

# The “Ombudsman” in Japan

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There is no ombudsman system in Japan, but there are institutions that function in almost the same manner. Moreover, the Japanese government recently concluded a study of the ombudsman system which recommended the adoption of such a system in Japan. This article discusses the currently existing institutions that perform functions in Japan similar to those performed by an ombudsman, and concludes with a discussion of the study of the ombudsman system conducted by the government and its recommendations.

The new civic constitution adopted by Japan after World War II established a government based on the principle of popular sovereignty. This means that, in practice, government administration must serve the interests of the Japanese people. Accordingly, as early as 1946, certain administrative agencies set up offices to hear public complaints and grievances and to handle them through administrative counseling. In 1955, the Administrative Management Agency (Gyōsei Kanri-chō), which had been established to oversee, among other things, the activities of the national public administrative agencies, set up a similar office.

The number of cases of administrative counseling increased year by year. The Administrative Management Agency was generally believed to be independent of the administrative agencies subject to its oversight and, therefore, capable of maintaining a disinterested position with respect to public complaints. But it was felt that the general public considered the Agency inaccessible because of its high position in the Japanese government. Therefore, in 1961, the government appointed eight hundred and eighty two local administrative counselors, who were placed in major cities and towns throughout Japan. Initially these counselors could only inform the Administra-

tive Inspection Bureau (Gyōsei Kansatsu-kyoku) of the Administrative Management Agency of public complaints. Gradually, however, their powers were expanded to permit them to advise actively on the solution of such complaints. There are currently four thousand seven hundred and eighty nine administrative counselors.

After 1965, each government ministry and agency established an office to receive public complaints and to handle them through administrative counseling. Persons in charge of such counseling were also appointed. By 1984, the administrative counseling offices established by each government ministry and by those government agencies that deal frequently with the public were fully staffed and operational. Under the direction of the Ministry of Home Affairs, the local public corporations have also begun setting up administrative counseling offices and putting them into full operation. There are currently four hundred and fifty thousand counselors. The administrative counseling system is reinforced by the monitoring systems in various fields which are generally effective in informing administrative agencies of public grievances and requests.

The administrative counseling system in Japan serves many of the same functions as the institution of the ombudsman. The functions of the ombudsman are those of not only hearing and resolving public complaints, but also identifying and trying to correct the underlying causes of such complaints so that they do not recur. Among the more important functions of the administrative counseling system is that of helping to ensure that administrative agencies protect the rights and interests of the public. The administrative counseling system accomplishes this by providing, first, a place where citizens can bring their grievances and requests and, second, a channel through which those grievances and requests may be resolved or satisfied by the administrative agency concerned. The administrative counseling system also provides the opportunity for analyzing public complaints with a view towards improving the performance of administrative agencies.

The administrative counseling system forms a link in the chain of administrative remedies available in Japan. In order to understand its role fully, it must be examined in relation to such other remedies.

The two main administrative remedies are the administrative lawsuit and the administrative complaint investigation. The administrative lawsuit provides a judicially administered remedy in which a court reviews and then affirms or denies the validity of an administrative act. The administrative complaint investigation provides a non-judicial remedy by which a citizen can appeal to the administrative authority concerned, or to another administrative authority, and seek a reconsideration of any act or omission to act by any public authority. The results of any such reconsideration by an administrative agency are open to judicial appeal, the results of which are final.

The administrative counseling system offers certain advantages over both the administrative lawsuit and the administrative complaint investigation. First, it can handle cases arising from almost any acts of administrative agencies, not just from acts that fall into the legal category of acts of the executive. Second, the administrative counseling system resolves cases quickly and is therefore more accessible for the public than other administrative remedies. Evidence of this can be seen in the steady annual increase in the number of administrative counseling cases handled by the Administrative Management Agency since its establishment in 1955. In recent years, such cases have totalled nearly two hundred thousand per year.

One of the reasons for this increase is that the system provides many avenues by which public complaints can be heard. These include the general administrative counseling bureaus in major cities as well as a nationwide network of "hotline" telephones which are used by the public exclusively for registering complaints against administrative agencies.

The administrative counseling system has been developed in Japan, and, as far as I know, is unique to it. It enjoys a favorable reputation among Japanese citizens and is generally regarded as contributing to democratizing and increasing the efficiency of Japanese public administration. The U.S. administrative law scholar Walter Gellhorn offered the following observations with respect to the administrative counseling system:

Japan's experimentation with a bureaucratized instead of a highly personalized grievance machinery deserves to be closely watched.

—Japanese experience, valuably suggestive of new approaches, is also valuably suggestive that old approaches toward justice and efficiency must not be slighted.— Present endeavors, in sum, are not free from fault. Yet their general worth can be acclaimed. Starting without the guidance of other countries' experience (and without much guidance from its own past experience, either) Japan has significantly stimulated attentiveness to informally expressed grievances of the citizenry. Its work in that respect may be a major breakthrough in the effort to humanize modern administration without impairing its efficiency. [Gellhorn, Walter, "Ombudsmen and Others", pp. 417–419]

However, the administrative counseling system is generally considered to have the following weaknesses. Each administrative agency has its own administrative counseling system and runs it independently from those of other administrative agencies. The result is that there is sometimes a lack of coordination with respect to problems that involve more than one administrative agency. Consequently such problems can sometimes be resolved only partially or not at all. Another weakness is that even if an administrative agency concludes that legislative action is necessary to deal with a public grievance, the agency lacks the authority to propose the appropriate measures to the Diet. Because of these shortcomings in the administrative counseling system, it was felt that the creation of an ombudsman system should be considered in Japan.

In 1980, the Administrative Management Agency, which in 1984 was renamed the Management and Coordination Agency (*Sōmu-chō*), began a series of conferences on the ombudsman system and, in 1986, published a final report. The conclusion of the report was that Japan should adopt an ombudsman system not only to work in conjunction with and augment the administrative counseling system but also to perform certain functions that cannot be performed by the administrative counseling system.

Specifically, the report recommended that an ombudsman committee be established at each administrative agency. The committee would consist of 3 to 5 ombudsmen, including a chief ombudsman. The Prime Minister, with the consent of the Diet, would appoint each

ombudsman for a fixed term. In order to maintain the independence of the ombudsmen from the influence of other government offices, no ombudsman could be involuntarily removed from office before the expiration of his or her term. The ombudsmen would be empowered to deal with all aspects of public administration and to participate in all administrative remedies. Based on the results of their investigations of public complaints, the ombudsmen could render opinions or advice with respect to correcting, improving or amending laws and ordinances. Members of the public could submit complaints in person, in writing or by telephone. The report reserved for later consideration such matters as the determination of the conditions that complaints would have to meet to qualify for investigation and the time limitations for submitting complaints. Lastly the report recommended that the ombudsmen be required to submit detailed annual reports to the Cabinet and the Diet and to make public the contents of the reports. This, the report said, would help to stimulate public opinion about the activities of the ombudsman system.

## References

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## Notes

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