報　告　書

英訳「司法制度改革審議会『民事訴訟利用者調査』報告書（結果の要約）」

菅　原　郁　夫
I-Ching Tseng

本資料は、2000年に司法制度改革審が行った「民事訴訟利用者調査」（以下「本調査」とする）の結果の要約部分の英訳である。この調査は、日本で初めての民事訴訟利用者に対する調査であり、日本の民事司法制度を知る上ではきわめて重要な資料である。すでに報告から５年以上の年月が経過しているが、この時点で英訳を試みるは、上記のような貴重な資料であるにもかかわらず、必ずしもその全容が欧米に紹介されているわけではないことにある。唯一ドイツ語訳として Kazuhiko Teshikahara, Verfahrensgerechtigkeit und Ziviljustiz in Japan – Ergebnisse der Regierungsumfrage : Der Zivilprozess in der Wahrnehmung der Parteien, 2000" (ZZP International, Band 7, 2002) が存在するのみであり、英文としては、本調査のデータを用いた２次分析である Kenich Ohbuchi, Ikuo Sugawara, Kasuhiko Teshigahara, & Kei-ichiro Imazai, Procedural justice and the Assessment of Civil Justice in Japan, Law and Society Review, Vol.39, pp. 875-892. が存在するのみである。他方において、日本においては、本調査の二次分析を行った文献（佐藤岩夫＝菅原郁夫＝山本和彦編・利用者から見た民事訴訟――司法制度改革審議会『民事訴訟利用者調査』の２次分析）が出版されるなど、本調査に関する再分析などもなされている。そこで、訳者らは、本調査の英訳部分を忠実に翻訳することによって国外においても本調

査の成果を再評価するきっかけができればと思い翻訳を試みた次第である。本翻訳は当然のことながら私訳にとどまり、その内容に関する責任は訳者らのみが負うものである。この英文訳が少しでも日本におけるこの領域の研究の紹介につながればと期待するところである。

This information is the English translation of the summary of the survey results on the "Field Survey on Users of Civil Litigation" ("this Survey") conducted by the Justice Reform Council in 2000. This is the first attempt in Japan to conduct an extensive survey on actual users of the civil litigation system and the results provide extremely important information as far as Japan's civil justice system is concerned. Five years have passed since the results came out. Although this is an attempt to provide an English translation of the survey results, and despite the importance of those results, it does not seem necessary to introduce the entire contents of the results to Western countries. The only German translation of the survey results is provided in Kazuhiko Teshikahara, Verfahrensgerechtigkeit und Ziviljustiz in Japan – Ergebnisse der Regierungsumfrage: Der Zivilprozess in der Wahrnehmung der parteien, 2000" (ZZP International, Band7, 2002). The only English version is the secondary analysis of the data of this Survey provided in Ken-ich Ohbuchi, Ikuo Sugawara, Kasuhiko Teshigaraha, & Kei-ichiro Imazai, Procedural justice and the Assessment of Civil Justice in Japan, Law and Society Review, Vol.39, pp.875-892. On the other hand, analyses based on this Survey, such as the release of a publication (Iwao Sato, Ikuo Sugawara, Kazuhiko Yamamoto (ed.), Secondary Analysis of Judicial Reform Council's "Field Survey on Users of Civil Litigation") are also conducted in Japan. Consequently, an attempt to translate the results of this Survey was made based on the belief that reappraisal of the results may be prompted pending on the provision of a faithful English translation. Of course, this translation remains a private translation, and the responsibilities for the contents are borne only by the translators. It is hoped that this English translation will contribute to the introduction of researches in this field conducted in Japan.

Field Survey on Users of Civil Litigation

(English version)

Justice Reform Council, 2000

Summary of the Survey Results

Ikuo SUGAWARA
I-Ching TSENG

1. Introduction

As the basic data for the establishment of a "Civil Litigation System Accessible to People," this survey asked actual users to evaluate various aspects of the civil litigation process. In the implementation of the survey, enumerators visited 591 persons who had experienced litigation nationwide, interviewed each of them directly and asked them to evaluate key aspects of the system, including the litigation procedure, judges and lawyers.

This is the first attempt in Japan to develop an extensive survey of the actual litigants, and the data are extremely important for understanding the realities of the system from the viewpoints of the users. At the same time, the comprehensiveness of the content is comparable to similar surveys in Western countries.

The questions chosen cover all aspects of civil litigation, and various statistical methods were used for the analysis. Consequently, an enormous amount of information and results are shown in sections 2 and 3 (which are omitted). Therefore, this section seeks to summarize the main results of the survey according to four viewpoints, which are: "What do the users want from their litigation?" "Is litigation

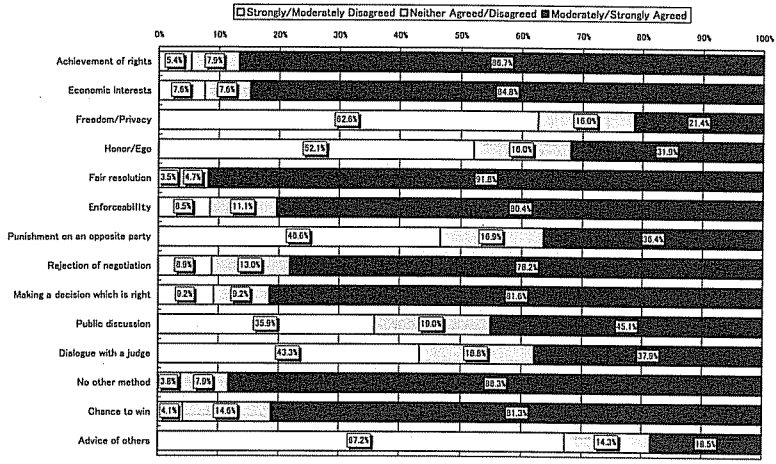
accessible to the users?" "How do the users perceive their litigation experiences?" "Are the users satisfied with the present litigation system?"

2. What Do Users Want in Their Litigation?

(1) What do the users want from their litigation?

As a precondition to the establishment of a litigation system accessible to people, it is necessary to know what the users want from their litigation. What litigants want in litigation differs depending on their stances, that is, those of plaintiffs who initiate the litigation process and defendants who relate to litigation passively. Thus, the survey tried to analyze plaintiffs and defendants separately considering this bias.

Firstly, the largest proportion of plaintiffs chose "Fair resolution" as the reason to pursue litigation (91.8%). Not surprisingly, the respondents' second and third choices, which were generally expected, were "Exercising one's own rights" (86.7%) and "Economic interests" (84.8%) respectively. Notably, more respondents chose fair resolution over protecting one's rights or economic interests. The responses to other motives, "Expecting enforceability" (80.4%) and "The determination of right and wrong" (78.2%) were also significant. In comparison, the ratio of those wishing to appeal to the public or an authority, such as "Public discussion" and "Dialogue with a judge," was small. In addition, few people stated that they initiate litigation for emotional reasons, for instance, "To punish the opposite party" or "To defend one's honor." Hence, the trend in plaintiffs' attitudes toward litigation is to pursue a fair resolution or economic interests (cf. [Figure 1-1-1]). However, there is a discernable difference depending on whether or not a plaintiff is an individual or a corporation. In responses to "To punish the opposite party" and "To get the judge to listen to this side of the story", for instance, the number of affirmative answers was higher for individuals while more corporations responded in the negative. It became clear that there

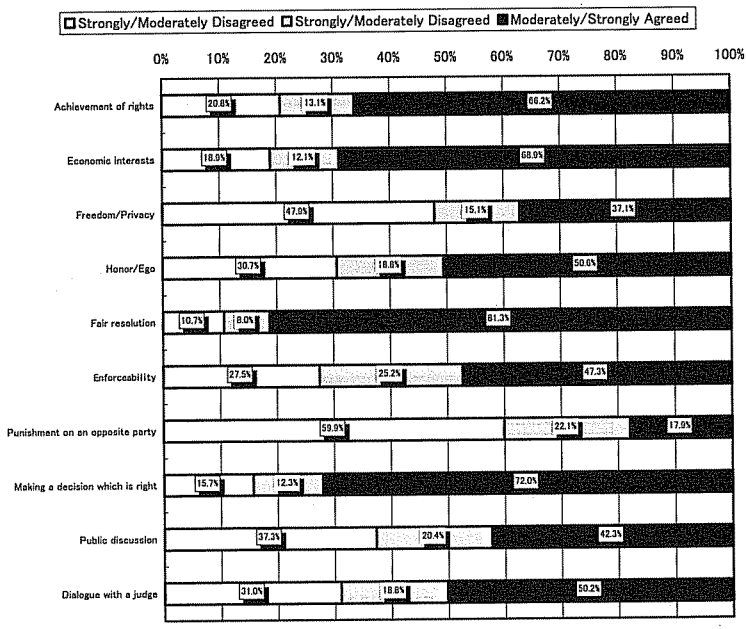


[Figure 1-1-1] Plaintiff's Motivation for Litigation

was a subtle difference in the motives for bringing litigation between individuals and corporations.

With respect to what the defendants expect from litigation, as was the case with the plaintiffs, a fair number responded that they expected to "Exercise one's own rights" (66.2%) and "To protect one's economic interests" (68.9%). However, the biggest reason for pursuing litigation here is also to seek a Fair resolution (81.3%). In addition, the expectation towards "The determination of right and wrong" was also similar to that of the plaintiffs at 72.0%. On the other hand, defendants showed a clear trend towards pursuing litigation to "Protect one's honor" and "To get the judge to listen to one's story" more so than the plaintiffs. In particular, responses to the latter preferences registered a difference between individuals and corporations. While the affirmative answers of individuals to "Protecting one's honor in the society and ego" and "Getting a judge to listen" outnumbered the negative ones significantly, the majority of corporations responded in the negative. Once again, the subtle difference between individuals and corporations in their expectations for litigation is highlighted here. In general, although like the plaintiffs,

⟨6⟩ Field Survey on Users of Civil Litigation (Sugawara · Tseng)



[Figure 1-1-2] Expectations of the Defendants for Litigation

the defendants appear to be motivated to seek a fair resolution, they are less apt to be motivated by economic interest. The latter fact is regarded as an indication that the defendants relate to litigation passively ([Figure 1-1-2]).

As a result, even though there are some differences between the plaintiffs and the defendants in their expectations for litigation, the number of common factors is larger than that of different ones among items regarded as the most important issues. In addition, both parties to a dispute seek a fair and clear resolution and to protect their own rights. Therefore, in developing a new litigation system, it is especially important to give full consideration to the fact that the users not only seek to protect their own rights and interests, but also have their disputes determined fairly and explicitly. Additionally, when plaintiffs and defendants are taken together and categorized in terms of the size of district courts, the trend requiring a fair and explicit

resolution is more significant in small/moderate size district courts. Meanwhile, defendants in very large district courts showed a stronger stance toward protecting their economic interests.

(2) Position of litigation placed by each user

Another notable outcome is that, in addition to the positive reasons for using litigation as mentioned above, there was also a higher percentage of negative answers among plaintiffs, including "There was no other method" and "The opposite party refused to negotiate" (88.3% and 78.2% respectively). On the other hand, plaintiffs indicated "Expecting enforceability" as their strongest motive for litigation (80.4%). Prior to litigation, the majority of the respondents (65.3%) tried to negotiate with the opposite parties directly, and about a quarter of them (24.6%) paid for legal advice. These acts suggest that many affairs were not resolved, although the plaintiffs had made certain efforts to resolve their disputes before the parties and such unresolved affairs turned to litigation. The function of civil litigation as the final and enforceable system for dispute resolution is clearly confirmed here. Furthermore, more than two years (or 888.3 days) passed on average from the occurrence of a dispute to the institution of an action. The duration from the occurrence of a dispute to the institution of litigation was long for respondents, and it is likely that many attempts to resolve the dispute were undertaken.

Considering the motives for plaintiffs' use of litigation and the process to litigation, it is certainly understandable that users expect a final, fair and clear resolution from litigation.

3. Is Litigation Accessible to Users?

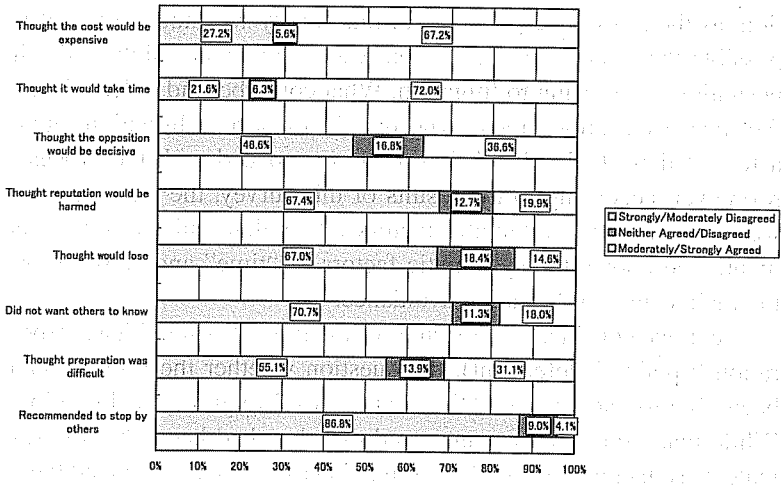
Next, by using the motives of users and their expectations for litigation as a premise, we consider whether litigation is accessible to such users. To do so, the survey questioned whether litigation is difficult to use or inaccessible, and whether the accessibility of lawyers, who act as a bridge, is adequate.

In terms of the usability of civil litigation, it has been said that the Japanese have an inclination to "abhor litigation," and it has also been indicated that litigation is not utilized because of failures of the legal system. So in order to provide the premise for a future discussion on reform, questions regarding whether civil litigation has been "inaccessible" to users and, if so, what respects of the system are "inaccessible," and for what reasons, must be clarified firstly.

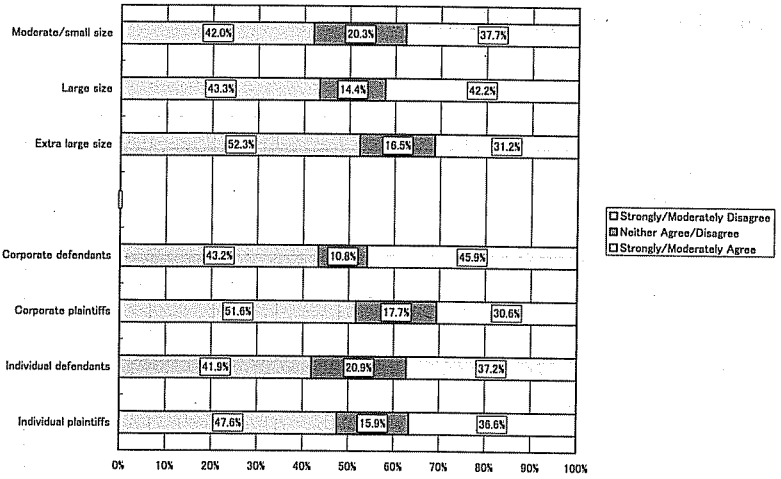
(1) Is there any obstacle to use litigation?

In this survey, we questioned whether there had been any hesitation when the respondents brought or considered litigation. Then, those who answered that hesitation had existed were asked to provide their reasons. As a result, the proportions of positive and negative answers were generally even (those who hesitated: 46.2%; those who did not hesitate: 53.8%). Furthermore, when those who had felt some hesitation were asked about their reasons, the answers ([Figure 1-3-1]) were mainly, "It was believed that the cost would be expensive" and "It was believed that it would take time." Alternatively, for responses such as "Reputation would be harmed," "Did not want others to know" and "Recommended to stop by others," the number of those who answered "That was not the case" was high. On the other hand, cultural factors such as the "National character to abhor litigation" were not so significant in comparison to other responses. However, in terms of the reason to avoid litigation "Animosity would inevitably occur," the percentage of positive and negative answers was even. Looking at the answers by the size and attribute of district courts, the percentage of affirmative answers for small- and moderate-size district courts was high, probably because of the character of local areas where an intimate community is formed. In terms of the answers of corporate defendants, affirmative answers were comparatively high, probably because of a rational calculation to maintain business relationships with their customers ([Figure 1-3-2]).

This survey targeted the actual litigation users, so the answers of non-users were not included. Therefore, it is difficult to assert that, generally, the same ratio of people in Japan feel no hesitation to litigate. In addition, even for people who have experienced litiga-



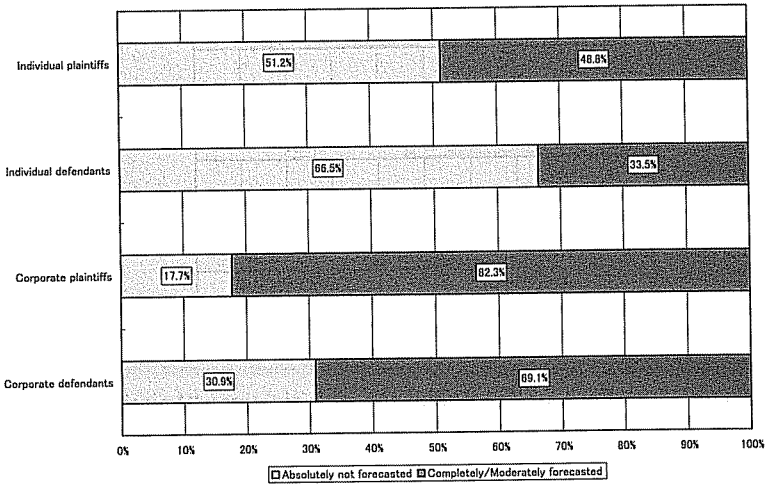
[Figure 1-3-1] Reasons for Avoidance of Litigation



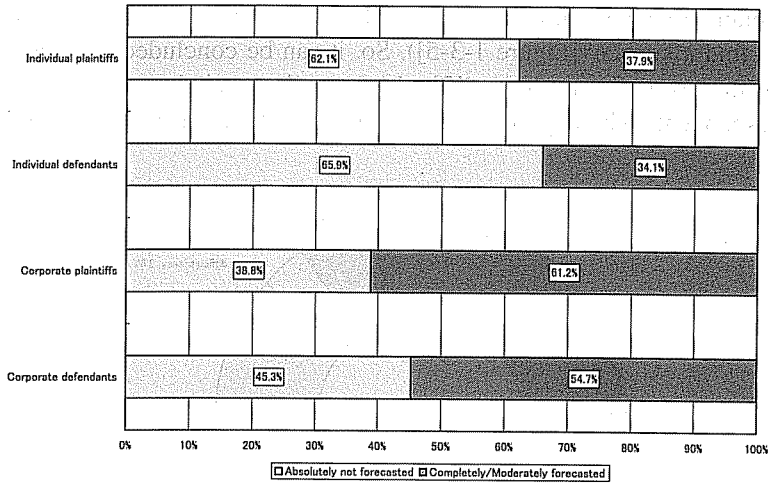
[Figure 1-3-2] Reasons for Avoidance of Litigation: "Animosity would inevitably occur"

tion, as the ratio of respondents of this survey was not so high, it is possible that there were many non-respondents who might had felt hesitation in resorting to litigation. What could be said at least is the fact that even among those who dared to resort to litigation, quite a few of them had still felt hesitation to proceed with the process. Moreover, according to the results of this survey, the main reasons were found to be systematic factors rather than cultural ones. As mentioned above, the systematic factors of "time" and "cost" were the main cause for litigation avoidance.

Next, we consider, by attributes of the litigants (individual/corporation * plaintiff/defendant), the question whether the litigants had been able to estimate the "time" and "cost" required for litigation. While many corporations answered that they had been able to estimate these factors, the number of individuals who had estimated them was in the minority ([Figure 1-3-3, 1-3-4]). Accordingly, especially in the case of individuals, it was indicated that anxiety due to the inability to estimate the time and cost of litigation could potentially make them reluctant to litigate.



[Figure 1-3-3] Estimation of Cost



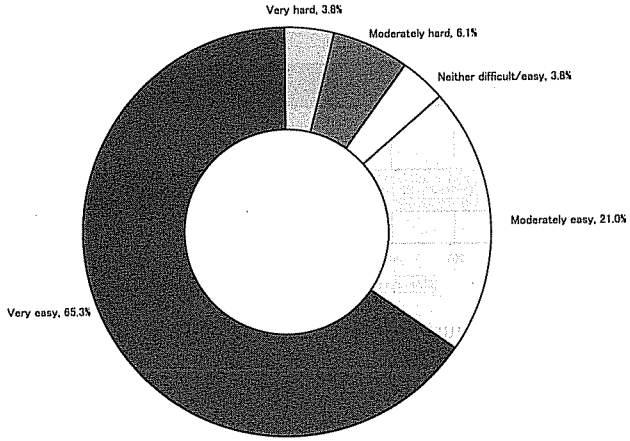
[Figure 1-3-4] Estimation of Time

(2) Is the access to a lawyer guaranteed?

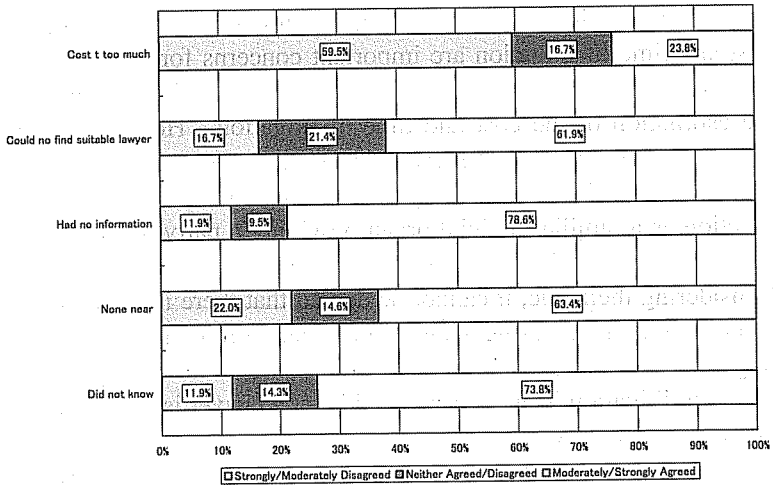
Secondly, we consider the state of access to a lawyer. For an amateur in law, it is not easy to litigate without a lawyer. Also, the cost and time of litigation are important concerns for litigation users, as mentioned above. In terms of the source of information for the estimation of the cost and time of litigation, "Heard from the lawyers" registered the highest percentage for both cost and time (72.6% and 54.2%, respectively). According to this logic, lawyers function as a familiar judicial organ providing a party having a dispute with particularized and specific information regarding litigation. Considering their role, it cannot be denied that there is a possibility that difficulty in accessing a lawyer may cause difficulty in obtaining litigation information, and this may, in turn, affect the ability to gain access to litigation itself. It can be said that a lawyer is a doorway to litigation for a party.

Then, from the perspective of the users, is the access to lawyers sufficiently guaranteed? Seventy-three percent of the respondents

obtained lawyers in this survey. Only 10% of them felt it was hard to find a lawyer ([Figure 1-3-5]). So, it can be concluded that most of the users did not have difficulty accessing their lawyers. Of the respondents who experienced difficulty, the main reasons were "Did



[Figure 1-3-5] Access to a Lawyer



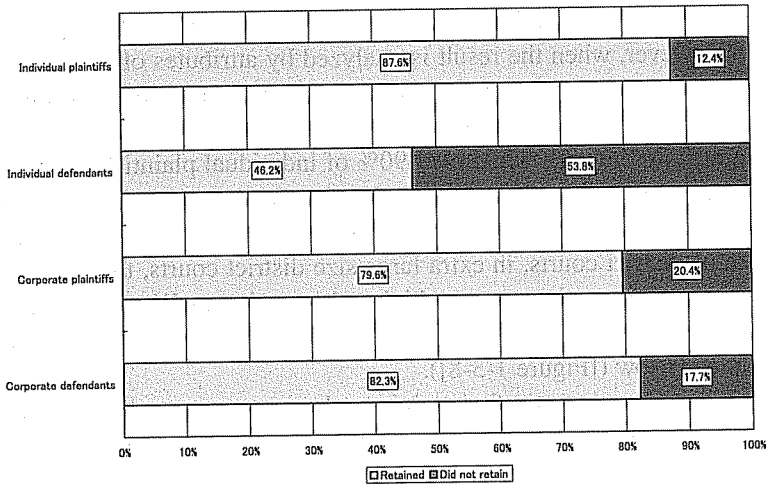
[Figure 1-3-6] Reasons for Difficulty of Access to Lawyer

not have the information" and "Did not know" ([Figure 1-3-6]).

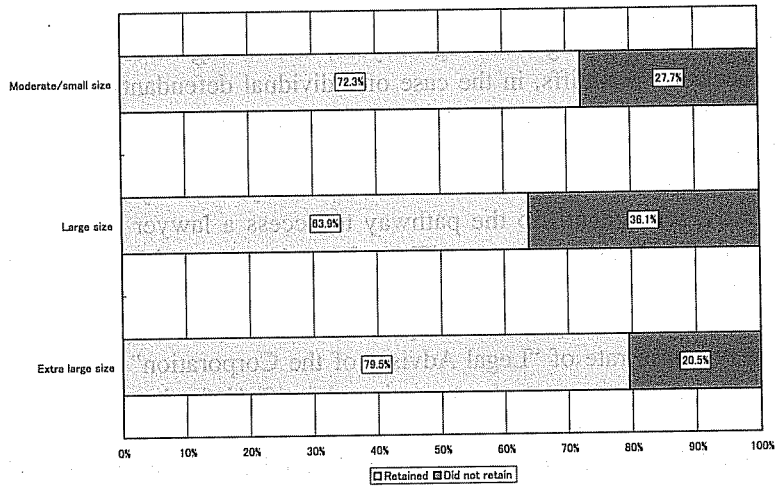
However, when the result is analyzed by attributes of the parties and the size of district courts, the situation is slightly different. First, when we look at the attributes of parties (individual/corporation * plaintiff/defendant), while over 90% of individual plaintiffs retained a lawyer, the proportion of individual defendants who obtained a lawyer was under 50% ([Figure 1-3-7]). Also, when we look at the size of district courts, in extra large size district courts, the ratio for those retaining a lawyer was high, whereas in small/moderate and large size district courts, the ratio for those retaining a lawyer was relatively low ([Figure 1-3-8]).

Generally, the ratio for retaining a lawyer was very high among the respondents of this survey, and there were few reports of obstacles to access a lawyer. However, since this survey is limited to litigation users, it is not clear whether we can deduct from this result that "generally, there is no obstacle to access to a lawyer."

Nevertheless, even these limited data are instructive in some ways. For instance, if we look at defendants who often had to prepare for litigation, including retaining lawyers, after being involved in the process by plaintiffs, in the case of individual defendants, the percentage of those retaining a lawyer was extremely low (under 50%) while more than 80% of the corporations retain a lawyer. From this standpoint, it is doubtful that access to a lawyer is easy in general. Firstly, with regard to the pathway to access a lawyer (cf. Cross Tabulated Table in this report [Table 3A-9-1]), the positive response rates to "Knew the lawyer before litigation" were over 20% for both individuals and corporations. Especially, in the case of corporations, the response rate of "Legal Advisor of the Corporation" was high. In total, the percentage of corporation plaintiffs/defendants choosing "Legal Advisor of the Corporation" and "Knew before litigation" was 83.8% and 75.9%, respectively. Secondly, even in the case of individual defendants of which the percentage for retaining a lawyer was extremely low, among those who retained a lawyer, responses to "Did not have any difficulty" reached 85%. This ratio was much higher than the one of individual plaintiffs, 76%, although the percentage of individual plaintiffs retaining a lawyer was over 90% (cf.



[Figure 1-3-7] Ratio for Retaining a Lawyer (by attributes of parties)



[Figure 1-3-8] Ratio for Retaining a Lawyer (by sizes of district courts)

Cross Tabulated Table in this report [Table 3A-9-4]).

Thirdly, if we look at the size of district court, the percentage for retaining a lawyer was the highest in extra large size district courts where there is a large concentration of lawyers. Also, even though this survey was conducted throughout the nation, results were based on the locations of the main offices of district courts. Therefore, it should also be taken into account that the survey was conducted in places where many lawyers operate. Accordingly, it cannot be denied that there is a possibility that only when people have easy pathways to access a lawyer, or only those who could overcome access obstacles, litigate.

This survey questioned only people who had already used litigation. The results showed that there was nothing to indicate any major obstacles to access to a lawyer. This fact indicates the important role played by the so-called doorway to litigation — the "Lawyer whom they know" or the "Legal Advisor of the Corporation." However, when we consider the general situation of access to a lawyer, a more informed attitude should be required. For litigants who do not know a lawyer or have their own corporate legal advisors, the use of existing legal counseling services or bar associations' references is a common way to access a lawyer. However, in this survey, few respondents reported the use of such methods. If the result of this survey seems to suggest that those litigants who do not have lawyers whom they know or their own corporate legal advisors have difficulty accessing a lawyer and cannot litigate, a barometer that measures whether such people can locate a lawyer without any difficulty would be the frequency of use of the access pathways opened to the public, such as legal counseling or bar associations' references. Therefore, the revitalization of such pathways will be necessary in the future.

4. How Do Users Perceive Their Litigation Experiences?

In the case of litigation users, their evaluation of the litigation system seems to be based on their own litigation experiences more

or less. Therefore, it is important to know how litigation users perceive judges and the results, or what kind of impression they had about legal specialists, including judges and lawyers. Hence, here, we try to analyze the actual evaluation of litigation experiences by the respondents to the survey and to discover how they reach their evaluations.

(1) Evaluations and responses concerning factors such as judges and lawyers

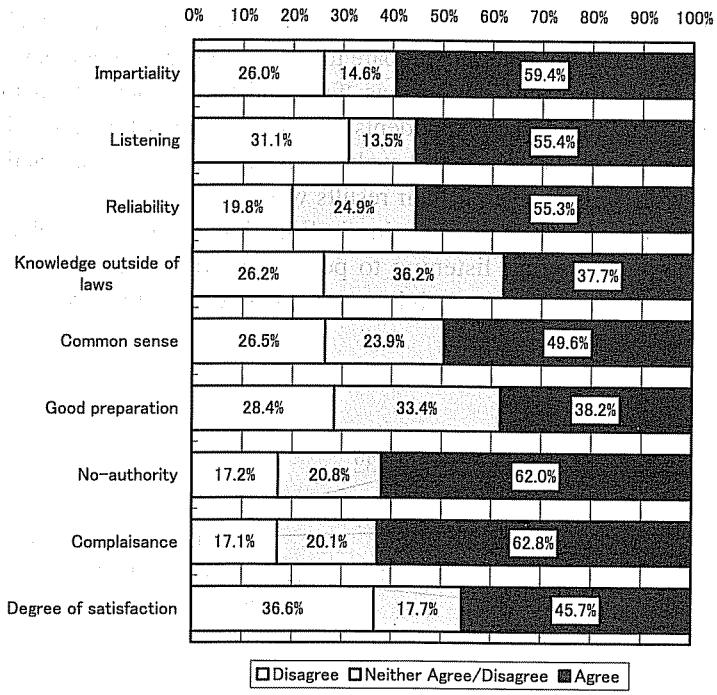
(a) Evaluations of judges

In this survey, the evaluations of judges explore eight attributes, which are as follows: "Impartiality," "Did they listen carefully? (Listening)," "Reliability," "Degree of knowledge outside of legal areas (Knowledge outside of law)," "Common sense," "Good preparation," "Non authoritative," and "Complaisance." In addition, the "Degree of satisfaction" with judges was questioned ([Figure 1-4-1]). According to the results, for responses to the attributes "Impartiality," "Listened to parties carefully," "Reliability," "Complaisant," and "Non authoritative," relatively high evaluations were found (The proportion of positive responses was approximately 60%). Especially in the analysis by corporate plaintiffs, certain attributes were evaluated significantly higher, for instance, "Impartiality" and "Listening."

On the other hand, evaluations regarding "Good preparation" and "Knowledge outside of law" are divided. While positive evaluations were under 40%, negative ones were over 25%. This trend applied irrespective of any distinction between individuals and corporations as well as plaintiffs and defendants. Furthermore, in terms of the degree of total satisfaction, although many respondents chose "Satisfied," the percentage of those who were dissatisfied was also relatively high (36.7%) ([Table 2-6-2]). The evaluation of the degree of satisfaction was especially low in extra large size district courts. In addition, respondents without lawyers tended to evaluate judges better than respondents with lawyers. By cases, the evaluation tended to be down in family cases.

When factor analysis was conducted in order to investigate the structure of these evaluations, the eight items were separated into

three viewpoints (factors): 1) "Impartiality," "Listening," and "Reliability"; 2) "Knowledge outside of laws," "Common sense," and "Good preparation"; and 3) "Non authoritative" and "Complaisance." The first viewpoint can be regarded as the evaluation of the judges' basic attitude to trials, the second one as the evaluation of the level of judges as specialists, and the last one as the attitude of judges toward the parties. Then, these three viewpoints are tentatively named "Fairness evaluation," "Ability evaluation" and "Compatibility evaluation," respectively. Further, the item "Favorability of the Result" was added. Next, the relation between these evaluation items and the degree of satisfaction was considered through regression analysis. The results can be seen in Figure 1-4-2. According to the data, the

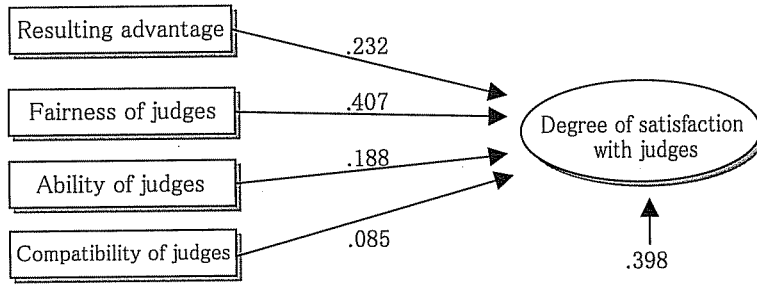


[Figure 1-4-1] Breakdown of Responses to Items of Evaluations and Degree of Satisfaction Concerned with Judges

most significant factor was "Favorable Result."

In addition, the evaluation of judges, including "Fairness," "Ability" and "Compatibility" also affected the degree of satisfaction. The respondents felt satisfied when they received favorable results. At the same time, the respondents who evaluated judges higher for fairness (being impartial, listening carefully and being reliable), ability as law specialists (expert knowledge and common sense), and approachability (non authoritative and complaisant) tended to give judges higher satisfaction ratings. Among the evaluations of judges, the "Fairness evaluation" was consistently deemed as having a significant effect on satisfaction level, even when respondents were separated into groups by individual/corporation, plaintiff/defendant and judgment/settlement. The "Ability evaluation" also affected the degree of satisfaction with judges across most groups. Conversely, the effect of the "Compatibility evaluation" on the degree of satisfaction was small. In general, compare to individuals, corporations were more likely to evaluate judges as 'fair' and had higher satisfaction levels. In addition, the respondents who settled rather than receiving judgment had relatively better evaluations of, and higher satisfaction level with, judges, even if their results were not favorable.

Regardless of wining or losing in litigation, it can be concluded that being impartial, listening to people carefully and especially trying to be trustworthy heightens the degree of satisfaction with judges.



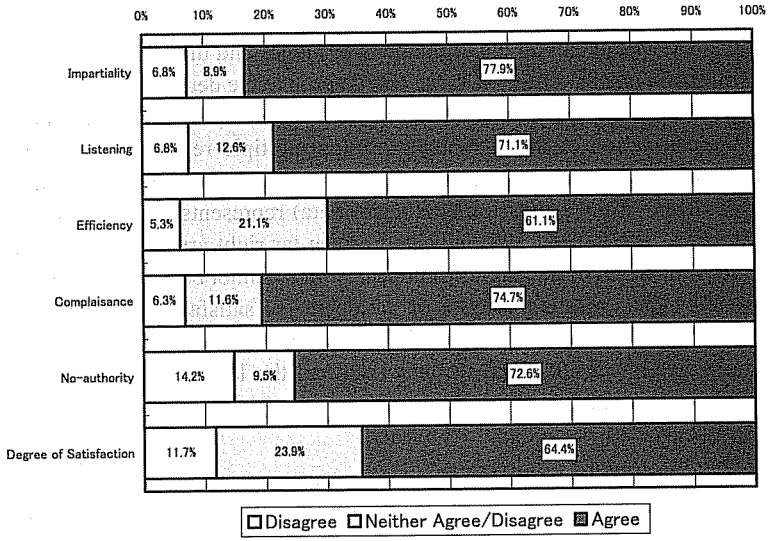
[Figure 1-4-2] Determining Factors for Degree of Satisfaction with Judges

To what extent do the evaluations of judges and the favorableness of litigation results (criterion variables) determine the degree of satisfaction with judges (explanatory variable)? These figures provide the results of the estimation of these impacts through multiple regression analysis. An arrow indicates a relation of influence, and an attached figure (standardized partial regression coefficient beta) represents the power of its impact. The figure (.398) indicated by the far right arrow is an error to show the level of the unknown impact, which cannot be explained in this survey. This means that 60% of the degree of satisfaction with judges can be explained by the evaluations of judges and the favorableness of adjudication results. The factor which had the largest impact was the fairness evaluation of judges.

(b) Evaluations of court staffs

Regarding court staffs, evaluations on "Impartiality," "Listening," "Compatibility," "Efficiency of Work," "Complaisance" and "Non authoritative," as well as the "Degree of Satisfaction," were questioned. The result is shown in Figure 1-4-3. For each evaluation item, around 70% of respondents evaluated positively. The apprais-als of the degree of satisfaction were also relatively favorable and two-thirds of respondents answered that they were "Satisfied with the staffs." However, there were some differences based on the sizes of district courts. For instance, 79.2% of respondents answered positively in small/moderate size district courts to the question "Did the staffs listen carefully?" while the ratio in extra large district courts dropped to 62%. A similar inclination applied to the evaluation of the efficiency of work. In addition, probably because of the effect of these evaluations, the degree of satisfaction with staffs in extra large size district courts was relatively low compared to small/moderate size district courts. Also, parties without lawyers evaluated these aspects more positively. Only when considering "Non authoritative," were the parties without lawyers more negative.

Nevertheless, favorable evaluations of staffs prevailed generally. Even when respondents were separated into groups by individual/corporation, plaintiff /defendant and judgment/settlement, there was no significant difference. To apply a factor analysis on these evalu-



[Figure 1-4-3] Breakdown of Responses to Items of Evaluations and Degree of Satisfaction Concerned with Staff

ations in the same way as the evaluations of judges, the evaluations of staffs were separated into two viewpoints (evaluation factors): "Impartiality," "Listening" and "Efficiency" (referred to as "Fairness evaluation" hereafter) and "Complaisance" and "Non authoritative" ("Compatibility evaluation" hereinafter). When the factors of degree of satisfaction with the staffs were determined by these evaluation factors and the evaluation of advantages, they were rarely affected by the favorableness of the results, unlike in the case of the judges. Furthermore, it was found that the respondents who rated "Fairness" and "Compatibility" of staffs more highly had a higher degree of satisfaction.

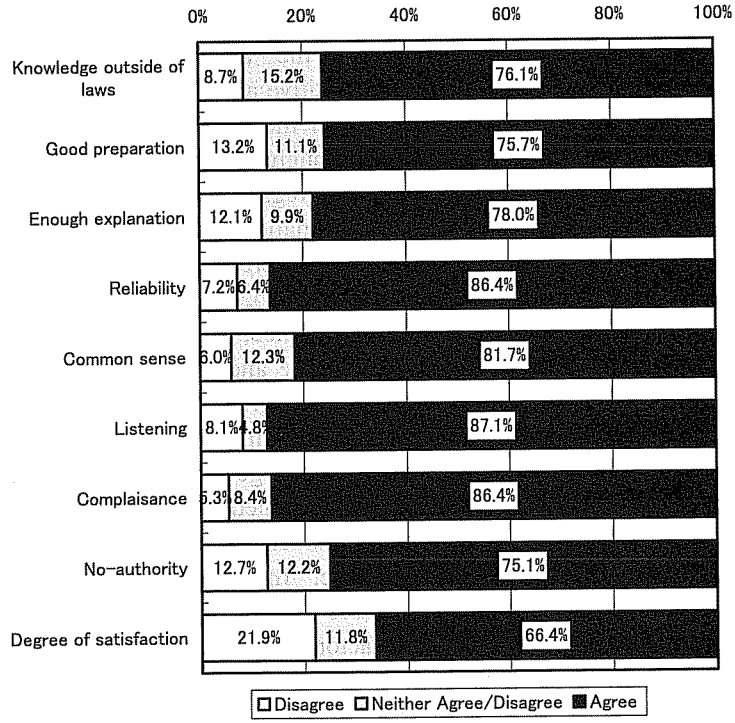
(c) Evaluations of lawyers

Evaluations of lawyers consist of questions almost the same as the ones for judges. But instead of the item "Impartiality," "Sufficient explanation" was used. According to the results, as indicated in Figure

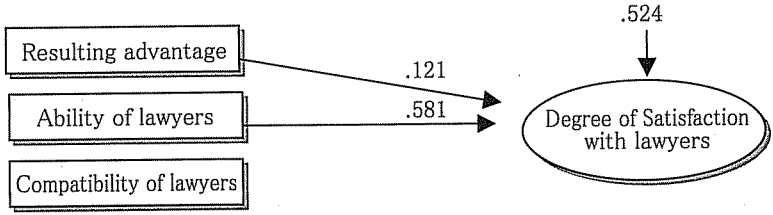
1-4-4, between 70% to 80% of respondents evaluated their lawyers positively on most items. In terms of the "Degree of satisfaction," two-thirds of respondents also had positive answers, and overall the evaluations were higher than those of the judges. Comparatively, the evaluations by individuals were tougher than corporations. Especially, the evaluations of individuals regarding "Common sense," "Good preparation," "Sufficient explanation" and the "Degree of satisfaction" were considerably lower (there was a gap of around 20% in the "Degree of Satisfaction"). Also, comparing by size of district courts, the items of "Complaisance," "Good preparation," and "Enough explanation" in extra large and large district courts received high evaluations, therefore, the degree of satisfaction in the district courts of these scales were also high. So it can be said that the evaluations of lawyers were higher in large cities. By cases, there were many positive evaluations on "Listened carefully" in family cases, but there were also more dissatisfactions, such as "There was little explanation concerning the case." In addition, the degree of satisfaction with lawyers in land cases was relatively low.

According to the results of the factor analysis of these evaluations, the evaluations were divided into two viewpoints (factors): "Complaisance" and "Non authoritative," and other items were separated. Now, the evaluation factors include Ability evaluation ("Knowledge outside of laws," "Good preparation," and "Enough explanation") and Compatibility evaluation ("Complaisance" and "Non authoritative"). By using these evaluations and the Favorableness of Results to examine the factors for the degree of satisfaction with lawyers, it was found that these were also affected by Favorable results. However, the impact was not as significant as for judges. Rather, it was the Ability evaluation that had a great impact. ([Figure 1-4-5]). Even when separating respondents by attributes of individual/corporation, plaintiff/defendant, judgment/settlement, the trends were similar.

It can be said that regardless of winning or losing in litigation, the importance of considerations of listening to parties carefully, explaining reasonably and preparing sufficiently were highlighted for lawyers, just like judges.



[Figure 1-4-4] Breakdown of Responses to Evaluations and Degrees of Satisfaction Concerned with Lawyers



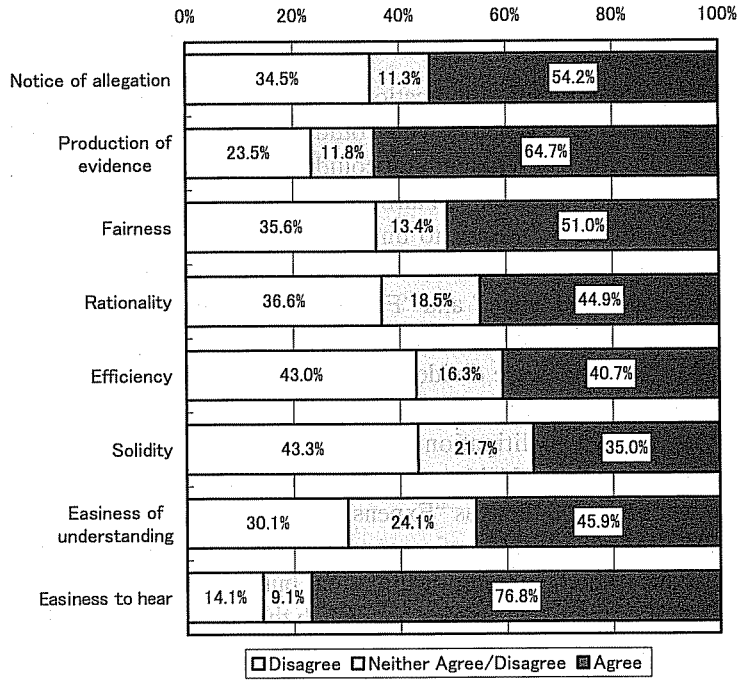
[Figure 1-4-5] Determining Factors for Degree of Satisfaction with Lawyers

(2) Evaluations and responses concerned with adjudication processes

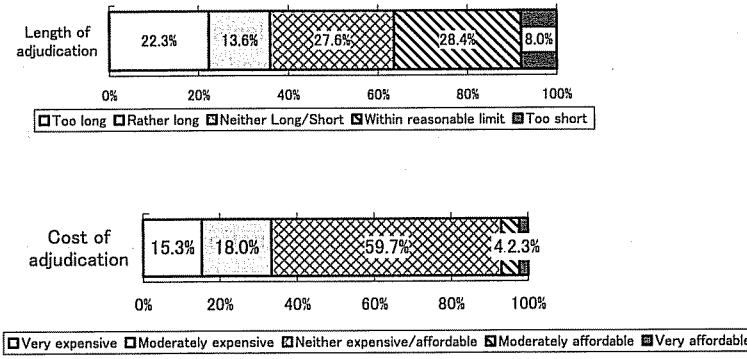
The evaluations of adjudication processes were tested on eight items as follows: "Whether you could advocate your claims duly (Notice of claim)," "Whether you could produce your evidence duly (Production of evidence)," "Fairness," "Rationality," "Temporal efficiency," "Solidity," "Easy to understand" and "Easy to hear." As indicated in Figure 1-4-6, while the items of "Notice of claim," "Production of evidence," and "Fairness" had a majority of positive responses, opinions regarding items such as "Rationality," "Efficiency" and "Solidity" were divided. The proportion of the responses to "Difficult to hear", although not so significant, reached 14%.

With respect to litigation costs, while more than half of the respondents choose "Neither expensive nor cheap", the number of those who regarded them as "Expensive" was also not small ([Figure 1-4-7]). Slightly over 50% of respondents had estimated the approximate costs at the beginning of litigation, but it is also indicated that nearly half of them had no idea how much the cost would be ([Figure 1-3-3] mentioned above). Furthermore, in terms of the required time for litigation, while the proportion of those who answered "Within reasonable limit" was about 28%, those who answered "Rather long" and "Too long" reached about 36% ([Figure 1-4-7]). It can be said that negative evaluations on trial time prevailed but the ratio was not as high as expected. It seemed that the estimation of time was more difficult than costs, as the majority of respondents (54.6%) mentioned "Could not estimate" ([Figure 1-3-4] mentioned above). Incidentally, the average durations of trial deliberations of those who responded "Within reasonable limit," "Rather long" and "Too long" were 175 days, 334 days and 461 days, respectively.

According to the factor analysis results of the eight evaluation factors of adjudication processes, the evaluations of adjudication processes were separated into three viewpoints (evaluation factors): "Adequacy of trials" ("Fairness," "Rationality," "Solidity" and "Efficiency"), "Assertiveness at trials" ("Notice of claim" and "Production of evidence") and "Intelligibleness of trials" ("Easiness of understanding" and "Easiness of listening.") Using Adequacy of trials



[Figure 1-4-6] Breakdown of Responses to Evaluation Items of Adjudication Processes



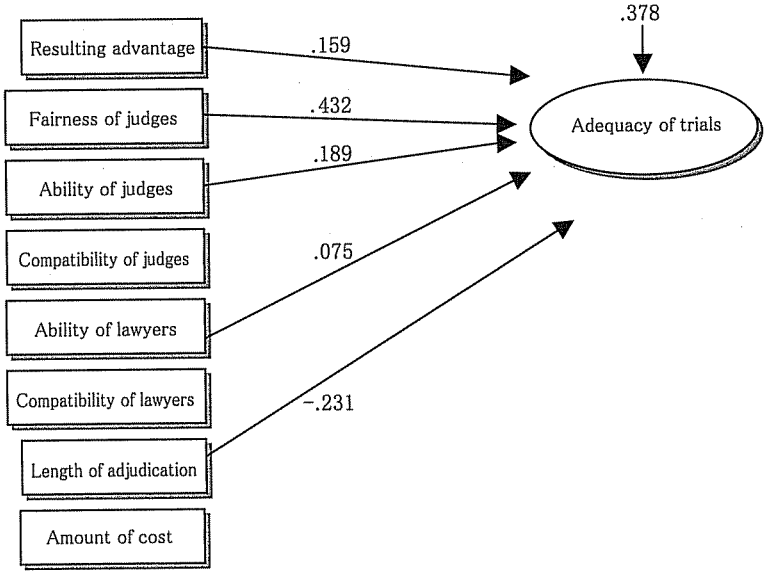
[Figure 1-4-7] Evaluations on Length and Cost of Adjudication

as an example, the results of the analysis of determining factors for the process evaluations by the evaluations of judges, the evaluations of lawyers, Favorableness of results and the evaluations of time/costs will be stated below ([Figure 1-4-8]).

As shown in the figure, the largest controlling factor in the evaluation of the Adequacy of trials was the Fairness of judges. The evaluation of the Ability of lawyers also affected opinions regarding the Adequacy of trials. Favorableness of reuslts also affected the evaluations of Adequacy of trials and Assertiveness at trials. However, respondents who evaluated their judges as "fair" (were impartial, listened to their assertions carefully and were trustworthy), or their lawyers as having high "Ability" (had knowledge outside of adjudication, prepared sufficiently and explained reasonably), tended to evaluate the adjudication processes positively regardless of whether the results were favorable or not. Although not specifically shown here, similar results were found in the analyses of determining factors for Assertiveness of trials and Intelligibleness of trials.

These results were similar irrespective of individual/corporation, plaintiff/defendant and judgment/settlement. However, corporations were more likely to place emphasis on the Ability of judges in their evaluations of trial processes compared with individuals, and the same was true for respondents who received a judgment compared with those who reached a settlement. The respondents who felt that the adjudication processes were long evaluated their trial processes as inadequate. However, it should be also noted that some respondents whose results were unfavorable evaluated their adjudication processes as too short to address their claims completely. Also, it was found that the Fairness evaluation of court staffs boosted the evaluations of Adequacy of trials and Assertiveness of trials by respondents who conducted litigation without a lawyer.

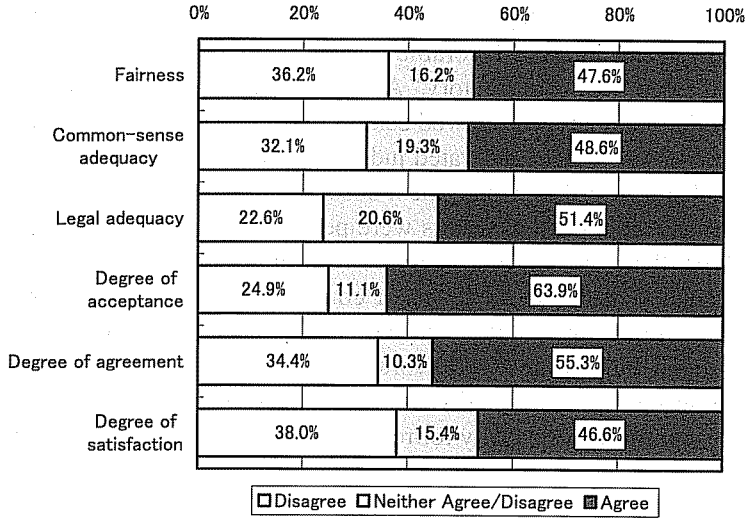
These analyses of determining factors show the important role of judges in the evaluation of trial processes.



[Figure 1-4-8] Determining Factors for Adequacy of Trial Processes

(3) Evaluations and responses relating to adjudication results

Questions regarding trial results were comprised of the opinions regarding the results and responses concerning the adjudication process. More precisely, the evaluations of results consisted of the three items, "Fairness," "Legally plausible" and "Appropriate in terms of common sense," and the responses to adjudication results were examined with the following three items, "Degree of acceptance," "Degree of agreement" and "Degree of satisfaction." Figure 1-4-9 shows the breakdown of responses to each item. With regard to the evaluation of Fairness, Legally plausible and Appropriate in terms of commonsense, the percentage of affirmative responses was approximately 50% while negative ones was around 30%. The results for the degree of satisfaction were similar, but the proportions of respondents who answered Acceptable and Agreeable were larger than the other ones, and both of them reached approximately 60%. In spite of this general trend, only corporate plaintiffs showed a specific response, and they



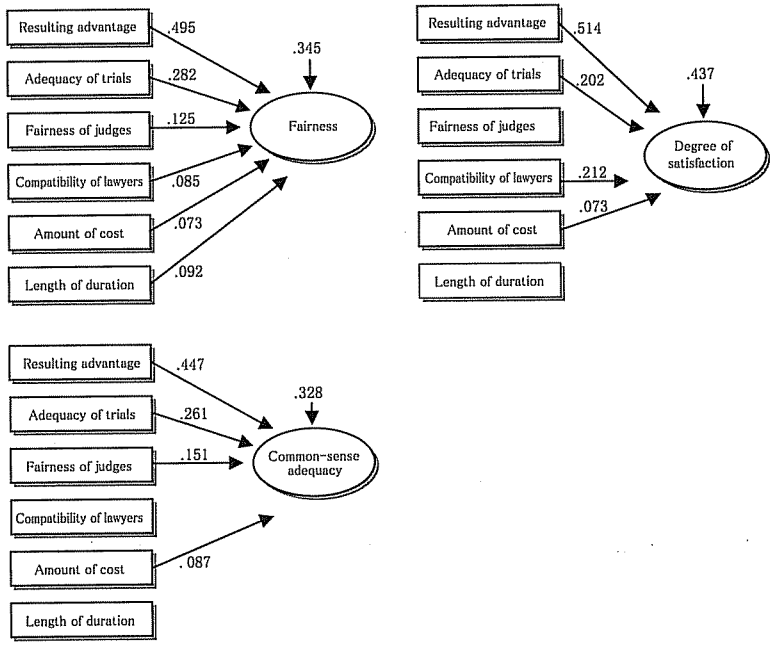
[Figure 1-4-9] Breakdown of Evaluations and Responses Concerned with Adjudication Results

evaluated Degree of acceptance, Degree of agreement and Degree of satisfaction higher than other groups.

The evaluations were related to each other, and those who regarded their adjudication results as Fair evaluated the results as "Adequate both legally and in terms of common sense." However, the evaluations of a part of the respondents showed some differences. The most frequently found differences were Adequate legally but not fair (found in 19.8% of respondents) and Adequate legally but not in terms of common-sense (i.q. 9.9%). In these cases, it can be concluded that the laws do not reflect the morality of the people.

Next, the relationship between evaluations and responses concerning litigation results was examined. Each of the three items for evaluations strengthens each of the three items of the responses. It was found that respondents who evaluated their results positively responded to the results favorably. Moreover, in the analysis of the determining factors, the strong effect of Favorable results was found. In other words, the more favorable the result a respondent received,

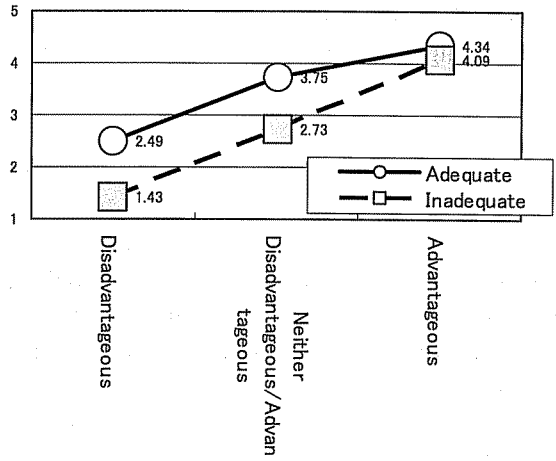
the more positively he/she evaluated the adjudication process which in turn result in more favorable responses, including "Acceptable," "Agreeable" and "Satisfactory." Also, the evaluations of trial processes, judges and lawyers showed certain impacts. Those who evaluated their trials as "Adequate" rated judges as "Fair" and lawyers as "Approachable" Further, if judgment costs were evaluated as affordable then their adjudication results were perceived as positive. In Figure 1-4-10, the results of the analyses regarding "Fairness of results," "Adequacy of results in terms of common sense" and "Degree of satisfaction with results" are indicated. When respondents were separated into groups by Favorableness of Results and analyzed, the impacts on the evaluations of trial processes, judges and lawyers were significant, especially for respondents who received unfavorable



[Figure 1-4-10] Determining Factors for Fairness, Legal Adequacy and Common-sense Adequacy of Results

results. As indicated in Figure 1-4-11, the respondents who received favorable results evaluated the results as fair regardless of whether they regarded trials as Adequate or Inadequate. But the respondents who received neutral or unfavorable results showed differences in the results of the fairness evaluations, depending on whether they regarded trials as Adequate or not. Those who evaluated Trials as adequate evaluated the results as more fair. This asymmetry indicates that evaluations of Trials as adequate or Judges as fair tend to soften the negative impacts (discontent or rejection) that the unfavorable adjudication results had on parties.

Moreover, corporations were more positive in general than individuals. Also, for plaintiffs and for respondents who received judgments, the effect of Favorableness of result was found to be stronger than in other groups. Furthermore, it was indicated that settlements had the effect of lightening the degree of impact of results. On the other hand, in the situation of settlements, there were some respondents who regarded their results as unfair since the litigation durations were short.



[Figure 1-4-11] Fairness Evaluations of Results by Result Advantages and Adequacy of Trial Processes

First, respondents were separated into three groups by favorableness of Results. Then, each group was divided further into two depend on whether they evaluated their trial processes as adequate or inadequate. Finally, the average amounts of fairness evaluations of results were compared (Analysis of variance).

As stated, we asked respondents their evaluations and degrees of satisfaction regarding judges, lawyers and staffs, processes of litigation as well as litigation results, and then examined the determining factors. Indeed, the impact of the Favorableness of results on them could be seen, and it was especially significant in evaluations and responses concerned with results. However, at the same time, it was confirmed that respondents also considered their evaluations of trial processes, judges and lawyers. Alternatively, with regard to the evaluations of trial processes and the degrees of satisfaction with judges and lawyers, the evaluations of judges and lawyers themselves were more important, and satisfaction with the staffs was not affected by Favorableness of results. These results indicate that respondents also evaluated some aspects of litigation from other perspectives apart from the Favorableness of results, and these evaluations affected how they accept their litigation experiences and respond to them regardless of winning or losing.

5. Are People Satisfied with the Adjudication System?

Are people satisfied with the present adjudication system? How do they evaluate it and from what angle? The main objective was to find the answers in this survey. It may be thought that people have formed their own evaluations and attitudes about the adjudication system based on extensive social information, including mass media. In practice however, how do people who experience litigation evaluate the litigation system?

The evaluations of the adjudication system were investigated with the following five items, "Does the system resolve disputes well

(Function of dispute resolution)?", "Fairness of system," "Fairness of laws," "In accordance with legal realities" and "Usability." Furthermore, to analyze the attitudes toward the system, three items were addressed: "Degree of satisfaction," "Willingness to use litigation again" and "Whether you will recommend other people in a similar situation to litigate (Indication of recommendation)?". Whereas 40% of the responses to "Function of dispute resolution," "Fairness of system" and "Fairness of laws" were positive, 30% were negative ([Figure 1-4-12]). Instead, in terms of "Usability" and "In accordance with realities", negative evaluations prevailed. Moreover, the proportion of those who said "Satisfied with the present system" was under 20%.

By the size of district courts, negative evaluations were significantly found in the users of extra large district courts. In particular, 62.1% of respondents were negative about the "Usability of the adjudication system" in extra large district courts. The "Degree of satisfaction" registered similar results. A majority of respondents answered "Not satisfied" ([Table 3B-24]). Also, if we look at the type of the cases, the "Function of dispute resolution" was rated lowly by the parties in family cases and land actions. Furthermore, in family cases, the evaluation of "Usability" was lower than others ([Table 3E-24]).

As mentioned above, overall, the evaluations of the system were generally low, but we can speculate that the interests of respondents in using litigation are high from the responses to the items of "Willingness to use again" and "Inclination of recommendation." However, it is also noteworthy that 21.6 percent of respondents said that they "Will not use adjudication" and only 41.2% of them said that they "Will recommend other people in a similar situation to litigate ([Table 2-13-1]).

According to the factor analysis, the system evaluations were comprised of four items, "Function of dispute resolution," "Fairness of system," "Fairness of laws" and "In accordance with legal realities," which were then grouped into one viewpoint (referred to as the "Adequacy of system" evaluation). It is found that this viewpoint is different from the evaluation of "Usability." Attitudes toward the

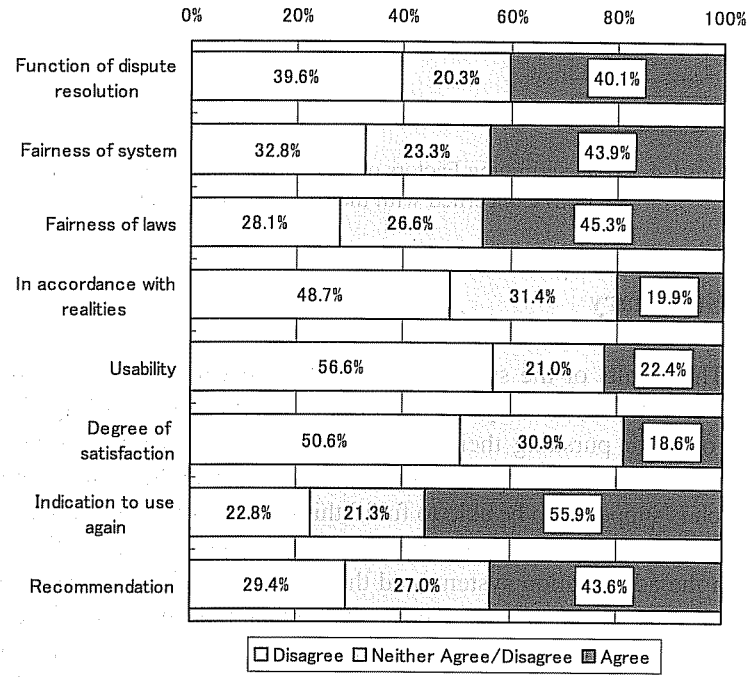
system were divided into two items, and they were, "Degree of satisfaction with the system" and "Interest in use." The latter consists of "Willingness to use litigation again" and "Inclination of recommendation." The results of the analysis of these determining factors are shown in Figure 1-4-13 (The analysis result "Interest in use" is omitted).

Firstly, the degree of satisfaction with the adjudication system was formed on the basis of the system evaluation. In other words, the respondents who evaluated that the present system was Adequate and usable were satisfied with the present system. Alternatively, the evaluation of Adequacy of system was affected by the litigation experiences of the respondents. The respondents who said that the trials they experienced in litigation "Were adequate;" "The result of adjudication was reasonable in terms of common sense;" "They were satisfied with their judges as well as lawyers;" or "The adjudication costs were affordable" evaluated the adjudication system highly. On the contrary, neither the favorableness of adjudication results nor the length of adjudication affected the evaluation of the adjudication system directly. The respondents evaluated the worth of the adjudication system by taking into account many aspects of litigation (trial processes, judges, lawyers and costs) regardless of whether their results were favorable or unfavorable. This was a common fact even when the respondents were categorized, for instance, by judgment/settlement.

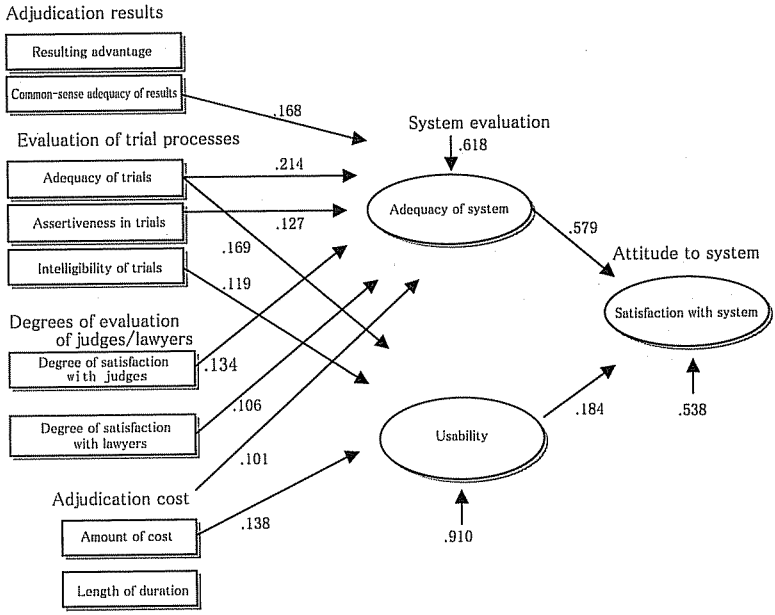
"Interest in use", which is another attribute of the system, was affected by "Assertiveness in trials," "Compatibility of lawyers" and "Favorableness of the results". This fact suggests that the interest in use shows the wish to put into practice the utilization of litigation as a tool to resolve problems and find solutions. The interest in use was found more noticeable in plaintiffs than defendants, and in corporations than individuals. For this reason, plaintiffs and corporations regarded the present system as difficult to use.

The structure of litigation users' evaluation of the litigation system is relatively complicated, as indicated above. What is important is that the nature of the evaluation of the litigation system is not one where winners are always satisfied and losers are always dissatisfied.

This means that, aside from the sense of winning or losing which are always associated with litigation, it is possible to heighten the degree of satisfaction with the litigation system. According to the results of this survey, it cannot be stated that the present litigation system is rated highly. However, it can be said that the evaluation can be enhanced surely through the improvement of the procedure as well as the intention of judges and lawyers to reform the system. The result of the survey indicated that each individual factor does not affect the entire evaluation significantly. In spite of that, it is truly expected that persistent improvement of practices and efforts to improve the procedure by judges/lawyers would improve the evaluation of users henceforth.



[Figure 1-4-12] Breakdown of Responses to Evaluations and Degree of Satisfaction Concerned with the Adjudication System



[Figure 1-4-13] Determining Factors of Evaluations and Attitudes (Satisfaction) Concerned with the Adjudication System

6. Summary

The results of the survey made it clear that litigation users, regardless of whether they are plaintiffs or defendants, start litigation not only for pursuing their own interests but also a fair and clear resolution. However, the evaluation of the entire adjudication system, which is supposed to be able to fulfill this expectation, was not necessarily high. Only 18.6% of the respondents said they are satisfied with the adjudication system, and those who said that the system is usable only reached 22.4%. The analysis result indicates that this low degree of satisfaction with the adjudication system cannot simply be explained by dissatisfactions arising out of the case ending with unfavorable result and is related to the evaluations of litigation procedures, judges and lawyers.

Also, if we look at the evaluations of specialists related to litigation, including judges, court staffs and lawyers, while most users were satisfied with court staffs and lawyers, satisfaction and dissatisfaction with judges were even. The reason why the evaluation of judges was lower than the others is that compare to the others, it was influenced more strongly by litigation results, that is, favorable and unfavorable results. Nevertheless, the result also shows that the evaluation of judges was formed not only based on the litigation results but also the perceptions on whether judges gave the impression that they were impartial, listened carefully and were trustworthy or not.

Considering these points, it can be said that the evaluation of the adjudication system, which is not very high at present, could be improved substantially by reforming the procedure or responses of judges and lawyers. Adopting such standpoints, the factors regarded as important for considering future improvements of the system, especially those which displays relation to the degree of satisfaction with the litigation system, would be as follows:

1 The degree of satisfaction with the litigation system is based on the evaluation of the Adequacy of the system, consisting of various aspects, including dispute resolution functions, the fairness of the system, the fairness of laws and the conformity with legal realities.

2 The evaluation of the Adequacy of the system mentioned above is affected by litigation experiences. Specifically, it is affected by the evaluations regarding adequacy of adjudication results in terms of common sense, Adequacy of trials (the synthetic determination of the Fairness of trials, rationality, solidity and efficiency), and the degree of satisfaction with judges, lawyers and costs.

3 In terms of adjudication results, there are gaps in opinions between users regarding the judgments of courts in the form of "Adequate legally but not fair" and "Adequate legally but not in terms of common-sense.". Removing these gaps will boost the degree of satisfaction with the adjudication system.

4 The degree of satisfaction with judges is affected strongly by evaluations of impartiality, the posture of listening carefully and reliability (evaluation regarding "Fairness of judges").

5 The degree of satisfaction with lawyers is affected strongly by

the evaluations (the evaluation of "Ability of lawyers") of the posture to listen carefully, reliability, knowledge outside of law, common sense and "Good preparation."

6 Adequacy of trials (the synthetic determination of the fairness, rationality, solidity and efficiency of trials) is affected by evaluations of Favorableness of results, Fairness of judges (the synthetic determination of impartiality, the posture to listen carefully and the reliability of judges), Ability of lawyers (posture to listen carefully, reliability, knowledge outside of law, common sense, good preparation and sufficient explanation from lawyers) and the length of adjudication. In particular, the Fairness of judges has the biggest impact.

7 The evaluation of litigation results is affected not only by Favorableness of results but also by other evaluations such as Adequacy of trials, as mentioned above, or the degree of satisfaction with judges. These impacts seem particularly strong with the parties whose cases ended with unfavorable results. If these evaluations of Adequacy of trials or the degree of satisfaction with judges are improved, the improvement will act to soften the dissatisfaction of the parties who received unfavorable results.

8 Although the evaluation of the accessibility to litigation is not greatly affected by litigation experiences, it was affected by the evaluations of Adequacy of trials, Intelligibleness of trials (the synthetic determination of easiness to understand trials and to hear) and affordable costs.

Up to this point, this survey has analyzed the results of litigation users and their evaluations of the present system, as well as the framework of the evaluation structure. Henceforth, based on the evaluation structure, a study should be undertaken on what kind of concrete improvements should be made to the system to address each situation. In order to do that, a more detailed investigation should be conducted. Also, in terms of the trend of litigation avoidance and whether the obstacle of access to a lawyer exists or not, we could not get enough information. Therefore, regarding these issues, more in-depth surveys of actual litigation users and other general citizens should be conducted simultaneously and the results should be compared.