First Study Commission

Status of the Judiciary and Judicial Administration

Economics, Jurisdiction and Independence

1. “New Public Management” in the Judiciary

1.2.1

There are Ideas of NPM which are or are planned to be applied in several countries in the judiciary. They may infringe on the independence of the judiciary and the judge. Please give a short survey of certain tendencies or features which may derive from NPM in your jurisdiction.

The Japanese government also intends to promote administrative and fiscal reforms using the Ideas of NPM, and is implementing or planning various actions to create a “small and efficient government.”

On the other hand, the Constitution of Japan provides that the whole judicial power is vested in the court. To substantively guarantee the independence of judicial power, matters relating to the management of judicial administration, including personnel affairs and budgets for the court, are left to the independent decision of the court (In terms of budget, the Public Finance Law admits special handling in consideration of independence of judicial power, and court-related expenses are included in the budget independently of expenses for other state organizations.).

Consequently, the above-mentioned actions by the government will not be applied immediately to the court and will thus not infringe the independence of judicial power. However, the same methods as the methods proposed by NPM may be used in independent management of judicial administration from the viewpoint of efficient implementation of budget and provision of better judicial services to the people, because the court is a public organization run with a state budget.

1.2.2.

Please report on the following typical features of NPM.

Are they applied in your judiciary? If yes, in what way are they applied?

Do you think that they infringe on the independence of the judiciary?

・Global budget, devolution of budgets

・financial control,

・internal competition, benchmarking

・best practice

・quantity of outputs

・flexible distribution of workload

・customer orientation

・emphasis on performance, incentives

・Quality control

・others

The typical method of NPM used in the Japanese judiciary is PFI.

In Japan, the PFI Law (Law Relating to Promotion of Realization of Public Facilities by Using Private Funds) was enacted in 1999. The PFI method is also used for construction of court facilities.

2. Costs of the judiciary

2.1

How many professional judges are there in the judiciary of your country? (absolute figure and per 100,000 inhabitants)

There are 3,266 judges (2.56 judges per 100,000 inhabitants).

2.2

How much is the share of the judiciary of the overall annual budget of the state? Indicate the percentage out of the total state budget)?

The budget for the court accounts for about 0.4% of the overall budget of the state (fiscal 2005 budget).

2.3

Is there any fixed percentage in the overall budget of the state?

No, there is not a fixed percentage of budget for the court in the overall budget of the state.

2.4

What is the recent development（1995-2005）of finances allocated to the judiciary? Give a short survey.

The percentage of budget for the court in the overall budget of the state differs in each fiscal year, but it has been hovering around 0.4% over the past decade. In addition, the overall budget for the court was ¥295.05 billion in 1995, but it increased to ¥325.95 billion in 2005.

2.5

Can you report on any cost-cutting measures in the last 10 years（1995-2005）? If yes, give a short description of them (please consider especially changes of court procedures, remedies etc.).

The following are examples of provisions concerning court procedures that were recently revised, which have the effect cutting costs.

・Rationalization of the system to file a Jokoku-appeal with the Supreme Court (1998)

・Granting of the authority to issue a demand for payment to court clerks (1998)

・Expansion of the subject matter jurisdiction of Summary Courts (2003)

2.6

Is there any influence of these cost-cutting measures on judicial independence and jurisdiction? If yes give a short description.

No, there isn’t.

3. Privatisation of the judiciary

3.1

Are the tendencies to shift competences from the state courts to private arbitration, mediation and “private courts” (“rent a judge”)? What are your experiences?

In the Japanese court, civil and domestic mediation systems are available as alternative dispute resolution (ADR) procedures, and these systems have been heavily used. On the other hand, private mediation and arbitration are not necessarily utilized to the full.

The Recommendations of the Judicial System Reform Council (2001) also proposed the reinforcement and vitalization of ADR mechanisms. The government has been promoting strengthening cooperation among related organizations and coordination of common institutional bases, and the ADR Basic Law will be enforced in 2007. This is expected to promote the use of private ADR mechanisms.

4. Diversa

4.1

Is remuneration for judges dependant at all on their performance（quantity or quality of output）?

No. Remuneration (compensation) for judges is not dependant on their performance. According to Article 79(6) and Article 80(2) of the Constitution of Japan, “judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.”

“Adequate compensation” is generally understood as the amount sufficient to guarantee a livelihood suitable for the status and duties of a judge. The specific amount is stipulated in Articles 2 and 15 of the Law on Compensation, etc, of Judges.