

Labor-management Relations in Japan

Part III: Systems for Resolving Individual Labor Disputes

HAMAGUCHI Keiichiro

The numbers of collective labor disputes involving labor unions in recent years have significantly declined, almost to the point of extinction. In contrast, there are extremely high numbers of labor disputes between individual workers and management without the involvement of labor unions. In 2019, there were just 49 labor disputes with dispute acts, in comparison with around one million incidences of the authorities being consulted concerning individual labor disputes in the same year, of which around 10,000 incidences resulted in advice or guidance being issued by the Director of the relevant Prefectural Labor Bureau, and around 5,000 incidences entailed mediation by Dispute Adjustment Committees. Individual labor disputes—cases involving individual workers who have been subject to dismissal, bullying, or other such treatment—already account for almost the majority of Japan's labor disputes.

I. The development of systems for resolving individual labor disputes

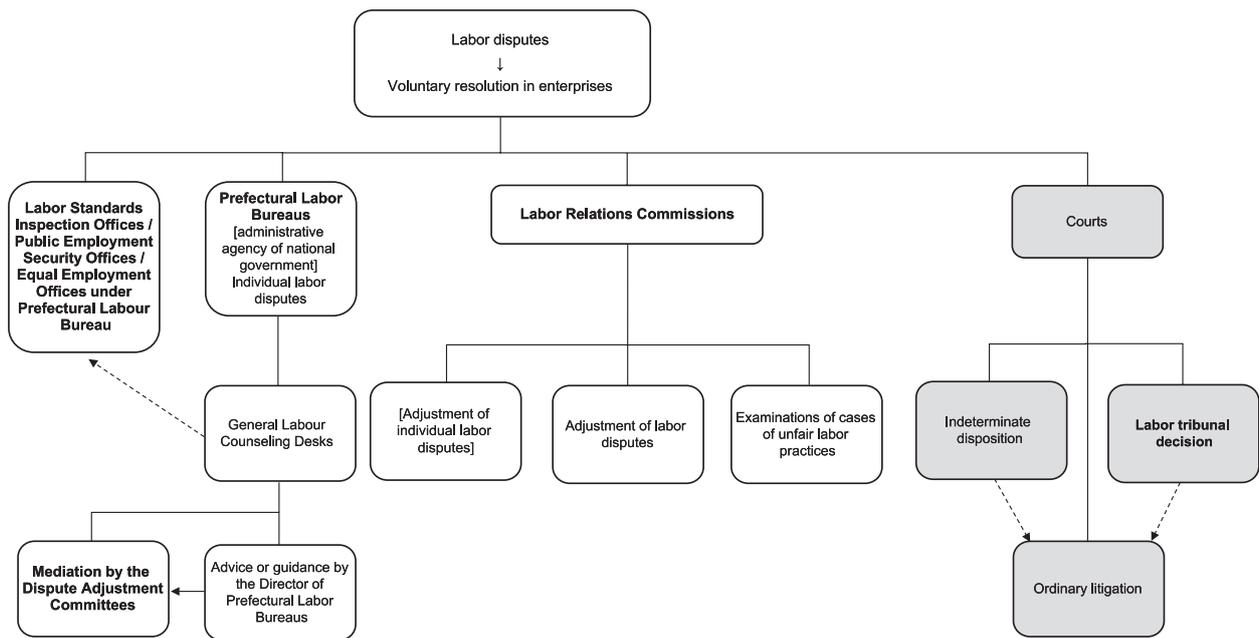
As seen in Part II of this article series, over the years there has been a rise in the numbers of individual workers who are unable to have their disputes resolved through collective labor relations, due to factors such as the declining unionization rate and the lack of labor unions in micro-, small-, and medium-sized enterprises, as well as the exclusion of non-regular employees from union membership by the majority of Japan's enterprise unions. Despite this, for many years, no steps were taken to develop systems for responding to such individual labor disputes. Modern Japan's labor dispute resolution

systems have been developed exclusively as adjustment procedures for resolving collective labor disputes involving labor unions. The Labor Union Act prohibits the unfair labor practices of less favorable treatment and refusal



to bargain collectively, and stipulates that in the event of violations, the relevant Labor Relations Commission will issue a remedial order. The Labor Relations Adjustment Act also establishes procedures for handling disputes between workers and their employers in the form of mediation, conciliation, and arbitration by a Labor Relations Commission.¹ However, both approaches assume that the party leading the dispute is a labor union, as opposed to an individual worker.

This is not to say that individual workers formerly had no procedures whatsoever to pursue the resolution of labor disputes. The Constitution of Japan guarantees all people the right of access to the courts. And yet, proceedings in Japanese courts are an unrealistic option for individual workers due to the long periods of time they require. While the cases known as *kakekomi uttae* (“action with last-minute union membership”) described in the previous article—namely, those in which a worker joins a non-enterprise-based labor union *after* being dismissed and requests that union to pursue collective bargaining—are in effect individual labor disputes, they are collective labor disputes in formal terms. Moreover, although the resolution of unpaid wages and other such legal violations can be sought by reporting the issue to a Labor Standards



Source: Takashi Araki, *Rodo ho* [Labor law], 4th ed. (Tokyo: Yuhikaku, 2020) 598. Translated by the author.

Figure 1. Framework of Labor Dispute Resolution System

Inspection Office, civil disputes such as unfair dismissal are not covered under that system.

There was therefore growing recognition of the necessity for the establishment of mechanisms specialized in resolving individual labor disputes. This resulted in the enactment of the Act on Promoting the Resolution of Individual Labor Disputes in 2001 (Figure 1). The Act prescribes that Prefectural Labor Bureaus receive consultations from workers, and among those cases the Director of the Prefectural Labor Bureau can, at the request of the worker, issue advice or guidance, and have a Dispute Adjustment Committee conduct mediation. Of these measures, we shall look at mediation process. The majority of cases begin with the individual worker applying for mediation. If the employer that is the other party to the dispute responds by declaring its intention *not* to participate, the mediation is immediately discontinued. If the other party participates, the mediation commences, and the relevant Dispute Adjustment Committee puts forward a mediation proposal. If both labor and management agree to the proposal, the dispute is resolved. If, on the other hand, one or both parties

refuse to accept, the mediation fails, and the process is discontinued.

Table 1 shows changes in the numbers of individual labor disputes—total number of labor consultations, and a breakdown of those consultations into individual civil labor disputes, requests for advice or guidance, and applications for mediation—received by Prefectural Labor Bureaus across Japan. In terms of approximate figures, this indicates that there are around one million consultations in total each year, of which 250,000 are civil labor disputes on dismissal and other such matters, around 10,000 are requests for advice or guidance, and around 5,000 are applications for mediation.

II. Development of the labor tribunal system

The previous section looked at the labor administration processes for handling individual labor disputes. With regard to the court system, there were likewise increasing calls for the establishment of a simpler system—that is, an alternative to lawsuits—exclusively for resolving individual labor disputes. These led to the

Table 1. Changes in Numbers of individual labor disputes (at Prefectural Labor Bureaus and courts)

Fiscal year	Prefectural Labor Bureaus				Courts	
	Total number of labor consultations	Number of individual civil labor disputes	Number of requests for advice or guidance	Number of applications for mediation received	Labor tribunals	Civil suits
2001 (second half)	251,545	41,284	714	764		
2002	625,572	103,194	2,332	3,036		2,309
2003	734,257	140,822	4,377	5,352		2,433
2004	823,864	160,166	5,287	6,014		2,519
2005	907,869	176,429	6,369	6,888		2,446
2006	946,012	187,387	5,761	6,924	877	2,035
2007	997,237	197,904	6,652	7,146	1,494	2,246
2008	1,075,021	236,993	7,592	8,457	2,052	2,441
2009	1,141,006	247,302	7,778	7,821	3,468	3,218
2010	1,130,234	246,907	7,692	6,390	3,375	3,127
2011	1,109,454	256,343	9,590	6,510	3,586	3,170
2012	1,067,210	254,719	10,363	6,047	3,719	3,358
2013	1,050,042	245,783	10,024	5,712	3,678	3,339
2014	1,033,047	238,806	9,471	5,010	3,416	3,257
2015	1,034,936	245,125	8,925	4,775	3,679	3,391
2016	1,130,741	255,460	8,976	5,123	3,414	3,391
2017	1,104,758	253,005	9,185	5,021	3,369	3,528
2018	1,117,983	266,535	9,835	5,201	3,630	3,500
2019	1,188,340	279,210	9,874	5,187	3,665	3,619
2020	1,290,782	278,778	9,130	4,255	3,907	3,960

Source: Ministry of Health, Labour and Welfare (MHLW), <https://www.mhlw.go.jp/content/11909000/000797476.pdf>. Ministry of Justice, "Civil Affairs Administration of the Ministry of Justice in the Year of 2005" and "Civil affairs administration of the Ministry of Justice in the year of 2019," *Hoso Jiho (Lawyers Association Journal)*.

establishment of the Labor Tribunal Act, which was enacted in 2004 and put into effect in 2006.

Labor tribunals are largely carried out in the district courts. A labor tribunal is conducted by a labor tribunal committee consisting of a labor tribunal judge and two labor tribunal members (selected from labor and management organizations). The dispute is generally resolved within three sessions. The labor tribunal starts by attempting conciliation. If conciliation is achieved, the dispute is thereby resolved, and if an agreement is not reached, the labor tribunal judge passes a labor tribunal decision (*shinpan*). A party that objects to the decision must file a challenge. In such cases, it is considered that an action was filed at the time of petition for labor tribunal proceedings, and from that point on, the case is handled through typical trial proceedings. As seen in Table 1, the annual numbers of labor tribunals have been between 3,000

and 4,000 in recent years.

In fact, the numbers of workers who file civil suits—that is, those who are prepared to do so regardless of the costs—are, as may be expected, also between 3,000 and 4,000 cases each year. Civil suits go through the three-tiered court system: district courts, high courts, and the Supreme Court. Firstly, the plaintiff submits a complaint. The defendant responds by submitting a written answer. The judge then conducts the trial by examining the documentary evidence and witnesses. Generally, the judge passes a judgment (*hanketsu*), but in many cases, disputes are resolved when a settlement (*wakai*) is reached between the plaintiff and defendant during the suit. If a party objects to the judgment, that party files an appeal (*kōso*) with the relevant high court, or subsequently a final appeal (*jōkoku*) with the Supreme Court. This, however, requires a long period of time.

III. Change in the content of individual labor disputes

The content of the individual labor disputes handled by the labor bureaus has also changed considerably over almost two decades since the system was established. While formerly, issues concerning the termination of employment, such as dismissal or non-renewal of repeatedly renewed fixed-term contract, accounted for an overwhelmingly large number of disputes, there has been a rising number of disputes involving bullying (harassment) in recent years. Figures 2, 3, and 4 show the changes in the numbers of individual labor disputes (civil labor disputes, requests for advice/guidance, and applications for mediation) in each category (dismissal or non-renewal of fixed-term contract, other forms of termination of employment, bullying/harassment, and others).

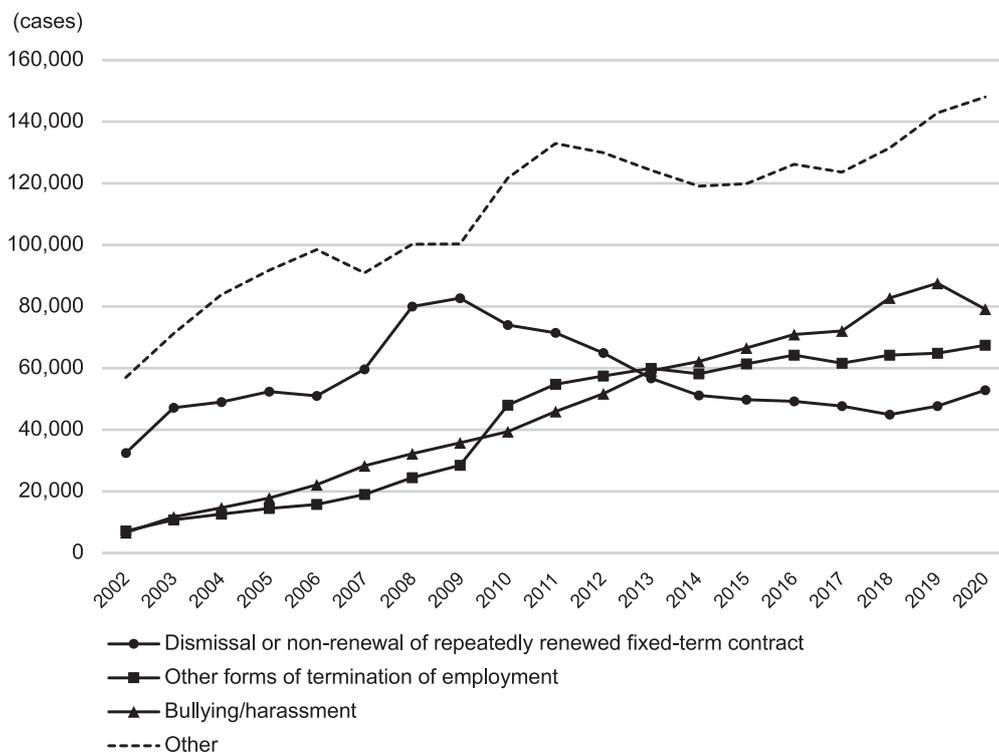
If we take the 2008–2009 global financial crisis as a turning point, the figures show that while prior

to the crisis there was a rising number of disputes regarding dismissal, non-renewal of repeatedly renewed fixed-term contract, and such other forms of termination of employment (such as inducement of resignation, (reluctant) voluntary resignation, or withdrawal of a tentative hiring decision), after the crisis such disputes have in fact been on the decline, while, in contrast, the numbers of harassment-related disputes are steadily rising.

IV. Increasing categories of disputes handled by conciliation

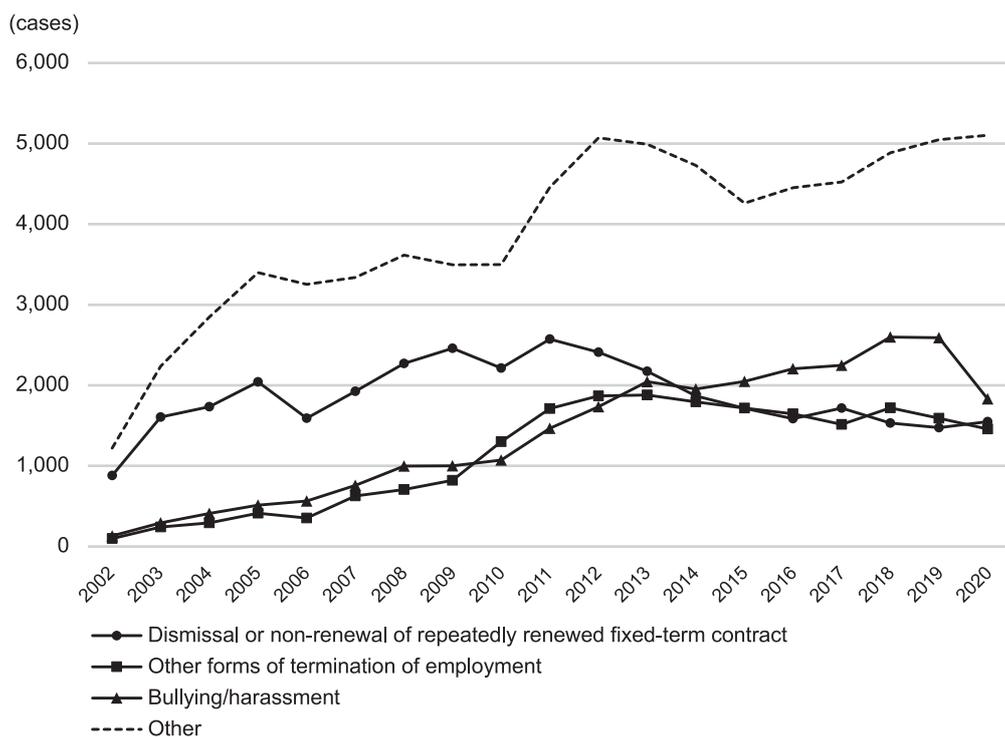
In the previous sections, we have looked at the systems for resolving typical individual labor disputes. The mechanisms for addressing individual labor disputes in specific fields have been established—some prior to those systems, and some as separate, independent approaches—and have been gradually expanding. This section provides a summary of those developments.

The first of those mechanisms to be established



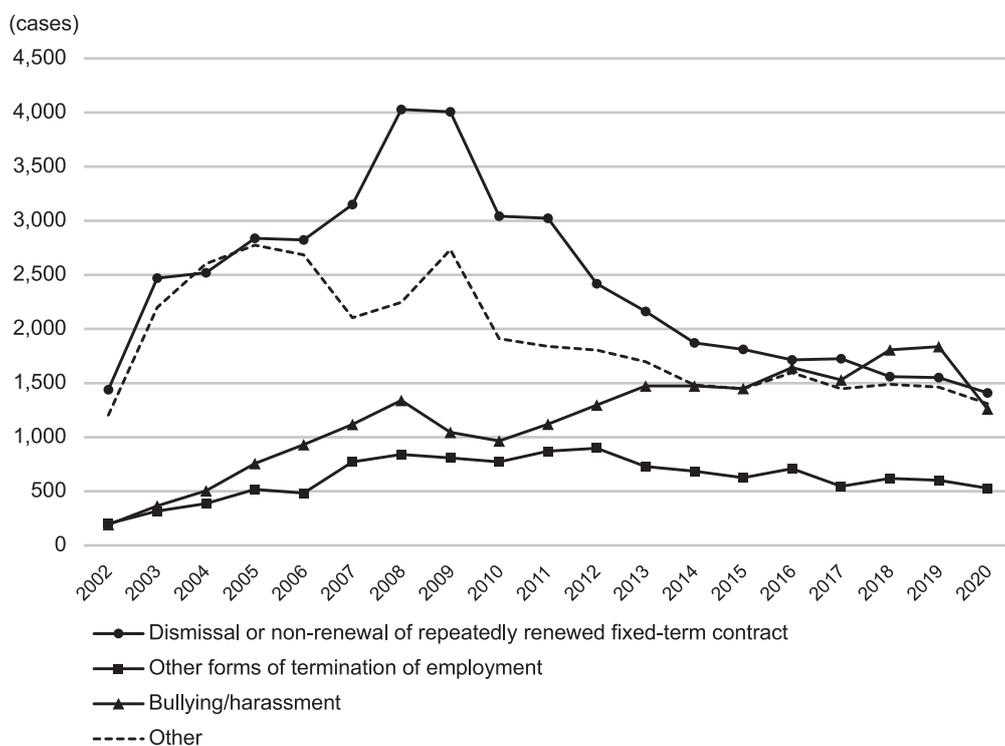
Source: MHLW, “The Enforcement Status of Individual Labor Dispute Resolution System.”

Figure 2. Change in number of individual civil labor disputes by category



Source: MHLW, "The Enforcement Status of Individual Labor Dispute Resolution System."

Figure 3. Change in number of requests for advice or guidance by category

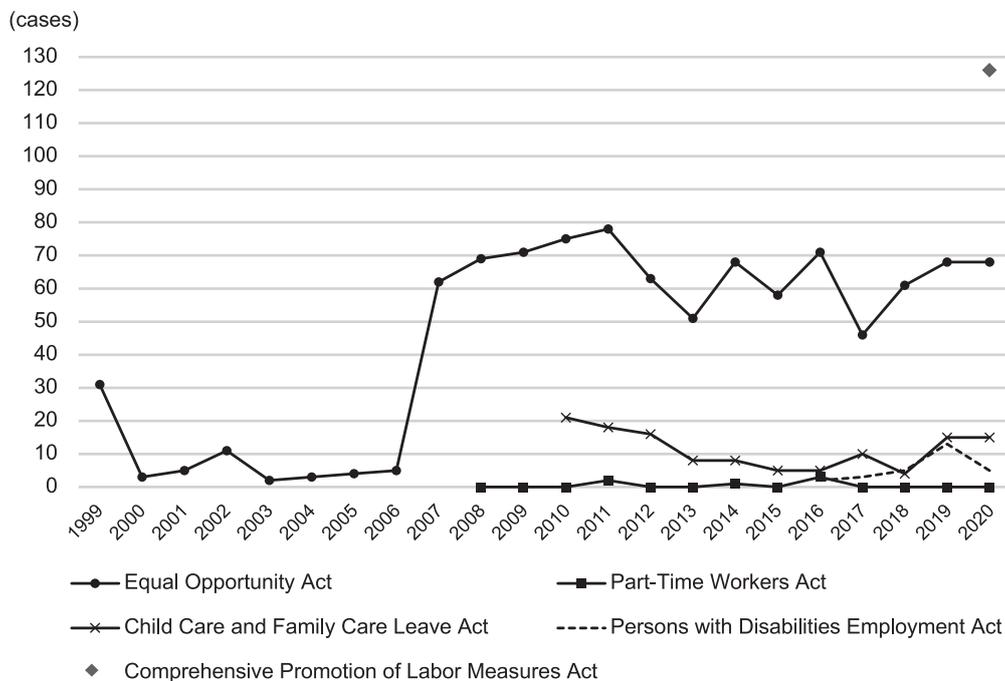


Source: MHLW, "The Enforcement Status of Individual Labor Dispute Resolution System."

Figure 4. Change in number of applications for mediation by category

was an Equal Opportunity Conciliation Commission based on the Equal Employment Opportunity Act² of 1985. The Act marked the first time that gender equality in employment was prescribed under Japanese law, and such commissions were therefore created to solve disputes concerning such matters. However, the 1985 version of the Act stipulated merely a “duty-to-endeavor,” and had no legal binding to prohibit discrimination. Moreover, the system of conciliation by an Equal Opportunity Conciliation Commission was such that even if one party applied for a dispute to be handled, conciliation could only commence when the other party also consented. This was on par with the International Court of Justice, which does not have jurisdiction if one of the countries’ parties to the matter does not consent to referral to trial. Subsequently, the 1997 amendment to the Act, which enforced the prohibition of discrimination, enabled conciliation based on the Act to be commenced upon an application from just one party.

At that stage, conciliation was only adopted as a means for addressing disputes involving gender discrimination. Therefore, disputes concerning sexual harassment, as were the cases for harassment in general, were handled through mediation when the Act on Promoting the Resolution of Individual Labor Disputes was enacted in 2001. Several years later, when the Equal Employment Opportunity Act was amended in 2006, the adjustment procedures for handling sexual harassment and maternity-related discrimination cases were changed from mediation to conciliation. Furthermore, the procedures for handling cases of discrimination concerning the working conditions of part-time workers were changed to conciliation with the amendment of the Part-Time Workers Act³ in 2007, and the procedures for handling cases of discrimination related to raising children or caring for family members were also changed to conciliation with the amendment of the Child Care and Family Care Leave Act⁴ in 2009. The 2013



Source: Data on enforcement of related laws issued each year by Equal Employment Offices of Prefectural Labor Bureau, MHLW.

Note: Comprehensive Promotion of Labor Measures Act was enforced on July 6, 2018.

Figure 5. Numbers of conciliation cases by category

amendment of Persons with Disabilities Employment Act⁵ saw the adjustment procedures for handling cases regarding discrimination toward (and reasonable accommodation of) persons with disabilities also changed to conciliation. Following the establishment of the Act on the Arrangement of Related Acts to Promote Work Style Reform (more commonly known as the Work Style Reform Act) in 2018, cases of discrimination concerning the working conditions of fixed-term contract employees and dispatched workers were also handled by conciliation, as had already been the cases for those regarding part-time workers. Figure 5 shows the changes in the numbers of individual labor disputes handled through conciliation in that period.

While such increases in the categories of disputes handled by conciliation have resulted in the gradual decline in the numbers of disputes categorized as “other” mediation cases, no particularly significant changes have been noted at this point. At the same time, the changes prompted by the 2019 amendment of the Comprehensive Promotion of Labor Measures Act⁶ (enforced in June 2020) are anticipated to prompt rather significant impacts in the years to come. This is due to the fact that the amendment has resulted in all cases of harassment in general—that is, cases of harassment other than sexual harassment—also being addressed through conciliation instead of mediation. As shown in Figure 4, mediation applications regarding harassment cases in general have risen sharply from 192 (6.3%) in 2002 to 1,261 (28.0%) in FY2020. With such cases now being handled by conciliation, it has become not only possible for the conciliation process to begin regardless of the intention of the other party, and to request the company (the employer) in question to appear to the commission, but also possible to

request not only the person involved but also their colleagues to appear to the commission to hear their opinions.

Furthermore, while an example of legislation that was not passed, a human rights bill submitted to the Diet in 2002 proposed to prohibit discrimination and harassment on the grounds of race, creed, sex, social status, family origin, disability, disease, or sexual orientation, and also went a step beyond dispute mediation and conciliation by proposing arbitration as a stronger system for tackling cases of discrimination or harassment. As arbitration is legally binding for the parties concerned, the realization of such a bill could have a considerable impact on Japanese society. However, the bill was ultimately scrapped, as at the time, in 2002, the opposition raised an objection based on concerns regarding the freedom of the press, and subsequently the objection grew among right-leaning diet members in the Liberal Democratic Party itself due to backlash toward the activities of foreigners.

1. *Assen* has been termed as “conciliation,” and *chotei*, as “mediation” in the labor law academia in Japan for a long time. However, *assen* and *chotei* are translated into “mediation” and “conciliation” respectively in this text in the view of general understanding.
2. Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment
3. Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers.
4. Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members
5. Act on Employment Promotion etc. of Persons with Disabilities
6. Act on Comprehensive Promotion of Labor Measures and Stabilization of Employment of Employees, and Enrichment of Their Working Lives

HAMAGUCHI Keiichiro

Research Director General, The Japan Institute for Labour Policy and Training. Research interest: Labor policy.

<https://www.jil.go.jp/english/profile/hamaguchi.html>