

Meeting with Judge KUSANO and Judge HAZAMA of the Supreme Court of Japan

06/03/2024



On March 1, 2024, the Cour de cassation welcomed a delegation from the Supreme Court of Japan: Judge Koichi KUSANO and Judge Hiromasa HAZAMA, accompanied by the liaising magistrate Mr. Yuki KUNUGI, First Secretary for Legal and Judicial Affairs at the Japanese Embassy in France. This visit is a continuation of the close collaboration between the Supreme Court of Japan and the French Cour de cassation. The Court has already welcomed delegations of Japanese judges for study visits and meetings with a view to exchanging information on the practices of our courts.

Mr Eloi BUARD-MENARD, Judge at the First civil chamber, began by presenting the workings of the Cour de Cassation, its organisation into different chambers and the role of the various judges.

Judge Koichi KUSANO showed a particular interest in the operation of the preliminary question of constitutionality and the review of the conventionality of laws carried out by the Court, and the way in which they are used to protect individual rights and freedoms.

Mr Eloi BUARD-MENARD and Judge Koichi KUSANO discussed the practices of the two courts. Judge Koichi KUSANO presented a translated court decision that he had handed down in order to explain his reasoning methodology and was thus able to question the members of the Cour de cassation on the drafting method and the use of arguments of opportunity and fact in legal reasoning. These discussions enabled a comparative law approach to be taken, particularly with regard to the use of *amicus curiae*, i.e. persons who, without being court-mandated experts or parties to the proceedings, are asked by the Court to give their opinion on a given question.



The introduction of separate opinions in the Court's judgments was also discussed. This practice is common at the Supreme Court of Japan, whether concurring or dissenting, and is the subject of reflection at the Cour de cassation, following the report of the Cour de cassation 2030 Commission. Judge Koichi KUSANO shared his experience and the importance and impact of the separate opinion in Supreme Court decisions. This input is invaluable to the Cour de cassation, which has set up a working group on the issue. The debate was then extended to judicial profiling and legaltech.

This type of visit encourages dialogue between judges and makes it possible to address a variety of issues relating to substantive law and court organisation, despite the diversity of the systems involved. It fosters a better understanding of the practices of our two Courts, strengthening the links that already exist.



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