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ESTRUCTURA GENERAL DEL PROCESO CIVIL EN JAPON

"OVERALL STRUCTURE OF JAPANESE CIVIL PROCEDURE"

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Título: "Estructura general del proceso civil en Japón"

Resumen: Este artículo presenta una estructura general del proceso civil japonés: a) jurisdicción de la Corte, b) características del Poder Judicial, c) historia del Código Procesal Civil de Japón, d) perfil del proceso civil japones y sus características.

Palabras clave: Proceso Civil; Derecho Procesal Civil; Poder Judicial; Japón

Title: "Overall structure of Japanese Civil Procedure"

Abstract:

This article presents the overall structure of japanese civil procedure: a) Jurisdiction of the Courts, b) characteristics of the Judiciary, c) history of the Japanese Civil Procedure Code, d) outline our civil procedure and explain the features of the procedure.

Key words: Civil Procedure; Procedural Law; Judiciary; Japan

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OVERALL STRUCTURE OF JAPANESE CIVIL PROCEDURE

PROF. TAKUYA HATTA *

I. OVERVIEW

The title of my presentation is overall picture of Japanese Civil Procedure. It is going to be a short explanation of the outline of Japanese Civil Procedure. First, I am going to talk about the Jurisdiction of the Courts, and then move on to the explanation about the characteristics of the Judiciary, and then I will explain the history of the Japanese Civil Procedure Code, and then I will outline our civil procedure and explain the features of the procedure.

II. JURISDICTION OF THE COURTS REGARDING CIVIL CASES IN JAPAN

The judicial structure is very simple in Japan. We have one Supreme Court, below which 8 High Courts, below which 50 District Courts and Family Courts, and below District Courts we have 438 Summary Courts.

When we focus on civil procedure, family matters (matters such as divorce) are dealt with by the Family Courts as the first instance, the appeal of which goes to the High Courts as the second instance, and the Supreme Court will be the third and the last instance. As for matters that are not related to family, which can be called as ordinary matters, such as return of loans, payment of a purchase, etc., we divide between cases up to 1.4 million yen and cases above

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1.4 million yen (1 US$ is about 110 yen, so 1.4 million yen is about 14,000 US$. Cases whose value is above 1.4-million-yen are dealt with by the District Courts as the first instance, High courts as the second instance, Supreme Courts as the third instance. As for cases whose value is up to 1.4-million-yen, Summary Courts are the first instance, with the District Courts being the second and the High Court's being the third instance.

III. CHARACTERISTICS OF THE JUDICIARY

To name the characteristics of the Japanese Judiciary, firstly, its structure is very simple. No special courts for commerce, labor, or administration, etc., except for family courts. We have family courts as the special courts for matters related to families but beside that we don't have any special courts.

The next feature is about the judges. Professional judges get to decide the cases. No involvement of laymen such as in the case of jury system in the. U.S.

Thirdly, representation by the lawyers is not compulsory. Self-representation by the party themselves is allowed. So, you can go to court on your own. But if you want to hire someone to represent you, he/she must be a lawyer in Courts in and above the level of District courts and Family courts. In relation to that we don't have any looser-pay-rule for the lawyers' fee. Even when you win, you have to pay for your own lawyers' fee.

To show some data, firstly, the number of cases received in the District courts are 170.578 in year 2016 and 157.398 in year 2018. If you compare this number with that of U.S. (15.670.573), England (2.338.145), Germany (2.109.251) and France (1.114.344), you will see that we have very low number of civil cases.

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Next is the number of lawyers, judges and prosecutors. As for lawyers, you will see the number drastically increases after 2004. We almost have doubled the number of lawyers in 13 years from 2004, with the figure in 2004 being 20.240 and 38.027 in 2017. This is the result of the introduction of the law school system in 2004, a new education system for lawyers, judges, and prosecutors, which is intended to increase the number of lawyers. But if you compare the number of population per each lawyers (how many people each lawyers represent) in Japan (=3.334) with that of the U.S. (261), England (401), Germany (499) and France (1.045), you can see that still we have very few lawyers in Japan in comparison to these countries.

Last data is about the duration time of the civil procedure in the first instance (in the district courts). When you see the figure in the year 2006, 2008, 2014 you will see that it is about 6 to 8 months and the number drastically decreased in comparison to the year 1990 (about 13 months), which is the result of the reform of the Civil Procedure Code in Japan, which will be explained shortly hereafter.

IV. HISTORY

Here I will explain about the history of the Japanese Civil Procedure Code.

In 1868, in late 19the Century, we modernized our society, and we westernized our society. This is called the “Meiji Restoration”.

Right after that in 1890, we established the first Code of Civil Procedure, which was almost a literal translation of the German Code of Civil Procedure. We had the German Civil Procedure as the model, and we introduced the German model into Japan in 1890.

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Then we slightly begin to deviate from our German origin. This first happened in 1926, in which we had a big amendment of the Civil Procedure Code, which introduced some original provisions that don't have their models in our German mother (such as Independent Party Intervention in article 71).

In 1945 we experienced the loss of World War II, which brought about many new changes in the structure of our society, economy, and politics, literally almost everything including the constitution, which was entirely changed. In 1947 we implemented a new Constitution under the supervision of the U.S. But our Civil Procedure Code didn't change so much. The Criminal Procedure Code changed a lot. Huge amendment was made there. But not so much in the Civil Procedure. In 1948 we had small amendment which introduced some U.S. schemes such as cross examination system of witnesses replacing the inquisitory system by the judges. But this introduction of U.S. schemes was very limited, and our Civil Procedure system basically didn't change after the World War II.

The biggest change came in 1996, almost 70 years after the first big amendment in 1926. The amendment of the Civil Procedure Code in 1996 was a full amendment intended to introduce measures to expedite the procedure such as the distinction of stages, which I will explain shortly on. As I explained shortly before, this amendment was successful, and we were able to cut the duration period of the first instance in the district courts.

V. OUTLINE OF THE PROCEDURE

To explain the outline of the current procedure after the 1996 amendment, the procedure is now divided in 4 stages. In the first stage, the parties make allegation of facts. The parties will state what they think took place in the incident. In the second stage, the parties and the judge collaborate in sorting out the issues

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to be clarified, the points in which parties disagree as facts. The parties and the judge also work to sort out the evidence to be examined in the next stage here, except for document evidence, which is examined at the second stage because it is easy to examine and also helpful in sorting out the issues. The third stage is the stage in which the evidence that is selected in Stage 2 is examined: witness, parties themselves, etc. When the examination of evidence is over, case will be closed and the judge(s) will ponder upon the facts and the laws to be applied, and when he/she/they come up with the decision, he/she/they will give the sentence.

VI. FEATURES OF THE PROCEDURE

Lastly, I would like to explain about the features of our procedure.

The first feature is the use of non-sanction schemes to direct the procedure. To take an example, in Japan, presentation of new facts is still possible after the 2nd stage (which is about sorting out the issues to be clarified, after the presentation of allegations of facts by both parties) is over. This means that even after the issues are sorted out and the points to be clarified from the evidence are decided, the parties are still allowed to bring in new facts and new issues to the case. But this is as long as the party explained why he/she couldn’t state the fact before the 2nd stage is over. As another scheme of controlling the presentation of facts from the parties, you could make a rule in which the presentation of new facts after the 2nd stage is prohibited. But Japan didn’t take this approach but decided that the presentation of new facts is OK and that the parties are just required to explain the reason. The reason can be anything. The quality or the content of the reason is not an issue. As long as you explain why you are allowed to present new facts even after the 2nd stage is over. So the Japanese law doesn’t use sanction in preventing the parties from bring in new

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facts after the 2nd stage but uses the scheme to ask for explanation. Japanese law does have points in which it uses sanction, but compared with other countries, our law is said to tend to use non-sanction schemes.

The second feature is the gap between the principle that the law takes and the reality which is actually happening. The principle that the Japanese Code of Civil Procedure applies is party disposition, party autonomy. Parties are given the autonomy as to the resolution of the case: 1) the court can only decide over what it is asked to; 2) the court can't base it's judgement on the facts that are not alleged by the parties; 3) the court must base it's judgement on the facts that both parties agree on; 4) the court can only examine the evidence provided by the parties (no ex-oficio examination of evidence). But in reality, the parties depend highly on the judges in resolving the cases.

This dependence firstly appears in the acquisition of information and evidence from the other parties. The parties depend on the judge to collect information and evidence from the other party. The parties ask the judge to ask the other party to present information and evidence. This dependence has a lot to do with the fact that the Japanese law provides the parties with very limited means to collect information and evidence from the other party by themselves. As for information, the law gives each party the right to ask for information to the opponent, but there is no sanction if the opponent resists to give it, which is another example of non-sanction scheme that I explained earlier. As the result of this, the party's right to ask for information directly from the other party is not used, not exercised. As for evidence, there is no discovery or disclosure system like in the U.S. We do have the scheme for the parties to force the other party to present the evidence that they need. This scheme has sanction. If you don't comply with the order to present the evidence, you get sanction. But there is a limitation in this scheme in that the demanding party has to specify what evidence it needs when it asks for the evidence. This often presents a huge obstacle in

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gaining the evidence, since sometimes or on many occasions the parties don't have a clue as to what evidence the other party has concretely and because they have to specify nonetheless what evidence they want it is in many cases impossible for them to use the scheme to collect evidence from the other party. So, all in all, the means that the Japanese law gives to the parties to collect information and evidence from the other party are insufficient, and this incurs that the parties depend on the judge's authority to make the other party to come up with their demand for evidence and information.

Another dependence appears in the form of strong intervention by the judges in the clarification of the case. This has a lot to do with the first dependence that I explained just before, but intervention by the judge happens even without the request from the parties. Even without the request from the parties judges are keen on intervening in the clarification of the case, trying to dig out and find out what really happened. They want to find out the truth and decide the case on the truth that they've found.

So, in reality the parties are highly dependent on the judge and the judge plays an extremely important role in resolving the case in Japanese judiciary.

VII. CLOSING REMARK

Although I was also asked to explain about the use of I.T. technology in Japanese courts, but I am afraid Japanese courts are at the moment extremely low tech. We have just begun the process of trying to introduce the system in which the use of I.T. is developed, such as on-line filing of the case, on-line management of the case, but we are still at the beginning stage. So, I can't talk much about it.

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With this I would like to end my presentation of how our system of civil procedure is all in all.