

ADMINISTRATIVE JUSTICE IN JAPAN

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Is there 'administrative justice' in Japan? 'Justice' or 'administrative justice' are simple words but very difficult for me to understand precisely in the way that I understand the meaning of civil justice or criminal justice. I suppose that definitions of 'administrative justice' may differ among academics, even in Australia. I understand 'administrative justice' to mean resolving administrative disputes in a fair and impartial process.

Japan introduced almost all of its modern legal systems from European continental countries in the Meiji Era. The first Constitutional Law was enacted in 1890. The Administrative Court was established to resolve disputes relating to administrative actions (decisions). It belonged to the Administrative Branch and was independent of the Judicial Branch. The disputes which people could bring to the Administrative Court were enumerated by Acts; however, there were many disputes which were not within its jurisdiction. Purely civil law matters, for example, disputes concerning contracts of a private nature between government and citizens were decided by the ordinary judicial courts.

After World War II, the Administrative Court was abolished; administrative actions (decisions) are now reviewed by judicial courts. We call this the 'Judicial State'. Generally, it is the choice of complainants whether they use complaints resolution procedures at an administrative level or whether they bring actions directly to the courts. Many Acts prohibit people from bringing actions directly to the courts without first undertaking administrative review at the administrative level. Examples of such Acts are appeals related to taxation and appeals related to social security.

Administrative Review within the Administrative Branch

Japanese law makes provision for reconsideration of decisions by the original decision maker and also for an administrative review system. Remedies are generally sought at the administrative level. Three features of administrative branch remedies are that they:

- are simpler and quicker than court procedures;
- screen cases to be brought before courts; and
- are free.

These elements appear to be similar in Australia.

These procedures are generally governed by the *Administrative Complaints Review Act*, a general Act concerning administrative complaints, objections and review. Many other Acts provide special rules.¹ According to the *Administrative Complaints Review Act*, ordinary adjudicators at the review level have authority to give supervisory directions to original decision makers. Ministers are very often such adjudicators at a national level, and mayors such adjudicators at the city level.

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Example:

In the case of original decisions by the Director of Local Infrastructure Offices within the Ministry of Construction and Transportation, complainants apply for review by the Minister of Construction and Transportation. The Minister can and should supervise the Director's decision. This is an internal review within the Ministry. If there is no higher authority, complainants can seek reconsideration by the original decision maker at an administrative level.

Hearings are available only with leave or if authorised by special legislation.

Internal review is insufficient for a complainant to get a fair and impartial decision, even in a review by a supervising authority. A reviewer's independence from the original decision maker is indispensable for an impartial review decision. As a consequence of the limited rights of review 'administrative justice' in Japan is deficient.

However, it is not correct to say that there is no 'administrative justice' at all. In some cases there is special appeals legislation.

Special legislation establishing administrative appeals tribunals

Special rules are found in several statutes, which set up administrative appeals tribunals. These tribunals were established by the US government after World War II. On the whole, administrative review tribunals are the exception in Japan.

At the national government level there is:

- the Social Insurance Appeals Tribunal; and
- the Labor Insurance Appeals Tribunal.

At the local government level there is:

- the Building Appeals Tribunal;
- the Land Development Appeals Tribunal;
- the Public Health Insurance Appeals Tribunal;
- the Public Nursing Insurance Appeals Tribunal; and
- the Property Valuing Appeals Tribunal.

For civil disputes, there are some administrative tribunals, for example, the Industrial Relations Commission and the Fair Trading Commission.

The members of administrative appeals tribunals at the local government level are all part time appointments. The members are expected to be specialists in each administrative field (building, land development, public health insurance, and so on). It is difficult to find members for tribunals in rural areas due to the shortage of specialists. Administrative law professors are very busy with the work of tribunals.

Tribunals do not have dedicated registrars. Accordingly, it is unclear who has the 'gate keeper' responsibility. Procedures at local government administrative appeals tribunals are usually determined by the tribunals themselves. Often, people cannot find out the detail of the procedures in advance.

National level administrative review tribunals are a little different. Generally the appointment of members requires the Parliament's approval and members are full time appointments.

Special legislation or by-laws for advisory councils

By special legislation advisory councils have been established and are consulted by reviewers and recommend the preferable administrative decision. The council set up under the *Freedom of Information Act* is typical and familiar. At a local government level, similar advisory councils are set up by municipal Freedom of Information By-laws. There are about 1,700 local government bodies in Japan. As a result many members are needed for advisory councils. There are regular calls for administrative law professors to be members, part-time or full-time, of these councils and this can be an onerous and time-consuming task.

The Customs Duty Complaints Review Council is also a kind of advisory council.

Administrative Complaints Review Amendment Bill

Much effort has been made to amend the *Administrative Complaints Review Act*, but the process is difficult because of Japan's unstable Government. The content of the amendment Bill is clear and is designed to:

- establish a position of specialist reviewing (hearing) officer;
- provide for consultation with independent advisory councils; and
- extend the time in which to appeal from 60 days to 3 months.

I would like to see established in Japan a general or comprehensive administrative appeals tribunals such as the AAT in Australia. But my plan is still only a dream in Japan.

Endnote

- 1 For national taxation we must read the *National Taxation General Rule Act*. The National Taxation Review Tribunal was established by this Act but it belongs to the National Tax Administration Agency and is only partly independent of the Director of National Tax Administration.