



Title	RECENT DEVELOPMENTS IN THE JAPANESE CIVIL JUDICIAL SYSTEM
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Citation	Osaka University Law Review. 1998, 45, p. 19-24
Version Type	VoR
URL	https://hdl.handle.net/11094/9334
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Recent Developments in the Japanese Civil Judicial System

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Introduction

Aside from the complexity of modern Japanese society, the current deregulation and structural changes being undertaken in Japan may facilitate the emergence of new, procedurally complex cases in this country. I give as only brief examples of this phenomenon civil suits related to shareholder derivative actions, actions by taxpayers against administrative measures taken by the government or any of its subdivisions, large-scale tort actions, labor cases, and suits contesting employment termination. These circumstances threaten to try the Japanese civil procedure system's ability to fulfill its function of realizing social justice and of protecting citizen's legal rights.

In the face of these challenges, the form of Japanese civil procedure has been recently comprehensively revised. The newly reformed Civil Procedure Code ("Code") is effective on January 1, 1998. Changes have been widespread, but most notable are improvements in the preliminary proceedings for modifying matters under court review, as well as making orders relating thereto, modifications in the treatment of evidence at oral hearings in trial proceedings, expansion of the scope of documents subject to court order for submission, small claim proceedings, Supreme Court appeal, and utilization of automated office equipment. While vestiges of the classical European legal system are still evident, practical needs have compelled massive alterations for convenience of use. In today's rapidly changing economic order, comprehensive reform has become a mandate for both civil procedure, in practice as well as in its legislative development. One may even think of this change as the civil procedural analogue to the financial "Big Bang" now gaining so much attention in the media.

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1. Civil Procedure

The former Code, written in a stilted form of Japanese not commonly used at present, was enacted more than seventy years ago, in 1926. Though it has been amended several times, there was a significant gap between the law and actual practice. Trial proceedings thus at times seemed little more than ceremonial in nature and empty of substantive meaning.

Aside from this, there is the pervasive problem of the cost and delay inherent in court proceedings. Both Judges and lawyers are aware of this situation and, though the Japanese legal system is one based on codified law, a notable number of legal practitioners have made efforts to ameliorate matters by means of practices not to be found in the Code. It is thus a long-awaited step to incorporate aspects of actual practice into the Code itself. The need for such reform is now a fundamental and vital one, reaching every aspect of the Code.

Comprehensive revisions to the Code were made in 1996, a major year in the annals of Japanese civil procedure. The reform of that year sought to be friendly to parties, comprehensive in scope, and to increase ease of use of civil procedure itself. The main purpose of these reforms, which swept away archaic language in favor of the modern idiom, was to make civil procedure easier to understand and to increase access to the citizenry. It also strove to meet the demands of present-day society.

A. Pre-Trial Innovations

One of the most noteworthy innovations is the introduction of pre-trial conference for refining the case and for narrowing the issues in dispute. As a result, there are three special proceedings for adjustment of issues: Preparatory Oral Proceedings, New Preliminary Proceedings for the trial, and Preliminary Proceedings for Exchanging Initial Pleadings.

These proceedings are designed to secure an efficient and speedy trial, especially in taking evidence. They should aid the Judge and both parties in recognizing the points at issue accurately before the trial and should thus expedite the examination of witnesses, parties, and so on. Hopes are high for this new system's ability to further expeditious and well-managed trials.

B. Reform of Evidence Collection

The new Code provides for a party to be able to put inquiries to the opposing party in writing regarding matters to be further explained. Answers to these interrogatories are to be made in writing. Thus, a litigant now has the opportunity to gain information regarding the case from his opponent. This change is in response to the natural inclination of a party threatened with liability to prevent the discovery of any kind of material evidencing such liability. It is for such a case that a litigant now has the capacity to request materials in order to bolster his claims. Further legislative efforts are expected to enhance the obligation to produce documents in this regard.

C. Improvement of the Method of Appeal to the Supreme Court

Recently, many groundless appeals have been made to the Supreme Court. This has resulted in the Court's inability to accomplish expertly its original duties of adjudicating the constitutionality of laws and to provide for common interpretations of laws. The new Code consequently limits the grounds for appeal to the Court, especially in the case in which laws have been contravened. Now, the Court may, by its own ruling, refuse to hear an appeal which does not include important points to be examined. However, this change reinforces the need that full and substantial proceedings are provided in the lower courts.

D. Small Claims Courts in the New Code

The new proceedings provided for in the new Code have proven so popular that the Japanese mass media have carried the changes and made them known to the public at large.

Under the new system, the Summary Court will hear matters involving sums under 900,000 yen (¥900,000). Trial and special procedures in the Summary Court may be requested by a plaintiff for monetary cases involving claims not exceeding 300,000 yen (¥300,000), though the defendant may object to have the case transferred to an ordinary court.

Procedures in Summary Court permit only the introduction of easily-examined evidence. In principle, the Summary Court is to finish its proceedings by the date of the first hearing in the small claims court procedure, and then immediately render judgment in the matter. It is also to be the court of first and last instance, but

by objecting to the judgment a full re-trial of the case will be held before the same court. Put simply, this system is designed to provide speedy resolution for small monetary actions.

E. Utilization of Office Automation

Automation is also a major aspect of changes to the Code. It is encouraged, with examples ranging from telephone conferences to be used to clarify issues in dispute, a television conference system to examine witness, and a computer system is to be installed for Special Summary Procedures relating to certain matters (ex. moneylending). This latter procedure is now given wide-ranging jurisdictional authority, and is designed to be widely used as the simple and prompt measure to obtain legal title.

In conclusion, the new Code's pre-trial conferences are designed to enrich the content of each respective hearing, which should ultimately contribute to the more rapid resolution of the case as a whole. The former Code permitted complaints on legal actions (and defenses thereto) to be introduced at any time in the case, until the conclusion of the trial's oral proceedings. This aspect of the Code was widely acknowledged to be a principal factor encouraging delay. The new Code, on the other hand, requires complaints (and answers) to be made in a timely fashion. With respect to multi-party cases involving issues of large scale, the new Code also provides for special provisions to permit five judges to conduct the proceedings, with each such judge having the authority to examine witnesses and parties to avoid procedural delays.

While ordinary trials in District Court seem to be taking less time currently, it is still likely that cases with substantial disputes at their center last for over a year. The common understanding regarding these trials is that they consume far too much time, have high costs, and are measures of last resort to be used only in the event something terrible arises. A civil action's purpose, in contrast, is to be the system which is always readily available to people in need of legal redress.

It is expected that civil cases will see the time expended in their duration to drastically be reduced, so that a substantial dispute, for example, may be resolved in one year. While there is of course no rule limiting the length of a trial, the implementation of more continuous and concentrated trials with increased evidence-gather powers are always preferred under the new Code. The new Code's

Article 2 provides that a court should make every effort to increase a trial's speed, and all parties participating as litigants are charged with the obligation to pursue the proceedings in good faith.

2. Reform of the Selection of Legal Personnel

Concurrent with the changes in the Code, reform of the National Bar Examination started in 1996. The Supreme Court, Ministry of Justice, and the Japan Federation of Bar Associations have all agreed to increase the number of successful candidates on the Bar Examination from its former number of roughly five hundred (500) to at least one thousand (1,000) in the near future. This reform has been occasioned by the strong recognition among the citizenry that increase in the number of qualified legal professionals is needed. Indeed, the present insufficiency of judges and attorneys in Japan contributes to the holding up of proceedings.

This reform, along with the one previously mentioned regarding trials, is designed to produce a new Japanese legal society.

3. Bankruptcy Law Reform

The present bankruptcy system is currently undergoing thorough legislative review. As the number of personal bankruptcy cases has risen, along with the increasing number of international bankruptcy cases, deficiencies in the present Code have become more and more apparent. Treatment of property under liens and other secured claims is also a matter of considerable importance. These and many other issues are presently under discussion and review. The new bankruptcy law is expected to provide more effective responses to these problems.

4. Proceedings for Enforcement of Civil Judgments

Proceedings to enforce civil judgments are now conducted in accordance with Law of Civil Enforcement, enacted in 1979. Civil enforcements are sometimes obstructed by unlawful occupation of property, or by its unlawful destruction by the debtor or third party. Unlawful profits are sometimes also sought by harassing judgment creditors.

New counter-measures were introduced in 1996, subjecting the possessor of a debtor's real property to an order prohibiting that person from diminishing the

value of that property.

Conclusion

The future bodes well for the increased availability of less expensive and more expeditious dispute resolution, including more extensive computerization in civil proceedings. It also signals the beginning of a new, more extensive cooperative relationship between the judge in a court and the law clerk. Furthermore, it holds the portents of increased thought regarding the interweaving of civil procedure and Alternative Dispute Resolution.

On the other hand, increased international cooperation brings with it the objective of harmonizing procedural standards internationally, not merely for domestic cases. With a new and freshly invigorated Code, we may meet these aims and be well prepared for the upcoming century.