

JUDICIAL ACTIVISM IN ADMINISTRATIVE LITIGATION?
2004 ADMINISTRATIVE LITIGATION REFORM AND ITS IMPACT

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ABSTRACT

In Japan, until very recently, plaintiffs in administrative cases only won approximately 10% to 15% of all the cases. On the other hand, 20% of the cases were dismissed because of the failure to fulfill procedural requirements required by the old Administrative Litigation Act, and the remaining 40 % of the cases were denied because of having no merit. Scholars strongly criticized the fact that the old law was institutionally unfavorable to the plaintiffs, and advocated that the remedies for the plaintiffs should be granted much more frequently.

The old law, in spite of the continuous strong criticism against it, had never been significantly modified during the 40 years since its enactment. However, in the late 1990's and early 2000's, the Administrative Litigation Reform Movement flourished in academia. Finally, the Law was reformed in 2004. Interestingly enough, the years between the late 1990's and 2004 were a time of dramatic changes in the administration of administrative litigation as well. During those years, some judges who were said to be "activists" began to grant remedies to the plaintiffs more often and more generously. These activist judges became a driving force for the speedy reform of the old Law.

This paper attempts to ascertain whether the reform will result in more remedies for the plaintiffs, especially focusing on the impacts of the reform on judges. To analyze this issue, I support my argument by reviewing the research literature on the Japanese administrative litigation system, on legal education and on administrative litigation reform, as well as

examining judicial opinions in administrative cases, on the minutes of the Administrative Litigation Discussion Committee, conducting interviews with two retired judges, and with my own experience adjudicating administrative cases from 2000 to 2004 as one of the judges in a three-judge court in the Tokyo District Court.

I conclude that a remarkable change will be found under the new law. However, in order to support the vital administration of the system, further reform should be taken at least in two fields. First, the number of the judges should be increased, and second more research should be done in administrative substantive law.