

immediately before the first launch of the Juki Net. Given these realities, we cannot help feeling misgivings that the door toward the “National ID Number System” was opened just by the introduction of the Juki Net.

In this way, Japan took a step toward becoming a “surveillance state” based on a “National ID Number System” by the introduction of the Juki Net. It was symbolic that the “Law Concerning the Interception of the Communication for the Criminal Search” (Law No.137, 1999) was adopted on the same day as the adoption of this amendment. And, at last, on June 6, 2003, the “Three Laws concerning Emergency Defense” were adopted as if backing up our fear, because such a surveillance system could bring its ability into the fullest play just in the emergency. The image of the state arising from these circumstances is the “state preparing for war” which always keeps a watch on people and mobilizes people as personal resources in emergency. We the people need always to keep “surveillance” on the movements of the State to prevent Japan from driving recklessly toward the “surveillance state.”

2. Administrative Law

The Act on the Use of Information Technology in Administrative Procedures and Others

Law No.151, December 13, 2002 (Effective on February 3, 2003).

Background:

This Act is one which provides common rules allowing applications, reports, and other administrative procedures which have only been carried out in writing in the existing legal institutions to be carried out online for the purpose of promoting national and local electronic government. This Act is generally called “the Act on Making Administrative Procedures Available”.

In Japan, the idea of making administrative procedures available online had been under examination by the national government with the aim of promoting it since the Cabinet decision to employ “the Basic Plan

to Promote Information-Oriented Administration” in 1994. In 2001, the national government, responding to the enforcement of “the Basic Act on Making Our Society an Advanced Information Network” (the IT Basic Act), established the “e-Japan Tactics”. These ‘Tactics’ suggested the goal that Japan became “the Most High-Tech IT State around the World” by 2005. In March this year, the Head Office for the Tactics for Promoting a Society of Advanced Information Network (the Head Office for IT Tactics) created “the Priority Plan for e-Japan”. The information-oriented administration was one of the priority policy fields suggested in this plan. About this field, this Plan provides that electronic government, which equates electronic information with paper information, should be realized by fiscal year 2003, and that, in particular, all administrative procedures, such as applications and reports, should be made available online as soon as possible but not later than fiscal year 2003.

The bill for this Act was submitted in order to construct the legal institutions to make the implementation of this plan possible in the 154th Diet in 2002, with two related bills. These bills, however, were not passed in that session, and were carried over to the next session. Finally, these bills were passed in the 155th Diet.

Main Provisions:

As mentioned above, this Act is one to make administrative procedures available online. Making administrative procedures available online supposes that individuals and groups will become able to do administrative procedures in their own houses and work-places without going to public offices.

The legislative purposes of this Act are, according to art. 1, first, “planning an improvement in the convenience to citizens”, and, second, “contributing to making administration simple and efficient”. Administrative procedures and others which are objects of this Act are, according to art. 1, “applications, reports, and other notices which are carried out for administrative agencies and others under laws and ordinances”, “notices of an administrative disposition and other notices carried out by administrative agencies under laws and ordinances”, “provisions of matters which are recorded in paper media or electronic media by administrative agencies under laws and ordinances for public

inspections or perusal”, “to make or keep writings or electronic records by administrative agencies under laws and ordinances”.

As mentioned above, this Act is *the one which provides common rules* for allowing administrative procedures to be made available online. In other words, this act allows administrative procedures conventionally carried out by writings available online generally, without particular amendments to existing laws. This Act, however, according to art. 8, does not give a duty to make administrative procedures available online to the state. That is, the state only has a duty to make an effort (“the state must make an effort to devise improvements of information systems and other necessary measures, to promote the use of information technology in the procedures and others which administrative agencies and others take part in”). Legal provisions excepted in the application of this Act are enumerated in an attached table delegated by art. 7. In this table, writings which do not match with electoral records, and writings which need the appearance or confrontation are exceptions to the application.

To carry out administrative procedures online is not a matter of the rights of applicants but at the discretion of administrative agencies. For example, Arts. 3 & 4 provide that “administrative agencies, in accordance with the provisions of ministerial ordinances given by the competent ministry, can allow the use of an electoral data processing system and the carrying put of [applications and disposal notices]”. Also, in the provisions cited above, delegation by the competent ministry to ministerial ordinances is important.

Editorial Note:

This Act is a part of the concept of the “IT State”. Therefore, the merits and demerits of this concept apply to this Act. In my view, to realize a curtailment of expenses, making administrative procedures simple and efficacious by the use of the internet appears to be a very attractive policy to the national government of Japan carries with it which suffers from red-ink financing, because this policy has another purpose, that of planning the improvement of convenience to citizens, and the plus-image of applying the latest information technology to administrative institutions. But, in comparison to the conception of the state as relating itself to individuals in real space, it is difficult to say that the

conception of the IT State, which relates itself to individuals in virtual space, is a better one, because such a state is not able to exist without high-level information technology and, therefore, is against the nature. Also, “the IT State”, which is good or bad, is the conception of the state as something which will bring about radical changes to existing administrative systems. If so, its realization requires careful arguments, the professional insights of scholars of constitutional law and administrative law, and the understanding of private individuals and officials which practically engage with these systems.

Next, “the IT State” is inevitably accompanied by the digital divide. This is a problem not only for private persons. First, officials engaging in administrative procedures must have skills in handling computers at least to the degree to which they can take responsibility for their own mistakes. This means that computer skills will be indispensable to officials in the future, and that, therefore, people without these skills will have no qualification to become officials. That is, changes in the necessary skills bring about changes in the character of officials. Second, citizens monitoring administrative procedures and scholars studying them also need a knowledge of computers. In other words, the existing knowledge of existing administrative procedures, standing alone, will not be able to lead to proper descriptions or suggestions about administrative procedures.

Furthermore, administrative procedures online are expected to bring about many legal problems accompanying these changes in the nature of the media. In this law, particularly in arts. 3 & 4, there are provisions concerning the timing of the arrival of applications or notices of disposal. But there are no provision about how legal problems which may be brought about by problems such as computer viruses, or the cutting-off of the internet, or the breakdown of systems, should be met with. In particular, what one should pay attention to is that the possibility that legal problems brought about by such troubles will give not a few important problems to the nature of the administrative-procedural law.

From these viewpoints, the enactment of this Act appears to have been rather too rapid. This appears to be reflected in the provisions of this Act.

First, this Act adopts the form of one generally making all procedures in related laws objects of this Act in principle, and then enumerating

exceptional provisions, not that of particularly amending related laws. Second, this law only allows making administrative procedures available online, and then delegates the setting of concrete institutions to Ministerial ordinance by the competent Minister. Third, procedures based on the ordinances and regulations of local governments are not objects of this Act. Therefore, making these procedures available online requires the enactment of new ordinances or regulations. If making administrative procedures available online is a matter of legislation, then it is open to question not to adopt the form of amending particular laws and delegating administrative ordinances, and to wait for new local ordinances about administrative procedures based on local ordinances and others. Perhaps, in the background of having to adopt this type of act, there is an imperative that during the 2003 fiscal year electronic government must be realized.

In addition to this Act, 71 existing laws were amended by “the Act on Preparations and Others for Related Laws accompanying the Enforcement of the Act on the Use of Information Technology in Administrative Procedures and Others”, enacted at the same time as this Act. In doing so, what comes into question particularly is the wide extension of the range of office work using the network of the basic register of residents (Ju-ki net), which is the system of administration of personal data by numbers which are assigned to all citizens one by one. This extension is from 93 to 264 including the issuing of passports, the granting of annuities, and so on. The network of the basic register of residents has been in operation since 2002. But, this network system has been the object of fears since before its enactment, in part because it will lead to the institution of numbering citizens, and techniques and legal systems for protecting personal data have not yet been established. Thus, taking these fears into account, the national government orally has emphasized the limited use of this system. Nevertheless, in the name of “Preparations and Others for Related Laws accompanying the Enforcement of” this Act, office work using this network was extended. It is important that we look at coming movements in order not to be blinded by the convenience and efficiency of the IT State or electrical government, which are served by administrative procedures online, and not to allow personal data and human dignity to be threatened.