

German Institute for Japanese Studies (DIJ Tokyo)

DIJ Study Group



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Fairness in Law: A Comparative Analysis of the Abuse of Rights Principle in Japan and Germany

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Firm legal rules are indispensable for a modern social and economic order. Yet, at the same time the pursuit of justice and fairness is a fundamental challenge for human coexistence. When the legal system is abused to merely cause harm to another person, or when the exercise of the law is grossly contrary to social norms, the judge can prohibit the exercise of a right despite the exercise being covered by the letter of the law. This principle, known as “abuse of rights”, was adopted by Japanese courts from Europe after the Meiji Restoration to resolve conflicts between written law and social norms. However, it is not always possible to clearly determine when a right is being “abused”. Despite this ambiguity, the prohibition of abuse of rights still plays a significant role in Japanese law today. For example, modern Japanese protection against dismissal is based almost entirely on judgments on the abuse of the right of dismissal, and in patent law, too, judgments on the abuse of patents led to legislative changes not that long ago.

This presentation deals with the historical development and contemporary practice of the prohibition of abuse of rights in Japan and Germany. To this end, decisions and the theoretical discussion from the first application in Japan in the late 19th century to the present day will be presented, analyzed and contrasted with German theory and practice. The aim is to answer the question of how and why the Japanese understanding of the prohibition of abuse of rights differs from the German understanding today. Due to the vague nature of the concept, this question also leads to very fundamental questions about the relationship between legislators and courts, and society’s understanding of law as a whole.

Felix Dröll is a PhD candidate at the chair for Japanese Law at the Goethe-University Frankfurt. After graduating from Law School, he began comparative research about the abuse of right principle in German and Japanese Law. His areas of interest include Legal History, Legal Theory, and Private Law. Since February 2024 he has been a PhD student at the DIJ.

About:

The DIJ Study Group is a forum for scholars from all disciplines conducting research on contemporary or modern Japan. The event is open to all. This session is organized by David M. Malitz.

Hybrid Event:

On-site participation: please register via email to malitz@dijtokyo.org until June 19, 2024.

Online participation: please register via our [webpage](#).

Venue:

Online and DIJ Tokyo: <https://www.dijtokyo.org/access/>