

## CASE TRANSLATION: JAPAN

### CASE CITATION:

**Heisei 22 Nen (Wa) 5356 Gou**

### NAME AND LEVEL OF COURT:

**Osaka District Court**

### DATE OF DECISION:

**Heisei 23.04.12 (12 April 2011)**

### MEMBERS OF THE COURT:

**Chief Judge Hiroyuki Nakagawa, Judge Jindo Yoshimi and Judge Kazuhito Uemura**

### ELECTRONIC VERSION:

**<http://www.courts.go.jp/hanrei/pdf/20110816120455.pdf>**

### *Prosecutor; alteration of digital evidence; criminal offence*

#### Decision:

One year and 6 months in prison

150 days pre-decision imprisonment should be included in the period.

#### Reason:

##### Facts of the accusation

The accused was a prosecutor at the Office of the Public Prosecutor in Osaka District. On 13 July 2009, the accused altered the evidence of a criminal case, by changing the latest editing date of an electronic file from 1:20:06 June 1st 2004 to 21:10:56 June 8th 2004 stored on the floppy disk that comprised the evidence of a continuing case, charging K and others with the forgery of a sealed public document, using a personal computer and high performance file management software.

##### 1. Summary of the case

This is a case where evidence was destroyed. The accused was a prosecutor at the Special Investigation Office of the Public Prosecutor in Osaka District. He was a chief prosecutor in charge of a case in relation to two public officers, section chief M and sub-chief K of the Department of Social and Support in the section of Handicapped Health and Welfare Plan of the Ministry of Health and Labour. The accused committed the crime of making a forgery of a sealed public document, in that he altered the latest editing date of document file (hereinafter “the document file”) in the floppy disk (hereinafter “the FD”), comprising evidence in the case.

##### 2. Facts against the accused

(1) The accused knew that the latest editing date of the document file (hereinafter “property information”) and the order of the data in the document file was inconsistent with the story of the case put forward by the Public Prosecutor’s Office. However, he failed to report the inconsistency to his senior prosecutor, and arrested public officers section chief M and sub-chief K, and prosecuted them. Furthermore, after the start of the prosecution, at the point of the procedure in which the exhibits are returned, he feared that if the FD were used for rebutting the prosecution case and presented to the court, he would be reprovved by the senior prosecutor and lose his trustworthiness. He excluded the FD from the disclosure of evidence held by the prosecution office, and returned the FD to sub-chief public officer K. The public prosecutor is required to be faithful, and to evaluate unfavourable evidence as part of the prosecution, and to be fair by not hiding such evidence.

However, the accused called the FD unpleasant evidence, and altered it knowing that it might destroy the evidence. Even if it is taken into account that he was under pressure because he was the chief public prosecutor in the case, it is not reasonable for a public prosecutor to have such a thoughtless attitude.

(2) The accused altered the property information of the document file using high-level function file management software, and changed the order of the document files. This alteration could not be found without using a special analyzing program, and could be described as malicious.

(3) The lawyer for the accused claimed that the FD was not crucial evidence that decided the guilt of section chief public officer M and sub-chief K, because it was not identified whether the public sealed document, stated as being forged, was the print-out of the document file stored in the FD, and that the alteration by the accused did not effect the result of the case against chief public officer M and sub-chief K. Even if we could not identify

that the document was the print-out of the original data, in the circumstances that both texts were the same and the possibility the public document was the print-out of the document file, it is enough to rebut the prosecution as unfavourable (negative) evidence. In deciding the innocence of chief public officer M, the trustworthiness of the testimony of sub-chief officer K, who stated that M was not engaged the forgery of the public document, was assured by the consistency of the property information of the document file before the alteration. Therefore the FD is evaluated as an important item of evidence to prove the truth of the statement by section chief public officer M. In the case of the prosecution of chief public officer M and sub-chief officer K, it should be noted that the investigation report referred to the property information of the document file before the alteration was made, and we recognize this. Without the report, the evidence that proved the trustworthiness of the testimony by sub-chief officer K might not exist, and could not deny the possibility of the evidence resulting in a severe disadvantage to chief public officer M.

If the alteration of important evidence was not challenged, the purpose of the criminal procedure to find the truth and to punish properly is not accomplished. The act of the accused is blameworthy and undermines the criminal justice system. This case has caused people to be suspicious of the good standing not only of the public prosecution office, but also the criminal justice system.

(4) Furthermore, the accused made a false report and a false statement during the internal investigation by the public prosecution office. This attitude that followed the criminal act is also not praised.

### 3. Facts for the accused

After his arrest, the accused admitted the criminal act, and understood that the people suspected the trustworthiness of the criminal justice system. He expressed regret about his act, as “he deserves to die” expressing “he did what one should not do” and apologized to chief public officer M and others. The family of the accused, his friends and many other people stated and presented a petition to the effect that they will support his rehabilitation after imprisonment. The accused is previously of good character and had been disciplined. He may face continual blame by the public from now on. And the accused has two children who need his support.

### 4. Conclusion

Considering facts, this case in which the chief public prosecutor in charge of prosecution procedure altered the evidence to be favourable for the prosecution of the procedure is not to be found in the history of the criminal justice system in our country. The act of the accused is malicious because it impaired the fairness of criminal justice and the effect on society should be considered. The accused should face a severe criminal liability.

Therefore even if we consider the favourable elements for the accused, we cannot admit a stay of execution.

Therefore we have decided.

(Two years imprisonment in the case)

Osaka District Court Criminal Section 5

Chief judge Hiroyuki Nakagawa

Judge Kazuhito Uemura

(Judge Jindo Yoshimi had moved into another court and could not seal this sentence)

Chief judge Hiroyuki Nakagawa

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### Background to the case

Where a handicapped association receives a certificate from the Ministry Labour Health and Welfare that confirms the association acts to support and promote activities for the handicapped, the society can use the postal service at discounted rate for the purpose of sending newsletters and so on, that are necessary to its activities.

At the time the case occurred, there were some companies and associations that do not act for the handicapped that wanted to use the postal service at a discount rate to send direct mail to sell products. One of these associations, “Rin-No-Kai” made a request to public officer K of the Ministry to issue a certificate.

Public officer M was the section chief of the section dealing with handicapped health and welfare of the Ministry. Public officer K was sub-chief of the section and issued the certificate using the seal of the section chief in the knowledge that “Rin-No-Kai” did not provide any

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activities for the handicapped. However, it subsequently sent a vast amount of direct mail for the purposes of selling products.

The president of “Rin-No-Kai” was accused of using the postal service at discount rate in violation of the Postal Law. Public officer K was accused of the making a forged public sealed document. After this, public officer M was accused of ordering public officer K to issue the certificate (that is the public sealed document) and helping the president of “Rin-no-Kai” to present the certificate to the Japanese Postal Service.

As the case unfolded, it was rumoured that one member of the cabinet was approached by the president of “Rin-No-Kai”, and also put pressure on the former public officer M. For this reason, the special public prosecution office of Osaka district began an investigation into a sensational case. A committee of the cabinet conducted an investigation into the actions of the public officer.

After public prosecutor T was convicted of forging the evidence, public officer M was declared innocent. Public officer K admitted that he was solely responsible for the forgery of the certificate.

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