

[Article]

Collective Redress System in Japan

Keiji YAGI

I. Introduction

1. Deficiency of Collective Redress

Historically, Japan has had some legal systems for the disposition of collective claims⁽¹⁾. In 1926, the Code of Civil Procedure⁽²⁾ introduced a system that allowed plaintiffs or defendants in litigation with a common interest to appoint one or more of themselves to stand as plaintiffs or defendants on behalf of the group (so-called “Sentei Tojisha” (選定当事者))⁽³⁾. The appointed party system was designed to simplify multi-party litigation by introducing a procedure for selecting representative parties.

This system, however, is not widely used. One reason is that; a party

(1) For details on the content described herein, Kazuhiko YAMAMOTO, *Kai-setsu Shohisya Saiban Tetsuduki Tokurei-hou* [Commentaries on the Act of Special Proceedings for the Collective Redress for Property Damage Incurred by Consumers] (3d ed. 2023), p. 3.

(2) About the Civil Procedure in Japan, *see e.g.* Supreme Court of Japan, *Outline of Civil Procedure in JAPAN*, 2022, p. 4, https://www.courts.go.jp/english/vc-files/courts-en/Material/Outline_of_Civil_Procedure_in_JAPAN_2022.pdf.

(3) Code of Civil Procedure, Art. 30. "Sentei Tojisha (選定当事者)" is said to be modeled after the representative action in the UK.

must become a “party to a litigation” in order to participate in the selection process, and many are reluctant to become a party⁽⁴⁾. On this point, a provision was added during the reform of the civil procedure system in 1996. This provision allows a non-party with a common interest in the litigation to appoint the plaintiff or defendant to represent them as well.

Even after the amendment, this provision had not been utilized in consumer injury cases. This is because it is difficult for consumers, who are dispersed and hard to consolidate. Furthermore, selecting a representative and fully entrusting them with one’s rights—including accepting the consequences of a losing judgment—requires substantial trust between the parties. It is few for such a trust relationship to exist among unrelated consumers, the selected party, and the selector.

Efforts to achieve collective redress through the “Sentei Tojisha (選定当事者)” were largely unsuccessful, leaving the system fraught with issues. Under such circumstances, the introduction of group action by a consumer association brought about an institutional breakthrough⁽⁵⁾.

2. Development of Consumer Collective Redress⁽⁶⁾

(1) Injunction brought by a consumer association

The first group action⁽⁷⁾ recognized in Japan was an injunction brought by a consumer association. This type of action was established under the amended Consumer Contract Act (Act No. 56 of 2006), which was enacted on May 31, 2006, and implemented on June 7, 2007.

(4) Additionally, there are systems such as Joint Litigation. *See* Code of Civil Procedure, Art. 38 etc.

(5) Although there were discussions about introducing class action for collective redress, strong opposition from the business community continued to prevent their implementation. Furthermore, unlike Germany or France, Japan has no tradition of group action.

(6) In terms of “consumer collective redress”, *see e.g.* Dai YOKOMIZO, Consumer Collective Redress and Japanese Conflict of Laws, 61 *JAPANESE Y.B. INT’L L.* p. 189 (2018).

(7) In this paper, the term “group action” corresponds to the French term “action de groupe” and the German term “Verbandsklage”.

This group action may only be initiated by a “qualified consumer organization”. A “qualified consumer organization” is defined as an association certified by the Prime Minister under Art. 13 of the Consumer Contract Act. This certification demonstrates the necessary qualification to exercise the right to demand an injunction in the interest of a large, non-exclusive group of consumers (*see* Art. 2, para. 4, Consumer Contract Act). Consumer organizations that have obtained this qualification are recognized as eligible plaintiffs in injunction litigations under the provisions of the Consumer Contract Act Art. 12, the Act against Unjustifiable Premiums and Misleading Representations Art. 30, para. 1, the Act on Specified Commercial Transactions Art. 58-18 to 58-24, and the Food Labeling Act Art. 11.

(2) Collective redress for property damage

The initiative to extend the group action mechanism to monetary compensation for individuals is implemented by the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers (hereinafter referred to as the “Act on Collective Redress”)⁽⁸⁾. This Act was adopted on December 4, 2013, promulgated on December 11 of the same year, and entered into force on October 1, 2016, after a preparatory period. The Act on Collective Redress is a unique legal procedure, the So-Called “Japanese Class Action”⁽⁹⁾.

The collective redress procedure set out in the Act on Collective Redress is primarily aimed at property damage. Its purpose is to alleviate the difficulties consumers face in obtaining reparations for material dam-

(8) As a work discussing a similar subject to this paper in French, *see* Keiji YAGI, *Action de groupe à la japonaise*, in *Shohisha Funsou Kaiketsu Shudan no Hatten ni Mukete : Jittai Hou Tetsuzuki Hou no Kadai* [Toward the Development of Consumer Dispute Resolution Mechanisms: Challenges of Substantive and Procedural Laws], p. 171 (2024).

(9) Kazuhiko YAMAMOTO, *Special Proceedings for the Collective Redress for Property Damage Incurred by Consumers —About So-Called “Japanese Class Action”—*, 61 *JAPANESE Y.B. INT’L L.* p. 168 (2018).

age through traditional individual litigation, especially in cases involving consumer contracts that affect a large number of individuals (Art. 1, Act on Collective Redress). To briefly describe the process, also known as the two-step procedure, the first step is an action for declaratory judgment on common responsibility⁽¹⁰⁾ filed by a specially qualified consumer association. If this action is dismissed or found baseless, the procedure terminates at this stage. If, on the other hand, the claim is substantiated, the association that brought the action for declaratory judgment on common responsibility initiates a simple determination proceedings.

Consumers who wish to participate in this procedure must authorize the association that filed for the simple determination proceedings⁽¹¹⁾, which then takes responsibility for submitting the claims to the court (Art. 34, para. 1, Act on Collective Redress)⁽¹²⁾. In the simple determination proceedings, after the opposing party accepts or rejects the claims, the court issues a simple determination proceedings on the contested claims. Should there be an objection to the decision from the first step, a subsequent trial provides a final resolution (second step of the procedure). The practical significance of this two-step procedure is that the

(10) It is referred to as "common obligations" in the Act on Collective Redress, but theoretically, it is understood as merely "common responsibility". This is because even if the defendant's common obligations are declared in the first stage of litigation, the defendant may not be obligated to pay money to individual consumers in the second stage of proceedings.

(11) "The simple determination proceedings" is a judicial process that, following a trial to establish common responsibility, determines the existence and content of the claims in question. After the claims are filed with the court, the opposing parties accept or reject them. If there is no dispute, the decision is based on this response. In the event of a dispute, the decision is made by the tribunal. This procedure allows for a quick and straightforward resolution of consumer claims that have been filed.

(12) Unlike the first step of the procedure (action for declaratory judgment on common responsibility), the group's capacity to take legal action in the second step (simple determination proceedings) is based on this authorization (from consumers).

declaration of common responsibility allows the affected consumers to base their case on the outcome of the first step, thereby facilitating their participation in subsequent legal actions.

Similar to an injunction brought by a consumer association, this group action can only be initiated by a "specifically qualified consumer organization". A "specifically qualified consumer organization" refers to those qualified consumer organizations that have received "specific certification" from the Prime Minister under Art. 71 of the Act on Collective Redress (Art. 2, Item 10, Act on Collective Redress). Consumer organizations with this specific certification are granted the status of eligible plaintiffs in damage recovery civil proceedings under the Special Measures Act (Art. 3 for declaratory judgment on common responsibility, and Art. 13 for simple determination proceedings).

3. Overview of the 2023 Legislative Reform

(1) Extension of application scope

The Act on Collective Redress has also been described as experimental legislation, designed to be improved through ongoing evaluation of its implementation. Given that only four cases have been brought forward in the six years since its enactment⁽¹³⁾, the reform, which took effect on October 1, 2023, made the system more accessible⁽¹⁴⁾. The primary changes from a theoretical perspective brought about by this reform include the expansion of procedural scope and the early relaxation of the settlement mechanism⁽¹⁵⁾.

Firstly, the scope of procedures has been expanded. Initially, only

(13) As an evaluation of the system at that time, e.g. Takuya HATTA, Collective Redress to Recover Consumer Damage in Japan —Present system and the direction of its amendment—, *Japan Commercial Arbitration Journal Vol. 2*, at 107 ; Akihiro HIRONAKA et Yui TAKAHATA, Is the Opt-in System Doomed to Fail? An Experience with the New Japanese Legislation on Collective Redress, *14 Disp. Resol. Int'l 27*, p. 29 (2020).

(14) YAMAMOTO, *supra* note 1, p. 46.

(15) Furthermore, the requirement for traders to notify certain information to affected consumers (Article 28, Act on Collective Redress), the disclosure of

property damage was considered, but the procedure now also includes moral damage, commonly referred to as compensation for emotional distress. This change is based on observations from the case of fraudulent admissions at Tokyo Medical University, where consumers wanting to claim compensation for emotional distress were compelled to initiate legal action⁽¹⁶⁾.

The eligibility of moral damages as a claim has raised concerns about potential uncertainty in the system, which could lead to a large of irrelevant cases and thus cast doubt on the economic efficiency of the system⁽¹⁷⁾. However, it is possible to distinguish between standardized and non-standardized moral damages⁽¹⁸⁾. In the case of standardized moral damages, the goals of the Act on Collective Redress are relevant. The practical advantage of the two-step procedure lies in the declaratory

information to affected consumers by a conservation disclosure order (Article 9, Act on Collective Redress), the publication by the Prime Minister (or the National Consumer Affairs Center of Japan) (Article 95, Act on Collective Redress), and other provisions have been established, thereby enriching the methods of providing information to consumers. This also includes introducing a system for recognizing entities that support qualified consumer associations (Article 98 *et seq.*, Act on Collective Redress).

- (16) Shohisha Saiban Tetsudzuki Tokurei Hou tou ni Kansuru Kentoukai Houkokusho [Report of the study committee on the Act of Special Proceedings for the Collective Redress for Property Damage Incurred by Consumers and others], at 10 (October 2021), https://www.caa.go.jp/policies/policy/consumer_system/meeting_materials/review_meeting_003/assets/consumer_system_cms201_211008_01.pdf.
- (17) Takehiro OHYA, Shohisha Saiban Tetsudzuki Tokurei Hou tou ni Kansuru Kentoukai Dai Sankai Gijiroku [Minutes of the Third Meeting of the Study Committee on the Act of Special Proceedings for the Collective Redress for Property Damage Incurred by Consumers and others], at 18 (2022), https://www.caa.go.jp/policies/policy/consumer_system/meeting_materials/assets/consumer_system_cms204_210728_02.pdf.
- (18) The degree of moral damage should vary considerably from one individual to another. However, the accumulation of case law can lead to the establishment of a standard scale, resulting in a *de facto* standardization of damages. Moral damages are a typical example of this.

judgement of common responsibility, which the affected consumers can rely on and which facilitates their participation in legal proceedings⁽¹⁹⁾. Therefore, it does not seem appropriate to systematically exclude moral damages. Moreover, regarding the limitation of eligible cases, it has been noted that the scope of the Consumer Affairs Agency's competence, as well as practices and notably the cases attracting the attention of numerous consumer associations, did not cover all the usual cases of civil tort or bodily injury⁽²⁰⁾. Furthermore, the reluctance of the economic world and public institutions to legislate has been acknowledged. In this context, there seems to be no opposition to extending the scope of the procedures.

The requirement of alleged predominance (Art. 3, para. 4, Act on Collective Redress)⁽²¹⁾ is stipulated only for the conditions of the simple determination proceedings, with its application thus limited to exceptional cases⁽²²⁾.

(19) Katsuji KANO et al., *Shuudanteki Shohisha Higai Kyuusai Seido no Kentou Joukyou ni tsuite* [On the State of Examination of the Collective Redress System for Consumer Damages], *NBL* No. 963, p. 51 (2011); Makoto ITO and Katsuji KANO, Interview *Shuudanteki Shohisha Higai Kyuusai to aratana Soshou Seido no Sousetsu ni tsuite* [Interview on Collective Redress for Consumer Damages and the Creation of a New Judicial System], *NBL* No. 965, p. 13 (2011).

This means that the economic aspect is not the central element of the system, whose goal is instead to restore the margin for consumers to make an independent decision (in this case, whether or not to participate in the procedure).

(20) Koichi MIKI, *Nihon-ban class action no Rippou ni tsuite* [About the Legislation of the Japanese Class Action], *Hogaku Kenkyu* [Legal Research] (Keio University) No. 86, p. 23 (2013).

(21) The requirement of predominance does not aim for superiority over individual cases; rather, it emphasizes that the common points of dispute predominate over individual points of dispute.

(22) Makoto ITO, *Shohisya Saiban Tetsuduki Tokurei-hou* [Act of Special Proceedings for the Collective Redress for Property Damage Incurred by Consumers] (2d ed. 2023), p. 45.

(2) Simplifying and expediting settlement

Concerns about settlement were raised during the system's creation debates. In cases where an amicable settlement is reached without the defendant's partial acceptance of responsibility, the plaintiff could end up controlling the rights of others (consumers who have suffered damage) without authorization, thus calling into question the nature of the agreement⁽²³⁾. In response to this concern, it was emphasized that the concession in an amicable agreement could be interpreted flexibly, and that the amicable agreement in the first step could be considered a stipulation for the benefit of third parties⁽²⁴⁾. Its contractual effects would be recognized (i.e., the concession would take effect) if invoked by consumers. As a result of these debates, the previous law prohibited amicable agreements concerning individual consumer claims.

In practice, however, the scope of application for amicable settlements was minimal, making the system difficult to use and ineffective. Therefore, a reform aimed at broadening the scope of amicable settlements allowed in trials to declaratory judges on common responsibility was discussed. Consequently, the law was explicitly amended to authorize amicable settlements concerning individual claims in these trials, provided that the scope of the rights or legal relations targeted by the agreement, the amount of the claims, their calculation method, and the extent to which consumers entitled to the agreement are clearly defined.

(23) Shuudanteki Shohisha Higai kyuusai Seido Senmon Chousakai Dai Hachi Kai Gijiroku [Minutes of the eighth meeting of the expert committee on the collective redress system for consumer damage], p. 15 (2011), https://www.cao.go.jp/consumer/history/01/kabusoshiki/shudan/008/gijiroku/__icsFiles/afldfile/2011/03/28/008_20110303_gijiroku.pdf.

(24) *Id.* p. 15.

II. Specificity of Consumer Collective Redress for Monetary Compensation

Opinions vary on the justification for accepting the first-step of the Act on Collective Redress (action for declaratory judgment on common responsibility), and the theoretical foundations that permit legal actions by specially qualified consumer associations. If group actions hinder consumers from bringing individual actions, it is argued that there is no justification for group actions. Therefore, various models were considered during the drafting process, drawing on the legal systems of other countries⁽²⁵⁾. The model that was finally adopted is the current two-step procedure.

The characteristic of this two-step procedure is that; only declaratory judgments are obtained through collective actions, and benefits are deferred to the second step of the procedure. The question is why lawsuits are permitted without consumer's consent in the case of declaratory actions. The origins of these discussions can be traced back to doctrines developed during debates on the legitimacy of injunctions pursued by consumer associations, among other discussions related to the Act on Collective Redress⁽²⁶⁾.

(25) YAMAMOTO, *supra* note 9, p. 176.

(26) Some view this system as applicable to class actions; however, a group action is somewhat different from this legal system. See Keiji YAGI, Uniqueness and Possibilities of the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers (4: final), *Seikei Hogaku* [Seikei Law Review] No. 99, p. 225 (2023).

III. Theoretical foundation of the system⁽²⁷⁾

1. Conflict management authority

A pioneering theory is the theory of conflict management power. According to this theory, in disputes with a recognized unity of interest, the right to manage conflicts is granted to those who have made significant efforts to resolve them prior to litigation⁽²⁸⁾. This right enables recognition of the capacity to act for those who do not themselves hold conflicting interests. The innovative aspect of this theory is that the conflict itself is considered the object of management and is, thus distinguishing it from disputes over individual interests.

Similarly, about the Act on Collective Redress, even though the common liability does not directly correspond to the claim rights of the affected consumers, a legal correlation is recognized. According to this correlation, the claim rights could only be asserted with a prior declaratory judgment on common responsibility. Therefore, it is generally accepted that there is a legal relationship between the group of consumers concerned and the opposing trader. In this context, where an integrated interest in litigation is recognized, the right to take legal action is granted to specifically qualified consumer associations to manage this type of dispute.

2. Protection of collective interest *latu sensu*

The second fundamental theoretical basis for the cessation actions initiated by consumer associations rests on the approach of collective interest⁽²⁹⁾. Collective interest is those that exist between individual and public interest. In the context of cessation actions taken by associations, this

(27) For a summary of the previous discussion, see Keiji YAGI, Uniqueness and Possibilities of the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers (1), *Seikei Hogaku* [Seikei Law Review] No. 94, p. 251 (2021).

(28) Makoto ITO, *Minji Sosyo no Toujisya* [The parties to a civil lawsuits], p. 119 (1978).

approach has been seen as "an attempt that, much like assigning a legal personality to a community with an unclear legal denomination, results in a similar effect and contemplates significant rights for such legal entities"⁽³⁰⁾.

In connection with the Act on Collective Redress, the legal form adopted for inherent collective interest in individual claim rights is common responsibility. This is manifested in the form of a declaratory judgement action, a type of inherent right granted to associations⁽³¹⁾.

3. Derivative suit

Finally, there is an interpretation in which the representative in a litigation is seen as substituting for individual creditors based on legal authorization. Among these interpretations, a prevailing view is that the common elements of the dispute (common issues) — i. e. those shared

(29) See Cécile CHAINAIS et al., *Procédure civile* [Civil Procedure], 36 éd., p. 179 (2022). The approach of collective interest explains that differences in the types of violated interests lead to variations in the subject of the litigation, which thus justifies the existence of differences in the right to legal action.

(30) Hiroshige TAKATA, *Uttae no Rieki and Toujisha Tekikaku : Shuudanteki Rieki wo meguru Soshou ni Shouten wo ateta Oboegaki* [Interest in action and standing to sue : A memorandum focusing on lawsuits concerning collective interest], *Jurist* No. 971, p. 214 (1991).

(31) Kazuhiko YAMAMOTO, *Shuudanteki Rieki no Soshou ni okeru Hogo* [The Protection of Collective Interest in Litigation], in *Minji Soshouhou no Gendaiteki Kadai* [The Modern Issues of Civil Procedure Law], at 499 (2016). In other words, if we consider, on one hand, the cessation action (a special case where the action involves a common liability and there are no individual points of dispute), and on the other hand, the individual action (where the case consists entirely of individual points of dispute and there is no shared liability), then the action that falls between these two can be regarded as the one introduced in the procedure of the Act on Collective Redress. This approach is similar to that of Maria-José Azar-Baud, who discusses homogeneous individual interests (Maria-José AZAR-BAUD, *Les actions collectives en droit de la consommation* [Collective actions in consumer law], thesis at Paris I, p. 33 (2013)).

by many holders of similar rights in litigation involving multiple right holders — correspond to collective responsibility⁽³²⁾. These would not constitute substantial rights per se, but rather part of the necessary conditions for the formation of such rights. Furthermore, the fact that the subject of the dispute is distinct from the substantial rights, and focuses on questions that are crucial premises in judging substantial rights, resembles the action of verifying the authenticity of documents (Art. 134-2⁽³³⁾, Code of Civil Procedure), which explains the legitimacy of the system.

4. Synopsis

Given the general nature of the two-step procedure, it is possible to create similar procedures for typical damages across different legal domains. However, in order to ensure procedural protection for the defendant, particularly in understanding the interests at stake, further research will be necessary to extend the procedure to cases where the damages are not standardized or are difficult to calculate. The theoretical basis for this can be found in the approach of the collective interest as an intermediate interest. In other words, instead of focusing on the subjective aspects of the victims (such as their characteristics), it is possible to focus separately on the objects of the dispute⁽³⁴⁾, concentrating on objective aspects such as the rights being claimed.

(32) Koichi MIKI, *Shohisha Shuugou Soshou Seido no Riron to Kadai* [Structure and theory of the consumer collective litigation system], in *Minji Soshoniyoru shuugoteki Kenri Hogo no Rippou to Riron* [Legislations and Theories of Collective Rights Protection through Civil Justice], p. 294 (2017) ; Koichi MIKI et al., *Shohisha Saiban Tetsuzuki Tokurei Hou no Riron to Kadai* [Theory and Issues of the Act on Collective Redress], *quarterly jurist* No. 9, p. 147 (2017).

(33) "An action for declaratory judgment may also be filed to determine the authenticity of the provenance of a paper document that certifies a legal relationship".

IV. Outstanding question

Following the recent legislative reform, in-depth discussions have begun on the possibility of qualified consumer associations initiating bankruptcy procedures, considering the ineffectiveness of the current system against dishonest traders contemplating bankruptcy in the event of a dispute⁽³⁵⁾. It is necessary to continue studies to improve the system, taking into account both practice and theory.

(34) Concerning the above, *see* YAGI, *supra* note 26, p. 249. In Germany, it appears that the discussions are centered on types of damage rather than collective interests. However, if it is understood that types of benefits drive the differences in types of damage, these discussions can be regarded as similar in nature.

(35) *See e.g.*, Keiji YAGI, Tekikaku Syouhisya Dantai tou niyoru Kaisann Moushitate and Hasann Mousitate no Kanousei [The possibility of dissolution petitions and bankruptcy petitions by qualified consumer associations], *Gendai Syouhisya Hou* [Modern Consumer Law] No. 62, p. 48 (2024).