

other hand, the policy also has sacrificed the accommodation that the concerned parties can get a total resolution of their all disputes in single procedure.

From this angle, this law reform may be described as creating a procedural basis where all concerned, such as parties, judges and other court staff, can concentrate their efforts on a comprehensive resolution of the disputes in the Family Court. On the other hand, there are some causes for concern. This reform transfers jurisdiction for an action of personal status while keeping its adversarial structure. So, some authors are concerned that the confusion of the identity of the Family Court may rise from the transfer and, the resolution of the family affair cases in the Family Court may be more difficult as a result of that. Indeed, there is a great distance between the philosophy of the Family Court and that of the procedure of an action of personal status. What changes the transfer will bring in the Family Court is still unknown. From now, the court will be required to make great efforts to establish a new identity for the Family Court as the court treats all cases relating to family affairs.

5. Law of Civil Procedure and Bankruptcy

An Act to Partially Amend the Code of Civil Procedure, etc.

Law No.108, July 16, 2003 (Effective on April 1, 2004).

Background:

The Code of Civil Procedure was revised completely in 1996, and enforced from 1998. “An Act to Partially Amend the Code of Civil Procedure, etc.” was enacted in 2003 and enforced from April 1, 2004. The social situation in which the demand for a more substantial judicial function has been increasing in our complicated and diversified society can be mentioned as a background to this amendment. The amendment was made for the purpose of making civil litigations more substantial and speedier, as part of the Judicial System Reform, which is considered as an important and emergent issue. Especially, on the point of “making civil

litigations speedier”, this amendment was made in conformity with the meaning of “An Act to Make Litigations Speedier” (Law No.107, 2003). (For example, this act has the provision that the first instance should be finished within two years. Art. 2).

Main Provisions:

The main provisions of this amendment can be mentioned as follows; (1) the Planned Trial (*keikaku-shinri*), (2) the Collection of Evidence before Filing the Suit, (3) the Establishment of a Special Committee (*senmon-iin*) System, and (4) the Exclusive Jurisdictions of Patent Cases.

(1) Planned Trial (*keikaku-shinri*)

It is provided that the court and the parties must try to follow the plan in litigation proceedings in order to realize a proper and speedy trial (Art. 147.2). Based on the meaning of this provision, the system of the Planned Trial (*keikaku-shinri*) has been newly introduced (Art. 147.3). When a trial plan is deemed necessary to conduct a proper and speedy trial according to the situation in which a case is complicated and so on, following the result of a conference with the parties, the court provides a plan (Art. 147.3, para. 1). In this plan, the court must provide a period for the arrangement of the points at issue and the evidence, a period for the examination of witnesses and parties, and a planned time for the conclusion of oral arguments and the pronouncement of a judgment (Art. 147.3, para. 2). Moreover, other matters may also be provided (Art. 147.3, para. 3). Furthermore, the presiding judge may hear the opinions of the parties and set the period in which the parties should advance offensive or defensive measures on specific matters (Art. 156.2). When a trial plan has been defined, with regard to offensive or defensive measures advanced by a party after the period, the court may, upon motion or upon its own authority, render a ruling of dismissal (Art. 157.2).

(2) Collection of evidence before filing the suit

First, when the person who is going to file the suit gives the notice which warns of the filing (*yokoku-tuchi*) to the person to be the defendant in writing, the person who gave the notice (*yokoku-tuchisya*) may, for four months only after the notice, inquire in writing to the person who was given the notice about matters which are obviously going to be necessary for the preparation of assertions or proof, before filing the

suit, requesting written responses within an appropriate period to be designated by such person (Art. 132.2). On the other hand, the person to be the defendant may also inquire of the other, when he has responded to the notice in writing with a summary of the answers (Art. 132.2).

Second, after the notice (*yokoku-tsuchi*), with regard to the matters which are obviously going to be evidence necessary for assertions in the case of the filing of the suit and which are deemed to be difficult for the applicant to collect by himself, the court may dispose of the collection of evidence; a request for transmission of documents (Art. 226), the entrustment of investigations (Art. 186), the statement of opinions by experts, and the investigation of the present situation by a marshal (Art. 132.4).

(3) Establishment of a Special Committee System

The court may involve, after hearing the opinions of the parties, by a ruling, a special committee in the proceedings to hear explanations based on special knowledge, when it is deemed to be necessary for the clarification of the relationships involved in the litigation or the smooth advance of the litigation proceedings, in the conference of matters relating to the arrangement of points at issue and evidence or the advance of the litigation proceedings (Art. 92.2).

(4) Exclusive jurisdiction over patent cases

With regard to suits relating to patents, etc., except for the cases over which the summary court has jurisdiction, in the first instance, the Tokyo District Court has exclusive jurisdiction over cases in the eastern part of Japan, and the Osaka District Court has exclusive jurisdiction over cases in the western part of Japan; in the *koso*-appeal instance, Tokyo High Court has exclusive jurisdiction (Art. 6).

With regard to suits relating to designs, etc. as well, Tokyo District Court has competing jurisdictions over cases in the eastern part of Japan and Osaka District Court has competing jurisdictions over cases in the western part of Japan (Art. 6.2).

Editorial Note:

Besides the main provisions in this amendment explained above: the introduction of the ruling replacing compromise in a summary court (Art. 275.2), the raising of the maximum amount of a claim to 600,000 yen in the Action on Small Claims (Art. 368). Including these

points of amendment, it is possible to explain this amendment from the viewpoint of making litigation proceedings speedier and more efficient.

6. Criminal Law and Procedure

Law for the Amendment of a part of the Criminal Law —Offenses Committed Against Japanese Outside the State— Law No.122, July 11, 2003 (Effective on August 7, 2003).

Background:

In recent years, many Japanese are active outside Japan as a consequence of globalization, and they have higher and higher risk to meet with crimes. So, the Amendment aims to protect Japanese in action outside Japan from serious crimes, such as Murder and Robbery.

Until the Amendment 1947, the Japanese Criminal Law has had the provision for the protection of fellow countrypersons being active outside Japan. But it was struck out in consideration of legislation by foreign countries.

This time around, the outline of the Amendment 2003 was inquired from the Council of Legislation by the Ministry of Justice in December, 2002, taking advantage of the TAJIMA case. In this case, a Japanese member of a crew was killed by Filipino fellow members in the high seas off the coast of Taiwan. But the Japanese Bureau of Investigation hesitated to intervene in that case, because the nationality of the ship was Panama. And the Panama Bureau also was negative about interventions, for, in fact, the ship was owned by Japanese. This was because the owner of the ship acquired the nationality of the ship in Panama where tax, employment of foreigner members of crew and so forth were convenient for him. Accordingly, in order to ensure protection of the Japanese outside Japan, an Amendment of the Criminal Law was called for.

The outline was discussed and approved by the Council of Legislation and the Criminal Section established in it. On the basis of the