論　説

Information Technology and Civil Justice in Japan

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1. The Start of Discussions on Introducing Information Technology into the Administration of Justice

On June 9, 2017, the Japanese cabinet issued a document[1)] titled "Future Investment Strategy 2017: Reforms Aimed Towards the Realization of Society 5.0," a policy program with the aim of incorporating the so-called Fourth Industrial Revolution and solving social problems in order to break down the long-term stagnation of the economy. The document included some concrete measures to do so, including the following:

> In order to strive towards the realization of quick and efficient court trials, we must take the situation of other countries into account as well, and quickly investigate in regard to plans to obtain the cooperation of related organizations, etc., and promote the introduction of information technology (IT) in the procedures, etc., involved with court trials with the user's perspective, and we must do so from the comprehensive viewpoint that includes aspects of procedure protection and information

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1) http://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/miraitousi2017_t.pdf

security in court trials, and obtain a conclusion during this year.

The above does not seem to indicate that the plan to "promote the introduction of IT in the procedures, etc., involved with court trials" is the central theme in the policy program, but rather that it was decided in the cabinet as a concrete policy issue.

The issue of introduction of IT into judicial proceedings had actually already had a head start in the Written Opinion of the Judicial System Reform Council in 2001[2)].

It included a category known as introducing IT into places such as the administration of justice's courts as well as its use in consulting services and information services , and there was an order that stated,

In order to promote the active introduction of information technology (IT) in various aspects such as court proceedings (including the electronic submission/exchanging of documents related to lawsuits), office processing and information provision of courts, the Supreme Court should form and publicly announce a plan for introducing information technology.

The Administration of Justice Access Investigation Association, which was established to receive this order and bear the responsibility of implementing the reform, did not do a great deal of investigation of the issues of IT use, but the courts received this order seriously, and as one way of strengthening the civil execution system, they began a system of Broadcast Information of Tri-set system where property information from real estate auctions was made

2) https://www.kantei.go.jp/jp/sihouseido/report/ikensyo/index.html

open to the public through the Internet[3]. At that time, online statements were being attempted, with the courts taking the lead. In 2003, a regulation was promulgated related to procedures such as statements in civil suit proceedings that are managed while using electronic data processing systems (a so-called IT regulation), and taking the experiments based on this into account, a stipulation based on online statements was stipulated as Article 132-10 of the Code of Civil Procedure when it was amended in 2004.

Unfortunately, this stipulation has rarely been applied. However, the provision to be applied *mutatis mutandis* of Article 132-10 of the Code of Civil Procedure has also been placed in Article 42 of the Non-Contentious Cases Procedures Act and Article 38 of the Domestic Cases Procedures Act (both of which were established in 2011) as well as in Article 69 of The Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (established in 2013). In all of these stipulations, however, neither have the regulations and procedures for their realization been established, nor have they been used in practical business.

Furthermore, in Article 3-2, Clause 1 of the Rules of Civil Procedure that were amended and newly established in 2004, it is established that,

> In the case of using it in the creation of a written judgment and in other cases where it is acknowledged to be necessary, and when the individual who has submitted or is about to submit a document to the court possesses an electromagnetic record (which refers to records made with an electronic method, magnetic method and other methods that cannot be recognized by a person's perceptions, and are provided

3) http://bit.sikkou.jp/app/top/pt001/h01/

> for use in information processing done through electronic computers. In the rest of this clause, the meaning of this term is the same) which has the contents of the information recorded in the document in question, the court can request to that individual that they provide the court with the information in the electromagnetic record in question through electromagnetic means (which refers to methods that use electronic data processing systems and methods that use other information technology) through what is established by the court.

This stipulation does not aim to carry out statements online, and if there is simply digital information of the print media of the submitted document, then it is merely a request to provide that and nothing more. It seems to be widely used, however, and depending on the court, will sometimes be requested to be provided in the form of an email attachment. It should be noted as a suggestion of the potential of electronic data and their online submission in courts.

Taking history into account with the scarce but continuously repeated proposals and attempts to introduce IT into the administration of justice through initiatives by groups such as the Judicial System Reform and Leading Technology Research Society, Future Strategy Investment 2017 has now brought the issue center stage, so to speak.

The Investigation Association of Introducing IT to Court Decision Proceedings launched an investigation of the abovementioned topic under the Headquarters for Japan's Economic Revitalization, and "The Collection Aiming Towards the Introduction of IT to Court Decision Proceedings, Etc.," was officially announced on March 30, 2018.

According to this, the online submission of complaints, written responses,

and the like is known as e-filing, case management carried out by computers is called e-case management, and operating a court by applying web conference systems and the like is called e-court. These three "e" terms are to be divided into three phases and be realized.

First, Phase 1 is the realization of e-court actions such as adding web conferences to telephone conferences, which are possible under the existing law, and applying/doing a trial run of an effective and efficient way of arranging points at issue. It is hoped that this will be implemented from 2019.

Moreover, in Phase 2, the realization of law amendment with regard to e-courts, such as not requiring the parties concerned to attend oral arguments, appointed dates for preparation of arguments, and other obligations, is hoped to be achieved by 2022. For this to happen, it is desired that preparations will continue while bringing the legislation investigation consultation during 2019 into perspective.

Furthermore, in Phase 3, the changeover to online statements will be implemented, and e-filing and e-case management will be realized. To do this, system maintenance and pro se lawsuit support, common knowledge, and publicity, are needed as well as amendments to existing law. Although a time period of implementation has not been specified, preparations will continue while bringing the legislation investigation consultation during 2019 into perspective.

And so, alongside partial preceding implementation, the work of amending the law will begin in earnest. Presently in 2019, the Supreme Court, along with the bar association, is carrying out experimental implementations of e-courts within limits that do not make it necessary to amend the law.

2. The Necessity of Introducing IT into the Administration of Justice in Japan

On another note, in addition to the introduction of IT into the administration of justice, with regard to Office Automation, courts are also advancing the construction of office processing systems that use computers, thereby advancing the introduction of IT. Moreover, with the increased use of IT in society, the networking and digitalization of disputes will also advance. As a result, when digital information appears as evidence or when exchanges or disputes in online society are brought into lawsuits, digital data must be handled even in judicial proceedings. Further, with information networks such as SNS spreading in society, the potential for transmitting information related to court proceedings has rapidly risen. Concomitantly, there is an increasing push for ways to open court trials to the public. In short, it is inevitable that the administration of justice will be pressed to be involved with IT in various ways, and IT support in court decision proceedings cannot be avoided in the administration of justice.

If the application of IT is to be advanced, especially in civil proceedings, there is a need to confirm its use. The significance of e-filing should be considered, where it is not just simply responding to the increase in evidence through digital information, but rather a system through which the parties concerned submit documents to the court online while having them remain as digital information. These documents will be recorded while remaining as digital information and the documents that the court sends to the parties concerned are also sent via network as digital information. Moreover, it is perhaps also necessary to confirm the significance of this in regard to

implementing arguments and witness examinations that use video conference systems as e-courts and how to move the process of exchanging preparatory documents and proceedings online. Through this, the extent to which IT is introduced into the courts will be decided.

In my opinion, the aim of introducing IT is to improve access to justice and increase speed and economic efficiency without affecting complete justice. The online submission of complaints, written responses, and preparatory documents, while having them remain as digital information through e-filing, makes it possible to access one's affiliated court regardless of distance, and shows great utility not only in cases where the parties concerned with the dispute themselves initiate an act of procedure but also in cases where an attorney is made a representative. The parties concerned with the dispute who live in the local area can request their local attorney and institute a lawsuit or file a countersuit quickly and economically in any court in the country, and in cases where local attorneys are few, or in cases where there is no local attorney who can handle the case, depending on the type of case, acts of procedure through attorneys in remote locations become possible. If there are e-courts, where attendance is possible online, the problem of distance becomes even smaller[4)].

Not only will the use of IT overcome distance, but by using the recording of information in its digital form and by using web-based e-case management, the management of records and trial schedules will become automated, and further, transparency will rise as courts, secretaries, and both parties

4) In Japan, quite a large percentage of attorneys are concentrated around Tokyo and Osaka, and apart from these, there are many attorneys around large cities including Nagoya, Fukuoka, Sendai, and Sapporo. In regions other than these locations, there are small number of attorneys, even in locations where there are district courts and high courts.

concerned will all have direct access to the information. This improves speed and economic efficiency without hampering justice[5]. In addition, if managing assertions and establishments of proof becomes possible digitally, it opens the path to the automation of arranging the points at issue. Through this, the arrangement of points at issue at a high level through artificial intelligence (AI) computers may ultimately become possible.

To realize this goal, the current system with original records of print media must convert to a system of digital information (electromagnetic records). Additionally required is the organization of systems for ensuring security, the issue of the response capability of the people participating in the court trial, the issue of equipment, as well as the issue of budget. In short, there are many pending tasks.

Nonetheless, if, fearing that the incorporation of IT is too difficult, the courts fail to take action, technology will advance further, and the structure of IT to be introduced will greatly change. The judicial system needs to incorporate technology at an early stage, and if a problem arises, they must handle it by evolving technologically. It is anticipated that all digital data will be backed up to prevent any inadvertent loss.

3. The Potential of E-court in Phase 1

(1) The potential under the existing law

5) I imagine the French administrative court's online judicial system, named "Télérecours". https://www.utrechtlawreview.org/articles/abstract/10.18352/ulr.211/

At present, Phase 1, under the existing law, involves actively using IT tools such as web conferences in addition to telephone conferences and trial runs of more efficient systems to arrange points at issue. These measures are in place to quickly realize "what is possible to realize through environmental improvement such as maintenance and trial runs of IT equipment."

We will not discuss here whether the web conferences mentioned above are the same or different from peer-to-peer conferencing or Skype. However, they incorporate the use of software communication on multiple levels and real-time sending and receiving of images and vocal sounds through the Internet. Presently, the Code of Civil Procedure establishes the following in Article 170, Clause 3:

When a party concerned is living in a remote area and in other instances where it is acknowledged to be suitable, the court can listen to the opinions of the party concerned, and through the part established with the Rules of the Supreme Court, can carry out procedures on the appointed date of proceedings for preparing arguments through a method where both the court and the party concerned can speak over the telephone at the same time through the sending and receiving of vocal sounds. However, this is limited to cases where one of the parties concerned is attending on that appointed date.

In addition to this, the Rules of Civil Procedure establish the following in Clauses 2 and 3 of Article 88:

> 2. When carrying out the procedures of the appointed date of proceedings for preparing arguments through a method where both the court and the party concerned can speak over the telephone at the same time through the sending and receiving of vocal sounds, the court or

the commissioned judge must confirm the person on the phone and the location of the destination of the call.

3. When carrying out the procedures of the previous paragraph, the substance of what has been said as well as the telephone number of the destination of the call must be recorded in the record of the proceedings for preparing arguments. In this case, in addition to the telephone number of the destination of the call, their location can also be recorded.

With regard to these stipulations, Article 204 of the Code of Civil Procedure, which acknowledges the use of electronic means of communication in the examination of witnesses, stipulates "methods where speaking on the telephone is possible while the other person's situation can be mutually recognized through the sending and receiving of images and vocal sounds," thus clearly indicating video conference systems. In contrast, Article 170, Clause 3 of the Code of Civil Procedure, which sets out the procedures for preparing arguments, is interpreted as indicating a method that does not include the sending and receiving of images, i.e., the use of telephone conference systems.

There is no need, however, to interpret this as prohibiting the use of video conference systems in the preparation of arguments. Naturally, video conference systems include the function of speaking over the telephone at the same time as the sending and receiving of vocal sounds, so whether it be a system for telephone conferences only or a video conference system, it meets the requirements of the text of the law. As the law only assumes participation via telephone, stipulations do exist that do not always match with web conference systems, such as the need to "confirm the person on the phone and the location of the destination of the call" and to record telephone numbers as

stated in Article 88, Clause 2 of the Rules of Civil Procedure. The need exists to confirm the identity of the person on the phone and the location even if it is a web conference system, and in that case, the role of a record is fulfilled in a similar way if the code equivalent to the telephone number is recorded.

To this point, the stipulation of Article 170, Clause 3 of the Code of Civil Procedure states, "However, this is limited to cases where one of the parties concerned is attending on that appointed date." This is a restriction that obstructs the trial runs that search for potential in a wide range of cases. The situation of both parties concerned participating through web conference with the court at the center can be carried out as a "trial run," but in that case, how should the provision in Article 170, Clause 3 be interpreted? As the stipulation in question is one where the waiver of right to allege procedural error is possible, it should be interpreted in a way that states that the participation of both parties concerned in the proceedings for preparing arguments through web conference is also acknowledged if both parties agree in advance.

Apart from what is stated above, the stipulation that plans for the use of telephone conference systems is in Article 92-3 of the Code of Civil Procedure, which covers the participation of expert advisors, Article 176, Clause 3, which sets forth the preparatory proceedings through written documents, Article 215-2, which covers the questioning of expert witnesses, and in Article 372, Clause 3, which discusses the examination of witnesses in small claims lawsuits. The activation of these stipulations should also be put on a trial run simultaneously.

The use by the courts of telephone conferences and case management systems in proceedings for preparing for arguments may not be frequent but it is neither prohibited nor established in the law. While striving in Phase 1 for

the improvement of a system, which is also in anticipation of the realization of e-case management, there is a need to first construct a structure and rules of information sharing between the judges, secretaries, and administrative officials. It is at that point that it becomes desirable to fashion a system in which access from outside the court, from one's home, for example, is possible.

(2) Matters that should be verified in Phase 1

Whether they be trial runs of web conferences or the improvement of case management systems, the trial runs as Phase 1 serve as preparation for future legislation. In both cases, there is a need to bring problems to light as well as to provide appropriate laws and regulations and bring them together as the conditions of the system.

For example, in addition to acknowledging the abovementioned construction of information sharing and management systems inside the court as well as access made from outside the court, it is possible to strengthen tasks and structures—such as the ideal state of sharing with the people involved who are outside the court, ID management, and ensuring security—during Phase 1. This is also preparation for the legislation to be developed in Phases 2 and 3.

Moreover, in regard to web conferences, trial runs can help with the preparation or rehearsal of oral arguments to be used for a wide range of purposes such as on the appointed date or in the investigation into witness testimonies. Oral arguments should be made open to the public, and although the purpose is specific to use in web conferences, the proceedings for preparing the arguments should also be open to the people involved. Depending on the

case, listening to the proceedings should be allowed to an appropriate extent. Therefore, the law should aim to ensure the openness of all proceedings to the public on the web conference date. Through these kinds of experiments, it seems possible to find a fixed course of action on the question of what form oral arguments for use in web conferences should be made open to the public.

Apart from this, a large number of legal problems remain, such as the distortions and restrictions of communication made through the camera, the management method of sending and receiving images of witnesses, vocal sounds coming from locations other than the court, and countermeasures for sound and video recordings done by the parties concerned or a third party. These issues must be resolved during the trial runs. In addition, matters such as confidentiality and stability in relation to the technical side of communications are important tasks. On this point, organizations that specialize in digital forensics may provide assistance.

4. In Regard to E-filing

(1) Online document submission

The administration of justice in civil affairs has created a work process that places importance on document exchange between the parties concerned and the court, facilitated through the administration of justice in civil affairs, as well as on document management inside the court. In this situation, if information network technology is employed in the document exchange and submitting documents electronically becomes possible, needless to say, the current court proceedings will become efficient. Moreover, in regard to document management, if digital data are managed as the original records, the storage space will become dramatically smaller, and online document sharing

between the court and parties concerned (representatives) can eliminate the need for sending and receiving documents altogether.

However, currently the documents are created as print media and are brought to the front counter or posted. These documents become case records, are used in the courts, and are preserved afterwards. Preparatory documents are typically faxed to courts and other parties, and at present, this, the FAX, is the most advanced communication method available in our Justice.

The plan for introducing IT as a method of document sharing will differ depending on the properties of the documents and level of confidentiality needed.

For example, e-mailing documents has been suggested as a more contemporary method than faxing. However, complete security cannot be guaranteed with email, even with anti-virus measures. If a document infected with malware is received, an isolation method would be needed to prevent an impact on the whole system, and there would be a need to have backup versions of the documents appropriately ensured.

Because of this, while documents may be sent via facsimiles or post mail, email is not considered an appropriate way to submit documents. Rather, at the moment, it is best for the parties concerned to log in to cloud servers that the court has prepared and upload the files there. Even with this upload method, the safety of the files and system defense are necessary, and in addition, the log-in procedure becomes an issue.

Previously, public authentication was suggested, and the current procedure is public individual authentication through individual number cards. For

attorneys and judicial scriveners, security can be ensured if each group is authenticated or if authentication is done through IDs and passwords set in advance by each group. The risk of illegal access will remain, of course; however, the threat (e.g., attempted access from a new terminal) can be lowered by countermeasures such as having a method of document recovery and confirmation measures, including notifications sent to the registered email address or telephone number.

Pro se lawsuits should be considered separately. Writing a complaint on one's own and filing a lawsuit is in itself a hurdle, and access to important forms can be improved in cases where *pro se* lawsuits are possible, through the digitization of fixed form complaints used in places such as summary courts. In relation to logging in, possibilities include either using public individual authentication or having the digital data of identity verification documents be uploaded so that users can create and register an ID. The court system needs to be equipped with these kinds of structures, as an unspecified large number of people will be able to access the server and security will be an important issue.

What has been stated above is also fundamentally appropriate in areas such as civil preservation, where statements are made to the court before instituting a lawsuit, as well as the collection, disposal, and preservation of evidence before instituting a lawsuit.

Furthermore, the payment of fees for online form submissions, considering the various types of electronic payment methods which are already available for postage stamps, should be possible.

(2) The potential of electronic delivery

In relation to the delivery of complaints and summons for lawsuits, delivering files directly to the addressee is the general rule as long as the present stipulation for delivery[6] is maintained.

This can generally be done through electronic means of communication, although, for example, it is not guaranteed that an addressee will receive an email. Of course, administrative agencies and local governments may register methods of receiving notifications concerning lawsuits in advance in administrative litigations and national reparations lawsuits. Regarding general private individuals and companies, at first, the method will probably be the usual delivery of print media (e.g., mail service and executive officer delivery).

Furthermore, registered mail[7] is used together with ordinary mail. If a notification is to be sent as a reminder, the defendant's registered email address that the plaintiff knows can be recorded in the complaint. It can also be added that the court will send the notification. In this way, the effectiveness of the procedure will be improved.

In regard to service by publication[8], it is appropriate to honor requests for attempts at making contact through email addresses prior to service by publication. In addition, a notification can be sent to the email address stating that service by publication has been done.

These measures of electronic delivery for first complaints/summons will serve to improve citizens' access to courts.

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6) Under Article 98 of the Code of Civil Procedure.
7) Article 107 of the Code of Civil Procedure.
8) Article 110 of the Code of Civil Procedure

(3) Delivering and sending other documents

Apart from what is written above, in cases where the court sends to the parties' concerned documents that require to be delivered, such as judgments, it will be adequate, as a general rule, to upload them to the cloud server prepared by the court and to send a notification to the email address that has been registered in advance. The concerned parties can then access the documents through the server. This will realize efficient and secure deliveries.

(4) Digitization of the originals

The sections above discuss procedures for concerned parties and the courts to share digital data online. However, Article 132-10 of the Code of Civil Procedure, which is the existing stipulation for online statements, states in Clause 5 that documents submitted online must be printed out, and in Clause 6 that what has been printed out must be handled as records. However, this is not practical with document sharing through the cloud. Instead, as mentioned, the digital data on cloud servers are the original forms, which is a merit of digital records.

Although digital records present the risk of falsifications and disappearances through illegal access, security can be ensured by creating backups, detecting falsification, and employing technological methods such as collation and recovery. It is worth noting that print records have previously been destroyed in situations such as natural disasters like the Great East Japan Earthquake.

(5) The necessity of a dedicated system

If connecting to case management systems will be part of the scope of the submission and sending of digital information online, as described above, it should be done through a dedicated system that accommodates the special characteristics of lawsuit documents. In other words, to make possible the organization of each purpose, reason, and required facts of the parties concerned and the claims, responses, plans for matching the corresponding parts of the written responses, arrangement of points at issue, and management of trial schedules, the system should be able to sort out each element of the digital information, not merely send and receive print media that has been digitized. This can be done through LegalXML tagging.

However, although the Supreme Court of Japan is currently advancing experimental attempts at network use with groups such as the bar association, the experiments do not take into account the necessity of systems such as what has been described above. Moreover, the experiments have depended on private systems provided by the American company Microsoft. The situation is, thus, extremely doubtful.

5. Conclusion

Although a dedicated system is necessary, in regard to the digitization of documents and their online submission/delivery/sending, the approach has already been practically applied in the world and is sufficient for social or business functions. It is not an exaggeration to say that digital forms are nothing new. Although risks are expected, such as illegal access, as can be seen in online banking, in the case of courts, caution may be taken to secure the precise originals of records, and there is no need to worry about illegal

remittances. Information leaks are also a potential problem, but general civil suits originally have a principle of being open to the public, including the reading of records, so there is no need for worry in that regard. It might even be said that domains in which confidentiality is strictly demanded are holding back the introduction of online processes.

Moreover, although technological progress is advancing in e-courts, it is currently provided only for private practical use. It may be possible to carry out experimental implementation in parts of the courts if amendments to the existing laws would not be required.

Introducing mature technology is easy in theory, but amendments to the legal stipulations may be needed for the implementation to be accepted and this may take time.

In contemporary times, information is stored and guarded by electronic technology. For example, access to courts can be expanded and ideas can be improved regarding appropriateness, fairness, speed, and economy by introducing further advanced technology such as trials in digital format, points at issue stored electronically, and AI.

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