patched to Iraq, arguably a combat zone, for the first time since their foundation. On October 25, 2005, the Liberal Democratic Party in power announced their draft of a new Constitution of Japan, which aims at effectively undermining Article 9. Asian neighbors' uneasiness about Japan's reactionary tendency and militarism may be unfortunately not groundless.

One should not, however, focus only on the rightist tendency of the Government. Nobody can deny that it was the powerful grass-roots campaign by ordinary citizen that achieved "Showa Day." According to one of these grass-roots groups, "Showa Day" Promotion National Network (SDPNN), one million and seven hundred thousand signatures of people calling for the enactment of "Showa Day" were collected. It seems that, as ordinary people have been gradually getting more conservative, so the Japanese Government gets more and more so. But it is also the case that most Japanese people have not taken part in the campaign actually. Pro-"Showa Day" people would have never been a majority. Though SDPNN insists that the fact that there has not been an anti-"Showa Day" movement demonstrates that the silent majority have been supporting "Showa Day," this is simply misleading. Even if people who opposed "Showa Day" had cooperated with the anti-"Showa Day" political party, such as the Japanese Communist Party or Social Democratic Party, since the number of the Diet members in those parties was so small, they could not have succeeded in the campaign, and thus it should have been a lost cause from the start. Therefore, we cannot now evaluate all the campaigns around "Showa Day," much less the true meaning of the day. They will be evaluated in the near future.

2. Administrative Law

An Act to partially amend the Administrative Procedure Act 1993

Law No.73, June 29, 2005 (Effective on the day falling within a year of the day of the promulgation laid down by Government order).

Background:

This act adds new procedural rules concerning so-called "Administrative Litigation" to the jurisprudence terms to Administrative Procedure Act 1993.

In prewar Japan, the administrative law had paid no attention to procedural controll over the administrative decision-making process. So with the problem how to protect the citizen, the principle of *die Gesetzmäßigkeit der Verwaltung* (this principle derives from German Administrative Law) and *ex post facto* remedies for maladministration were weighed.

On the contrary, in Post-War Japan, under the influence of Anglo-American administrative procedural Legal-thought (namely the idea of Natural Justice or Due Process of Law), the theory that the justness of a disposition's contents could be maintained by aiming at just pre-procedure, has come to be one of major issues in Japanese Administrative law.

Concerning the concrete proposal for an enactment of the Administrative Procedure Act, we can go back and examine the "Opinion about the Reform" handed in by the 1st Ad Hoc Commission on Administrative Reform in Nov, 1964. Furthermore in November 1983, the "Study Group of the Administrative Procedure Act" handed in a proposal which referred, in addition to the need for procedural control over administrative dispositions, and for guidance, to the need for procedural control over "Administrative Legislation" and "Administrative Planning."

However, in subsequent progress, from the point of view that it is appropriate to investigate the field relating directly to peoples' rights and duties, the problem of the need for procedural control over the "Administrative Legislation" and "Administrative Planning" were carried over as future subjects. Thus, in the Administrative Procedure Act 1993, procedural rules concerning "Administrative Litigation Law" and "Administrative Planning" did not exist.

Yet, from the viewpoint of the suitability of an administrative management for the needs of citizens, the concept of procedural control over the administrative decision-making process has gradually come to

be thought of as important, so that the idea of democratic control over an administration, and of citizens' participation in an administrative decision-making process came not to be disregarded. So, based on such a social background, in March 1999, the introduction of a "Public Comment System" was decided upon by the then Cabinet. And yet, this system was not a rule but just a guideline and the scope of the system was limited in the regulatory area.

Thereupon, the need for a law which lays down procedural control over the "Administrative Legislation" was recognized, and this Act was established.

Main Provisions:

This Act adds a new Chapter 6 consisting of 8 articles (which lay down the procedure for the collection of opinions when administrative agencies make some orders) to the Administrative Procedure Act 1993, and in order to define the scope of this Chapter 6, in Chapter 1 of the Administrative Procedure Act 1993, it gives the definition of words and defines the scope of application.

1. The definition of words:

The word "order" means Government and Ministerial Orders, other Orders based on delegated powers, review standards, disposition standards, and guidelines for administrative guidance [Art. 2, Item 8]. In the amended Administrative Procedure Act, the phrase of "Administrative Legislation" is not used. Because the phrase of "Administrative Legislation" is mainly a jurisprudential term, and the concept is not yet fixed fully.

2. The scope of application:

Because of Art. 3(2), Art. 4(4), and Art. 39(4) which were established newly in the amended Administrative Procedure Act, the provisions of Chapter 6 shall not be applied to some kinds of orders (for example, orders not relating directly to people's rights and duties, or orders over which priority should be given to other procedures and so on).

3. The General principle of the procedure for collection of opinions:

An administrative agency which intends to make some orders has to move the order conform to the meaning of the enabling statute [Art. 38(1)], and also after having laid down the order, taking the change in the social-economical situation into account, to endeavor to maintain the fairness of the substance of the order [Art. 38(2)].

4. The procedure for the collection of opinions:

An administrative agency which intends to make some orders has to give notice of the draft of the order and materials relating to the draft, and to ask for public opinion during 30 days or more from the day of the notice [Art. 39(1) and (3)]. The draft of the order must be equipped with the title of the order, articles of the enabling statute, and be a concrete and clear one [Art. 39(2)]. However, when there is a situation set to Art. 39(4) (for example, in case of an emergency situation where there is a need to make an order immediately or in case a slight change is made and so on), an administrative agency is not obliged to do this procedure, and when a committee or a deliberative council takes some quasi-procedures for the collection of opinions, the procedure of Art. 39(1) is not needed either [Art. 40].

5. The consideration of opinions:

An administrative agency which intends to make some orders has fully to take into consideration the opinions handed in following the procedure stated in Art. 39(1). However, the agency need not have those opinions clearly reflected in the order [Art. 42].

When an administrative agency makes an order after carrying out the procedure stated above, the agency is, at the same time as the promulgation of the order, obliged to give notice of (1) the title of the order, (2) the date of the notice in which the draft of the order was noticed, (3) the opinions handed in, (4) the result of the consideration of the opinions handed in, and the reason which resulted in the result [Art. 43].

6. The way of notice:

The notices which are described in Art. 39(1) and Art. 43(1) are intended to be issued by using computers, telecommunications (for example by having notices appear on the web-site of "e-Gov").

7. Measures by local public entities:

Though Chapter 6 of this Act does not apply to the orders of local public entities [Art. 3(3)], the new Art. 46 which was introduced by this amendment lays down that local public entities shall, with regard to the procedures of Chapter 6 of this Act, endeavor to adopt the necessary measures.

Editorial Note:

This Act is the fruit of cooperation over two decades between the academic world and the government concerning the "Administrative Legislation."

However, some subjects in relation to procedural control over the administrative process have still been left unsolved.

First, even in the Administrative Procedure Act amended by the amendment of this time, the rules of procedural control over "Administrative Planning" still do not exist, and also the subjects about the procedural protection of the rights of third parties are still left unsolved.

Second, in case of applying the new Chapter 6, it is intended that in relation to one draft the procedure for the collection of opinions will be held just one time, and not intended that in relation to one draft bidirectional opinion exchanges are held covering several times. Thus, it is not clear whether it is necessary to carry out the collection of opinions anew, when, as a result of taking opinions handed in into consideration, the order which has neither an original form and original identity, nor relevance to the original draft, is issued.

Furthermore, though this problem is not only one concerning the procedural rules of Chapter 6 but of the whole Administrative Procedure Act, as the effect of the order which breaks the procedural rules prescribed in new Chapter 6 is not specified in the Administrative Procedure Act, it is not clear on this Administrative Procedure Act whether such orders are valid or void or voidable, and to find out the effect of the order which does not pass through procedural rules, we will have to wait for future judicial review.