CHAPTER 16

# Crimes of Defamation

- Promulgated on March 25, 2019. Effective on July 1, 2019.
- Amended on March 28, 2022. Effective on June 1, 2022.
- Amended on April 24, 2023. Effective on July 1, 2023.
- Amended on March 30, 2026. Effective on July 1, 2026.

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Defamation by Publiclyizing Alleging False Facts (Criminal Act, Article 307, paragraph 2), Defamation of Dead Person (Criminal Act, Article 308), Defamation of Superior by Publicizing Alleging False Facts (Military Criminal Act, Article 64, paragraph 4), Defamation by Means of Publication, etc. of False Facts (Criminal Act, Article 309, paragraph 2), Defamation by Publicizing Alleging False Facts by Means of Information and Communications Network (Act on Promotion of Information and Communication Network Utilization and Information Protection, etc., Article 70, paragraph 2), Insult (Criminal Act, Article 311), Insulting a Superior (Military Criminal Act, Article 64, paragraph 1, and paragraph 2) Habitual Crimes of Child Abuse (Act on Special Cases Concerning The Punishment, Etc. of Child Abuse Crimes, Article 6, Article 2, subparagraph 4, item 7), Crimes of Child Abuse by Persons Who has a Duty to Report Child Abuse (Act on Special Cases Concerning The Punishment, Etc. of Child Abuse Crimes, Article 7, Article 2, subparagraph 4, item 7).

※ Note that the underlined provisions applied to certain crimes were deleted or amended following the statutory revisions made after the sentencing guidelines were established. The sentencing guidelines on those crimes will be revised later. For this reason, all or part of the current standards of sentencing would not be applied.

PART A

# TYPES OF OFFENSES AND SENTENCING RANGE

## 1 DEFAMATION BY PUBLICIZING ALLEGING FALSE FACT

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|---|---|---|---|---|
| 1 | General Defamation | ~ 6 mos. | 4 mos. ~ 1 yr. | 6 mos. ~ 1 yr. 6 mos. |
| 2 | Defamation by Means of Publication or Information and Communications Networks | ~ 8 mos. | 6 mos. ~ 1 yr. 4 mos. | 8 mos. ~ 2 yrs. 6 mos. |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| Special Sentencing Factor | Conduct | • Cases with special extenuating circumstances that mitigate the offender's involvement<br>• Extenuating motives for the offense<br>• Cases where the extent of publicizing false fact is minor<br>• Dolus Eventualis<br>• Cases where the false fact is less likely to be disseminated (Type 2)<br>• Defamation of a dead person | • Morally reprehensible motives<br>• Cases where the offense resulted in serious harm to the victim<br>• Highly egregious conducts or methods<br>• Defamation of a superior under the Military Criminal Act<br>• Instigating the subordinate to commit the offense |
| | Offender/ Etc. | • Hearing and/or speech disabilities<br>• Diminished mental capacity (without fault)<br>• Voluntary surrender to investigative authorities<br>• Victim expresses the intent of non-punishment or substantial restitution to the victim | • Same-offense recidivism within the statutory recidivism period<br>• Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes<br>• Habitual offender (Limited to cases that constitute child abuse crimes stipulated in Article 6 of the Act on Special Cases Concerning the Punishment, Etc. of Child Abuse Crimes) |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| General Sentencing Factor | Conduct | • Minor participation<br>• Cases where the false fact is less likely to be disseminated (Type 1) | |
| | Offender/ Etc. | • Diminished mental capacity (with fault)<br>• Sincere remorse<br>• No prior criminal convictions<br>• Considerable restitution | • Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense resulting in imprisonment which do not constitute statutory recidivism (within ten years after the completion of the sentence)<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) |

▷ Apply the following classification when the offense of Defamation was committed while severely intoxicated by the use of alcohol or drugs (this equally applies to offense of Insult):

❶ Cases in which the offender voluntarily became intoxicated by alcohol or drugs with the intent to commit a crime, in anticipation of committing a crime, or to use as grounds for exemption after committing a crime, the state of intoxication shall be reflected as a general aggravating factor regardless of whether the defendant was in a state of diminished mental capacity at the time of the offense.

❷ Cases in which offender had no criminal intent and no anticipation of committing a crime, but past experiences, physical condition, or circumstances indicated a propensity to cause harm to others when intoxicated, the state of intoxication shall not be reflected as a mitigating factor regardless of the defendant's mental capacity at the time of the offense.

❸ Even in cases not falling under ❶ or ❷, if the offender did not suffer from diminished mental capacity at the time of the offense, the intoxication shall not be reflected as a mitigating factor.

## 2 INSULT

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|---|---|---|---|---|
| 1 | General Insult | – 4 mos. | 2 mos. – 8 mos. | 4 mos. – 1 yr. |
| 2 | Insult of Superior | – 6 mos. | 4 mos. – 10 mos. | 6 mos. – 1 yr. 2 mos. |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| Special Sentencing Factor | Conduct | • Extenuating motives for the offense<br>• Cases where the extent of insult is minor<br>• Cases where the insult was not committed publicly (Military Criminal Act, Article 64, paragraph 1) | • Morally reprehensible motives<br>• Cases where the offense resulted in serious harm to the victim<br>• Highly egregious conducts or methods<br>• Instigating the subordinate to commit the offense |
| | Offender/ Etc. | • Hearing and/or speech disabilities<br>• Diminished mental capacity (without fault)<br>• Victim expresses the intent of non-punishment or substantial restitution to the victim | • Same-offense recidivism within the statutory recidivism period<br>• Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes (Type 1)<br>• Habitual offender (Limited to cases that constitute child abuse crimes stipulated in Article 6 of the Act on Special Cases Concerning the Punishment, Etc. of Child Abuse Crimes) (Type 1) |
| General Sentencing Factor | Conduct | • The victim is a superior with no commanding authority in a hierarchical relationship (Type 2) | |
| | Offender/ Etc. | • Diminished mental capacity (with fault)<br>• Sincere remorse<br>• No prior criminal convictions<br>• Considerable restitution | • Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense resulting in imprisonment which do not constitute statutory recidivism (within ten years after the completion of the sentence)<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) |

# DEFINITION OF OFFENSES

## 1 DEFAMATION BY PUBLICIZING ALLEGING FALSE FACT

### 1. TYPE 1 — GENERAL DEFAMATION

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| Defaming another by publicly alleging false facts | Criminal Act, Article 307, paragraph 2 |
| Defaming a dead person by publicly alleging false facts | Criminal Act, Article 308 |
| Defaming the superior by publicly alleging false facts | Military Criminal Act, Article 64, paragraph 4 |

### 2. TYPE 2 — DEFAMATION BY PUBLICATION · INFORMATION AND COMMUNICATIONS NETWORK

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| Commit the offense of defamation by means of newspaper, magazine, radio, or other publication with intent to defame another | Criminal Act, Article 309, paragraph 2 |
| Commit defamation of another person by disclosing a false fact to the public through an information and communications network purposely to disparage the reputation of such a person | Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. Article 70, paragraph 2 |

## 2 INSULT

### 1. TYPE 1 — GENERAL INSULT

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| Publicly insulting another | Criminal Act, Article 311 |

### 2. TYPE 2 — INSULTING A SUPERIOR

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law (hereinafter the same).

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| Insulting the offender's superior during a face-to-face encounter | Military Criminal Act, Article 64, paragraph 1 |
| Insulting the offender's superior by publishing a document, picture, or an image, giving a speech, or openly expressing otherwise | Military Criminal Act, Article 64, paragraph 2 |

※ Habitual Offenders of Child Abuse, Crimes of Child Abuse by Persons Who have a Mandatory Duty to Report Child Abuse (the same applies with each crimes of Type 1, Type 2).

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| Where a person habitually commits child abuse crimes under Article 2, subparagraph 4, item 7 and 13 (limited to cases where crimes under item 7 are subject to aggravated punishment under other Acts) of the Act on Special Cases Concerning the Punishment, Etc. of Child Abuse Crimes | Act on Special Cases Concerning The Punishment, Etc. of Child Abuse Crimes, Article 6 |
| Where a mandatory reporter under Article 10, paragraph 2 of the Act on Special Cases Concerning the Punishment, Etc. of Child Abuse Crimes commits child abuse crimes under Article 2, subparagraph 4, item 7 and 13 (limited to cases where crimes under item 7 are subject to aggravated punishment under other Acts) of the same Act against a child under their protection | Act on Special Cases Concerning The Punishment, Etc. of Child Abuse Crimes, Article 7 |

# DEFINITION OF SENTENCING FACTORS

## 1 DEFAMATION BY PUBLICIZING ALLEGING FALSE FACT[1)]

### 1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES THAT MITIGATE THE OFFENDER'S INVOLVEMENT

- This applies where one or more of the following are present:
  - The offender participated in the crime under coercion or threats by another person (excluding cases that fall under Article 12 of the Criminal Act).
  - The offender merely agreed to participate in the crime and neither directed nor directly took part in carrying out the offense.
  - Other cases with comparable factors

### 2. EXTENUATING MOTIVES FOR THE OFFENSE

- This applies where one or more of the following are present:
  - Cases where the victim provided the cause for the offense, or the victim also bears substantial responsibility for the occurrence of the offense, such as where the offender made the false statement in the course of responding to harm suffered from a wrongful act or unfair treatment by the victim or a person related to the victim
  - Crime was committed impulsively in the course of exercising or asserting justifiable rights
  - Cases where the main purpose of the offense was for public interest
  - Other cases with comparable factors

### 3. EXTENT OF PUBLICIZING FALSE FACTS IS MINOR

- This applies where one or more of the following are present:
  - Cases where some of the facts which publicly alleged were false but most of facts stated with those false facts were true

1) Sentencing factors with the same designation that apply to Insult have the same definition unless separately defined.

- Cases where the alleged false facts are incidental or concern a minor matter that is not significant within the overall context
- Other cases with comparable factors

## 4. DOLUS EVENTUALIS

- This applies where one or more of the following are present:
  - Cases where the offender's awareness of the falsity was weak at the time of the offense, including cases where the offender conducted some fact-checking but committed the offense without sufficient verification or where there existed some basis for the offender to reasonably believe the facts were true at the time of the offense
  - Cases where the offender's awareness of the 'public nature' of the communication was weak, such as where the false facts were disclosed only to a small, specific group of persons
  - Others cases with comparable factors

## 5. FALSE FACTS ARE LESS LIKELY TO BE DISSEMINATED (TYPE 2)

- This indicates cases in which the offender publicly discloses false facts via the internet and other means, but the number of hits is extremely low. However, it excludes cases where they were spread to many and unspecified individuals by other internet users.
- Other cases with comparable factors

## 6. MORALLY REPREHENSIBLE MOTIVES

- This applies where one or more of the following are present:
  - The offense was committed in retaliation against, or out of grievance or hatred toward, the victim.
  - The offense committed with no specific reason towards an indiscriminate (random) number of people against a particular group or multiple victims, or the offense was committed for the offender’s own enjoyment of committing the crime itself.
  - The offense was committed to conceal other crimes or faults
  - Other cases with comparable factors

## 7. OFFENSES CAUSED SERIOUS HARM TO THE VICTIM

- This applies where one or more of the following are present:
  - When the offense caused extreme levels of sexual humiliation to the victim or extreme levels of emotional distress
  - When the offense resulted in an irreparable harm to the victim, for example, unemployment, family breakdown, suicide, or suicide attempt, etc.
  - Cases when the social reputation of the victim was seriously damaged
  - Other cases with comparable factors

## 8. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - Using malicious methods such as attaching falsified or forged documents, synthesized photos or manipulated chatting on SNS (Social Network Service)
  - Where the offense was planned and committed in an organized manner by multiple persons with divided roles
  - Prolonged and repeated commission of the crime
  - Other cases with comparable factors

## 9. VICTIM EXPRESSES THE INTENT OF NON-PUNISHMENT

- This indicates cases in which the offender shows sincere remorse with genuine efforts to reach a settlement with the victim; the victim or the family of victim (in the case of a deceased victim) fully understands the legal and social implications of opposing punishment and clearly expresses the intent not to seek punishing the offender. However, this should not apply in the following cases:
  - (1) in cases in which the victim or the family of the deceased opposes punishment as a result of *de facto* coercion or deceit by the offender against the victim's will, or
  - (2) where there is no reasonable or convincing basis for the victim or their legal representative to express no desire for punishment.
- This applies only to cases in which, upon careful and thorough examination and assessment of the victim's or legal representative's age, intelligence, and ability to fully understand the meaning, content, and legal implications of expressing an intent not to seek punishment, it is determined that such expression is both informed and genuine.

## 10. SUBSTANTIAL RESTITUTION TO THE VICTIM

- This refers to cases in which the offender, through genuine and sustained efforts, has restored the damages to a degree comparable to a formal settlement or in which restitution of such degree is reasonably assured.
- This includes cases where the victim's reputation has been substantially restored through corrective measures voluntarily taken by the defendant, such as retracting statements, deleting posts, or making a public apology.
- In the case of a deposit, this applies only where it amounts to substantial recovery of damages, as determined through careful examination of the following: the opinion of the victim or the victim's legal representative (in case of a deceased victim, this includes the spouse, lineal relatives, and siblings); whether the defendant is able by law to recover the deposited money or is likely to do so; and the nature of the legal interest harmed and the scale and degree of the damage.

## 11. MINOR PARTICIPATION

- This refers to cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.
- However, this is not applicable in cases in which the offender had an active role in the commission of the offense by causing another person to commit the offense.

## 12. SINCERE REMORSE

- This indicates cases in which, after examining and assessing the specific circumstances surrounding the offender’s admission of the offense and any voluntary efforts made toward victim restitution and/or the prevention of re-offending, the offender is deemed to show genuine remorse for the offense.

## 13. NO PRIOR CRIMINAL CONVICTIONS

- This refers to cases where the defendant has never committed a crime even once prior to the relevant offense. However, this excludes cases targeting unspecified victims or multiple victims, or cases where crimes were committed repeatedly over a considerable period.

### 14. CAUSING HARM IN THE COURSE OF ATTEMPTED SETTLEMENT (EXCLUDING CASES WHERE SEPARATE CRIMES SUCH AS COERCION ARE ESTABLISHED)

- This indicates cases in which harm is inflicted by persistently harassing the victim, by applying undue pressure by suggesting tangible or intangible disadvantages for refusing the settlement, or by using other equivalent methods, in the course of attempting settlement.

## 2 INSULT

### 1. EXTENUATING MOTIVES FOR THE OFFENSE

- This applies where one or more of the following are present:
  - Cases where the offense resulted from causes attributable to the victim or the victim is also primarily responsible for the crime; for example, the offense was committed in the course of response to the provocation or agitation by the victim or others' related to the victim
  - Crime was committed impulsively in the course of exercising or asserting justifiable rights
  - Other cases with comparable factors

### 2. EXTENT OF INSULT IS MINOR

- This applies where one or more of the following are present:
  - When the offense was confined to a single instance of abusive language or a brief comment
  - When only a few people were at the scene when the offense committed
  - Where, even through the internet or other means were used, the number of views was extremely low. However, this excludes cases where the posting was further disseminated to an unspecified large number of persons by other users
  - Other cases with comparable factors

### 3. MORALLY REPREHENSIBLE MOTIVES

- This applies where one or more of the following are present:
  - The offense was committed in retaliation against, or out of grievance, aversion or hatred toward, the victim.
  - The offense committed with no specific reason towards an indiscriminate (random) number of people against a particular group or multiple victims, or the offense was committed for the offender's own enjoyment of committing the crime itself.
  - Other cases with comparable factors

### 4. OFFENSES CAUSED SERIOUS HARM TO THE VICTIM

- This applies where one or more of the following are present:
  - When the offense caused extreme levels of sexual humiliation to the victim or extreme levels of emotional distress
  - When the offense resulted in an irreparable harm to the victim, for example, unemployment, family breakdown, suicide, or suicide attempt, etc.
  - Other cases with comparable factors

### 5. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - Repeatedly insulting the victim through the internet or other media with high-dissemination or insulting the victim on multiple number of internet portals
  - Where the offense was planned and committed in an organized manner by multiple persons with divided roles
  - Prolonged and repeated commission of the crime
  - Other cases with comparable factors

### 6. CASES WHERE THE VICTIM IS A SUPERIOR OFFICER WITHOUT COMMANDING AUTHORITY

- This means the victim is a higher-ranking person or in a higher order of precedence but has no authority of command in a command-obedience relationship under the Military Criminal Act, Article 2, subparagraph 1, latter part.

# PRINCIPLES APPLICABLE TO SENTENCING FACTORS

## 1 DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, judges must consider only the Special Sentencing Factors.
- However, where multiple Special Sentencing Factors are present, the applicable sentencing range shall be determined after assessing the factors in accordance with the following principles:
  - ❶ Greater weight is accorded to Conduct Factors than to Offender/Etc. Factors of equal number. However, where a victim has intent of non-punishment, such wishes may be treated on a par with a Conduct Factor.
  - ❷ Conduct Factors *inter se*, and Offender/Etc. Factors *inter se*, shall be treated as equivalent.
  - ❸ If the sentencing range applicable cannot be determined by the aforementioned principles in ❶ and ❷, judges are to decide the sentencing range by a comprehensive comparison and assessment of Special Sentencing Factors based on the principles set forth in ❶ and ❷.
- After the assessment of sentencing factors, where aggravating factors outweigh mitigating factors, the aggravating sentencing range is recommended; where mitigating factors outweigh aggravating factors, the mitigating sentencing range is recommended; and in all other cases, the standard sentencing range is recommended.

## 2 DETERMINING THE SENTENCE TO BE IMPOSED

- The sentence to be imposed shall be determined within the sentencing range established under paragraph 1 above, by comprehensively taking into account both General Sentencing Factors and Special Sentencing Factors.

# GENERAL APPLICATION PRINCIPLES

## 1 SPECIAL ADJUSTMENTS TO THE RECOMMENDED SENTENCING RANGE

❶ After the assessment of Special Sentencing Factors, if a case falls within the Aggravating Sentencing Range and either i) two or more Special Aggravating Factors exist alone, or ii) Special Aggravating Factors outnumber Special Mitigating Factors by two or more, the upper limit of the recommended sentencing range may be increased by up to 1/2.

❷ After the assessment of Special Sentencing Factors, if a case falls within the Mitigating Sentencing Range and either i) two or more Special Mitigating Factors exist alone, or ii) Special Mitigating Factors outnumber Special Aggravating Factors by two or more, the lower limit of the recommended sentencing range may be reduced by up to 1/2.

## 2 RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE SENTENCING GUIDELINES AND THE APPLICABLE SENTENCING RANGE BY LAW

- Where the sentencing range recommended under this guideline conflicts with the statutory applicable aggravated/mitigated sentencing range, the upper or lower limit of the applicable sentencing range by law shall govern.

## 3 APPLICATION OF DISCRETIONARY MITIGATING FACTORS BY LAW

- Where a judge declines to apply discretionary statutory mitigating factors listed in the Sentencing Factor Table of this guideline, such grounds shall be considered as extenuating circumstances among mitigating factors.

# GUIDELINES ON SENTENCING MULTIPLE OFFENSES

## 1 APPLICABLE RANGE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act include both an offense set forth in the sentencing guidelines and an offense not covered by the sentencing guidelines, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

## 2 DETERMINING THE BASE OFFENSE

- The "base offense" refers to the offense subject to the most severe punishment after selecting the type of punishment and applying any statutory aggravation and/or mitigation thereto. However, where the upper end of the sentencing range under the sentencing guidelines for an offense covered by this chapter is lower than the upper end of the sentencing range under the sentencing guidelines for the other concurrent offense, the other concurrent offense shall become the base offense.

## 3 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE OFFENSES

- Except for concurrent offenses that are treated as a single offense under the sentencing guidelines, the following method of aggravation for multiple offenses shall apply:
  - ❶ For multiple offenses involving two offenses, the upper end of the sentencing range shall be determined by adding 1/2 of the upper end of the sentencing range of the other offense to the upper end of the sentencing range of the base offense.

❷ For multiple offenses involving three or more offenses, the upper end of the sentencing range shall be determined by adding the following three figures: (1) the upper end of the sentencing range of the base offense, (2) 1/2 of the upper end of the sentencing range of the offense with the highest sentencing range among the other offenses, and (3) 1/3 of the upper end of the sentencing range of the offense with the second highest sentencing range among the other offenses.

❸ For multiple offenses where the lower end of the sentencing range of the other offense is higher than the lower end of the sentencing range of the base offense, the lower end of the sentencing range after applying the method of aggravation for multiple offenses shall be the lower end of the sentencing range of the other offense.

PART B

# GUIDELINE ON SUSPENDING A SENTENCE

## 1 DEFAMATION BY PUBLICLY ALLEGING FALSE FACTS

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|---|---|---|
| Primary Circumstance | • Morally reprehensible motives<br>• Cases where the offense resulted in serious harm to the victim<br>• Highly egregious conducts or methods<br>• Defamation of a commissioned officer superior in rank (Military Criminal Act)<br>• Prior convictions for the same-offense [suspended sentence of imprisonment without labor or a more severe punishment imposed within the past five years, or three or more fines (including suspended fine)]<br>• Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes | • Cases with special extenuate circumstances that mitigating the offender's involvement<br>• Extenuating motives for the offense<br>• Cases where the extent of publicizing false fact is minor<br>• Dolus Eventualis<br>• Cases where the false fact is less likely to be disseminated<br>• No prior criminal convictions<br>• Voluntary surrender to investigative authorities<br>• Victim expresses the intent of non-punishment or substantial restitution to the victim |
| General Circumstance | • Leading role as a co-offender<br>• Planned crime<br>• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment<br>• Lack of social/family ties<br>• Absence of sincere remorse<br>• Absence of efforts to reverse the harm<br>• Post-offense evidence tampering or attempt to destroy or conceal evidence<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) | • Minor participation as a co-offender<br>• Offense committed impulsively<br>• No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment<br>• Stable social/family ties<br>• Sincere remorse<br>• The offender's physical condition is severely impaired<br>• Cases where detaining the offender would impose excessive hardship on dependent family members<br>• Considerable restitution |

## 2 INSULT

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|---|---|---|
| Primary Circumstance | • Morally reprehensible motives<br>• Cases where the offense resulted in serious harm to the victim<br>• Highly egregious conducts or methods<br>• Prior convictions for the same-offense [suspended sentence of imprisonment without labor or a more severe punishment imposed within the past five years, or three or more fines (including suspended fine)]<br>• Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes | • Extenuating motives for the offense<br>• Cases where extent of insult is minor<br>• Cases where insult was not committed publicly (Military Criminal Act, Article 64, paragraph 1)<br>• No prior criminal convictions<br>• Victim expresses the intent of non-punishment or substantial restitution to the victim |
| General Circumstance | • Planned crime<br>• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment<br>• Lack of social/family ties<br>• Absence of sincere remorse<br>• Absence of efforts to reverse the harm<br>• Post-offense evidence tampering or attempt to destroy or conceal evidence<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) | • Offense committed impulsively<br>• No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment<br>• Stable social/family ties<br>• Sincere remorse<br>• The offender's physical condition is severely impaired<br>• Cases where detaining the offender would impose excessive hardship on dependent family members<br>• Considerable restitution |

## DEFINITIONS OF CIRCUMSTANCES TO CONSIDER WHEN SUSPENDING A SENTENCE

- For identical factors in both Sentencing Factors and the Circumstances for Suspending a Sentence, refer to the definitions set forth in the Definition of Sentencing Factors.
- In cases of 'Defamation of a Commissioned Officer Superior in Rank (Military Criminal Act)', the 'Commissioned Officer Superior in Rank' means the person who has the authority of command in a command-obedience relationship (Military Criminal Act, Article 2, subparagraph 1, first part).
- Calculation of the Period of Prior Criminal Convictions
  - For cases where a suspended sentence of imprisonment or a fine was imposed, the period of a prior conviction is calculated from the date on which the judgment became final to the date of the commission of the offense.
  - For cases where a sentence of imprisonment was executed, the period of a prior conviction is calculated from the date on which the sentence was fully served to the date of the commission of the offense.

## PRINCIPLES APPLICABLE TO CIRCUMSTANCES WHEN SUSPENDING A SENTENCE

- When the recommended sentence is imprisonment with labor and judges decide to suspend execution of the sentence, they must give greater weight to the Primary Circumstances than to the General Circumstances, and the following principles should be considered:
  - ❶ When two or more Primary Affirmative Circumstances exist alone, or when Primary Affirmative Circumstances outnumber Primary Adverse Circumstances by two or more, it is recommended to suspend the sentence.
  - ❷ When two or more Primary Adverse Circumstances exist alone, or when Primary Adverse Circumstances outnumber Primary Affirmative Circumstances by two or more, imprisonment is recommended.
  - ❸ In cases in which ❶ or ❷ apply, but the difference between the number of General Adverse (Affirmative) Circumstances and General Affirmative (Adverse) Circumstances is greater than the difference between the number of Primary Affirmative (Adverse) Circumstances and Primary Adverse (Affirmative) Circumstances, or in cases other than ❶ or ❷, the judges shall decide whether to suspend the sentence after comparing and assessing all the Circumstances comprehensively.