

# 「訴訟上の和解」についての憲法的考察(「公正な裁定者」としての司法の位置づけ)

メタデータ	言語: Japanese 出版者: 公開日: 2022-05-13 キーワード: 作成者: メールアドレス: 所属:
URL	<a href="https://doi.org/10.24517/00065996">https://doi.org/10.24517/00065996</a>

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# 1998 Fiscal Year Final Research Report Summary

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## A STUDY ON "CONCILIATION IN LAW SUITS" FROM A CONSTITUTIONAL PERSPECTIVE

Research Project

### Project/Area Number

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09620015

### Research Category

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Grant-in-Aid for Scientific Research (C)

### Allocation Type

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Single-year Grants

### Section

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一般

### Research Field

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Public law

### Research Institution

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Kanazawa University

### Principal Investigator

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### Project Period (FY)

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1997 - 1998

### Keywords

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judiciary / conciliation / procedural due process / access to courts

### Research Abstract

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For over the past decade, the judiciary has actively pursued the procedure of conciliation within law suits. This has had both favorable and unfavorable responses. The favorable responses have been that it has reduced judicial expenses and that it has made possible remedies not capable of being reached by an actual court judgment. On the other hand, in large-scale law suits involving public power related concerns such as the Aids Case and Hinamata Disease Cases problems concerning pressure to pursue a judgment by law" are quite strong. Furthermore, issues concerning the limits in the role of judicial power and the increase at judicial discretion by the judge are said to be unfavorable if conciliatory procedure is used since it may result in infringements in the party's procedural guarantees.

From the perspective of the judiciary as being "the fair decision-maker," the following three conditions justify using conciliation procedures in the above-mentioned large-scale public law suits. They are: 1) The need for an urgent remedy; 2) The court must give a detailed legal "opinion"; 3) A guarantee of procedural due process.

The recent amendment to the code of Civil Procedure established reparatory proceedings for advocacy (xi 265). The aim of the amendment was to eliminate doubts about advocacy and judicial conciliation proceedings and to make clear the procedures involved.


The most important point to consider for the parties in the law suit is that the judge involved collects the necessary information in a fair manner and that the information is properly disclosed. In order to accomplish this procedure, an important point will be to control the judge's discretion based on Article 32 of the Constitution which guarantees "the right of access to courts." Unfortunately, research in this particular field is still insufficient. More research on Article 32 concerning the control of judicial discretion will need to be done in the future.

## Research Products (2 results)

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All Other

All Publications (2 results)

[Publications] 笹田栄司: "裁判制度-やわらかな司法の試み-" 信山社, 260 (1997) 

[Publications] JUDICIAL SYSTEM. Shinzansha, 260 (1997) 

**URL:** [https://kaken.nii.ac.jp/report/KAKENHI-PROJECT-09620015/096200151998kenkyu\\_seika\\_hokoku](https://kaken.nii.ac.jp/report/KAKENHI-PROJECT-09620015/096200151998kenkyu_seika_hokoku)

Published: 1999-12-07