

SESSION III
PERSPECTIVE FOR JUDICIAL REFORM IN ASIA

Alternative Dispute Resolution for Consumer Protection: Consumer Complaints Handling Systems in Japan

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I. ADR for Consumer Protection

The aim of this paper is to review the roll of alternative dispute resolution (ADR) in the field of consumer protection in Japan and other Asian countries. In recent years, with the increasing public concern about consumer affairs, many Asian countries have enacted rather comprehensive consumer laws. It is not surprising that such laws have special mechanisms and procedures to improve access to justice, or give redress to consumers suffering from grievances or damages. The need to provide these special mechanisms or procedures comes from the large number of factors that act to keep consumers away from formal litigation before the courts. In general, the amount of damages of the complaints lodged by consumers is so small that it is not worthwhile for consumers to bring a case to the court that is likely to be expensive and time consuming. Even if such damage is substantial, resorting to litigation is the option that consumers want to avoid, because they can not see in advance how much they have to pay, and how many days they have to be absent from their jobs for their hearing. Furthermore, entrepreneurs are usually juristic persons and there is imbalance between consumers and entrepreneurs in information, legal or other technical knowledge, economic power, the ability to pursue legal proceedings and so on. It is therefore necessary to offer mechanisms or procedures to modify such problems and to improve access to justice for consumers.

The approaches adopted to improve access to justice can be divided into two types: (1) the first is to reduce barriers blocking consumers' access to litigation, and to enhance the use of the procedures before the court, such as class actions or group action¹ or legal aid, and (2) the second is to provide forums "outside the court", that is,

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1 The Consumer Protection Act 1979 (amended 1998) of Thailand has two special procedures for dispute resolution for consumers. First, under the CPA, any private consumer association certified by the Consumer Protection Board has the right to bring the case to the court on behalf of its member consumers. Certification of consumer

alternative dispute resolution (ADR).

It seems that consumer laws provide ADR by administrative agencies. Court-annexed ADR, such mediation or conciliation, is provided by more general laws such as civil procedure law. ADR by business or private organizations is also an important path for consumers. Usually it does not have special laws authorizing it.

ADR by administrative agencies can be found in some legislation in Asia, such as the Consumer Act 1994 (Republic Act NO. 7394) of the Philippines and the Consumer Protection Act 1999 of Malaysia. In Malaysia, the Tribunal for Consumer Claims was established by the Act as an administrative organization, under the Ministry of Internal Trade and Consumer Affairs. This tribunal offers arbitration on the cases where damages do not exceed 10,000 RM, and does not include personal injuries or death. Consumers can select other procedures like small claim procedures or this Tribunal, but if the injured party chooses to file the case to the Tribunal, the defendant company is obliged to come before the Tribunal. The Philippine's Consumer Act also provides conciliation and arbitration by government officials such as those of the Department of Trade and Industry.

Japan seems to be reluctant to adopt the special procedures improving access to justice particularly for consumers. Instead, it has developed the consumer complaints handling schemes (in Japanese "*Kujo Shori*") by administrative agencies and by business or private organizations. Such schemes include some kinds of ADR such as counseling, mediation or conciliation.

In the drafting process of the Consumer Contract Law that was enacted last year, there were proposals to include provisions regarding the right of consumer associations to take action on infringements of that law. However, there were negative opinions to this idea mostly from the rigid attitude toward the matter of locus standi. Thus, in order to speed up the enactment of this Law, these proposals were not adopted even in the draft.

It should be noted that under the new Civil Procedure Code of Japan (promulgated in 1996, and came into force in October 1998), the small claim procedure

associations had not taken place for almost 20 years, and it was in April 2000 that the first consumer association was certified by the Board. No cases have been brought by consumer associations yet. Another procedure is that any official of the Office of Consumer Protection Board or a public prosecutor can bring the case to the court on behalf of consumers who have suffered damages, when those consumers file complaints to the Board and the Board finds that the case satisfies the some requirements provided by the law. For example, the case should be beneficial to promote consumer protection in general. There have been about 200 cases under this procedure, and all the cases were brought by the public prosecutors on behalf of the consumers that suffered damages. Most of

was newly introduced. Petitions under this procedure can be made only for monetary claims for amounts not exceeding 300,000 yen. The small claim procedures can be the impetus to improve access to justice for consumers. However, the number of cases under this procedure is still small, so it is too early to know whether this procedure contributes to consumer protection.

II. Consumer Complaints Handling Schemes in Japan

1. Administrative Agencies

Formation of the Japanese consumer law and consumer affairs administration was motivated by the experience of massive and widespread consumer damages such as those caused by polluted foods or side effect of medicines since the 1960s. There was also the influence of the international consumerism movement. Some ministries established divisions responsible for consumer protection affairs.

In 1968, the Basic Consumer Protection Law was enacted. It has only 20 sections, but even now it gives the basic framework for consumer protection and consumer affairs administration in Japan. Based on the policy framework under this Law, several individual legislations have been enacted.

Article 15 of the Basic Consumer Protection Law stipulates the responsibilities of the State, local governments², and entrepreneurs in solving consumer complaints. It provides:

(1) Entrepreneurs shall make efforts to establish the systems necessary for providing adequate and prompt solutions to complaints lodged with regard to transactions with consumers.

(2) Cities, towns and villages shall make efforts to offer mediation or other measures to solve complaints lodged with regard to transactions between consumers and entrepreneurs.

(3) The State and prefectures shall make efforts to take necessary measures to offer fair and prompt dealings to complaints filed with regard to transactions between consumers and entrepreneurs”.

the cases relate to land or houses.

2 The local government system of Japan has two levels of local governments. There are 48 prefectures in Japan, and under the prefectures there are cities, towns and villages. Each local government has a governor and local assembly; both of them are selected by election.

Local governments

In 1969, the Local Government Law was amended to declare consumer protection as one of the duties of local governments. Many local governments have enacted consumer protection ordinances since the 1970s. Under such ordinances, each local government has established offices responsible for consumer protection, and established centers generally called “consumer life centers”. In general, consumer life centers conduct activities concerning consumer affairs such as providing information, consumer education, product testing and inspection and complaints handling including consumer counseling and mediation. There are about 400 Consumer Centers nationwide now. Consumer counseling is the backbone of the Japanese consumer complaints handling system. Counseling is conducted mainly by permanent or temporary consumer counselors working at the centers. There are training courses and examinations for consumer counselors and advisors. Counselors can ask lawyers and other experts for support. The activities of each consumer centers depends on the size of budget or human resources of that local government. Some consumer centers of bigger local governments like the Tokyo Metropolitan Government have ADR programs such as mediation and conciliation other than counseling. If necessary, consumers will sometimes be advised to go to appropriate organizations like the National Consumer Affairs Center or PL centers for the products concerned, or schemes of other private organizations according to the issues.

Consumer Distress Relief Committee of Tokyo Metropolitan Government

The Tokyo Metropolitan Consumer Ordinance provides the establishment of Metropolitan Consumer Distress Relief Commission in order to offer fair and prompt dispute resolution to consumers in the manner of mediation or arbitration.

The number of the members does not exceed 22 persons, including academics (not exceeding 10), representatives of consumers (not exceeding 6) and representatives of business sectors (not exceeding 6). This Committee is an advisory body of the Governor of Tokyo. Complaints by consumers have to satisfy the requirements stipulated by the Ordinance, and if the Governor finds that it is necessary to resolve the case by the Committee, the case will be referred to the committee. Disputes that can be referred to the Committee shall relate to the complaints lodged by consumers suffering damages in their consumer life because of business activities of the entrepreneurs, and that adversely affect consumer life of Tokyo citizens.

When any case is referred to the Committee, the panel for mediation is formed, and the panel will hear opinions from both parties (consumers as complainant and traders), and try to resolve the case by proposing a compromising plan. The mediation panel also consists of representatives of academics, consumers and business. If any parties do not agree with the plan, the arbitration panel consisting of only academic members of the Committee will decide the arbitration, and recommend that both parties accept it. If any parties do not agree with it, the procedure comes to end.

Until 1998, the Committee had 15 cases. The results are as follows: mediation succeeded (10 cases), mediation partially succeeded (2 cases) and mediation failed (3 cases). Most of the cases concern door-to-door sales or telemarketing. Several cases include similar issues. That is, whether consumers can invoke the cancellation of the contract with the trader or selling company to the credit company. The decisions on these cases are considered to have contributed to the amendment of related laws such as the Law Concerning Door-to-Door Sales etc.

Prof. Akira Shoda, working as the chairman of this Committee, explained the nature of conciliation and arbitration procedures of the Committee as follows: It is not only offering solutions to individual cases, but also, “considering the basic ways of thinking about the cases, establishing a framework for decisions, and applying it to the concrete case for its solution.” In other words, the Committee is the body that decides the approach of the Tokyo Metropolitan Government toward such type of disputes, and simultaneously offer solutions to individual cases³.

It is interesting that the Tokyo Comprehensive Consumer Center has a program of legal aid for the parties of the cases where mediation or arbitration have not succeeded, and the parties to dispute bring the case to the court, or the consumer is sued by the company. In such case, the Tokyo Metropolitan Government provides loans to the consumer according to the conditions provided in the Rules.

National Level

As a national level consumer center, the National Consumer Affairs Center (NCAC)⁴ (“*Kokumin Seikatsu Center*”) was established by Law in 1970. It is a special

3 “*Tokyo-to Shouhisha higai kyusai iinkai houkokushoshu shouwa nen 51- Heisei 12 nen*”. (Compiled Reports of Tokyo Metropolitan Consumer Distress Relief Commission.1976-1998 (1999), p. 3.

4 JCIC has changed its English name to the National Consumer Affairs Center, although its Japanese name has not changed.

governmental organization under the Economic Planning Agency (EPA)⁵. It has similar functions to those of consumer centers. It also acts as the coordinating organization among consumer life centers of local governments, consumer organizations and business sectors in making policy for consumer affairs. It supports the activities of consumer associations and consumer centers of local governments.

The numbers and content of the complaints lodged to consumer life centers of local governments or NCAC can be seen from the database system called PIO-NET which is administered by NCAC. In 1998, the total number of consumer complaints was about 620,000. This number includes the complaints that have not reached the level of “dispute” yet. Some of them are only inquiries about the safety of some kinds of products or asking for information before starting negotiations with the entrepreneurs. Most complaints are solved at the level of counseling or negotiations between consumer and entrepreneurs, although consumer life centers usually give advice to the consumers from the early stage of negotiations. If a consumer submits a complaint requesting inspection of products and that consumer center finds itself unable to conduct investigations because of a lack of facilities, the center may ask the NCIA or other organizations for support.

The information obtained from PIO-NET is used to support the necessity of enacting or amending the related laws. Of course, privacy of the consumers concerned is assured in PIO-NET.

Number of Consumer Complaints Received

	1995	1996	1997	1998	1999
Tokyo	75,910	83,459	87,059	87,584	46,659
Tokyo Metropolis	31,987	31,643	30,548	30,144	15,270
Cities, Towns and Villages in Tokyo	43,923	51,816	56,511	57,440	31,389
Nationwide	510,566	577,863	611,154	626,640	-

Source: National Consumer Affairs Center

⁵ EPA was responsible for the coordination of consumer affairs administration. According to the administrative reform, the EPA was merged into the Cabinet Office from 6 January 2001. It remains the center of consumer affairs administration in Japan.

2. Business or Private Organizations

Business Sector's Attitude toward Consumer Complaints

As seen already, Article 15 of the Basic Consumer Protection Law provides that entrepreneurs shall make efforts to establish the systems necessary for providing adequate and prompt solutions to complaints lodged with regard to transactions with consumers.

It is very common that large numbers of complaints are received by a company regarding its products or services every day. Many companies now find that such complaints provide very important information for development of new products and services, marketing, improvement of corporate image, and efficient management. Many companies have improved their customer service sections, including call centers. Such centers have a database of all the complaints and they can easily find information on the type of products causing troubles, the content of complaints and so on.

PL Centers

When the Product Liability (PL) Law was enacted in 1994 (came into force on 1 July 1995), there were fears that it would cause an explosive increase in complaints and case concerning product accidents and worrying about the increase of the amount of remedies like PL cases in the United States. This made companies review their systems for handling complaints.

Many companies started to review and improve their systems on dealing of complaints from consumers. And business or industrial associations started to provide mechanisms for dispute resolution regarding PL. In order to handle the complaints after PL Law, many business associations have established so-called "PL centers" to offer fair and prompt solution to consumer complaints regarding the quality or defectiveness of products. There is no special law regarding the organization or function of PL centers. The establishment of such centers was encouraged by the resolution of the National Diet attached to the PL Law in June 1994. It states: "In considering the effectiveness of fair and prompt dispute resolution system that does not depend on the court for dispute resolution for remedies of consumer damages, alternative dispute resolution systems should be encouraged and enhanced..."⁶

6 The Ministry of International Trade and Industry (MITI) of Japan also issued the (non-binding) administrative

More than ten PL centers have been established for certain kinds of products such as automobiles, pleasure boats, medicine, chemical products, electric home appliances, beverages, cosmetics, fire safety equipment, gas and kerosene appliances.

Most PL centers are established within the business or industrial associations. Sponsorship by the business or industry organizations make it easy to find persons who have knowledge and experience regarding accidents caused by the products concerned. However, securing fairness and neutrality is very big issues for such PL centers. So PL centers are trying to appoint the members of such mediation or conciliation committees from lawyers, academics, representatives of consumer associations, administrative officers, etc. Some PL centers also establish advisory committees and managing boards with such members.

The Conciliation Committee of Automobile Product Liability Counseling Center has 12 members, comprising 4 attorneys, 6 professors (law, engineering and so on) and 2 consumer counselors or advisors. This Center was established as a foundation independent from the business association of automobile industry, and lawyers and professor occupy some posts of this Center, such as directors, auditors and advisors.

Most PL centers publish their activities by newsletters, annual reports, and websites, etc. According to such information, the number of conciliations and arbitrations seems to remain small. One PL center attributes this to the fact that most product accident cases are resolved by negotiations between consumers and companies, with only the remainder brought into PL centers. Furthermore, in the cases brought into PL center, the issue is not the matter of law, but the matter of fact, such as the cause of the accident.

After about 5 years have passed since PL Law came into force in 1995, the number of the cases on PL Law is still very small, and most of them are against the plaintiff. This may be because of the screening by ADR of business sectors and consumer centers in the early stage of disputes. In addition, the cases that come to the court may be difficult cases for the consumer side. The lack of leading judgments seems to cause somewhat a vagueness about product liability law. It should be noted that there was the case admitting product liability as to the damages caused by foreign objects in a glass of orange juice in a hamburger shop in Japan. The claim for damages was for 400,000 yen, but the court (Nagoya District Court) ordered the payment of

instructions in October 1994, entitled "Toward the Establishment of Alternative Dispute Resolution System by

100,000 yen.

Conclusion

The consumer complaints handling scheme in Japan has contributed to consumer protection in two senses. Firstly, it has offered Japanese consumers dispute resolution methods at small cost. Secondly, the cases reported, and dealt by, the consumer complaints dealing system contribute to identifying issues and problems with current consumer protection law, and contribute to the law making.

There are two different views concerning ADR. The first emphasizes the prompt and adequate solution of individual cases, and so ADR is seen as an effective method for improving access to justice. Another view is emphasizes rule-making through the litigation or “test cases” for the benefit of consumers in general, and so prefers resolutions before the court than ADR, which sometimes makes it possible for entrepreneurs to avoid unfavorable decisions for them by compromising or negotiating individual cases.

However, it seems that if ADR can offer solutions to the some categories of conflicts or disputes which are scarcely brought to formal litigation, the decisions or result of ADR can add information about consumer needs. As the experience of the Japanese consumer complaints handling system suggests, if we deliberately organize ADR and analyze its decisions or result, especially by administrative agencies, they can contribute to identifying the problems or needs in consumer life, and be used in making policies on consumer affairs and enacting individual legislation.

To enhance such function of ADR in identifying consumer problems, the results of ADR must be published in a manner that shows the types of disputes, legal issues, the means of resolution adopted and so on, taking into account protection of the privacy of the parties concerned.

Products” [in Japanese] to promote PL centers.