

Comments on COLLECTIVE REDRESS FOR CONSUMERS IN THE EUROPEAN
UNION AND IN SPAIN

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Prof. FERNANDO GASCÓN INCHAUSTI, I would like to thank you again for your rich presentation today. Thanks to your presentation, I was able to understand the latest situation of collective rights remedies in the EU.

I am one of the researchers of consumer law in Japan, and my research mainly focuses on substantive law. But I am also interested in the procedural mechanism for the realization of substantive rights of consumers. Namely, lawsuits by consumer associations. It is difficult to realize the rights of individual consumers through individual lawsuits if the damage is small, which means that in such cases the rights of consumers will become a picture-perfect cake. On the other hand, even if the amount of damage for each person is small, if it becomes large as a total, it will be a considerable amount. A business operator that makes a profit by engaging in unfair acts is interfering with the profit-making activities of other competitors. Taking this into consideration, we must say that it is not possible to ensure market order in this situation.

In Japan, as a means of collective redress remedy, injunction requests by consumer

groups are recognized in consumer contract law, modeled on German law. In addition, financial claims by consumer groups are permitted under the Consumer Court Procedure Act.

Requests for injunctions under the Consumer Contract Act are permitted for unfair solicitation and unreasonable consumer contract provisions. However, while lawsuits seeking injunctions against unfair clauses are useful for consumer groups as they play a role in advancing negotiations with businesses that use unfair clauses, it is difficult to obtain an injunction based on Article 10 of the Consumer Contract Act in Japan, which is a general provision. As for financial claims, it is not the case that consumer groups are actively using them. It is known that there was a ruling granting the refund of the examination fee in a case where women were unfairly discriminated against despite having a passing grade in a medical school entrance examination, but it does not function in general in the form of realising the financial recovery of many small consumer damages. Rather, there is a tendency to deal with businesses that have obtained unfair profits with administrative sanctions in the form of surcharges, but this has not been sufficient to force businesses to disgorge the profits obtained from unfair acts.

Remedies for consumer damage need to be reexamined from the perspective of

restoring the rights of individual consumers and realizing their rights, and it is necessary to inform businesses that have profited from unlawful acts that such economic activities do not pay it and are worthless from an economic point of view. Recently, there has been a growing recognition in Japan that it is necessary to start by clearly stating the rights of consumers in substantive law. This shows a tendency to systematically reorganize the current state of consumer law. It is a paradigm shift in consumer law.

In terms of the effectiveness of consumer rights enforcement, it is necessary to realize the perspective of strengthening individual rights by enhancing the collective rights remedy system.

In doing so, emphasis should be placed on the role of consumer groups that support individual consumers. Considering the litigation, the activities of consumer groups require a large amount of money, but since this is not secured and the financial basis has not been established, it seems that they are not able to play a sufficient role in leading consumer policy.

These are major differences from Europe.

As a mechanism that does not leave unfair profits to businesses, I personally believe that it is not possible to deter unfair economic behavior of businesses unless the opt-out

system is firmly available. However, I was very interested in the fact that you mentioned the redress fund system like the US *cy-près funds* as a mechanism to recover damages to consumers who did not opt-in, even when the lawsuit is of an opt-in type. I thought that if such a system could be established, the result would be same as that of the opt-out system, but I would like to ask whether such an understanding is correct.