

sures.

2. Administrative Law

Basic Act on Reform of the National Public Service System (23provisions)

Law No. 68, June 13, 2008 (Effective on the day of the promulgation laid down, but the regulations in the third chapter will be effective on the day which a year after the day of the promulgation laid down by Government order)

Background:

This act is a basic act concerning the reform of the Japanese national public service system. The purpose of this act is, firstly, to stipulate the basic principle and the basic policy which makes each national public servant execute his work with confidence, a sense of responsibility, and an improvement in ability, secondly, by establishing a Headquarters for the Promotion of the National Public Service System Reform, to accomplish the reform of the Japanese national public service system.

In Japan, the administrative operation have traditionally been carried out in such a way that the drafting of a plan for a policy has been entrusted to a bureaucrat. However, such an administrative custom has caused a vertically structured administration to develop in which each ministry forces them to give priority to the profit and the policy remote from the national needs, as is symbolized by the pension problem, the waste of the budget, the “bureaucrat’s descent from heaven” (in Japanese, “*AMAKU-DARU*”, this means that a bureaucrat is given a high post in an affiliated organization or private enterprise, etc, over which the government office to which he belonged formerly has jurisdiction) and so on, so that distrust of the government or the Liberal Democratic Party (LDP), which is the government party, has formed.

After the Cabinet decision concerning the reform of the Japanese national public service system in April in 2007, the bill for this act was submitted to the House of Representatives in April in 2008 under the Fukuda

administration, and after that, in the House of Representatives Cabinet committee, the parts concerning contact between a member of Parliament (an M. P.) and a national public servant, and the unification of management by the Cabinet of executive personnel, were amended. However, these amendments seemed to remove the backbone of the contents of the government bill, so the bill as a whole was rejected by the government party (LDP) and the Democratic Party of Japan, an opposition party, and the formation of this act saw into doubt. But Mr. Yoshimi Watanabe, who was the then Minister of State for Administrative Reform, argued that the promotion of the reform of the national public service system itself that was more important than being so particular about the details of the contents of the bill and the bill was spoiled. So this amended bill passed the House of Representatives on May 29, 2008 and was formed via an approval in the House of Councilors on June 6, and was proclaimed on June 13.

Main Provisions:

Article 1, the purpose of this act

The purpose of this act is to stipulate the basic principle, the basic policy, and other standard matters concerning the reform of the Japanese national public service system, in order to make sure that each national public servant, who is a servant of the people as a whole, improves his or her ability, has a citizen's point of view, feels responsibility, and executes work confidently, And this act is also intended to accomplish the reform of the Japanese national public service system by establishing a headquarters for the promotion of the national public service system reform, in consideration of the pressing need to make a system for national public servants who carry out administrative operations corresponding to changes in social and economic conditions.

Article 5, concerning the national public servant's role under a Parliamentary Cabinet system.

The post (state strategy staff), which takes the Prime Minister's orders and assists the Prime Minister in drafting plans for a specific matter which is the subject of the Cabinet's important policy, within the Cabinet Secretariat, shall be established by the Government and the post (state affair staff), which takes the Minister's orders and assists the

Minister in drafting plans for a specific matter of policy and state affairs, within each ministry, shall be established by the Government, in order that political initiatives are strengthened and national public servants play the role of assisting the Cabinet, the Prime Minister and each minister appropriately (Art. 5. 1).

The government shall strengthen the personnel management function of the Cabinet, and a new system by which it is possible to appoint various human resources and to carry out flexible personnel management shall be established, in order to exclude the evil of a vertically structured administration (Art. 5. 2).

The government shall take all necessary measures so that information in the case when national public servants have contact with a member of Parliament (an M. P.) is exhibited appropriately, in order that the relationship between politicians and national public servants is made clear and, in each stage of the drafting, the decision and the implementation of a policy, the responsibility of the national public servants are made clearer, and a just and democratic administration is promoted with national accurate national understanding and criticism (Art. 5. 3).

The government shall take measures to carry out personnel managements concerning the executive's personnel union with the Cabinet Secretariat, in order to foster and utilize staff across ministries, and to carry out the personnel management of executive staff appropriately without exception (Art. 5. 4).

Article 6, concerning the appointment of various human resources

Concerning a test for the appointment of national public servants, the government shall reconsider the kinds and the contents of the present appointment tests radically, in order to be able to appoint various and excellent human resources (Art. 6. 1).

Though an executive candidate upbringing course is established, it should not be assumed that passing through this course guarantees appointment to executive staff, and after the selection of staff, the appointment has to be carried out appropriately based on personnel evaluation (Art. 6. 3).

Article 11, concerning the Cabinet Personnel Bureau

The government shall give the Cabinet Secretariat with the responsibility to explain to the people about the personnel management of national public servants, and shall make the Cabinet Secretariat take charge of affairs concerning article 5 clause 4 of this act, and the Cabinet Personnel Bureau shall be established in the Cabinet Secretariat to carry out these affairs (Art. 11. 1. 1).

With this, the functions of the management of national public servants personnel, which the National Personnel Authority, the Ministry of Internal Affairs and Communications, and other national administrative agencies carry out presently, from the point of view which makes sure that the Cabinet Secretariat can show that the function is carried out newly and effectively, shall be transferred to the Cabinet Secretariat with the necessary scope (Art. 11. 1. 2).

Necessary measures for establishing a Cabinet Personnel Bureau shall be taken within one year after this act is effective (Art. 1).

Article 12, concerning the basic right to work

The government shall show an overall picture, including advantages and costs with the expansion of the staff who conclude collective agreements with the people, and under their understanding shall take measures which make the self-controlled organization of employer-employee relations open to the people (Art. 12).

Chapter 3, concerning Headquarters for the Promotion of the National Public Service System Reform

In order to promote the reform of the national public service system generally and promptly, the Headquarters for the Promotion of the National Public Service System Reform shall be established in the Cabinet (Art. 13).

The Headquarters for the Promotion of the National Public Service System Reform shall take charge of affairs concerning the promotion of planning, drafting, and overall adjustment and implementation of a policy for national public service system reform (Art. 14).

The general manager of the Headquarters for the Promotion of the National Public Service System Reform shall be the Prime Minister (Art.

16), the deputy manager shall be the Minister of State (Art. 17), and other members of the Headquarters shall be all the remaining Ministers of State (Art. 18).

Editorial Note:

In the Japanese national public service system, there is a distinction between the senior staff who have passed the national public servant test and are employed by each ministry (they are called “career public servants”) and other staff who are called “non-career public servants”. The former is, as its promotion rate is quicker than other staff just after entrance to public service, treated more warmly than other staff. On the contrary, the latter are treated more coldly than the former. In fact, it is the current state that only a career bureaucrat actually can be a director, a director-general, or a vice-minister.

This sharp distinction between staff at the time of employment is one of the evil factors which causes a decline morale of non-career staff and a decline in the consciousness as a public servant in career staff. The surfacing of the pension record problem, the graft scandal concerning a defense Ministry administrative vice-minister, and the matter of “AMAKUDARI” show a decline in government officer’s morale and a vivid decline in normative awareness.

Furthermore, in Japan, which adopts a Parliamentary Cabinet system, it is the state of the original government operation that members of Parliament (M. P. s) elected by national voting elect a prime minister, and a policy is formed led by politics under the Cabinet. However, in fact policy formation is led by the bureaucrats who constitute a hierarchy with the administrative vice-minister at the apex. Moreover, each ministry tends to give priority to its own profit, and how to concern a bureaucrat and a politician in the policy formation process is indefinite. So policies tend to be estranged from national needs.

This act is positioned as a fundamental act which reforms such a national public service system for accomplishment or a policy formation which reflects national needs.

The points of this act to which attention needs to be paid are ① the establishment of a state affairs staff who assist a Cabinet minister with the establishment of a state strategy staff who plans a important state policies

under the Prime Minister. ② the strengthening of political initiatives in policy formation by developing contact restrictions and rules concerning politicians and bureaucrats (Art. 5). ③ introduction of unification of management of executive personnel by the Cabinet Personnel Bureau to remove the evil of the vertically structured administration which emphasizes its own Ministry's profit (Art. 11). ④ the abolition of the career system to improve the official servant's morale and the reform of sense (Art. 6).

The basic policy of this act should be estimated highly as the one which indicates one direction to break through the evil of the Japanese national public service system as described above.

However, opposite to the basic policy of this act, which introduces the unification of the management of executive personnel by the Cabinet Personnel Bureau and abolishes the career system, since there is no reference to the custom in which an official servant is employed by each Ministry, there are a lot of problems, such that the new "work" system replacing the career system may just be changing the name of the conventional career system, and actually, a career system will be continued.

Furthermore, the problem of the national public service system can not be settled only by institutional reform.

In the bureaucratic system, which has continued up to now from the government clerk system in the Meiji Constitution era, sweeping away sense of superiority to the people planted in national public servants and to prompt them to have an awareness of as the servants of whole people is indispensable.

The concrete measures for the reform of Japanese national public service system will be taken gradually based on this act from now on. Now that this act is a fundamental act originally, whether a problem like the above is solved or the spirit of this act is reduced to ruin conversely will depend on concrete measures. So we must pay attention to the contents of the concrete reform measures and their effects in the future.