

## Research on Mediation Specialization in Japan

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### Abstract

Mediation is an important means for resolving disputes. In modern time, with the development of Japanese society, mediation system changes from traditional type into modern one. Research on Japanese mediation specialization mainly reflected in strong support from legislation and proper arrangement. The professional operation of Japanese mediation cannot only guarantee mediation legal effect, but also can gain respect and trust.

**Key words:** Japan; Mediation; Specialization

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Japanese mediation system has a long history. After the World War II, in order to resolve disputes during the war rapidly, the Meiji government of Japan fastened the construction of legislation by widely importing European

legal systems and gradually carried out various laws, for example, “Mediation Act on Land Leasing and House Renting”, “Tenant Disputes Mediation Act”, “Commercial Mediation Act”, “Contemporary Mediation Act for Money Debts”, “Mediation Law for Personnel”, “Mediation Act on Mine Accident”, and etc.. Japan carried out the “Family Affairs Mediation Act” in 1947, and in 1951 the Japanese congress passed the unified “Civil Mediation Act” which has made Japanese mediation system more complete.

According to jurisdiction and different kinds of cases, Japanese mediation can be divided into family mediation and civil mediation. Family mediation is governed by family tribunal dealing with marriage and family life related cases. Civil mediation system started from the Tokugawa era which is governed by local tribunal and resolves commercial and civil cases except the ones that dealt by family tribunal.

On the grounds of authorized statistics, Japan has more than 30, 000 mediation officers working in various regions’ mediation tribunals but 2850 judges until 2011 (See Table 1). The number of mediation officers is ten times of the judges’ who effectively share responsibility for them and makes Japan have fewer judges to support its giant national judiciary machine. Therefore, it can be seen that Japanese mediation professional level is very high and at the same time specialization mediation guarantees the effect of disputes resolving.

**Table 1**

Year	Amount of Judges (summary tribunals excluded)			Amount of Public Prosecutors (Alternate Public Prosecutors excluded)			Amount of Lawyers		
	Total (People)	Male (%)	Female (%)	Total (People)	Male (%)	Female (%)	Total (People)	Male (%)	Female (%)
1991	2022	—	—	1172	96.2	3.8	14,080	94.2	5.8
1992	2029	—	—	1174	95.9	4.1	14,704	93.9	6.1
1993	2036	—	—	1184	95.4	4.6	14,953	93.7	6.3
1994	2046	—	—	1190	95.0	5.0	15,212	93.5	6.5

To be continued

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Year	Amount of Judges (summary tribunals excluded)			Amount of Public Prosecutors(Alternate Public Prosecutors excluded)			Amount of Lawyers		
	Total (People)	Male (%)	Female (%)	Total (People)	Male (%)	Female (%)	Total (People)	Male (%)	Female (%)
1995	2058	—	—	1229	94.3	5.7	15,110	93.4	6.6
1996	2073	—	—	1270	93.6	6.4	15,975	92.7	7.3
1997	2093	—	—	1301	92.9	7.1	16,398	92.2	7.8
1998	2113	—	—	1325	92.0	8.0	16,853	91.7	8.3
1999	2143	—	—	1363	91.6	8.4	17,283	91.1	8.9
2000	2213	—	—	1375	90.8	9.2	17,130	91.1	8.9
2001	2243	—	—	1443	89.4	10.6	18,246	89.9	10.1
2002	2288	—	—	1484	88.4	11.6	18,851	89.1	10.9
2003	2333	—	—	1521	87.4	12.6	19,523	88.3	11.7
2004	2385	—	—	1563	87.2	12.8	20,240	87.9	12.1
2005	2460	—	—	1627	86.2	13.8	21,205	87.5	12.5
2006	2535	—	—	1648	85.2	14.8	22,056	87.0	13.0
2007	2610	—	—	1667	84.4	15.6	23,154	86.4	13.6
2008	2685	—	—	1739	82.8	17.2	25,062	85.6	14.4
2009	2760	80.4	19.6	1779	81.8	18.2	26,958	84.7	15.3
2010	2805	79.7	20.3	1806	81.0	19.0	28,828	83.8	16.2
2011	2850	79.1	20.9	1816	80.3	19.7	30,518	83.2	16.8

Japanese mediation specialization is mainly reflected in the following aspects:

## 1. SPECIALIZATION IN MEDIATION LEGISLATION

Apart from public hazard mediation, housing building mediation, agricultural affairs mediation, commercial affairs mediation, mine accidents mediation, traffic mediation, and other special rules stipulated by “Civil Mediation Act”, Japan is used to set up special law to provide professional mediation, for instance, “Tenant Disputes Mediation Act”, “Commercial Mediation Act”, “Contemporary Mediation Act for Money Debts”, “Mediation Law for Personnel”, “Family Affairs Mediation Act”, “Labor Disputes Mediation Act”, and so on are all independent procedure laws attached to mediation tribunal of the meditation system.

## 2. PROFESSIONAL MEDIATION ORGANIZATION CONSTITUTION

### 2.1 Mediation Committee

The “Civil Mediation Act” of Japan provides that the organizer of mediation must be the mediation committee which is usually made up be one judge (working as the mediation committee chairman) and more than 2 committee members chosen from the public. The constitution of mediation committee is different depends on different types of cases. The committee members

are mainly from the public. From the identities of those members, we can conclude that they are chosen from the three following types: qualified lawyers who have special knowledge or experiences on resolving civil and family disputes such as lawyers and university teachers and so on; experts in certain field who are capable in using their own professional knowledge and social experiences to provide disputes solutions by indentifying facts and cases, for example, company managers, real estate quantity surveyors, architect, and doctors, etc.; 40-70 years old people who have rich social experience, a great deal of knowledge, and good personal characters, for example, retired officers of public security organs. The mediator can work for the duration of 2 years. Re-election is possible.

### 2.2 The Mediator

The mediator is acted by lawyers as part time job. Lawyers hold the position of civil mediator or family mediator once a week in local tribunals or summary tribunals. The mediator is assigned by the Supreme Court and has the same power as the judge. A more than five years practice experience is required for the mediator and also they have to be very familiar with legal procedures, especially some professional knowledge background in certain field, have specific judgment in laws and regulations, grasp accurately each party’s mental movement, can strengthen communication for both parties in identifying facts by using his or her experience, and provide practical and useful solutions for mediation. Mediators only deal with civil mediations. The term of service is two years and they can be reappointment.

### 2.3 Professional and Administrative Mediation Organizations

Japan's professional and administrative mediation organs mainly are: Labor Committee, Public hazard adjustment committee, Japanese prefectures public hazards review committee, Central construction disputes supervision committee, Japanese prefectures consumers' lifestyle center, and the arbitral authority, etc.. With the diversification of disputes resolving methods, disputes resolving organs have been increasing. Administrative organs and departments have been allocated responsibilities in disputes resolving.

## 3. SPECIALIZATION OF MEDIATION PROCEDURES

### 3.1 Mediation Activation

The Japanese "Civil Mediation Act" stipulates that the start of mediation is from the application of the party but the application must be examined by the appellate court. Once the application passes the examination, the appellate court stops its civil procedure and transfer the case to the mediation tribunal, otherwise, the case cannot be mediated. In addition, Japanese civil mediation system also provides mandatory mediation system for certain disputes. The mandatory mediation system is also called mandatory pre-action mediation system which means the dispute parties must get the dispute mediated before filling a lawsuit. Only if the mediation fails, the dispute parties can file a lawsuit. The certain cases stipulated by Japanese "Civil Mediation Act" are 1) rights and obligations between the litigants are clear and only subtle adjustment of interest relationship is needed; 2) there is no related laws or regulations govern or certain fields that the government is not suitable to enter; 3) detailed and specific cases which is more suitable to be resolved by mediation.

### 3.2 The Operation of Mediation

Take medical disputes mediation for example, two branch organizations of the Japanese Medical Association – investigation committee and certifying commission. The two organizations are mainly made up by professional doctors and lawyers. When there is a dispute, doctors can report to their local medical association either in oral or writing form. The medical association will submit the report anonymously to the investigation committee and certifying commission to evaluate compensation responsibility and damages. The mediation proceeds in the mediation room of the mediation tribunal or in the disputes arising place which is called "Site Mediation". In order to provide convenience for the mediation parties, some mediation tribunals take mediation after work or in the night which is the so called "Evening Mediation". The mediation is hosted by mediation director. With the help of the mediation committee, the two parties research an agreement at last. In the mediation process, the judge

can use "back to back" or "face to face" mode to mediate. The mediation holds the "non-public" principle, generally, most mediations do not allow audit and the mediation date and record do not open to everyman. All these actions in the mediation are made for promoting communication and coordination of each party.

### 3.3 Separation of Mediation and Judgment

Japanese legislation mode totally realizes the separation of mediation subject and trial subject. If the litigant of a case that has already been received or heard by a court apply for a mediation or the judge thinks civil mediation can apply to the case, the case should be transfer to mediation organ to mediate. Only if the mediation fails, the case can be returned to the court and get resolved by judicial action. At the mean time, although the mediation takes place in the court's mediation room, the subject of a trial is the judge and the subject of the mediation is the mediator. They can never be one person.

## 4. SPECIALIZATION IN COPING WITH REAL MEDIATION CASES AND CASE RESOLVING ABILITIES AND SKILLS

In order to improve mediation functions and the ability to coping with the mediation parties, family tribunal set up scientific research room for juvenile department in 1951 and also carried out the family mediation judge system to take charge of scientific investigation of juveniles in order to resolve new juvenile problems by using scientific skills and methods. In 1963, the family tribunal invited famous educational psychological guidance specialist Bridgeman from the U.S.A to start education and psychological guidance for judges of family tribunal to improve mediation abilities and learn mediation skills. Bridgeman also asserts to bring psychological recovery skills and psychological guidance to the process of mediation which indirectly promoted the establishment of family tribunal's psychological guidance room.

## 5. SPECIALIZATION OF MEDIATION CONCEPT, IDEA, AND VALUE

From the beginning of Japanese family mediation tribunal, they have been holding the new concept of "known to the public" which first started from offices, mediation tribunals and other detailed places.

1949 March 31, Family tribunal just moved to its newly built office building. Although it was built in a rush, there are oil paintings "Countryside View" and "Spring Sea" hang on the lobby, a fountain in front of front door, an elliptic desk put in the middle of mediation room. The reason for setting the whole building like this is just for creating some peaceful and harmonious atmosphere.

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From the security point of view, the mediation room is divided into several separate smaller rooms which use noise barriers

thicker than the mediation room's and every floor of the mediation room has rest rooms for applicants and respondents (Shigemachū kazuyoshi).

According to Tanase Takao, the main value orientation of Japanese mediation system is judgmental mediation. Mediation is not court decision made by mediation tribunal. Most mediation cases happened between individuals in their daily life. This kind of cases happened a lot and most of them are related to ethics and emotional content which cannot be figured out clearly. Therefore, mediation only needs to be made according to common sense and reason to get general justice instead of being totally complied with laws.

## 6. INTRODUCING PROFESSIONAL COMPUTERIZED MANAGEMENT

Using giant computers in mediation comprehensive management has significant meaning. By using computers to organize mediation date, parties, mediation committee members and other data in detail, the mediation parties only need to dial the mediation office number or fax to easily get every information about applying for mediation procedure, getting application form, and progress of mediation process. This computerized system help the tribunal reduce more than 100 telephone counseling everyday which not only save the judicial cost, but also reduces human faults by providing standardized management and therefore win trust and applause from the public. The introduction of computerized management has made mediation truly a professional management.

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