic violence.

Forcible sexual intercourse: This may entail a definite term of not less than five years.[28] Typically, sentences may be between two years and three years.

# 5.5.3 What is the result of a violation of an existing order for protection?

A violation of an existing order for protection may result in imprisonment with work for not more than one year or a fine of not more than JPY 1 million.[29]

# 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

As noted above, fines may be imposed for certain crimes.

# 5.6 Post-release restrictions

# 5.6.1 Does the law notify the victim of the offender's release from custody?

Yes, in certain circumstances. A victim can generally receive a notification of the expected date of release if the offender has served his/her full sentence and if the actual date the offender was released upon written request. Prosecutors may decline such request, however, when they consider it inappropriate based on the nature of the case, e.g., when the notification may hinder the possibility of the offender's rehabilitation. The victim may also receive a notification on the actual date of release before the offender's release when the prosecutor deems it necessary to avoid contact with the victim.

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