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Online Dispute Resolution (ODR) and Japanese-Style Mediation

Internetowe rozstrzyganie sporów (ODR) a mediacja po japońsku

ABSTRACT

Just as Online Dispute Resolution is progressing in other countries around the world, the digitisation of Japanese-style mediation is also underway in Japan. The purpose of this article is to provide an overview of the ongoing digitalisation of Japanese-style mediation and to identify its challenges. In civil court proceedings, three distinct phases for the realisation of the system have been determined and are being systematically implemented. Mediation in domestic affairs is moving ahead to revise the system, and the realisation of its implementation is also in sight. The role of third parties in Japanese mediation differs significantly from that in Anglo-American law and elsewhere in that the role of the third party was more focused on the guardian role of the mediator than on the formation of an agreement between the parties. A characteristic feature of Japanese-style mediation is the emphasis on the role of the third-party guardian, who is the mediator. These characteristics of Japanese-style mediation are important factors to be taken into account when considering the digitalisation of mediation.

Keywords: ODR; mediation; conciliation; Japanese law; digitalization of judiciary; digital transformation

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INTRODUCTION

The digitisation of Japanese-style mediation is also progressing in Japan, although it seems to be lagging somewhat behind the global trend, just as Online Dispute Resolution (ODR) is progressing in countries around the world. This article aims to provide an overview of the ongoing digitisation of Japanese-style mediation and to highlight the challenges it is facing. It also aims to present the unique features of the Japanese style of mediation in comparison with mediation in other countries, in particular in the Anglo-American legal system. In brief, Japanese-style mediation is characterised by emphasising the role of the mediator, who acts as a guardian rather than helping the parties to decide for themselves and encouraging dialogue. These features of Japanese-style mediation will become important factors to consider when thinking about digitising mediation. The article first introduces the origins of Japanese-style mediation, then explains the outline of Japanese-style mediation, introduces the current state of digitization of Japanese-style mediation, and examines the challenges.

THE HISTORY OF JAPANESE MEDIATION

The Japanese mediation system can be broadly divided into domestic relations mediation and civil mediation. Both domestic relations mediation and civil mediation are conducted in courthouses, but are non-litigious procedures.[1]

Japanese courts fall into two categories: ordinary courts and family courts. The first instance of the ordinary courts is divided into the summary courts and the district courts, depending on the amount in dispute in the case. Domestic relations mediation is a procedure carried out in the Family Court and is aimed at resolving domestic relations disputes such as divorce, sharing of living expenses between husband and wife, child support claims, division of inheritance, etc. by agreement between the parties. Civil mediation, on the other hand, is a procedure that is carried out in ordinary courts and aims to resolve civil disputes, such as landlord and tenant and construction disputes, by agreement between the parties.

In domestic relations mediation and civil mediation, a collegiate body called the Mediation Committee comprises a judge and two mediators nominated from the private sector. The process that is used in mediation is that the Mediation Committee listens to both parties and gradually forms a proposal for the formation of an agreement between the parties. A document called the mediation record, which has the same effect as a judgment, is drawn up in court when the parties have reached an agreement by accepting the proposal made by the Mediation Committee during

[1] H. Oda, *Japanese Law*, Oxford 2009, pp. 66–68.

the mediation. On the other hand, if both parties fail to reach an agreement in mediation, the mediation is unsuccessful and the mediation procedure is terminated. After the failure of mediation, the parties seeking to resolve the dispute will file a lawsuit with the court to obtain a final resolution in the form of a court decision.

The Japanese mediation system is said to have its roots in the Nai-sai system used during the Edo period (1603–1868), rather than being adopted directly from the West during the Meiji Restoration. Nai-sai was a kind of court settlement in the Edo period, and the government encouraged Nai-sai rather than litigation. *Nai* means 'inward' and *sai* means 'settling'. Overall, Nai-sai means 'to settle privately'. The plaintiff would obtain an endorsement from the Bugyosho (Edo magistrate's court) ordering the defendant to appear in court and take it to the village master. The village chief and a group of people with authority in the village (known as the five-man group) would recommend a Nai-sai in a situation where the village chief had both parties present. If the dispute was not settled, the matter would be the subject of a court hearing. Nai-sai was also allowed after the complainant had gone to court.[2]

Japan's modern era is said to have begun with the Meiji Restoration in 1868, which ended the feudal government of the Edo period. Immediately after the Meiji Restoration, in 1875, the system of Kankai (conciliation) was introduced. In 1881, the Kankai Rules were established, describing the specific methods of Kankai. The outline of the Kankai procedure is as follows. The plaintiff makes an oral application to the court. The court issues a summons to the defendant through the plaintiff, hears the statements of the parties in the court of recommendation, examines the documents submitted, calls witnesses and hears their statements, decides on a settlement plan on the basis of these, and finally advises the parties. The special feature of this procedure is that the court has control over the procedure and content of a solution, rather than the parties' voluntary agreement. If the parties accept the court's solution, they must submit a written notice of proposed settlement, which is approved by the assistant judge, and the proceeding is closed. The brief rules on conciliations allowed for the appointment of two assistant magistrates of the Court of Justice as conciliations commissioners in charge of conciliations, and for local notables to conduct conciliations. In the current mediation system, mediators are not only qualified, but also have a certain level of knowledge and experience, which is common to the Japanese mediation system. At that time, there were strong traces of the 'honoring of government officials and disrespect for ordinary citizens' and the 'village responsibility system (Mrauke Seido)'. Thus, the authority of judges and people of reputation was great, and it's said that there was an atmosphere in which it was almost impossible to refuse their admonitions. The 'village responsibility system' is a system in early modern Japan (mainly the Edo period) in which the

[2] For more information on the history of mediation and conciliation in Japan, see M. Hayashi, *Constructing the Legal Profession in Modern Japan*, PhD thesis, SOAS University of London, 2016.

entire village was responsible for the payment of tribute and various services on a village-by-village basis. Under the village responsibility system, if someone in the village went bankrupt and was unable to pay the annual tribute, others in the village had to pay it instead. This seems to have influenced the current social and emotional nature of the Japanese people.

In 1890, the Code of Civil Procedure was enacted,[3] which abolished conciliation (Kankai) and established the mediation system. In 1898, the Personal Status Litigation Procedure Act was enacted (replaced by the Personal Status Litigation Act[4]). In 1939, the Personal Mediation Act was passed, establishing a mediation system for domestic relation cases. The Personal Mediation Act was designed to preserve traditional customs and aesthetics. Nearly 70% of the petitions for personal mediation were filed by women and were often related to divorce.

In August 1945, Japan was defeated in the Second World War. The pre-war constitution of King James, the Meiji Constitution, was repealed and a new civilian constitution, the Constitution of Japan, came into force on 3 May 1947. The basic principles of family law were reformed and the Personal Mediation Act, which aimed to preserve mellow manners and customs, was repealed; the Adjudication of Domestic Relations Act of 1947, based on the dignity of the individual and the essential equality of the two sexes, provided for a system of mediation in family matters. In 2011, the Act of Adjudication of Domestic Relations was repealed and became the Domestic Relations Case Procedure Act.[5] The new Domestic Relations Case Procedure Act aims to make the domestic relations case procedure more accessible to the public and more in line with modern society. It was introduced as a new system. For example, a teleconferencing system has been introduced. The enactment of this law indicates that whereas in the past the role of domestic relations mediation was to persuade the parties from the perspective of maintaining family peace and healthy family life and welfare, in the future it is important to respect the independence of the parties and to encourage and support their voluntary settlement of their disputes.

For civil mediation, the Civil Mediation Act was passed in 1951.[6] Before the war, civil mediation was not a unified system with only individual mediation instruments, such as the Rules of Mediation in Tenancies (1922), and the field of mediation cases was divided in different ways in response to social problems and other issues. Mediation was born out of a real need for a procedural method to achieve simplified solutions. For example, tenancy disputes were commonplace. There was a need for a new peaceful resolution process that was simple, quick and

[3] https://www.japaneselawtranslation.go.jp/ja/laws/view/2834 (access: 20.11.2023).
[4] https://www.japaneselawtranslation.go.jp/ja/laws/view/4178 (access: 20.11.2023).
[5] https://www.japaneselawtranslation.go.jp/ja/laws/view/4258 (access: 20.11.2023).
[6] https://www.japaneselawtranslation.go.jp/ja/laws/view/4219 (access: 20.11.2023).

allowed the tenancy relationship to continue, rather than one that was time-consuming and costly, like litigation, and caused discord between the parties because of winning or losing the case. In the Act on Land and Building Leases Law, the mediation process is conducted by a chief mediator who is a legal expert and two mediators who are knowledgeable and experienced in land and building leases but are not required to be legal experts. The Civil Mediation Act of 1951 established the mediation system with the aim of settling all civil disputes other than domestic cases in accordance with the law and in line with the actual circumstances, by mutual concession of the parties.

As a result, two systems of mediation have become established in Japan today: domestic relations mediation conducted in family courts and civil mediation conducted in civil courts.

The Japanese mediation system, in which the aim is to reach an agreement through the advice of a neutral third party in the form of a Mediation Committee, has been in use in Japan for a very long time. Although there is much discussion about the background to mediation, it is widely believed that one of the main reasons why the Japanese mediation system became established in Japan is that it is in keeping with the Japanese national culture to resolve disputes between individuals amicably through advice, rather than to seek a clear black-and-white judgment. Despite the post-war legal reforms discussed below, it can be said that the character of the Mediation Committee as a watchdog to assist the parties in reaching an agreement, as discussed in the next section, was essentially preserved. However, it has also been suggested that laypeople's perception of the mediation system may be changing. There is now a tendency among laypeople, as a result of their growing awareness of their rights, not necessarily to seek an agreement with each communication, but to seek the decision of the court.

THE DIMENSIONS OF JAPANESE MEDIATION

In this section, we would like to introduce the characteristics of mediation in Japan and compare it with Anglo-Saxon mediation. Anglo-Saxon mediation is a consensual dispute resolution process widely used in the common law system. It is characterised by the following points: (1) the parties sit opposite each other; (2) the mediator, a neutral third party, only assists the parties in reaching a voluntary solution through dialogue and is prohibited from making his own assessment or judgment on the content of the dispute; (3) the only requirement to become a mediator is to have attended mediation skills training; (4) the emphasis is on procedural legitimacy in order to reach a voluntary agreement between the parties, and the validity of the result of the agreement is considered to be the responsibility of the parties themselves. Japanese style mediation, on the other hand, is characterised

by significant differences from Anglo-Saxon mediation in terms of (1) the composition of the members of the Mediation Committee and (2) the way in which the mediators are involved in the mediation.[7]

1. The conciliation committee

As mentioned above, the procedure in domestic and civil mediation is as follows: two mediators are selected from the private sector. The mediator and a judge form a Mediation Committee. They hear from both parties and try to reach an agreement between the parties. If an agreement is reached between the parties, a document called a mediation record is issued by the court, which has the same effect as a judgment. However, if the two parties cannot reach an agreement, the mediation is unsuccessful and the mediation process ends. Having failed in mediation, the parties seeking a resolution of the dispute will file a claim with the court for a final resolution. In mediation, the mediator and the judge jointly form a conciliation committee, and who is the mediator who carries out the mediation? Mediators are selected from the private sector, not officials, in order to reflect the common sense of the general public in mediation. The qualifications of mediators are set out in the Supreme Court Rules as (i) those who are qualified as lawyers, (ii) those who have expert knowledge useful in resolving civil or domestic disputes, or (iii) those who have extensive knowledge and experience of social life, and (iv) those who are between 40 and 70 years of age and have good character and insight.[8]

In practice, they are drawn from all sectors of society, including lawyers, doctors, university professors, accountants, property valuers, architects and other professionals, as well as those who have worked extensively with the local community. The selection process varies from region to region, but there are a few cases where the wives of university professors and others are selected because they are spouses, even if they have no job, in terms of being prominent local people. No special negotiation skills or other qualifications are required. This seems to have a common basis in the recommendations mentioned above, where the head of the security court or a local prominent figure was allowed to serve and make recommendations. In contrast, in mediation in the UK and the US, as mentioned above, the only requirement to become a mediator is to attend mediation courses, and no training, expertise or social experience is required.

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[7] J. Wada, Y. Nakamura, K. Yamada, H. Kubo, *Theory and Clinical Skills on ADR/Mediation*, Tokyo 2020, pp. 47–51.

[8] Articles 248, 249 and 250 of the Domestic Relations Case Procedure Act; Articles 6, 7 and 8 of the Civil Mediation Act. Qualifications details are set out in the Rules for Civil and Domestic Arbitrators of the Supreme Court Rules, https://www.courts.go.jp/vc-files/courts/file4/chouteiiinkisoku2.pdf (access: 20.11.2023).

2. How mediators are involved in mediation

The Japanese mediation system differs from the Anglo-Saxon system in that the parties are generally seated separately. The structure of the mediation is that the mediator has a hearing with each party separately. During the mediation process, it is therefore characteristic that the parties do not meet. In some cases, the parties assembled in court are taken to a separate waiting room so that they do not see each other at each session. Since the parties are not present to engage in dialogue, they are also expected to play a role in persuading the parties by giving their assessment and opinion of the case. Of course, the mediator maintains a neutral position, but the difference is that the mediator has a strong role as a guardian, not just as a facilitator. In addition to assisting the parties to reach a voluntary settlement through dialogue, the Japanese mediator may express his or her assessment and judgment on the substance of the dispute. The mediator's ability to ensure the parties' procedural legitimacy to reach a voluntary agreement, as well as the adequacy of the agreement outcome, often depends on the expertise or even of the morality of mediator. For example, it has been suggested, albeit informally, that the family morality of mediators differs between urban centres such as Tokyo and the regions, and that in rural areas, the way mediation was conducted expresses the moral values of the region. This pre-modern situation is thought to be gradually changing.

In Anglo-Saxon law, where individual self-determination is respected by the people, dispute resolution is also left to the voluntary agreement and self-responsibility of the parties, and the legitimacy of the procedures leading to this seems to be emphasised. In contrast, the Japanese mediation system, based on the historical background mentioned above, requires mediators to ensure that the content of the parties' agreement is socially appropriate, that it provides relief to the socially vulnerable and, in the case of domestic relations mediation, that it protects the welfare of children and families. In Japan, the concept of individual self-determination was not shared until the post-war period, and the Japanese people's preference for guardianship by public authority has meant that compromise and resolution have largely been achieved by respecting the opinions and judgments of an authoritative third party. It is undeniable that there was an aspect of reaching an inevitable agreement through the authority of the court, rather than whether the individual was fully persuaded, and although the mediator also had the role of trying to reach a reasonable solution, there was also an aspect of using the authority of the court to persuade the parties. It is said that even today there may be some vestiges of this. However, it is also true that in Japan, with the recent increase in legal awareness, parties do not necessarily blindly accept mediation proposals from the court, but rather seek solutions on their own initiative and responsibility. The current rapid progress in the use of IT in civil courts and mediation may have an impact on this trend towards change.

ON THE DIGITALIZATION OF JAPANESE MEDIATION

1. Implementation of IT in the civil justice system

The digitalisation of court proceedings is becoming an international trend, and legislation to this effect has also been developed in Japan during this period. A 2017 Cabinet decision on the Future Investment Strategy provided for the digitisation of court proceedings.[9] The Committee decided that the digitisation of civil proceedings would be implemented in three contexts, namely (a) e-filing, (b) e-case management, and (c) e-court. The first one means submitting documents and evidentiary material as digital data, the second refers mainly to situations where the progress of a case or other information in the courts is managed digitally, and the third one refers to situations where court hearings, etc. are conducted via web conferencing.

These three situations will be in place in three phases, not all at once, but one at a time. The first phase is one that can be implemented without having to wait for legislative changes or building a new system: using web conferencing, which is still allowed in the e-court, falls under this first phase. The second phase is an area that can be implemented once legislation changes. The use of pleadings and issues in the e-court in point (b) will correspond to this phase. In the third phase, in addition to the legal reform, the Court of Justice will introduce a new system of its own. Phase 3 is the stage where everything up to (a) e-submission and (b) above, e-case management, is implemented. The Code of Civil Procedure will be amended in May 2022 on the basis of the Committee's conclusions. Phase 3 should be completed by the end of 2025.[10]

2. Legislative reform for the digitalisation of domestic relations mediation

The legislation on the digitalisation of the civil procedure has also had a significant impact on the mediation process. How has the digitalisation of mediation progressed? First of all, it should be mentioned that among mediations, the move to digitalisation is more active in domestic relations mediations than in civil mediations. Almost simultaneously with the amendment of the Code of Civil Procedure, the Personal Status Litigation Act and the Domestic Relations Case Procedure Act were partially amended prior to the Civil Mediation Act. The main reason for reforming the Personal Status Litigation Act and the Domestic Relations Case Procedure Act earlier than the Civil Mediation Act was that there was a great practical need for it in personal

[9] Future Investment Strategy 2017: "Reforms to Realize Society 5.0, 9.6.2017, https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/miraitousi2017_t.pdf (access: 20.11.2023).

[10] The Civil Affairs Bureau, Ministry of Justice, Amendment of the Code of Civil Procedure (related to digitalization), June 2022, https://www.japaneselawtranslation.go.jp/outline/61/905R411.pdf (access: 20.11.2023).

proceedings such as divorce. The amendment to the Personal Status Litigation Act (Article 37) allows the parties who have participated in the proceedings to settle divorce proceedings by means of video and audio communication. The amendment to the Domestic Relations Case Procedure Act (Article 268) allows mediation in divorce cases to take place using video and audio communication.

Previously, divorce mediation itself was allowed to conduct mediation interviews by telephone. However, the parties had to appear in court in order for the divorce mediation to be successful. Amendments to the Domestic Relations Procedure Act allow mediation in divorce and separation cases to be conducted by telephone with video and audio transmission and reception.[11] This is because when a web conferencing date is set, it is possible to confirm a party's will and intent through facial expressions as well as audio and video, so that a divorce can be finalised without a court appearance. Moreover, although divorce by mediation under the Personal Status Litigation Act also required the parties to appear in court, the amendment to the Personal Status Litigation Act allows parties who have participated in the proceedings by means of video and audio communication to settle and admit the claim in a divorce action.[12] The amended Acts have been promulgated, but no date has been set for their effective date. The Acts will come into force within three years of being promulgated, meaning that they will apply by May 2025 at the latest.

3. The current reality of digitising mediation in family courts

The COVID-19 pandemic, which started in 2019, has promoted the significant use of web conferencing in Japan, as it has around the world. It has promoted the use of IT in domestic relations mediation.

On March 18, 2021, the working group of the Liaison Council of the Three Legal Professions, in considering the way civil justice is handled, recommended the promotion of remote access to matrimonial proceedings. The working group also released an interim report on the use of web conferencing in domestic. Following this interim report, the trial operation of actual mediation proceedings in the Family Courts of Tokyo, Osaka, Nagoya and Fukuoka will begin sequentially from December 2021. In addition, the use of web conferencing will be progressively extended to 19 other family courts outside these courts from October 2022. The use of the Internet for domestic relations mediation is to be enforced nationwide by 2025 and it is expected that web-based mediation will continue to grow in relation to domestic relations mediation.

Each family court has its own operating manual for the use of the Internet, which includes identification, a ban on recording, a ban on using images in the

[11] Articles 268 and 277 of the Domestic Relations Procedure Act.

[12] Article 37 of the amended Personal Status Litigation Act.

background of the screen to operate the equipment so that the real background does not appear (ensuring a closed system), and that the parties themselves project the equipment in accordance with the instructions of the Mediation Committee. With regard to the method of entering the room and the method of waiting in online, no decision has been taken as to whether the line should be disconnected or whether the parties should wait in the waiting room. It should be remembered that mediation in Japan is conducted in such a way that the parties do not meet face-to-face. In other words, one party negotiates with the mediator while the other party waits in a separate room. The question is how to replicate this situation online. It is pointed out that the former (the line should be disconnected) can prevent and confidential information from the other party, but is time consuming and that it is a problem if the person is allowed to enter before being allowed to re-enter the room or before being prepared.

It is pointed out that the former (the line should be disconnected) can prevent and confidential information from the other party, but is time-consuming, and that it is a problem if the person is allowed to enter before being allowed to re-enter the room or before being prepared.

In contrast to the push for digitalisation of domestic relations mediation, the environment for web-based implementation into civil mediation does not appear to be sufficiently conducive. This is due to the fact that civil mediation is not as widely used as domestic mediation in Japan, where domestic mediation procedures must always be conducted before a lawsuit is filed (the so-called pre-mediation principle). It appears that there is sufficient potential to extend the benefits of the mediation system to a large number of citizens by promoting the use of IT, such as web conferencing, in civil mediation.

4. Advantages and disadvantages of the ODR of the mediation process

It is noted that ODR through mediation has both advantages and disadvantages. These are listed below.

Firstly, the benefits include: 1) no need for travel, which means less travel time, which in turn makes it easier to set a date for mediation, and also expands opportunities for disabled people to participate in the process as technology develops; 2) the ability to handle data, which means less submission of materials and record keeping; 3) ecology, as no paper is used; 4) ease of implementation during a pandemic, as there is no physical contact, which makes it easier to conduct the process; and 5) the lack of physical contact makes it easier to implement even under pandemic conditions, and since emotional conflicts are the basis of domestic cases, the avoidance of physical contact can bring safety and security to the parties involved.

On the other hand, the main drawback is security. This issue includes security risks and the possibility that people who should not be involved in the proceed-

ings may enter the procedure. Related to this is the fact that when the perpetrator of the other party's domestic violence is a party to the proceedings, harm may be done to the victim as a result of being located when he or she participates in the proceedings, e.g. in a lawyer's office, compared to when he or she participates in court. It is feared that the right to due process of those who are unfamiliar with digital devices and how to use them may be infringed.

It has been pointed out that these problems can be dealt with by means of technical measures. For example, the use of a camera on the terminal to see what is happening around you, or the use of a system with enhanced security. In addition, it is considered necessary to look at issues other than these technical aspects, such as dealing with cases of domestic violence, etc. It is important to point out that the agent's office is not good because its location is clearly known. Privacy guarantees must be implemented. In addition, a lawyer's office requires an enclosed office space and a directional microphone. In terms of related rule-making, the Information Security Regulations for Lawyers of the Japan Federation of Bar Associations are expected to come into effect in June 2022.

A more fundamental consideration is whether, given the intrinsic importance of Japanese-style mediation, communication in web conferencing can be made as good as in face-to-face proceedings. It was pointed out that it is necessary to find a way of talking to the parties to find out how they really feel and to be able to compromise. These are all issues that need to be considered. The question is how the online setting changes the setting created by the face-to-face setting. In Anglo-Saxon mediation, it may be necessary to contrast the quality of online dialogue with that of face-to-face dialogue in terms of dialogue facilitation. In Japanese-style mediation, on the other hand, the mediator has a guardian-like authority over the parties. It is therefore necessary for the mediator to fully understand the parties' intentions when meeting them and preparing a good mediation proposal. In this respect, it may be particularly problematic in Japanese-style mediation whether there are any negative effects of conducting mediation online.

CONCLUSIONS

The above is an introduction to Japanese-style mediation and the current state of ODR in mediation. The digitisation of civil court proceedings is not yet fully developed in Japan, as evidenced by the fact that the open digitisation of civil court data has not been implemented and is still in the process of being opened up. In civil procedure, the three phrases mentioned above have been established and are systematically applied. There is less legislation on mediation than on civil procedure. However, mediation in domestic relation disputes is moving ahead with the restructuring of the system and its implementation is beginning to materialise. The

role of the third party (the Mediation Committee) in Japanese mediation differs significantly from Anglo-Saxon law. In Japan, laypeople tend to favour the role of the mediator as a guardian, rather than as a facilitator of an agreement between the parties. These characteristics of Japanese mediation are taken into account in ODR.

REFERENCES

Literature

Hayashi M., *Constructing the Legal Profession in Modern Japan*, PhD thesis, SOAS University of London, 2016, **DOI: https://doi.org/10.25501/SOAS.00026667**.

Oda H., *Japanese Law*, Oxford 2009.

Wada J., Nakamura Y., Yamada K., Kubo H., *Theory and Clinical Skills on ADR/Mediation*, Tokyo 2020.

Miscellaneous

Future Investment Strategy 2017: "Reforms to Realize Society 5.0, 9.6.2017, https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/miraitousi2017_t.pdf (access: 20.11.2023). [in Japanese]

Rules for Civil and Domestic Arbitrators of the Supreme Court Rules, https://www.courts.go.jp/vc-files/courts/file4/chouteiiinkisoku2.pdf (access: 20.11.2023). [in Japanese]

The Civil Affairs Bureau, Ministry of Justice, Amendment of the Code of Civil Procedure (related to digitalization), June 2022, https://www.japaneselawtranslation.go.jp/outline/61/905R411.pdf (access: 20.11.2023).

Legal acts

Civil Mediation Act (Act No. 109 of 26 June 1996), https://www.japaneselawtranslation.go.jp/ja/laws/view/4219 (access: 20.11.2023).

Code of Civil Procedure, https://www.japaneselawtranslation.go.jp/ja/laws/view/2834 (access: 20.11.2023).

Constitution of Japan (Constitution of 3 November 1946).

Courts Act (Act No. 59 of 16 April 1947), https://www.japaneselawtranslation.go.jp/ja/laws/view/4150

Domestic Relations Case Procedure Act (Act No. 52 of 25 May 2011), https://www.japaneselaw-translation.go.jp/ja/laws/view/4258#je_pt3ch1sc1at5 (access: 20.11.2023).

Personal Status Litigation Act (Act No. 222 of 9 June 1951), https://www.japaneselawtranslation.go.jp/ja/laws/view/4178 (access: 20.11.2023).

Personal Status Litigation Act (Act No. 109 of 16 July 2003), https://www.japaneselawtranslation.go.jp/ja/laws/view/4178 (access: 20.11.2023).

ABSTRAKT

W Japonii, podobnie jak w wielu innych krajach, trwa proces digitalizacji, mający odbicie również w rozwoju internetowego rozstrzygania sporów (ODR). Celem artykułu jest analiza ODR w Japonii w świetle trwającej cyfryzacji mediacji oraz zidentyfikowanie związanych z tym wyzwań. Omawiane zmiany mają charakter systemowy. W sądowej procedurze cywilnej w zakresie mediacji określono trzy etapy transformacji, które są systematycznie wdrażane. Podobnie jak w sprawach cywilnych, mediacja w sprawach rodzinnych podąża w kierunku rewizji systemu i jej wdrożenie jest również bliskie. Jednocześnie w procesie cyfryzacji obejmującym tę instytucję prawną ważna jest jej odmienność od mediacji w obszarze prawa angloamerykańskiego i pozostałych obszarów prawa. Mediator w Japonii jest bardziej „strażnikiem procedury" niż osobą ułatwiającą zawarcie porozumienia między stronami. Ta oraz inne różnice w odbiorze instytucji prawnej mediacji powinny być brane pod uwagę przy konstruowaniu zmian ukierunkowujących mediację w stronę cyfryzacji.

Słowa kluczowe: ODR; mediacja; koncyliacja; prawo japońskie; informatyzacja sądownictwa; transformacja cyfrowa