

May 4, 2007

## **Legal Aid in Japan: Recent Reform and Emerging Themes**

**Tomoki Ikenaga (attorney at law, staff of Japan Legal Support Center  
Headquarters office)**

**\* e-mail tomoki.ikenaga@nifty.com**

### 1. National Situation

#### (1) number of people

- Population in Japan is 127,767,994 in 2005 and about 10% is in Tokyo.
- The number of attorney is 22,509 in 2005 (10,699 of 22,509 is in Tokyo), which is expected to double to about 50,000 by 2018. (for detail see section 2)
- The number of judge is 3,266 in 2005.
- The number of prosecutor is 2,447 in 2005.

#### (2) number of court cases

The number of case handled by first instance court in 2004 is as follows.

- Civil Case (including administrative case): 1,229,558 \*gradually increasing year by year
- Family Case: 699,553 \*gradually increasing year by year
- Criminal Case: 113,453 \*relatively stabled every year compared with civil and family cases but might be possible to increase in the future.

#### (3) number of recipient of main legal aid

○civil legal aid services in the form of legal representation (in principle reimbursement of the assisted legal costs is required, or grace or exemption from reimbursement to be granted in certain situation. for detail see section 8(3))

30,918 cases in 2001

37,690 cases in 2002

42,997 cases in 2003

51,463 cases in 2004

59,957 cases in 2005

\* feature: Divorce cases and personal bankruptcy cases are increasing.

\* gender: Percentage of female who received civil legal aid is about 60%. (40% about male)

\* age: Over the 60 years old have the highest percentage in male recipient.

Around 30 years old have the highest percentage in female recipient.

\* income: About 30 % of recipients have no income. About 40 % of recipient are under 100,000 yen per month(equivalent to EURO 625 \* 1 EURO=160 yen(2007, April)

About 20 % of recipient is getting some social benefit.

o legal consultation service(targeting those whose financial status falls below the criteria, free of charge)

88,513 consultations in 2005

\*Breakdown: personal bankruptcy 55%, family problem 22%, money problem except personal bankruptcy 14%, real estate 5%, employment 2% etc.

o criminal legal aid services for defendents(usually automatically appointed by court when defendent's financial status falls below the criteria and many of defendends are exempt from reimbursement of the assisted legal costs after trial due to the poverty.)

72,692 cases in 2003

73,933 cases in 2004

72,822 cases in 2005

o criminal legal aid services for suspects during the pre-indictment investigation(It had been served by volunteer attorney at the expense of JFBA since 1992 and many of suspects were exempt from reimbursement of the assisted legal costs due to the poverty. In 2006 suspects charged with certain felony cases came to have a right to be represented by attorney at the government's expense under the comprehensive legal support law enacted in 2004. \*see section 3)

6,174 cases in 2001

6,370 cases in 2002

6,711 cases in 2003

7,043 cases in 2004

8,480 cases in 2005

(expected to about 100,000 cases in 2009 \* see section 3)

o legal aid services for juvenile criminal cases(usually reimbursement of the assisted legal costs is not required due to the poverty)

2,429 cases in 2001

2,695 cases in 2002

2,929 cases in 2003

2,970 cases in 2004

3,593 cases in 2005

○some of other legal aid services

legal aid for crime victims: 96 cases in 2004, 115 cases in 2005

legal aid for refugees: 36 cases in 2004, 27 cases in 2005

## 2. Recent Judicial Reform in Japan

(see the English website of JFBA

[http://www.nichibenren.or.jp/en/about/judicial\\_system.html](http://www.nichibenren.or.jp/en/about/judicial_system.html))

For over the past several years, the Japanese judicial system has been in the midst of major reforms.

In 1999, the government established a Justice System Reform Council to study basic policies and programs to achieve a judicial system that is more accessible to the general public, encourage greater participation of the general public in the judicial system and improve the skills and abilities of the legal profession. Since its inception, it had met 63 times and in 2001 issued an opinion paper calling for fundamental reforms.

These reforms represent the transition from "small-scale justice" to "large-scale justice." They seek to extend the rule of law to all facets of society and, within the context of deregulation, to orient Japan away from "prior regulation" to "after-the-fact relief," as well as expanding the number of people involved in the judiciary as it takes on a greater role as the institution for providing "after-the-fact relief."

The recommendations in the Council's opinion paper, together with subsequent discussions in the Office for Promotion of Justice System Reform resulted in the passage of 24 laws related to justice system reform by the end of 2004.

One specific issue for judicial reform is achieving a substantial increase in the number of people involved in the legal profession. In 2005, Japan had approximately 25,000 legal professionals, which is expected to double to 50,000 by 2018. This represents a significant acceleration; in the past it has taken approximately 33 years for the number of legal professionals to double.

In 2004, Japan opened its first graduate-level law schools to provide training for these new lawyers. Since 2004, legal training and education at law schools has been implemented. This reform aims to shift the focus of legal training from section through the single event of the bar examination to training through the broader process of professional legal education at law schools.

To provide for greater public involvement, the "SAIBAN-IN(lay judge)" system will begin in 2009 and will allow ordinary citizens to participate in certain serious criminal trials alongside professional judges.

\* about "SAIBAN-IN(lay judge)"

Six lay judges will be chosen to serve alongside three professional judges in examining cases involving certain serious crimes. Lay judges will be involved in criminal proceedings, determine facts and decide sentences with an authority basically equivalent to that of professional judges.

The system is similar to a jury system in that lay judges are chosen at random from voter lists and assigned to serve on specific cases. It also resembles a lay judge (Schöffe or échevin) system in that citizens participate in trials alongside professional judges.

In the fall of 2006, government-funded legal aid organization "Japan Legal Support Center" started to operate. The Center is organized as a "quasi-independent administrative institution, " and opened offices in each of the areas where the district courts are located throughout Japan, as well as in areas suffering from a shortage of attorneys. (for details see section 3 and 6) It provides an access point for the resolution of legal issues and legal services on both the civil and criminal sides.

Many other reforms are also moving ahead. These reforms include: various systemic reforms regarding the criminal justice system such as provision of court-appointed attorneys to suspects; reforms of the administrative litigation system such as expansion of the range of parties qualified to file suits; reforms of the intellectual property system such as establishment of the Intellectual Property High Court; reforms of the system concerning judges such as appointment and evaluation of judges; establishment of a system where judges and prosecutors experience other professions; liberalization of profit-earning activities of attorneys; deregulation of legal fees; improvement of the disciplinary system; and establishment of the labor adjudication system.

### 3. History of the Legal Aid in Japan

1946 New Constitutional Law was enforced. Indigent defendants have a right to be represented by a court-appointed lawyer at the government's expense under the new constitution, but suspects don't.

1952 The Japan Legal Aid Association(JLAA, private sector sponsored mainly by Japan Federation of Bar Associations) is established.

1958 A subsidy from the Ministry of Justice for civil legal aid is delivered to JLAA.

1992 Japan Federation of Bar Associations(JFBA) started to offer aid in defense of suspects in criminal cases through JLAA at JFBA's expense.

1999 The statement is released by the Chairman of the Judicial Reform Council, demanding improvements in the legal aid system.

2000 The Civil Legal Aid Law is enacted and becomes effective. (Criminal legal aid was not enacted. Instead JFBA continued to offer aid in defense of suspects in criminal cases at JFBA's expense.)

2000 The JLAA is designated as the body to conduct the civil legal aid service by the Ministry of Justice

2001 The statement is released by the Justice System Reform Council, including fundamental reform in the legal aid system. This statement is the beginning of the biggest judicial reform after World War II.(for details see section 2)

2004 The Comprehensive Legal Support Law was enacted.  
(translation of Comprehensive Legal Support Law  
<http://www.jlaa.or.jp/english/comprehensive/comprehensive.pdf> )

2006 Japan Legal Support Center was established under the Comprehensive Legal Support Law, which enables suspects charged with certain felony cases to have a right to be represented by a lawyer at the government's expense(about 7,000 cases a year).

The Center also established staff attorney system to handle increased suspects case and other civil cases etc. But the number of current staff attorney is only 24.(see section 8(4))

2007 JLAA disperse and transform into Japan Legal Support Center.

2009 Suspects charged with certain misdemeanour cases also have a right to be represented by a lawyer at the government's expense(about 100,000 cases a year).

SAIBAN-IN starts(about 3,500 cases a year).

At least 300 staff attorneys will be required to handle increased suspects case and SAIBAN-IN cases, civil legal aid cases etc.

4. Before the establishment of Japan Legal Support Center

–the era of JLAA(private sector sponsored mainly by JFBA)

Japan Federation of Bar Associations(JFBA) has long overseen the legal aid system in Japan since 1952 when it founded the Japan Legal Aid Association(JLAA). However, as demand for aid has expanded, the Japanese legal aid system has been subject to serious and chronic fiscal deficits and has been slow to develop in comparison with legal aid systems in other countries.

The Civil Legal Aid Law was enacted and took effect in 2000 to remedy this situation by providing legal grounds for legal aid services in civil cases.

\*Summary of the Civil Legal Aid Law

<http://www.jlaa.or.jp/english/civil/index.html>

While criminal cases are still not covered, the law does institutionalize and stipulate government responsibility for legal aid and provide for government funding, both improvements long requested by the JFBA and practicing attorneys. Under the law, the clients can apply for legal aid at the offices of the lawyers who are enrolled in advance. If the applications meet the requirements, they are entitled to benefit from free legal consultations. It is thus referred to as a "system of consultations by enrolled attorneys." Previously, legal aid had generally been limited to the services of attorneys representing clients, but the new system expanded provision of the services to assistance for the preparation of legal documents to be submitted to the courts to offer loans for attorneys' fees and legal costs.

In addition to legal aid for civil cases, the Japan Legal Aid Association also provides free legal consultations, aid for the defense of criminal suspects, aid for attendance in juvenile criminal cases, aid for refugee cases, aid even for actions taken by lawyers against organized crimes in civil disputes and claims for the discharge and favorable treatment of the mentally incapacitated etc. at the request and expense of JFBA and/or another organization.

## 5. Establishment of the Japan Legal Support Center –first comprehensive legal aid system in Japan

The Comprehensive Legal Support Law was enacted in 2004 as one of the key components in judicial reform with the aim of expanding access to the legal services for the public, which enabled the establishment of the Japan Legal Support Center in 2006. In this sense, the passage of the Civil Legal Aid Law was not so much a fundamental reform of the legal aid system but the starting point for real judicial reform.

\*translation of Comprehensive Legal Support Law

<http://www.jlaa.or.jp/english/comprehensive/comprehensive.pdf>

The Comprehensive Legal Support Law was promulgated in 2004. This Law articulates the basic principle of "realizing a society where the information and services required for the resolution of legal disputes can be accessed throughout the country." The Japan Legal Support Center was established in 2006 as a quasi-independent administrative institution based on this law. The center opened offices in all areas where the district courts are located across the country as well as in areas suffering from shortage of attorneys, and it provides a wide range of legal services to the citizens.

## 6. Outline of Japan Legal Support Center

### (1) Establishment

2006, April 10

### (2) Office

#### ○Headquarters office(1)

Address:

Japan Legal Support Center

Ichigaya Building 6F, 4-2-6 Kudankita, Chiyoda-ku, Tokyo 102-0073, JAPAN

#### ○Regional Office(50)

50 regional office is located in each prefecture under the jurisdiction of district court.

Each office provides free information and liaison services by legal consultant, provides free legal counseling by attorneys who are enrolled in advance, arrange civil legal aid for legal representation and pays for attorney's fees, arrange court-appointed attorneys for defendants and suspects, provides victim support services etc. Civil legal aid and criminal legal aid for defendants and suspects are offered mainly by judicare who are enrolled in advance.

Some of the regional offices where the number of judicare is not enough have a few full-time staff attorneys. The main role of staff attorney is to represent both civil legal aid clients and criminal defendants and suspects.

#### ○Branch Office(16)

Some of the regional offices which cover large area or population have branch office and provide same service as regional office.

#### ○Municipal Office(10)

Municipal Office is located in rural area including two small islands where attorneys are none or very few.

Full-time staff attorney is working in each municipal office.(see section 7(3))

(3) Office Staff

office staff (400)

(4) Staff Attorney

full-time staff attorney(24), which is expected to (300) by 2009

They have a legal office in all the municipal offices and in some of the regional offices and branch offices.

(5) Budget

about 20,000,000,000 yen (equivalent to EURO 125,000,000) \* 1 EURO=160 yen(2007, April)

7. Main activities of Japan Legal Support Center

(see the English website of JFBA

[http://www.nichibenren.or.jp/en/about/legal\\_aid\\_and\\_jlsc.html](http://www.nichibenren.or.jp/en/about/legal_aid_and_jlsc.html))

(1) Information and Liaison Services

The center has 50 regional offices and 16 branch offices to provide free information and liaison services by legal consultant.

In addition, the center has one centralized main information office in Tokyo which has skilled telephone operators to provide free information to people in trouble over both the telephone and the Internet. For example, it maintains a database of contact information for bar associations, judicial scrivener associations, local government agencies and other institutions providing consultations around the country, and refers users to the one most suited to their situation or transmit users to the most appropriate regional or branch office. A Telephone call to the centralized main information office in Tokyo from landlines cost only 8.5 yen nationwide for three minutes. There are about 700 or 800 telephone calls to this main office from the whole country everyday.

(2) Civil Legal Aid Services

The Japan Legal Support Center now provides the civil legal aid services that were formerly provided by the Japan Legal Aid Association and provides free legal consultations and loans for attorney fees, etc. for people who require the assistance of legal experts but for economic reasons are unable to pay for attorney and court costs.

(3) Services for Communities with Shortages of Attorneys

In communities like rural area where shortages of attorneys make it difficult for sufficient legal services to be provided, the JFBA has set up so-called "public law



offices" to which it dispatches attorneys since 2000. The Japan Legal Support Center works in coordination with local bar associations to establish law offices(municipal office) and assign attorneys to areas suffering from shortages across the country, thus providing them with legal services.

So far the Center has established 10 law offices(municipal office) in rural area.(see section 6(2))

#### (4) Provision of Court-Appointed Attorneys for Defendants and Suspects

Before the Comprehensive Legal Support Law was enacted, Japan doesn't have a court-appointed attorney system to cover suspects. Instead JFBA has offered aid in defense of suspects through JLAA at JFBA's expense.(see section 3)

Under the Comprehensive Legal Service Law and the Japan Legal Support Center, court-appointed attorneys for suspects have been realized, ensuring a consistent public defense system. This system has two stages. First, suspects charged with certain felony case come to have a right to be represented by attorney in 2006(about 7,000 cases). Second, suspects charged with certain misdemeanour case also come to have a right to be represented by attorney in 2009(about 100,000 cases in total).

#### (5) Victim Support Services

The Japan Legal Support Center works in coordination with a number of other support organizations to refer victims to lawyers and consultation services with expertise in victim support.

#### (6) Other Services at the request of private organization etc.

Other than five main original activities mentioned above, the Japan Legal Support Center can accept the legal aid service at the request and expense of another organization like JFBA.

For example, when some private organization is being in charge of some legal aid activities and have a hope to use the facilities and system of the Japan Legal Support Center to expand their activities in whole country, the Japan Legal Support Center can accept the legal aid service at the request and expense of such private organization, which has a possibility to transform into public -funded service in the future.

So far, at the request of JFBA, the Japan Legal Support Center accepted some of legal aid services(services for foreign people, refugee, homeless people, mentally disabled people, children or women suffering from violence or abuse etc.) at the expense of JFBA and will start to provide legal aid services in this October.

#### (7) Conclusion

The Japan Legal Support Center is expected to materialize and embody the guiding principles of judicial reform, "realization of a judicial system based on respect for the individual and the sovereignty of the people, as articulated in the Constitution of Japan."

## 8. Some of the problems of Japan Legal Support Center

### (1) low budget and cost-efficiency

On the one hand, Japan established comprehensive government-funded legal aid organization "Japan Legal Support Center" for the first time in our history.

On the other hand, the budget is about only 20,000,000,000 yen a year (equivalent to EURO 125,000,000). \* 1 EURO=160 yen (2007, April)

This is very low compared with other developed countries though it is expected to grow year by year.

One of the reasons the budget is tight is that Japan Legal Support Center as well as other recent government-funded organizations is under the strong influence of "new public management" to enhance the efficiency of the public sector and the control that government has over it in these long economic recession. The Center has just started its activity and has to expand its activity widely from now, but the method of "new public management" forces the Center to cut the cost or to become cost-effective in cheap meaning as much as possible. These contradictions often disturb creative and strategic legal aid activity.

### (2) relatively strict entitlement to civil legal aid

Japan Legal Support Center stipulates that the applicant's financial status in the judicial procedures in the civil matters should satisfy the case where the aid applicant is too poor to pay for the legal expenses involved in defending their own rights, or where the payment of the legal expenses might incur serious hardship in their daily life.

The Center formulated the screening criteria which cover those applicants in the lowest 20% income bracket. \* For example, the maximum monthly income to get entitlement after tax is 182,000 yen (equivalent to EURO 1138) in single family, 299,000 yen (equivalent to EURO 1869) in family of four.

But we need to set the criteria at a higher level in the future to include broader citizens and overcome poverty or "social exclusion."

### (3) relatively strict reimbursement of the assisted civil legal aid costs

The civil legal aid recipients should repay the assisted legal cost in principle, which the Japan Legal Support Center paid for them, regardless of the results of

litigation.

According to the guidelines, if the aid recipients are on welfare support, or are facing severe financial difficulty in their lives after the settlement of the cases, such recipients may be exempted from the reimbursement. However the actual ratio of exemption from the reimbursement has remained low. \* 75% of reimbursement is achieved on the average.

(4) short of staff attorney

Japan Legal Support Center adopted public-funded staff attorney system for the first time in our legal history. The Center hired 24 staff attorneys in 2006 and they were dispatched to the area where shortages of attorneys make it difficult for sufficient legal services to be provided.

As Japan has long tradition of judicare system which sometimes leads to "resist against central government and protect freedom of citizen," public-funded staff attorneys are likely to be regarded not-independent of the government and not always welcomed by judicare. Some judicare also fear that staff attorneys may deprive future clients of judicare. In addition, we don't have established career as a lawyer like "public interest lawyer" in the United States. So young lawyers in Japan are likely to hesitate to become a staff attorney for fear that they can't establish a good career.

The center's important mission is how the center can combine judicare system and staff attorney system smoothly and organically in the near future, otherwise we will fail to provide a lot of suspects in 2009 as well as defendents in SAIBAN-IN with sufficient criminal legal aid service.(see section 3)

Also we are responsible for creating attractive career for future staff attorneys and young lawyers.

Anyway the Center needs to hire at least 300 staff attorneys by 2009 to handle the situation mentioned above.

(5) insufficient strategy

Japan has just finished to establish the public-funded comprehensive legal aid organization for the first time in our history, but we don't have sufficient creative strategy.

As to strategy, many developed nations currently make much of handling "social exclusion" and they are looking for the way how people can be included in the society in economic, social, political, cultural meaning etc.

Japan Legal Support Center doesn't have firm strategy so far. But we are responsible for building up it with other nations in these global era.

9. Some of English language Websites

Japan Legal Aid Association ([http://www.jlaa.or.jp/index\\_e.html](http://www.jlaa.or.jp/index_e.html))

Comprehensive Legal Support Law enacted in 2004

(<http://www.jlaa.or.jp/english/comprehensive/comprehensive.pdf>)

Summary of the Civil Legal Aid Law enacted in 2000

(<http://www.jlaa.or.jp/english/civil/index.html>)

Japan Federation of Bar Associations(<http://www.nichibenren.or.jp/en/>)

Supreme Court of Japan(<http://www.courts.go.jp/english/>)

The Ministry of Justice(<http://www.moj.go.jp/ENGLISH/index.html>)

\* Unfortunately, English language websites of Japan Legal Support Center is not yet published.