2. Administrative Law

Amendment of the Administrative Procedure Act
Law No.84, June 9, 2004 (Effective on April 1, 2005).

Background:

Administrative Procedure Act was established in 1962. Until now, the act has remained unrevised. This amendment is accounted for by the dissatisfaction concerning the functioning of the judicial system as a check on the administration. Given this situation, the final report published on June 21, 2001 by the Committee on the Reform of the Judicial System touched on the need "to strengthen systems for checking on the administration by the judiciary," and recommended "with regard to the modality of judicial review of the administration, including the reform of the Administrative Procedure Act, we need to discuss the roles of the judiciary and the administration in accordance with the fundamental principle of the rule of law." In answer to this proposal, the Government established an investigative commission unto administrative procedure in the task force on judicial reform. This commission published "a concept for the reform of the administrative litigation system" on January 6, 2004. The government submitted a revised bill for the Administrative Procedure Act to the 159th Diet in 2004. This bill went through and was enacted on June 2 in the same year.

Main Provisions:

This reform was carried with the object of putting more effective remedies for citizens' rights and interests in place. The content of the amendment can be divided into four parts.

1. Provisions to expand the scope of remedies.
(1) A new provision as to point to consider the interpretation of standing to sue (*genkoku-tekikaku*) of a revocation suit (Art. 9 [2]).
(2) The enshrinement into law of a mandatory injunction suit (Art. 3 [6]).
(3) The enshrinement into law of an injunction suit (Art. 3 [7]).

(4) A provision for the clarity of significance and the usability of a Party suit (Art. 4).

2. Measures to make trials satisfactory.
(1) A provision with regard to measures for the clarification that court must call the accused administration to account for legal grounds for administrative disposition (Art. 23-2).

3. A mechanism for make administrative litigation more accessible.
(1) A defendant of a protest suit changes the administrative authority (*gyousei-cho*) into the executive (*gyousei-syutai*) (Art. 11 [1]).
(2) Enlargement of the jurisdiction of a protest suit (Art. 12 [1]).
(3) Extension of the period for resort to judicial review from 3 months to 6 months (Art. 14 [1]).
(4) Regarding revocation suits and party suits: the administration which takes an administrative disposition must enlighten the object parties of that disposition in writing concerning the defendant, the period for resort and the prior claim for examination (Art. 46 [1]).

4. Measures to enrich the institution of remedy tentative.
(1) A measure to relax the requirement for a suspension of execution (Art. 25 [2]).
(2) The establishment of a temporary injunction (Art. 37-5 [1]).
(3) The establishment of a temporary mandatory injunction (Art. 37-5 [2]).

Editorial Note:

This administrative litigation system reform is based on the concept that we need to fix effective remedies for citizens' rights and interests. This reform rests on the theory arrived at through an accumulation of judicial precedents and administrative doctrine over 40 years after the establishment of the Administrative Procedure Act in 1962. Any provisions of this reform contain difficult issues. It is impossible to comment on all of these, so we confine our comments to a part of this reform. Among the four parts noted above, we cover the first part that seems to have a direct relation with the effective remedy, in particular the standing to sue (*genkoku-tekikaku*) of a revocation suit.

Historically, a revocation suit has played a central role in protest suits. To file a revocation suit, the plaintiff must have the interest to bring an action, in other words the need for judicial remedy through a judicial decision. The standing is one of the elements of the interest to bring an action. The now-defunct Article 9 provided that the revocation suit of a disposition administrative and that of adjudication can be filed only by a person who has the legal interest to apply for the revocation of a disposition or adjudication. Now who is the person who has the legal interest? Generally, the person who is directly subject to a disposition (the subject party of a detrimental disposition, an applicant as in a disposition to decline his claim) is considered as aggrieved, so he has the legal interest (the standing). The case that the standing may be brought in question is that much involves a third-party.

New Article 9 (2) is a norm of interpretation as to the third-party's legal interest. In terms of content, it is important to determine whether a third party has the legal interest or not that the judge should "not base a decision on only words of the statute laying down the basis for the disposition," and should consider "the intent and purpose of such a statute." And in this instance, if there are "other statutes that have the same purpose as such a statute," the judge should determine the standing by consulting the intent and purpose of those statutes. In short this article tell the judge that when he makes his decision about the standing of the third-party, it is important for him to think of the interest which the relevant statute tries to protect in consideration of the equity and purpose of this statute. By the same token, when the judge makes his decision about the standing, he should consider about "the nature of the interest that will be infringed and the degree of damage if a disposition should violate its underlying statute." These interpretive criteria are the achievement of an accumulation of judicial precedents of major factors in determining the standing of the third-party. In the normalization of these factors, it expands the reach of the standing in effect.