

# Simplified Civil Procedure in Japan

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## Abstract

Japanese civil procedure covers four types of simplified procedures: ordinary proceedings in summary courts; actions on bills, notes, and checks; actions on small claims; and payment orders. Actions on small claims were newly introduced as civil procedure in 1996 to promote public access to justice. Summary courts have jurisdiction over these actions. The use of actions on small claims once increased to adjudicate a number of cases for the reimbursement of overpayment against consumer loan companies (*Kabaraikin Suits*). Although they have been used with less frequency recently due to the decrease of *Kabaraikin Suits* and increase of the use of other ADR procedures, they have a good reputation among their users and have successfully eased the burden on judges of district courts regardless of budget constraint. However, as more and more difficult cases are filed as actions on small claims, the burden of summary courts and court clerks seems to have increased. Providing information on simplified proceedings by courts and institutions of ADRs to citizens will solve this new problem by helping them to choose appropriate proceedings.

**Keywords:** Japan, civil procedure, simplified procedure, summary courts, actions on small claims

## 1 Introduction

Japanese civil justice has experienced gradual change from inquisitorial to adversarial procedure. At the same time, we have allowed litigants to file civil suits without any representation by attorneys for a long time. For those who cannot afford to pay attorneys' fees and who are not successfully able to find appropriate attorneys to represent them, we have expanded legal aid for these fees, as well as increased the number of attorneys. We also provide a couple of simplified civil procedures to enable the quick resolution of conflicts; these procedures are easily accessible for litigants without attorneys. Economic situations have affected the litigant's attitudes to use these institutions and incentives for civil justice reforms.

This article addresses our challenge to provide easy access to civil justice for the public and effects of austerity on this challenge. This article proceeds as follows. In Part 2, I provide general information on Japanese civil justice including its institutional background, costs for litigation, and goals of civil procedures. In Part 3, I

detail features of simplified procedure; and then in Part 4, I argue whether and how austerity affects the public use of civil procedure. Finally in Part 5, I conclude with my evaluation of our current institutions and the perspective of our civil procedure.

## 2 Institutional Background of Japanese Civil Procedure

### 2.1 General Structure of Japanese Civil Procedure

#### 2.1.1 Historical Background

The Japanese legal system, as well as Japanese civil procedure, follows the continental legal tradition (civil law system), rather than the Anglo-American legal tradition (common law system). Especially since the late nineteenth century, Japan had been struggling to devise Western modern-legal systems by following the continental laws. Japanese civil procedure was first codified in 1890, based on the model of German civil procedure.<sup>1</sup> Although it has been reformed a couple of times since then, the basic principle and procedural structure of Japanese civil procedure are therefore quite similar to those of German procedure.<sup>2</sup> As a result, the structure of our original civil procedure was inquisitorial. Litigants were in principle responsible for producing evidence; however, a judge was still allowed to examine the evidence by him/herself.

However, our procedural law has experienced a gradual structural change since the end of World War II.<sup>3</sup> The fundamental structure of our procedural law slightly changed to an adversarial system from a previous inquisitorial one, through a reform of the Code of Civil Procedure that was affected by U.S. civil procedure. One example of adopting the adversarial system is the abolishment of inquisitorial examination of evidence in 1948. Another example is the change of the order of witness examinations. Before the reform, a judge had been primarily responsible for examining witnesses (Article 315 of the Code of Civil Procedure in 1890). After the reform, the litigant who submits a witness examines

1. Its draft was written by a German legal scholar, Hermann Techow.
2. For instance, our procedural law adopts the principle of 'Disposition-smaxime', according to which parties may freely commence and terminate civil litigations. It also adopts the principle of 'Verhandlungsmaxime', according to which parties are obliged to submit allegation and evidence.
3. Y. Taniguchi and A. Fukunaga, *Commentary on Civil Procedure XI* (1995), at 169.

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him/her first, the other litigant cross-examines next, and then the judge examines the case if necessary (Article 294 of the Code of Civil Procedure before its reform in 1996, Current Article 202 of the Code of Civil Procedure, hereinafter abbreviated as ‘CCP’).

### 2.1.2 *The Role of Judges and Litigants in Japanese Civil Procedure*

In Japanese civil procedure, the division of roles of a judge and litigants is generally clarified as follows: the judge plays a central role in conducting procedures and directing oral arguments, and litigants play critical roles in asserting facts and producing evidence. It is the judge who decides the dates of oral hearings, examination of witnesses, and rendition of judgment (Article 93 of CCP). The judge also decides whether evidence should be examined (Article 181 of CCP). The judgement should not be based on facts that litigants do not assert or evidence that they do not submit in court (*Verhandlungsmaxime* in Germany).

Regardless of such a division of roles, the Code of Civil Procedure also promotes cooperation between judges and litigants in order to realise effective justice. For instance, a judge is allowed to ask litigants to clarify their allegations so as to clarify legal and factual matters if these are unclear to him/her. Furthermore, a judge may ask litigants to submit evidence if they have not (Article 149 of CCP).<sup>4</sup> A judge is also allowed to make some dispositions to clarify legal and factual matters, such as asking litigants to submit documents or examining expert witnesses (Article 151 of CCP). On the other hand, litigants are allowed to object to a judge’s directions or to ask a judge to give some orders or directions (Article 150 of CCP). After the reform of the Code of Civil Procedure in 1996, a judge also may ask for litigants’ opinions regarding their choice of preparatory procedure and order of examination of witnesses or litigants.<sup>5</sup> Thus, judges and litigants are expected to cooperate with each other in conducting procedure and finding facts.

### 2.1.3 *The Role of Attorneys in Civil Procedure*

In Japanese civil procedure, a litigant is not obliged to be represented by an attorney. In other words, all litigants are allowed to submit a suit or be subjected to a

suit without appointing an attorney. Some cases are actually brought before the court without any representation by attorneys. These cases are called *Honmin Suits* in Japanese.

According to the statistics provided by the Supreme Court,<sup>6</sup> 141,006 civil cases were concluded in 2014. Among them, the number of cases where both litigants were represented by attorneys was 60,117; that where only a plaintiff was represented by an attorney was 54,437; and that where only a defendant was represented by an attorney was 5,013. These data show that in almost all cases at district courts, plaintiffs successfully found attorneys to represent them; on the other hand, defendants sometimes have difficulty in finding attorneys or intentionally avoid being represented by attorneys. One of the reasons is presumably that defendants do not necessarily have sufficient time to find adequate lawyers before they respond to the suits.

### 2.1.4 *Number and Average Length of Civil Cases, Number of Lawyers*

According to the statistics provided by the Supreme Court,<sup>7</sup> the number of ordinary civil cases that were concluded in 2014 at the first instance level was 141,006. More than one-third of these cases were concluded in less than 3 months, and more than half of these cases were concluded in 6 months, as is shown in Table 1.

New statistics published by the Supreme Court in 2013<sup>8</sup> show that the total number of cases including normal and personal status litigation filed in the first instance in 2012 was 161,312 and that the average number of months of litigation was 7.8 months in 2014. Compared to 12.9 months in 1989, the average length for litigation in the first instance has gradually decreased since then. It was 7.8 months in 2006 and 6.5 months in 2008 and 2009.

One of the reasons why litigation length reduced is mainly due to the reform of the Code of Civil Procedure in 1996 and successive reforms to promote the rapid resolution of civil cases. Another reason for the unprecedented reduction in litigation especially since 2006 is probably the increase in cases for reimbursement of overpayment against consumer loan companies (*Kabaraikin-Henkan-Seikyu Suits*, hereinafter abbreviated as *Kabaraikin Suits*). Such cases increased because some Supreme Court cases decided that the interest paid by the consumer to a consumer loan company over the interest rate stipulated in the Interest Rate Restriction Act was void.<sup>9</sup> Generally, *Kabaraikin Suits* require less time to decide than ordinary suits because the role of a judge is usually limited to calculating the interest that a plaintiff has overpaid to a defendant.

The number of cases other than *Kabaraikin Suits* that were filed in 2014 was 90,560, and the average number

4. Art. 149, Section 1, of CCP provides that the presiding judge, on the date for oral argument or a date other than that date, in order to clarify the matters related to the suit, may ask questions of a litigant or encourage him/her to show proof with regard to factual or legal matters.

5. Art. 168 of CCP (Commencement of preparatory proceedings), Art. 175 of CCP (Commencement of preparatory proceeding by means of documents), Art. 202 of CCP (Change of an order of examination of witnesses), and Art. 207 of CCP (Change of an order of examination of litigants).

6. <<http://www.courts.go.jp/app/files/toukei/909/007909.pdf>>.

7. <<http://www.courts.go.jp/app/files/toukei/909/007909.pdf>>.

8. Papers on Acceleration of Procedure No. 5. <[http://www.courts.go.jp/about/siryoh/hokoku\\_05/index.html](http://www.courts.go.jp/about/siryoh/hokoku_05/index.html)>, at 18.

9. Case of the Supreme Court on 13 January 2006, 60-1 *Minshu*, at 1 etc.

Table 1 Length of litigation in 2014.

Length (~)	1 month	2 months	3 months	6 months	1 year	2 years	3 years	4 years	5 years	More
Cases	5,887	23,217	21,517	31,332	27,684	23,242	5,818	1,487	537	295

Table 2 Number of cases filed in the first instance.\*

Year	All cases	Kabaraikin Suits	Cases other than Kabaraikin Suits
2003	157,833	43,416	114,417
2004	139,017	39,766	99,251
2005	132,727	42,614	90,113
2006	148,776	60,045	88,731
2007	182,291	93,286	89,005
2008	199,522	112,027	87,495
2009	235,508	144,468	91,040
2010	222,594	130,175	92,419
2011	196,366	106,171	90,195
2012	161,412	68,844	92,468

\* *Id.* at 21.

Table 3 Number of lawyers.\*

Year	1991	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Judges	2,022	2,460	2,535	2,610	2,685	2,760	2,805	2,850	2,850	2,880	2,994
Prosecutors	1,172	1,627	1,548	1,667	1,739	1,779	1,806	1,816	1,839	1,847	1,877
Attorneys	14,080	21,185	22,021	23,119	25,041	26,930	28,789	30,485	32,088	33,624	35,045

\* Hokusyo, below n. 11, at 79.

of months of litigation other than these cases was 8.9 months. However, the average number of months of litigation other than *Kabaraikin Suits* has remained almost the same for over 10 years (Table 2).<sup>10</sup>

According to the lawyer's *White Book* (Bengoshi Hokusyo), published in 2014,<sup>11</sup> the number of judges was 2,994, that of prosecutors was 1,877, and that of attorneys was 35,045 as of 2014. The latest data are available on the website of the Japan Federation of Bar Association (JFBA),<sup>12</sup> according to which the number of lawyers as of October 2015 was 36,373 (Table 3).

## 2.2 Cost of Litigation

### 2.2.1 The Scope of Costs of Litigation

Who bears the cost of civil litigation and how it is calculated are regulated by both the Code of Civil Procedure and the Act on the Costs of Civil Procedure.

According to Article 2 of the Act on the Cost of Civil Procedure (hereinafter, abbreviated as 'ACCP'), the costs of civil procedure that litigants shall pay to the court include court costs and costs for litigants. Court costs include fees for petition,<sup>13</sup> costs for examination of evidence, costs for service of documents, and travel expenses for judges and court clerks to conduct out-of-

10. Papers on Acceleration of Procedure No. 5, above n. 8, at 26.

11. Bengoshi Hokusyo (2014), at 79. Bengoshi Hokusyo (2013) is available online <[http://www.nichibenren.or.jp/library/ja/publication/books/data/2013/whitepaper\\_suii\\_judge\\_prosecutor\\_lawyer.pdf](http://www.nichibenren.or.jp/library/ja/publication/books/data/2013/whitepaper_suii_judge_prosecutor_lawyer.pdf)>.

12. <[http://www.nichibenren.or.jp/jfba\\_info/membership/about.html](http://www.nichibenren.or.jp/jfba_info/membership/about.html)>.

13. These fees are calculated based on the value of subject matter of the suits (Appendix Table 1 of ACCP). For example, if the claim is less than 500,000 yen, the filing fee shall be 5,000 yen. If the claim is 5 million yen, the filing fee is 30,000 yen, and if the claim is 50 million yen, the filing fee is 170,000 yen.

court examination of evidence. Court costs shall be paid directly to the court by the litigants.

Costs for litigants include travel expenses and accommodation fees for litigants, and the expense of preparing and submitting documents, such as written petitions, documentary evidence, etc.

Lawyers' fees are not included in the costs of civil procedure in the meaning of Article 2 of ACCP. Lawyers' fees usually include mobilisation fees, contingency fees, and actual expenses. There used to be stipulations for lawyers' fees regulated by each bar association. However, these were abolished in 2004 to promote free competition among lawyers. Currently, each lawyer and law firm are freely allowed to determine the lawyers' fees; however, in fact, most lawyers and law firms continue to use the same standard as formerly stipulated.

### 2.2.2 *Who Bears the Costs of Litigation*

According to Article 61 of CCP, the defeated litigant shall bear the costs of the civil procedure, that is to say court costs and costs for litigants. On the other hand, lawyers' fees are not included in costs of civil procedures regulated in this article. Therefore, these fees shall generally be borne by the litigants who appointed them. We call this principle the American Rule, because the United States adopts the same rule as ours. There are some exceptions, however. One exception is lawyers' fees that occur from tort suits.<sup>14</sup> Lawyers' fees that occur from breach of obligation shall be in general borne by the litigants who appoint them;<sup>15</sup> however, a recent case at the Supreme Court ruled that lawyers' fees in breach of obligation of securities in labour contracts shall be borne by an employer who loses a case.<sup>16</sup> Another exception is fees that arise from the appointment of an attorney by a court order.<sup>17</sup>

### 2.2.3 *Financial Aid for Litigants*

Financing means are available for litigants who could not otherwise afford litigation. For instance, according to Article 82 of CCP, for a person who lacks the financial resources to pay the expenses necessary for preparing for and conducting a suit or for a person who will suffer substantial detriment to his/her standard of living by paying such expenses, the court, upon petition, may make an order to grant judicial aid, when it cannot be said that such person is unlikely to win the case. If a plaintiff who is granted judicial aid wins a suit, the government that has paid court costs, such as fees for the petition and fees for service of documents, for him/her, collects the fee directly from the defendant.

The JFBA also provided legal aid so that people could enjoy the equal right of access to the court. It provided citizens with assistance from legal experts and with legal aid to cover the costs of litigation. For this purpose, the

JFBA founded the Japan Legal Aid Association in 1952. However, as demand for legal aid has expanded, our legal aid system has been faced with serious fiscal deficits. Therefore, the Civil Legal Aid Law was enacted in 2000. This law provides the legal grounds for legal aid services in civil cases by stipulating the government's responsibility for legal aid. In 2004, the Comprehensive Legal Support Law was enacted to expand public access to legal services. Under this law, the Japan Legal Support Center was established in 2006, to which the JFBA entrusted the services of legal aid that were previously performed by the Japan Legal Aid Association in 2007.<sup>18</sup> The Japan Legal Support Center has continued to expand legal service for the public. According to statistics published by the Japan Legal Aid Association,<sup>19</sup> the number of cases to which this association decided to grant legal aid for lawyers' fees was 101,123 in 2009, although it was only 68,910 in 2007.

On the contrary, insurance for lawyers' fees is not popular in Japan. However, some insurance companies have been providing car insurance or fire insurance that covers lawyers' fees. In addition, one insurance company has recently started to provide single insurance for lawyers' fees.<sup>20</sup>

## 2.3 *Goals of the Civil Justice System*

Various views have been expressed regarding goals of the civil justice system. There used to be a conflict as to the purpose of civil procedure. According to the commonly accepted theory, the goal of civil procedure is to resolve legal conflicts among citizens.<sup>21</sup> However, although some scholars insist that the purpose of civil justice should be first and foremost to protect the substantive rights of litigants,<sup>22</sup> some insist that more importance should be placed on due process,<sup>23</sup> and others insist that all of them should be the goals of civil procedure.<sup>24</sup>

The legislator of the Code of Civil Procedure did not clearly make mention of its goal. In addition, some scholars or legal practitioners have recently been paying less attention to the purpose of civil justice because they find that its purpose is not necessarily closely related to solving individual problems.<sup>25</sup>

14. Case of the Supreme Court on 27 February 1969, 23-2 *Minshu*, at 441.  
 15. Case of the Supreme Court on 11 October 1973, 723 *Hanrei Jiho*, at 44.  
 16. Case of the Supreme Court on 24 February 2012, 2144 *Hanrei Jiho*, at 89.  
 17. Art. 2, Section 10, of ACCP.

18. <<http://www.houterasu.or.jp/en/>>.

19. <<http://www.houterasu.or.jp/cont/100180149.pdf>>.

20. Mikata Insurance Co. started service of insurance of lawyers' fees in January 2015.

21. H. Kaneko, *New Structure of Civil Procedure* (1965), at 25; A. Mikazuki, *Civil Procedure* (1959), at 6; M. Ito, *Civil Procedure* (2014), at 19.

22. M. Takeshita, 'The Goal of Civil Procedure and Role of Civil Justice', 40 *Journal of Civil Procedure*, at 1 (1994); K. Yamamoto, *The Basic Problems of Civil Procedure* (2002), at 15.

23. H. Inoue, M. Ito and Y. Sagami, *The Future of Civil Procedure* (1984), at 365, 367.

24. K. Shindo, *Civil Procedure* (2011), at 4-10.

25. H. Takahashi, *Key Lecture: Code of Civil Procedure Part I*, 2nd edn. (2013), at 23.



## 3 Available Simplified Procedures in Japan

### 3.1 Types of Simplified Procedures

#### 3.1.1 Four Types of Simplified Procedures

The Code of Civil Procedure provides four types of simplified procedures: (i) ordinary proceeding in summary courts for claims less than 1,400,000 yen (Article 270 to 280 of CCP), (ii) actions on bills and notes and actions on checks (Article 350 to 367 of CCP), (iii) actions on small claims (Article 368 to 381 of CCP), and (iv) payment orders (demand procedure) (Article 382 to 402 of the CCP). Summary courts, not district courts, have jurisdiction over civil actions on small claims, payment orders.

These procedures are optional and not obligatory. If a litigant prefers an ordinary proceeding to simplified proceedings, he/she may freely choose the former, even if a suit is eligible for the latter types. Even if a plaintiff chooses a simplified proceeding, the plaintiff or defendant has a right to transfer the suit to an ordinary proceeding (Article 353, 373, and 395 of CCP).

It is usual that litigants do not have any information as to available simplified proceedings. Therefore, many summary courts have information desks, where court clerks hear from litigants the summary of their disputes and how they would like to resolve them, and explain to them what types of procedures they should choose.<sup>26</sup>

#### 3.1.2 Features of Summary Courts and Their Processes

Before moving on to detailed features of these procedures, features of summary courts and their processes are outlined.

There exist 438 summary courts all over Japan.<sup>27</sup> Summary courts are courts of the first instance for civil cases whose claims are less than 1,400,000 yen and for criminal cases of misdemeanour (Article 33 of the Court Act). Summary courts also have general jurisdiction over civil conciliations in court (Article 3 of Civil Conciliation Act). A party may file a petition for settlement with a summary court before filing a civil suit (Article 275 of CCP). The legislator of the current code of the civil procedure has placed even greater importance on these matters by widening the scope of claims that summary courts may handle<sup>28</sup> so that uncomplicated cases could be resolved easily and quickly and that citizens can have

easy access to summary courts, considering economic indicators.<sup>29</sup>

In summary courts, proceedings simpler than district courts are available. In that sense, summary courts actually work as ‘mini’ district courts that handle smaller cases than district courts do. However, summary courts are differentiated from district courts by offering unique judicial service to citizens.<sup>30</sup> They provide specialised simplified procedures, like actions on small claims and payment orders. Those who would like to file a suit without an attorney in a summary court may use fixed forms of complaint. Non-lawyers are expected to take part in procedures in summary courts. For instance, those who have engaged in judicial affairs for many years, or who possess knowledge or experience suitable for acting as judge in a summary court, may be appointed as judges of summary courts, even if they do not have any previous experiences of working as a lawyer, such as being an attorney, a prosecutor, or a judge (Article 45 of the Court Act). The court may allow judicial commissioners (*Shihoiin*) appointed from among citizens to assist arrangement of settlements, to attend the trial to hear their opinions (Article 270 of CCP). Lawyers other than attorneys at law, such as patent attorney, *Shihoshoshi* lawyers (judicial scriveners)<sup>31</sup> may, upon approval by the court, represent litigants (Article 54, Section 2, of CCP).

In short, summary courts are characterised as courts close, friendly, and easily accessible to citizens.<sup>32</sup>

### 3.2 Features of Simplified Procedures

#### 3.2.1 Ordinary Proceedings in Summary Courts

Civil claims of less than 1,400,000 yen are handled in summary courts (Article 33 of the Court Act). However, the summary court may transfer a case that is subject to its jurisdiction to a district court if suitable (Article 18 of CCP). An action may be filed orally (Article 270 of CCP).<sup>33</sup> In filing an action, it shall be sufficient to clarify the points of the dispute, in lieu of a statement of claim (Article 272 of CCP).<sup>34</sup>

Oral argument is not required to be prepared by means of a document (Article 276 of CCP).<sup>35</sup> The court, when it finds it appropriate, may allow the submission of a document in lieu of examining a witness or a party him/herself or having an expert witness state his/her opinions (Article 28 of CCP). When stating facts and reasons in a judgement document, it is sufficient to indicate the

26. Y. Oda, 'The Information Desk of Actions on Small Claims', in Osaka District Court (ed.), *Reports of Practical Research on Actions on Small Claims* (2006), at 49; K. Yokota, 'The Information Desks in Summary Courts and Those of Other Institutions of ADRs', in K. Okahisa et al. (eds.), *Civil Procedures in Summary Courts; Series on New Judicial Practices No. 26* (2005) 2, at 26.

27. District courts are the first instances of civil cases whose claims are not less than 1,400,000 yen (Art. 24 of the Court Act). They have jurisdiction over appeals cases against civil judgements and orders rendered by summary courts. There are 50 district courts and their 203 branches in Japan.

28. Before the reform of the Court Act in 2004, summary courts could handle civil cases whose value of subject matter of action was less than 900,000 yen.

29. Recommendations of the Justice System Reform Council. <<http://japan.kantei.go.jp/judiciary/2001/0612report.html>>.

30. K. Yamamoto, 'Summary Courts', in M. Ichikawa, T. Sakamaki & K. Yamamoto, *Introduction to Japanese Judicial System*, 6th edn. (2013) 5-2, at 92.

31. Art. 2, Section 6, of the act of judicial scrivener.

32. K. Yokota, 'The Present Situations and Problems on Small Claims', 1317 *Jurist*, at 131 (2006).

33. In district courts, an action shall be filed by submitting a written complaint to the court (Article 133, Section 1, of CCP).

34. In district courts, a complaint shall state the object and statement of the claim (Article 133, Section 1(ii), of CCP).

35. In district courts, oral argument shall be prepared by means of a document (Article 161, Section 1, of CCP).

gist of the object and statement of claim, the existence or non-existence of a statement, and the gist of a defence that is the reason for rejecting the claim (Article 280 of CCP).<sup>36</sup>

### 3.2.2 *Actions on Bills, Notes, and Checks*

Action on bills, notes, and checks is available for a claim for payment of money for a bill or note and a claim for damages at the statutory interest rate that is incidental thereto. As rights on bills and notes are expected to be realised quickly, the legislature of the Code of Civil Procedure has provided simplified procedures for claims on bills and notes.

In this action, for instance, only a claim for payment of money is allowed; affirmation of a claim only is not allowed (Article 350 of CCP). A counterclaim is prohibited (Article 351 of CCP). The examination of evidence is limited to documentary evidence (Article 352-1 of CCP). An appeal against a final judgement is prohibited (Article 356 of CCP); instead, an objection to the court that renders the judgement is allowed (Article 357 of CCP). When a lawful objection is made, the case is put on retrial in an ordinary proceeding. In addition, a plaintiff may request that actions be transferred to an ordinary proceeding without the consent of the defendant (Article 353 of CCP). Needless to say, an appeal against a judgement rendered in an ordinary proceeding is allowed.

### 3.2.3 *Actions on Small Claims*

If the value of the subject matter of the action does not exceed 600,000 yen, trial and judicial decisions may be sought by way of an action on small claims in a summary court. This type of action was introduced in the Code of Civil Procedure in 1996 to ensure easily that the procedure was accessible and understandable for the public.<sup>37</sup> Although the value of the subject matter of such action was originally 300,000 yen and below, it was expanded to 600,000 yen and below in 2004. Such actions may not be filed with the same summary court more than ten times (Article 368 of CCP, Article 223 of Rules of the Civil Procedure, hereinafter abbreviated as 'RCP'), so that as many people as possible have access to this type of action. A counterclaim is also prohibited in this action (Article 369 of CCP). A trial shall be completed on the first date for oral argument, unless some special circumstances exist (Article 370 of CCP). The examination of evidence is limited to evidence that can be examined immediately, that is litigants or witnesses who are present at the oral argument, and documents that litigants have with them (Article 371 of CCP). A defendant is allowed to request the actions be transferred to an ordinary proceeding in a summary court (Article 373 of CCP). The court shall render a judgement immediately after the conclusion of the oral argument.

A judgement may not be rendered based on the original of the judgement document (Article 374 of CCP). The judgement could be more flexible than an ordinary judgement. For instance, the court, considering the defendant's financial resources and other circumstances, may authorise instalment payments or grant a grace period for a defendant in a judgement (Article 375 of CCP).

A judgement may be executed through proceedings simpler than an ordinary judgement, as far as it is on a monetary claim. A court clerk of the summary court that rendered that judgement carries out its execution (Article 167-2 of the Civil Execution Act).

### 3.2.4 *Payment Orders*

With regard to a claim for the payment of a certain amount of money or any other alternatives or securities, a court clerk, not a judge,<sup>38</sup> upon the petition of a creditor, may issue a payment order (Article 382 of CCP). If the debtor does not make an objection to a demand within 2 weeks from the day on which he/she has been served a demand for payment, a court clerk, upon the petition of a creditor, shall declare provisional execution (Article 391 of CCP). If the debtor makes a lawful objection, that suit is transferred to an ordinary proceeding in front of a district court or a summary court that has jurisdiction over the case (Article 395 of CCP). A petition for a demand for payment may also be filed, by means of an electronic data processing system (Article 397 of CCP).

## 3.3 **Contribution of Effective Relief by These Simplified Procedures**

These simplified procedures have also contributed to acceleration of the procedure, thanks to the limitation of evidence, prohibition of appeal and counterclaim, and limitation of trial. Practitioners have also been struggling for rapid resolution of conflicts. In Tokyo summary courts, for instance, cases where both parties are ordinary citizens and not enterprises, if filed in ordinary proceedings, are concluded within three dates of trials.<sup>39</sup> As a result, as is shown in Table 4, almost all cases filed in summary courts as ordinary proceedings are concluded in less than 6 months. This means that the average length of litigation is much shorter in summary courts than in district courts as is shown in Table 1. Therefore, litigants who prefer a quick resolution of civil conflicts may choose these procedures, and those who prefer prudent procedures may go to ordinary proceedings.

Moreover, these procedures succeeded in assignment of roles by allocating difficult cases to district courts and simple cases to summary courts and court clerks there. Some of these procedures have also successfully eased the burden on judges because court clerks act as a sub-

36. In district courts, a judgement document shall state facts and reasons. The statement of facts shall clarify the claim and indicate allegations necessary to show justification of the judgement (Article 253 of CCP).

37. The Ministry of Justice, *Q and A; the New Code Civil Procedure* (1996), at 386-9.

38. Before the reform of the Code of Civil Procedure in 1996, a judge had the power to issue a payment order.

39. M. Ishizaki, 'The Problems of Litigations among Citizens', in Okahisa et al., above n. 26, 7, at 97.

Table 4 Length of litigation of ordinary proceedings in summary courts.\*

Length (~)	1 month	2 months	3 months	6 months	1 year	2 years	3 years	4 years	5 years	More
Cases	33,236	127,335	82,496	60,070	15,372	1,908	128	20	2	41

\* <[www.courts.go.jp/app/files/toukei/900/007900.pdf](http://www.courts.go.jp/app/files/toukei/900/007900.pdf)>. The data on the lengths of litigation of small claims and payment orders are not available on the website of the Supreme Court.

stitute for them. For instance, payment orders are issued by court clerks in lieu of judges. Court clerks play much more important roles in the simplified proceedings. In an action on a small claim, a court clerk shall explain to the litigant the process of trial and judgement in writing (Article 222 of RCP).<sup>40</sup> In practice, a court clerk explains to the party whether his/her choice of procedure is appropriate, how to fill in the form of the complaint, and what kind of evidence he or she should produce.<sup>41</sup> In actions on small claims in Tokyo summary courts, *Shihoiin* usually take part in the proceedings to help judges.<sup>42</sup>

Considering the fact that the number of cases in both district and summary courts has been decreasing recently, we no longer have to widen the jurisdiction of summary courts or widen the authorities of court clerks for the purpose of easing the burden on judges of district courts or summary courts.

These procedures have also contributed to the promotion of access to justice for the public, especially for those who would like to file a suit without any representative. For instance, among 9,227 cases filed as actions on small claims in 2014, 8,129 cases were *Honmin Suits*.<sup>43</sup> Fixed forms of complaints and detailed explanation of proceedings by court clerks make access to court by litigants without any representatives easier. In practice, oral argument and examination of parties are not strictly separated, considering the fact that litigants without any representative do not easily understand the difference between oral argument and examination of evidence.<sup>44</sup>

On the next page is a table that shows the number of actions filed as actions on small claims (Table 5).<sup>45</sup> The number of actions on small claims has been decreasing; however, this does not mean that they have a minor function in effective judicial relief. Rather, it could be said that their decrease is partly caused by drastic decrease in the number of *Kabaraikin Suits*. Or it is possible to guess that other types of alternative dispute resolutions (ADRs) have worked instead of these proce-

dures. For instance, a claim on a labour contract used to be one of the common claims filed as an action on a small claim; however, since an act on adjudication of labour conflicts was enforced in 2006, according to which proceedings shall be held in court and concluded within three dates,<sup>46</sup> a number of claims on labour contracts came to be filed for adjudication. This means that many labour conflicts are currently resolved through adjudication, rather than actions on small claims.<sup>47</sup> Though it would be premature to say that other types of ADRs, especially conciliation in the pYokota, above n. 34, at 136; Shimoda, above n. 54, atrivate sector, work so well as to supersede the current simplified proceedings, promoting ADRs could also be a way to realise effective justice in the future.

## 4 The 'Age of Austerity' and Relief in Small and Simple Matters

### 4.1 Austerity in Japan and the Judicial System

As in other countries, austerity is a critical issue in Japan; it has affected the funding of our judicial system. When we look at the statistics published by the Supreme Court,<sup>48</sup> the budget for the judicial system in Fiscal 2006 was 333,106 million yen; however, it was reduced to 320,122 million yen in 2011. The budget in 2014 dropped to about 311,100 million yen.<sup>49</sup>

However, austerity itself does not seem to affect the behaviour of litigants in Japan. Although it is possible to say that the increase in the number of *Honmin Suits*, as shown before, was caused by the financial crisis, this increase is presumably not mainly due to the austerity, considering the fact that the number of cases in which legal aid is granted has been increasing. Rather, other factors seem to have caused the increase. For instance, people can currently gain information regarding civil litigation more easily than ever before through books, the Internet, instructions by judges and clerks etc. At the same time, in an era of financial crisis, we cannot expect any drastic expansion of legal aid. Therefore, those who

40. According to this article, a judge shall also explain to them the general principle of this action.

41. T. Yamashita, 'The Role of Court Clerks in Actions on Small Claims', in Osaka District Court, above n. 26, at 40.

42. Yokota, above n. 32, at 134. In 2014, among 9,227 cases that were concluded in summary courts all over Japan, *Shihoiins* were appointed in 4,423 cases. <<http://www.courts.go.jp/app/files/toukei/900/007900.pdf>>.

43. <<http://www.courts.go.jp/app/files/toukei/900/007900.pdf>>.

44. Ishizaki, above n. 39, at 105; Y. Gyoda, 'The Significance of Actions on Small Claims and Their Procedures', in Koji Shindo (ed.), *Courses on Practice of Civil Procedure XI* (2013) 1-11, at 289.

45. <<http://www.courts.go.jp/app/files/toukei/890/007890.pdf>>.

46. Article 93 of Act on adjudication on labour conflicts.

47. T. Ueda, 'The Current Situation and Problems of Actions on Small Claims', 87-8 *Hosojihō*, at 44 (2015).

48. <<http://www.courts.go.jp/english/publications/budgets/index.html>>.

49. <[http://www.courts.go.jp/about/yosan\\_kessan/yosan/index.html](http://www.courts.go.jp/about/yosan_kessan/yosan/index.html)>.

Table 5 Number of cases of actions on small claims compared to ordinary proceedings in district courts and summary courts.

	Ordinary Proceedings in District Courts	Ordinary Proceedings in Summary Courts	Actions on Small Claims
2005	132,643	355,386	23,584
2006	148,767	398,261	22,679
2007	182,290	475,624	22,122
2008	199,522	551,875	20,782
2009	235,508	658,227	21,233
2010	222,594	585,594	19,133
2011	196,536	522,639	17,841
2012	161,313	403,309	15,897
2013	147,390	333,746	13,240
2014	142,487	319,070	12,109

cannot afford legal representation may prefer simple proceedings to ordinary complex proceedings. There have not been any reforms regarding the simplified procedures manifestly aiming to reduce governmental expenses, either. However, the government has not undeniably succeeded in increasing the number of judges due to budget constraint, regardless of the increase in the number and complexity of filed cases. Some previous reforms that widened the scope of cases that summary courts may handle and the authority of court clerks, in fact, met the practical need to reduce the judicial burden.

#### 4.2 Support to the Current Procedural Scheme for Small and Simple Matters

Regarding whether the current procedural scheme for small and simple matters has strong support from the public, no official data is currently available. However, some judges say that actions on small claims enjoy a good reputation among their users.<sup>50</sup>

Some concerns have been expressed that the burden of summary courts could increase especially since the law was reformed to widen the scope of cases that summary courts may handle as ordinary proceedings and actions on small claims, however.<sup>51</sup> Many cases are filed as actions on small claims, just because the value of the claims does not exceed 600,000 yen, although the cases are so complex that prudent proceedings, such as examination of witnesses and more than two dates of trials, are required to resolve them. Or some litigants make use of

actions on small claims unjustifiably by splitting a claim into smaller claims so that each claim is suitable for an action on a small claim.<sup>52</sup> In these cases, a defendant may request that the action be transferred to an ordinary proceeding in a summary court (Article 373 of CCP); yet, more often than not, he or she does not.<sup>53</sup>

A possible solution to this problem is to make the best use of transfer of complex cases to district courts (Article 18 of CCP). Another solution is to teach litigants to choose appropriate proceedings at the first stage of litigation. The information desks in summary courts are expected to play a critical role in helping litigants make an appropriate choice of procedure.<sup>54</sup> In addition, other institutions of ADRs, such as the National Consumer Affairs Center of Japan,<sup>55</sup> JFBA, and the Japan Legal Support Center, are also expected to work cooperatively with summary courts to inform citizens of simplified proceedings.<sup>56</sup>

## 5 Conclusion

In this article, I outlined our efforts to promote public access to civil justice. We have increased the number of lawyers, expanded legal aid, and provided a couple of simple procedures in summary courts. As most actions on small claims, one of the simplified procedures in summary courts, are *Honmin Suits*, suits filed without any representation by attorneys, the introduction of this type of action seems to have successfully widened public access to civil justice. Simplified procedures have also

50. K. Tatewaki, 'Problems of Actions on Small Claims', in Okahisa et al., above n. 26, 8, at 109; The Legal Training and Research Institute of Japan, 'Research on Trials of Actions on Small Claims', 54-1 *The Report of Judicial Research*, at 4-5 (2001).

51. Tatewaki, above n. 50, at 124; Yokota, above n. 32, at 136; H. Nakajima and Y. Okada, *The Practice of Actions on Small Claims* (2008), at 92; F. Shimoda, 'The Practice of Actions on Small Claims and Litigations among Citizens in Tokyo Summary Court', 53 *Journal of Civil Procedure*, at 76 (2007).

52. Yokota, above n. 32, at 136.

53. Nakajima and Okada, above n. 51, at 101.

54. Yokota, above n. 32, at 136; Shimoda, above n. 51, at 76-7.

55. <[http://www.kokusen.go.jp/ncac\\_index\\_e.html](http://www.kokusen.go.jp/ncac_index_e.html)>.

56. Yokota, above n. 26 at 18; The Legal Training and Research Institute of Japan, above n. 50 at 168; Nakajima and Okada, above n. 51, at 93, 110.



contributed to effective justice in accelerating proceedings and reducing the burden on judges of district courts and summary courts.

Japan has faced austerity, and austerity seems to affect neither the behaviour of litigants nor that of lawmakers. However, as expansion of legal aid and increase in the number of judges would be difficult because of budget constraint, the simplified proceedings will continuously play an important role in realising easy access to civil justice for the public and reducing the judicial burden, along with ADRs.