

Administrative Case Litigation Act

(Act No. 139 of May 16, 1962)

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Supplementary Provisions

Chapter I General Provisions

(Purport of This Act)

Article 1 Administrative case litigation is governed by the provisions of this Act, except as otherwise provided by other laws.

(Administrative Case Litigation)

Article 2 The term "administrative case litigation" as used in this Act means actions for the judicial review of administrative dispositions, public law-related actions, citizen actions and interagency actions.

(Actions for the Judicial Review of Administrative Dispositions)

Article 3 (1) The term "action for the judicial review of an administrative disposition" as used in this Act means an action to appeal against the exercise of public authority by an administrative authority.

(2) The term "action for the revocation of the original administrative disposition" as used in this Act means an action seeking the revocation of an original administrative disposition and any other act constituting the exercise of public authority by an administrative authority (excluding an administrative determination, decision or any other act prescribed in the following paragraph; hereinafter simply referred to as an "original administrative disposition").

(3) The term "action for the revocation of an administrative determination" as used in this Act means an action for the revocation of an administrative determination, decision or any other act by an administrative authority in response to a request for an administrative review, objection and any other

appeal (hereinafter simply referred to as a "request for an administrative review") (hereinafter simply referred to as an "administrative determination").

- (4) The term "action for the declaration of nullity, etc." as used in this Act means an action seeking the declaration of the existence or non-existence of or validity or invalidity of an original administrative disposition or administrative determination.
- (5) The term "action for the declaration of illegality of inaction" as used in this Act means an action seeking the declaration of illegality of an administrative authority's failure to make an original administrative disposition or an administrative determination which it should make within a reasonable period of time in response to an application filed under laws and regulations.
- (6) The term "mandamus action" as used in this Act means an action seeking an order to the effect that an administrative authority should make an original administrative disposition or an administrative determination in the following cases:
- (i) where the administrative authority has not made a certain original administrative disposition which it should make (excluding the case set forth in the following item);
 - (ii) where an application or request for administrative review has been filed or made under laws and regulations to request that the administrative authority make a certain original administrative disposition or administrative determination, but the administrative authority has not made the original administrative disposition or administrative determination which it should make.
- (7) The term "action for an injunctive order" as used in this Act means an action seeking an order, in cases where an administrative authority is about to make a certain original administrative disposition or administrative determination which it should not make, to the effect that the administrative authority should not make the original administrative disposition or administrative determination.

(Public Law-Related Actions)

Article 4 The term "public law-related action" as used in this Act means an action relating to an original administrative disposition or administrative determination in which a legal relationship between parties is confirmed or created, and either party to the legal relationship stands as a defendant pursuant to the provisions of laws and regulations, an action for a declaratory judgment on a legal relationship under public law and any other action relating to a legal relationship under public law.

(Citizen Actions)

Article 5 The term "citizen action" as used in this Act means an action seeking correction of an act conducted by an agency of the State or of a public entity which does not conform to laws, regulations, and rules, which is filed by a person based on their status as a voter or any other status that is irrelevant to their legal interest.

(Interagency Actions)

Article 6 The term "interagency action" as used in this Act means an action relating to a dispute between agencies of the State and/or a public entity(ies) over issues concerning which of these agencies has the power, or the exercise thereof.

(Matters Not Provided for in This Act)

Article 7 Any matters concerning administrative case litigation which are not provided for in this Act are governed by the provisions on civil actions.

Chapter II Actions for the Judicial Review of Administrative Dispositions

Section 1 Actions for the Revocation of Administrative Dispositions

(Relationship between an Action for the Revocation of the Original Administrative Disposition and a Request for an Administrative Review)

Article 8 (1) Even where a request for an administrative review of the original administrative disposition may be made pursuant to the provisions of laws and regulations, this does not preclude the immediate filing of an action for the revocation of the original administrative disposition; provided, however, that this does not apply if there are provisions in any law that no action for the revocation of an original administrative disposition may be filed until an administrative determination is made in response to a request for an administrative review of the original administrative disposition.

(2) Even in the case referred to in the proviso to the preceding paragraph, if the case falls under any of the following items, an action for the revocation of the original administrative disposition may be filed without obtaining an administrative determination:

- (i) where no administrative determination is made after a period of three months has elapsed from the day on which the request for an administrative review was made;
- (ii) where there is an urgent necessity in order to avoid any considerable damage that would be caused by the original administrative disposition, the execution of the original administrative disposition or the continuation of any subsequent procedure; or
- (iii) where there are other reasonable grounds not to obtain an administrative

determination.

- (3) In the case referred to in the main clause of paragraph (1), if a request for an administrative review of the original administrative disposition has already been made, the court may suspend litigation proceedings until an administrative determination is made in response to the request for the administrative review (in cases where no administrative determination is made after a period of three months has elapsed from the day on which the request for the administrative review was made, until that period expires).

(Standing to Sue)

Article 9 (1) An action for the revocation of an original administrative disposition and an action for the revocation of an administrative determination (hereinafter referred to as "actions for the revocation of administrative dispositions") may be filed only by a person who has legal interest to seek the revocation of the original administrative disposition or of the administrative determination (including a person who has legal interest to be recovered by revoking the original administrative disposition or administrative determination even after it has lost its effect due to the expiration of a certain period or for other reasons).

- (2) When judging whether or not any person, other than the person to whom an original administrative disposition or administrative determination is addressed, has the legal interest prescribed in the preceding paragraph, the court is not to rely only on the language of the provisions of the laws and regulations which give a basis for the original administrative disposition or administrative determination, but is to consider the purport and objectives of the laws and regulations as well as the content and nature of the interest that should be taken into consideration in making the original administrative disposition. In this case, when considering the purport and objectives of those laws and regulations, the court is take into consideration the purport and objectives of any related laws and regulations which share the objective in common with those laws and regulations, and when considering the content and nature of that interest, the court is to take into consideration the content and nature of the interest that would be harmed if the original administrative disposition or administrative determination were made in violation of the laws and regulations which give a basis therefor, as well as in what manner and to what extent that interest would be harmed.

(Restriction on Grounds for Revocation)

Article 10 (1) In an action for the revocation of an administrative disposition, the plaintiff may not seek revocation on the grounds of breach of law which is irrelevant to their interest.

(2) Where both an action for the revocation of the original administrative disposition and an action for the revocation of an administrative determination that has dismissed a request for an administrative review of the original administrative disposition may be filed, it may not be allowed to seek the revocation of the original administrative disposition on the grounds of illegality thereof in an action for the revocation of an administrative determination.

(Standing to Be Sued)

Article 11 (1) Where an administrative authority that has made an original administrative disposition or administrative determination (in cases where the power of the administrative authority that made the original administrative disposition or administrative determination has later been succeeded to by another administrative authority, that other administrative authority; the same applies hereinafter) is affiliated with the State or a public entity, any action for the revocation of that administrative disposition must be filed against the person specified in each of the following items according to the categories of actions listed in the respective items:

- (i) an action for the revocation of the original administrative disposition: the State or public entity with which the administrative authority that has made the original administrative disposition is affiliated; or
- (ii) an action for the revocation of an administrative determination: the State or public entity with which the administrative authority that has made the administrative determination is affiliated.

(2) Where an administrative authority that has made the original administrative disposition or administrative determination is not affiliated with the State or any public entity, any action for the revocation of that administrative disposition must be filed against the administrative authority.

(3) Where neither the State nor any public entity or administrative authority can be identified as the party to be sued under the provisions of the preceding two paragraphs, any action for the revocation of an administrative disposition must be filed against the State or public entity in which the affairs pertaining to the original administrative disposition or administrative determination are vested.

(4) When filing an action for the revocation of an administrative disposition against the State or a public entity pursuant to the provisions of paragraph (1) or the preceding paragraph, the administrative authority specified in each of the following items according to the categories of actions listed in the respective items is to be stated in a complaint, in addition to the matters to be stated under the provisions on civil actions:

- (i) an action for the revocation of the original administrative disposition: the administrative authority that has made the original administrative disposition; or

- (ii) an action for the revocation of an administrative determination: the administrative authority that has made the administrative determination.
- (5) Where an action for the revocation of an administrative disposition is filed against the State or a public entity pursuant to the provisions of paragraph (1) or paragraph (3), the defendant must clearly indicate to the court, without delay, the administrative authority specified in each of the following items according to the categories of actions listed in the respective items.
- (6) An administrative authority that has made an original administrative disposition or administrative determination has the power to conduct any and all acts in court in an action filed against the State or the public entity under the provisions of paragraph (1) with regard to the original administrative disposition or administrative determination.

(Jurisdiction)

- Article 12 (1) An action for the revocation of an administrative disposition is subject to the jurisdiction of the court that has jurisdiction over the location of the general venue of the defendant or the court that has jurisdiction over the location of the administrative authority that has made the original administrative disposition or administrative determination.
- (2) An action for the revocation of administrative dispositions pertaining to condemnation of land or establishment of a mining right or any other original administrative disposition or administrative determination pertaining to real property or a particular place may also be filed with the court that has jurisdiction over the location of the real property or place.
 - (3) An action for the revocation of an administrative disposition may also be filed with the court that has jurisdiction over the location of the lower administrative organ that has handled the case regarding the original administrative disposition or administrative determination.
 - (4) An action for the revocation of an administrative disposition against the State or an incorporated administrative agency prescribed in Article 2, paragraph (1) of the Act on General Rules for Incorporated Administrative Agencies (Act No. 103 of 1999) or any of the juridical persons listed in the appended table may also be filed with the district court that has jurisdiction over the location of the high court that has jurisdiction over the location of the plaintiff's general venue (hereinafter referred to as a "specified court with jurisdiction" in the following paragraph).
 - (5) Where an action for the revocation of an administrative disposition set forth in the preceding paragraph is filed with a specified court with jurisdiction pursuant to the provisions of that paragraph while an action for the judicial review of an administrative disposition is pending at another court with regard to another original administrative disposition or administrative determination

that was made based on the de facto or de jure same cause as that of the former, the specified court with jurisdiction may, upon petition or by its own authority, transfer the whole or part of the action to that other court or any of the courts specified in paragraph (1) through paragraph (3), when it finds it appropriate while taking into consideration the address or location of each party, the address of each witness to be examined, the points at issue or evidence common to both cases, and other circumstances concerned.

(Transfer of Action Pertaining to Related Claim)

Article 13 Where an action for the revocation of an administrative disposition and an action pertaining to a claim that falls under any of the following items (hereinafter referred to as a "related claim") are pending before different courts, the court before which the action pertaining to a related claim is pending may, upon petition or by its own authority, transfer the action to the other court before which the action for the revocation of the administrative disposition is pending, when it finds it appropriate; provided, however, that this does not apply where either the action for the revocation of the administrative disposition or the action pertaining to a related claim is pending before a high court:

- (i) a claim for restoration or for compensation for damages related to the relevant original administrative disposition or administrative determination;
- (ii) a claim for the revocation of another original administrative disposition which forms a single procedure together with the relevant original administrative disposition;
- (iii) a claim for the revocation of an administrative determination pertaining to the relevant original administrative disposition;
- (iv) a claim for the revocation of an original administrative disposition pertaining to the relevant administrative determination;
- (v) another claim to seek the revocation of the relevant original administrative disposition or administrative determination; or
- (vi) any other claim related to the claim for the revocation of the relevant original administrative disposition or administrative determination.

(Statute of Limitations for Filing an Action)

Article 14 (1) No action for the revocation of an administrative disposition may be filed when a period of six months has elapsed from the day on which the person who seeks revocation became aware of the fact that the original administrative disposition or administrative determination was made; provided, however, that this does not apply if there are reasonable grounds for failing to meet that time limit.

(2) No action for the revocation of an administrative disposition may be filed

when a period of one year has elapsed from the date of the original administrative disposition or administrative determination; provided, however, that this does not apply if there are reasonable grounds for failing to meet that time limit.

- (3) If a request for administrative review is made with regard to an original administrative disposition or administrative determination in cases where a request for administrative review may be made or where an administrative authority has mistakenly informed that a request for administrative review may be made, the person who has made the request, notwithstanding the provisions of the preceding two paragraphs, may not file an action for the revocation of an administrative disposition when a period of six months has elapsed from the day on which the person became aware of the fact that an administrative determination was made in response to their request for an administrative review or when a period of one year has elapsed from the date of the administrative determination; provided, however, that this does not apply if there are reasonable grounds for failing to meet that time limit.

(Remedy for Action Against Wrong Defendant)

Article 15 (1) When a plaintiff has, unintentionally or without gross negligence, sued a wrong person in an action for the revocation of an administrative disposition, the court may, upon the petition of the plaintiff, by an order, permit the plaintiff to change the defendant.

(2) An order set forth in the preceding paragraph is to be made in writing, and the authenticated copy thereof is to be served upon a new defendant.

(3) When an order set forth in paragraph (1) is made, it is deemed, with regard to compliance with the statute of limitations for filing an action, that an action against a new defendant was filed at the time of the filing of the initial action.

(4) When an order set forth in paragraph (1) is made, it is to be deemed that the action against the initial defendant has been withdrawn.

(5) No appeal may be entered against an order set forth in paragraph (1).

(6) An immediate appeal may be filed against an order to dismiss without prejudice a petition set forth in paragraph (1).

(7) When a court has made an order set forth in paragraph (1) in an appellate instance, the court must transfer the action to the court with jurisdiction.

(Objective Joinder of Claims)

Article 16 (1) An action for the revocation of an administrative disposition may be joined with an action pertaining to a related claim.

(2) In the case of the joinder of actions under the provisions of the preceding paragraph, if the court of first instance of the action for the revocation of an administrative disposition is a high court, it must obtain consent from the

defendant in the action pertaining to a related claim. If the defendant has presented oral arguments on the merits or made statements in preparatory proceedings without making any objection, that defendant is deemed to have consented to the joinder of actions.

(Joint Action)

Article 17 (1) Two or more persons may sue or be sued as coparties only in cases where claims made by or against those persons are a claim for the revocation of an original administrative disposition or administrative determination and its related claim.

(2) In the case referred to in the preceding paragraph, the provisions of paragraph (2) of the preceding Article apply mutatis mutandis.

(Joinder of Additional Claim by Third Party)

Article 18 A third party, until the conclusion of the oral argument of an action for the revocation of an administrative disposition, may file an additional action pertaining to a related claim against either of the parties to the action for revocation, by joining these actions. In this case, if the action for the revocation of that administrative disposition is pending before a high court, the provisions of Article 16, paragraph (2) apply mutatis mutandis.

(Joinder of Additional Claim by Plaintiff)

Article 19 (1) A plaintiff, until the conclusion of the oral argument of an action for the revocation of an administrative disposition, may file an additional action pertaining to a related claim, by joining these actions. In this case, if the action for the revocation of that administrative disposition is pending before a high court, the provisions of Article 16, paragraph (2) apply mutatis mutandis.

(2) The provisions of the preceding paragraph do not preclude an action for the revocation of an administrative disposition from being governed by the provisions of the Code of Civil Procedure (Act No. 109 of 1996).

Article 20 When filing an action for the revocation of the original administrative disposition by joining it, pursuant to the provisions of the first sentence of paragraph (1) of the preceding Article, with an action for the revocation of an administrative determination that has dismissed a request for an administrative review of the original administrative disposition, it is not required to obtain consent from the defendant in the action for the revocation of the original administrative disposition, notwithstanding the provisions of Article 16, paragraph (2) as applied mutatis mutandis pursuant to the second sentence of paragraph (1) of the preceding Article, and when an action for the revocation of the original administrative disposition is thus filed, it is deemed,

with regard to compliance with the statute of limitations for filing an action, to have been filed at the time of the filing of the action for the revocation of an administrative determination.

(Amendment of a Claim to a Claim Against the State or Public Entity)

Article 21 (1) When the court finds it appropriate to amend the claim that is subject matter of an action for the revocation of an administrative disposition, to a claim for compensation for damages or any other claim against the State or a public entity in which the affairs pertaining to the original administrative disposition or administrative determination are vested, the court may, until the conclusion of the oral argument, upon the petition of the plaintiff, by an order, permit that amendment of the claim, unless there is any change to the basis for the claim.

- (2) The provisions of Article 15, paragraph (2) apply mutatis mutandis to an order set forth in the preceding paragraph.
- (3) The court, when making an order to permit amendment of a claim pursuant to the provisions of paragraph (1), must hear opinions in advance from the parties and the defendant in an action pertaining to a claim for compensation for damages or any other claim.
- (4) An immediate appeal may be filed against an order to permit amendment of a claim.
- (5) No appeal may be entered against an order not to permit amendment of a claim.

(Intervention by Third Party)

Article 22 (1) If the outcome of an action would prejudice a right of any third party, the court may, upon the petition of a party or the third party or by its own authority, by an order, have the third party intervene in the action.

- (2) The court, when making an order set forth in the preceding paragraph, must hear opinions in advance from the parties and the third party.
- (3) A third party who has filed a petition set forth in paragraph (1) may file an immediate appeal against an order to dismiss the petition without prejudice.
- (4) The provisions of Article 40, paragraph (1) through paragraph (3) of the Code of Civil Procedure apply mutatis mutandis to a third party who has intervened in an action pursuant to the provisions of paragraph (1).
- (5) Where a third party has filed a petition for intervention pursuant to the provisions of paragraph (1), the provisions of Article 45, paragraph (3) and paragraph (4) of the Code of Civil Procedure apply mutatis mutandis.

(Intervention by Administrative Authority)

Article 23 (1) When the court finds it necessary to have an administrative

authority other than the one that has made an original administrative disposition or administrative determination intervene in an action, the court may, upon the petition of a party or that other administrative authority or by the court's own authority, by an order, have the administrative authority intervene in the action.

- (2) The court, when making an order set forth in the preceding paragraph, must hear opinions in advance from the parties and the administrative authority.
- (3) The provisions of Article 45, paragraph (1) and paragraph (2) of the Code of Civil Procedure apply mutatis mutandis to an administrative authority which has intervened in an action pursuant to the provisions of paragraph (1).

(Special Provisions on Order for Clarification)

Article 23-2 (1) The court, when it finds it necessary in order to clarify the matters related to the action, may make the following dispositions:

- (i) request any administrative authority affiliated with the State or the public entity that stands as a defendant, or the administrative authority that stands as a defendant, to submit the whole or part of the materials that clarify the content of the original administrative disposition or administrative determination, the provisions of the laws and regulations which give a basis for the original administrative disposition or administrative determination, the facts constituting the cause of the original administrative disposition or administrative determination and other grounds for the original administrative disposition or administrative determination (excluding the records of a case of request for an administrative review prescribed in the following paragraph), which are held by the administrative authority; and
 - (ii) commission any administrative authority other than those prescribed in the preceding item to send the whole or part of the materials prescribed in that item, which are held by the administrative authority.
- (2) When an action for the revocation of an administrative disposition is filed after an administrative determination is made in response to a request for administrative review of an original administrative disposition, the court may make the following dispositions:
- (i) request any administrative authority affiliated with the State or the public entity that stands as a defendant, or the administrative authority that stands as a defendant, to submit the whole or part of the records of the case of the request for administrative review, which are held by the administrative authority; and
 - (ii) commission any administrative authority other than those prescribed in the preceding item to send the whole or part of the records of the case prescribed in that item, which are held by the administrative authority.

(Examination of Evidence by the Court's Own Authority)

Article 24 The court, when it finds it necessary, may examine evidence by its own authority; provided, however, that the court must hear opinions from the parties with regard to the results of the examination of evidence.

(Stay of Execution)

- Article 25 (1) The filing of an action for the revocation of the original administrative disposition does not preclude the effect of the original administrative disposition, the execution of the original administrative disposition or the continuation of any subsequent procedure.
- (2) Where an action for the revocation of the original administrative disposition is filed, if there is an urgent necessity in order to avoid any serious damage that would be caused by the original administrative disposition, the execution of the original administrative disposition or the continuation of any subsequent procedure, the court may, upon petition, by an order, stay the whole or part of the effect of the original administrative disposition, the execution of the original administrative disposition or the continuation of any subsequent procedure (hereinafter referred to as "stay of execution"); provided, however, that the court may not stay the effect of an original administrative disposition if the purpose can be achieved by staying the execution of the original administrative disposition or staying the continuation of any subsequent procedure.
- (3) When judging whether or not any serious damage would be caused as prescribed in the preceding paragraph, the court is to consider the degree of difficulty in recovering from the damage and to take into consideration the nature and extent of the damage as well as the content and nature of the original administrative disposition.
- (4) Stay of execution may not be allowed when it is likely to seriously affect public welfare or when the action on the merits seems groundless.
- (5) An order set forth in paragraph (2) is made based on a prima facie showing.
- (6) An order set forth in paragraph (2) may be made without oral argument; provided, however, that the court must hear opinions in advance from the parties before making the order.
- (7) An immediate appeal may be filed against an order on a petition set forth in paragraph (2).
- (8) An immediate appeal against an order set forth in paragraph (2) does not have the effect of staying the execution of the order.

(Revocation of Stay of Execution by reason of Change in Circumstances)

Article 26 (1) If, after an order of stay of execution has become final and binding,

the reasons for stay of execution have ceased to exist or the circumstances have otherwise changed, the court may, upon the petition of the party subject to stay of execution, by an order, revoke the order of stay of execution.

- (2) The provisions of paragraph (5) through paragraph (8) of the preceding Article apply mutatis mutandis to an order on a petition set forth in the preceding paragraph and any objection against that order.

(Objection by the Prime Minister)

Article 27 (1) Where a petition set forth in Article 25, paragraph (2) is filed, the Prime Minister may make an objection to the petition to the court. An objection may also be made after an order of stay of execution is made.

- (2) An objection set forth in the preceding paragraph must be accompanied by the reasons therefor.

- (3) As for the reasons for an objection set forth in the preceding paragraph, the Prime Minister is to explain the circumstances where public welfare is likely to be seriously affected unless the effect of the original administrative disposition is maintained, the original administrative disposition is executed or any subsequent procedure is continued.

- (4) When an objection set forth in paragraph (1) is made, the court may not order stay of execution, and if the court has already made an order of stay of execution, it must revoke the order.

- (5) An objection set forth in the second sentence of paragraph (1) must be made to the court that has made the order of stay of execution; provided, however, that when an appeal against the order is pending before a court in charge of the appeal, that objection must be made to the court in charge of the appeal.

- (6) Except where it is unavoidable, the Prime Minister may not make an objection set forth in paragraph (1), and if the Prime Minister has made an objection, the Prime Minister must report it to the Diet at the next ordinary session.

(Court with Jurisdiction over Stay of Execution)

Article 28 The court with jurisdiction over a petition for a stay of execution or for the revocation of an order of stay of execution is the court before which the action on the merits is pending.

(Application Mutatis Mutandis of Provisions on Stay of Execution)

Article 29 The provisions of the preceding four Articles apply mutatis mutandis to the matters concerning stay of execution in cases where an action for the revocation of an administrative determination is filed.

(Revocation of Discretionary Disposition)

Article 30 The court may revoke an original administrative disposition made by an administrative authority at its discretion only in cases where the disposition has been made beyond the bounds of the agency's discretionary power or through an abuse of that power.

(Dismissal of Claim by reason of Special Circumstances)

Article 31 (1) In an action for the revocation of an administrative disposition, the court may dismiss a claim with prejudice on the merits in cases where the original administrative disposition or administrative determination is illegal but the revocation thereof is likely to seriously affect public welfare, if the court, having considered the extent of any possible damage to be suffered by the plaintiff, the extent and method of compensation for or prevention of that damage and all other circumstances concerned, finds that the revocation of the original administrative disposition or administrative determination is not in line with public welfare. In this case, the court must declare the illegality of the original administrative disposition or administrative determination in the main text of the judgment of dismissal.

(2) The court, when it finds it appropriate, may declare the illegality of an original administrative disposition or administrative determination by a judgment before making a final judgment.

(3) The court may cite a judgment set forth in the preceding paragraph when stating the facts and reasons in a final judgment.

(Effect of Judgment of Revocation)

Article 32 (1) A judgment to revoke an original administrative disposition or administrative determination may also be effective against a third party.

(2) The provisions of the preceding paragraph apply mutatis mutandis to an order of stay of execution or an order to revoke an order of stay of execution.

Article 33 (1) A judgment to revoke an original administrative disposition or administrative determination is binding on the administrative authority that has made the original administrative disposition or administrative determination and any other relevant administrative authority with regard to the case.

(2) When a judgment is made to revoke an original administrative disposition that has dismissed an application with or without prejudice or to revoke an administrative determination that has dismissed a request for administrative review with or without prejudice, the administrative authority that has made the original administrative disposition or administrative determination must, according to the purport of the judgment, make another original administrative disposition on the application or another administrative determination on the

request for administrative review.

- (3) The provisions of the preceding paragraph apply mutatis mutandis where an original administrative disposition made based on an application or an administrative determination upholding a request for administrative review is revoked by a judgment by reason of an illegal procedural defect.
- (4) The provisions of paragraph (1) apply mutatis mutandis to an order of stay of execution.

(Action for Retrial by Third Party)

Article 34 (1) Where a third party whose right is prejudiced by a judgment to revoke an original administrative disposition or administrative determination has failed to intervene in the action due to any grounds not attributable to that person and therefore failed to advance any allegation or evidence that should have affected a judgment, that person may file an action for retrial to enter an appeal against a final judgment that has become final and binding on the grounds of that failure.

- (2) An action set forth in the preceding paragraph must be filed within 30 days from the day on which the third party became aware of the final and binding judgment.
- (3) The period set forth in the preceding paragraph may not be an unextendable period.
- (4) No action set forth in paragraph (1) may be filed when a period of one year has elapsed from the day on which the judgment became final and binding.

(Effect of Judicial Decision on Burden of Court Costs)

Article 35 A final and binding judicial decision on the burden of court costs in an action wherein an administrative authority affiliated with the State or a public entity stands as a party or intervener is effective against or in the interest of the State or the public entity with which the administrative authority is affiliated.

Section 2 Other Actions for the Judicial Review of Administrative Dispositions

(Standing to Sue in an Action for Declaration of Nullity, etc.)

Article 36 An action for the declaration of nullity, etc. of an original administrative disposition or administrative determination may be filed only by a person who is likely to suffer damage from that original administrative disposition or any disposition following that administrative determination or any other person who has legal interest to seek the declaration of nullity, etc. of the original administrative disposition or administrative determination,

where the person is unable to achieve the purpose by filing an action concerning the existing legal relationship which is based on the existence or non-existence of or validity or invalidity of the original administrative disposition or administrative determination.

(Standing to Sue in an Action for Declaration of Illegality of Inaction)

Article 37 An action for the declaration of illegality of inaction may be filed only by a person who has filed an application for an original administrative disposition or administrative determination.

(Requirements for Mandamus Actions)

Article 37-2 (1) In the case set forth in Article 3, paragraph (6), item (i), a mandamus action may be filed only when any serious damage is likely to be caused if a certain original administrative disposition is not made and there are no other appropriate means to avoid that damage.

(2) When judging whether or not any serious damage would be caused as prescribed in the preceding paragraph, the court is to consider the degree of difficulty in recovering from the damage and to take into consideration the nature and extent of the damage as well as the content and nature of the original administrative disposition.

(3) A mandamus action set forth in paragraph (1) may be filed only by a person who has legal interest to seek an order to the effect that an administrative authority should make a certain original administrative disposition.

(4) The provisions of Article 9, paragraph (2) apply mutatis mutandis with regard to the judging of whether or not there is legal interest prescribed in the preceding paragraph.

(5) Where a mandamus action satisfies the requirements prescribed in paragraph (1) and paragraph (3), if it is found that the provisions of the laws and regulations which give a basis for an original administrative disposition pertaining to a mandamus action clearly show that the administrative authority should make the original administrative disposition, or it is found that the administrative authority's inaction to make the original administrative disposition goes beyond the bounds of the agency's discretionary power or constitutes an abuse of that power, the court makes a judgment to order that the administrative authority should make the original administrative disposition.

Article 37-3 (1) In the case set forth in Article 3, paragraph (6), item (ii), a mandamus action may be filed only when any of the requirements listed in the following items is satisfied:

(i) no original administrative disposition or administrative determination is

- made within a reasonable period of time in response to an application filed or request for administrative review made under the laws and regulations; or
- (ii) an original administrative disposition or administrative determination is made to dismiss with or without prejudice an application filed or a request for administrative review made under the laws and regulations, but the original administrative disposition or administrative determination should be revoked or is invalid or has never existed.
- (2) A mandamus action set forth in the preceding paragraph may be filed only by a person who has filed an application or made a request for administrative review under the laws and regulations prescribed in each item of that paragraph.
- (3) A mandamus action set forth in paragraph (1) must be filed by joining with it each of the actions specified in the following items according to the categories of cases listed in the respective items. In this case, if there are special provisions in any other law with regard to the jurisdiction over a suit pertaining to each of the actions specified in those items, those special provisions govern the jurisdiction over the suit pertaining to the mandamus action, notwithstanding the provisions of Article 12 as applied mutatis mutandis pursuant to Article 38, paragraph (1):
- (i) in the case where the requirement set forth in paragraph (1), item (i) is satisfied: an action for the declaration of illegality of inaction to make the original administrative disposition or administrative determination prescribed in that item; or
 - (ii) in the case where the requirement set forth in paragraph (1), item (ii) is satisfied: an action for the revocation of an administrative disposition or action for the declaration of nullity, etc. of the original administrative disposition or administrative determination prescribed in that item.
- (4) Oral arguments and judicial decisions in a mandamus action and the action specified in each item of the preceding paragraph, which are filed and joined pursuant to the provisions of that paragraph, must not be made separately.
- (5) Where a mandamus action satisfies the requirements prescribed in paragraph (1) to paragraph (3), if it is found that the claim pertaining to the action specified in each item of paragraph (3) is well-grounded, and it is also found that the provisions of the laws and regulations which give a basis for an original administrative disposition or administrative determination pertaining to a mandamus action clearly show that the administrative authority should make the original administrative disposition or administrative determination, or it is found that the administrative authority's inaction to make the original administrative disposition or administrative determination goes beyond the bounds of the authority's discretionary power or constitutes an abuse of that power, the court makes a judgment to order that the administrative authority

should make the original administrative disposition or administrative determination pertaining to the mandamus action.

- (6) Notwithstanding the provisions of paragraph (4), when the court finds, in consideration of the developments in proceedings and other circumstances, that it will contribute to more expeditious settlement of the dispute to make a final judgment only with regard to the action specified in each item of paragraph (3), the court may make a final judgment only with regard to that action. In this case, when the court has made a final judgment only with regard to that action, it may, until litigation proceedings for that action are completed, suspend litigation proceedings for a mandamus action, hearing opinions from the parties.
- (7) A mandamus action set forth in paragraph (1) which seeks an order to the effect that an administrative authority should make a certain administrative determination may be filed only in cases where a request for an administrative review of the original administrative disposition has been made and no action for the revocation of the original administrative disposition or action for the declaration of nullity, etc. of the original administrative disposition may be filed.

(Requirements for Action for Injunctive Order)

- Article 37-4 (1) An action for an injunctive order may be filed only in cases where any serious damage is likely to be caused if a certain original administrative disposition or administrative determination is made; provided, however, that this does not apply if there are any other appropriate means to avoid that damage.
- (2) When judging whether or not any serious damage would be caused as prescribed in the preceding paragraph, the court is to consider the degree of difficulty in recovering from the damage and to take into consideration the nature and extent of the damage as well as the content and nature of the original administrative disposition or administrative determination.
 - (3) An action for an injunctive order may be filed only by a person who has legal interest to seek an order to the effect that an administrative authority should not make a certain original administrative disposition or administrative determination.
 - (4) The provisions of Article 9, paragraph (2) apply *mutatis mutandis* with regard to the judging of whether or not there is legal interest prescribed in the preceding paragraph.
 - (5) Where an action for an injunctive order satisfies the requirements prescribed in paragraph (1) and paragraph (3), if it is found that the provisions of the laws and regulations which give a basis for an original administrative disposition or administrative determination pertaining to an action for an injunctive order

clearly show that the administrative authority should not make the original administrative disposition or administrative determination, or it is found that the administrative authority's act to make the original administrative disposition or administrative determination goes beyond the bounds of the authority's discretionary power or constitutes an abuse of that power, the court makes a judgment to order that the administrative authority should not make the original administrative disposition or administrative determination.

(Provisional Order of Mandamus and Provisional Injunctive Order)

Article 37-5 (1) Where a mandamus action is filed, if there is an urgent necessity in order to avoid any damage that cannot be compensated, which would be caused due to an original administrative disposition or administrative determination pertaining to the mandamus action not being made, and the action on the merits seems well-grounded, the court may, upon petition, make an order to the effect that an administrative authority should make the original administrative disposition or administrative determination on a provisional basis (hereinafter referred to as a "provisional order of mandamus" in this Article).

(2) Where an action for an injunctive order is filed, if there is an urgent necessity in order to avoid any damage that cannot be compensated, which would be caused due to an original administrative disposition or administrative determination pertaining to the action for injunctive order being made, and the action on the merits seems well-grounded, the court may, upon petition, make an order to the effect that an administrative authority should not make the original administrative disposition or administrative determination on a provisional basis (hereinafter referred to as a "provisional injunctive order" in this Article).

(3) No provisional order of mandamus or provisional injunctive order may be made when that order is likely to seriously affect public welfare.

(4) The provisions of Article 25, paragraph (5) through paragraph (8), Article 26 through Article 28, and Article 33, paragraph (1) apply mutatis mutandis to the matters concerning a provisional order of mandamus or provisional injunctive order.

(5) When a provisional order of mandamus is revoked by a judicial decision on an immediate appeal set forth in Article 25, paragraph (7) as applied mutatis mutandis pursuant to the preceding paragraph or by an order set forth in Article 26, paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph, the administrative authority must revoke the original administrative disposition or administrative determination that it has made based on the provisional order of mandamus.

(Application, Mutatis Mutandis, of Provisions on Actions for the Revocation of Administrative Dispositions)

Article 38 (1) The provisions of Article 11 through Article 13, Article 16 through Article 19, Article 21 through Article 23, Article 24, Article 33, and Article 35 apply mutatis mutandis to actions for the judicial review of an administrative disposition which are other than actions for the revocation of an administrative disposition.

(2) The provisions of Article 10, paragraph (2) apply mutatis mutandis where both an action for the declaration of nullity, etc. of an original administrative disposition and an action for the judicial review of an administrative disposition against an administrative determination that has dismissed a request for an administrative review of that original administrative disposition may be filed, and the provisions of Article 20 apply mutatis mutandis where an action for the declaration of nullity, etc. of an original administrative disposition may be filed by joining it with an action for the judicial review of an administrative disposition against an administrative determination that has dismissed a request for an administrative review of that original administrative disposition.

(3) The provisions of Article 23-2, Article 25 through Article 29, and Article 32, paragraph (2) apply mutatis mutandis to an action for the declaration of nullity, etc.

(4) The provisions of Article 8 and Article 10, paragraph (2) apply mutatis mutandis to an action for the declaration of illegality of inaction.

Chapter III Public Law-Related Actions

(Notice of Filing of Action)

Article 39 Upon the filing of an action relating to an original administrative disposition or administrative determination that confirms or creates a legal relationship between parties, wherein either party to the legal relationship stands as a defendant pursuant to the provisions of laws and regulations, the court is to give notice to the administrative authority that has made that original administrative disposition or administrative determination to that effect.

(Public Law-Related Actions Subject to Statute of Limitations for Filing an Action)

Article 40 (1) A public law-related action that is subject to the statute of limitations prescribed in laws and regulations may be filed even after the expiration of the statute of limitations for filing that action if there are reasonable grounds for failing to meet that statute of limitations, unless

otherwise provided for in the laws and regulations.

- (2) The provisions of Article 15 apply mutatis mutandis to a public law-related action that is subject to the statute of limitations for filing an action prescribed in laws and regulations.

(Application, Mutatis Mutandis, of Provisions on Actions for the Judicial Review of Administrative Dispositions)

Article 41 (1) The provisions of Article 23, Article 24, Article 33, paragraph (1), and Article 35 apply mutatis mutandis to public law-related actions, and the provision of Article 23-2 apply mutatis mutandis to the submission of materials that clarify the grounds for the original administrative disposition or administrative determination in a public law-related action.

- (2) The provisions of Article 13 apply mutatis mutandis to the transfer of an action in cases where a public law-related action and an action pertaining to a claim related to the claim that is subject matter of the public law-related action are pending before different courts, and the provisions of Article 16 through Article 19 apply mutatis mutandis to the joinder of these actions.

Chapter IV Citizen Actions and Interagency Actions

(Filing of Action)

Article 42 Citizen actions and interagency actions may be filed only by persons specified by Acts in cases provided for in Acts.

(Application, Mutatis Mutandis, of Provisions on Actions for the Judicial Review of Administrative Dispositions or Public Law-Related Actions)

Article 43 (1) The provisions on actions for the revocation of administrative dispositions, except for the provisions of Article 9 and Article 10, paragraph (1), apply mutatis mutandis to citizen actions or interagency actions seeking the revocation of an original administrative disposition or administrative determination.

- (2) The provisions on an action for the declaration of nullity, etc., except for the provisions of Article 36, apply mutatis mutandis to citizen actions or interagency actions seeking the declaration of nullity of an original administrative disposition or administrative determination.

- (3) The provisions on public law-related actions, except for the provisions of Article 39 and Article 40, paragraph (1), apply mutatis mutandis to citizen actions or interagency actions other than those prescribed in the preceding two paragraphs.

Chapter V Auxiliary Provisions

(Exclusion of Provisional Disposition)

Article 44 No provisional disposition prescribed in the Civil Provisional Remedies Act (Act No. 91 of 1989) may be made with regard to an original administrative disposition or any other act constituting the exercise of public authority by an administrative authority.

(Action over the Effect of Disposition)

Article 45 (1) Where the point at issue in an action concerning a legal relationship under private law is the existence or non-existence of or validity or invalidity of an original administrative disposition or administrative determination, the provisions of Article 23, paragraph (1) and paragraph (2), and Article 39 apply *mutatis mutandis*.

(2) Where an administrative authority has intervened in an action pursuant to the provisions of the preceding paragraph, the provisions of Article 45, paragraph (1) and paragraph (2) of the Code of Civil Procedure apply *mutatis mutandis*; provided, however, that allegations and evidence that may be advanced are limited to those concerning the existence or non-existence of or validity or invalidity of the original administrative disposition or administrative determination.

(3) When, after an administrative authority has intervened in an action pursuant to the provisions of paragraph (1), there is no longer a dispute over the existence or non-existence of or validity or invalidity of the original administrative disposition or administrative determination, the court may revoke the order of intervention.

(4) In the case referred to in paragraph (1), the provisions of Article 23-2 and Article 24 apply *mutatis mutandis* to the point at issue, and the provisions of Article 35 apply to a judicial decision on the burden of court costs.

(Informing of Matters Concerning Filing of Actions for the Revocation of Administrative Dispositions)

Article 46 (1) When an administrative authority makes an original administrative disposition or administrative determination against which an action for the revocation of an administrative disposition may be filed, it must inform the person to whom the original administrative disposition or administrative determination is addressed, in writing, of the following matters; provided, however, that this does not apply where the administrative authority makes that original administrative disposition orally:

(i) the person who is to stand as a defendant in any action for the revocation of the administrative disposition against the original administrative disposition or administrative determination;

- (ii) the statute of limitations for filing an action for the revocation of an administrative disposition on the original administrative disposition or administrative determination; and
 - (iii) if there are provisions in any law that no action for the revocation of the original administrative disposition may be filed until an administrative determination is made in response to a request for an administrative review of the original administrative disposition, those provisions.
- (2) Where an administrative authority makes an original administrative disposition which is subject to provisions in any law that an action for the revocation of an administrative disposition may be filed only against an administrative determination made in response to a request for an administrative review of that original administrative disposition, the administrative authority must inform the person to whom the original administrative disposition is addressed, in writing, of those provisions in the Act; provided, however, that this does not apply where the administrative authority makes the original administrative disposition orally.
- (3) Where an administrative authority makes an original administrative disposition or administrative determination against which an action relating to an original administrative disposition or administrative determination that confirms or creates a legal relationship between parties, wherein either party to the legal relationships stands as a defendant pursuant to the provisions of laws and regulations, may be filed, the administrative authority must inform the person to whom the original administrative disposition or administrative determination is addressed, in writing, of the following matters; provided, however, that this does not apply where the administrative authority makes the original administrative disposition orally:
- (i) the person who is to stand as a defendant in the action; and
 - (ii) the statute of limitations for filing the action.

Supplementary Provisions

(Effective Date)

Article 1 This Act comes into effect as of October 1, 1962.

(Repeal of the Act on Special Measures for Administrative Case Litigation)

Article 2 The Act on Special Measures for Administrative Case Litigation (Act No. 81 of 1948; hereinafter referred to as the "Former Act") is repealed.

(Principle for Transitional Measures)

Article 3 Unless otherwise provided for in the Supplementary Provisions, this Act also applies to any matters that have arisen prior to the enforcement of

this Act; provided, however, that this does not preclude the effect that has arisen under the provisions of the Former Act.

(Transitional Measures Concerning Petition Prior to Action)

Article 4 With regard to the filing of an action for the revocation of an administrative disposition in regard to an original administrative disposition or administrative determination against which a petition may be filed under the provisions of laws and regulations, where the period for filing a petition has expired prior to the enforcement of this Act with no petition being filed within that period, the provisions of Article 2 of the Former Act remain applicable even after the enforcement of this Act.

(Transitional Measures Concerning Restriction on Grounds for Revocation)

Article 5 The provisions of Article 10, paragraph (2) does not apply to an action for the revocation of an administrative determination which is pending at the time of the enforcement of this Act.

(Transitional Measures Concerning Standing to Be Sued)

Article 6 With regard to the standing to be sued in an action for the revocation of an administrative disposition which is pending at the time of the enforcement of this Act, the provisions then in force remain applicable.

(Transitional Measures Concerning Statute of Limitations for Filing an Action)

Article 7 (1) With regard to the statute of limitations for filing an action for the revocation of an original administrative disposition or of an administrative determination for which the statute of limitations under Article 5, paragraph (1) of the Former Act is running at the time of the enforcement of this Act and which commences from the day on which the person who seeks the revocation became aware of the fact that the original administrative disposition or administrative determination was made, the provisions then in force remain applicable; provided, however, that the statute of limitations does not exceed three months from the date on which this Act comes into effect.

(2) With regard to the statute of limitations for filing an action for the revocation of an original administrative disposition or of an administrative determination for which the statute of limitations under Article 5, paragraph (3) of the Former Act is running at the time of the enforcement of this Act and which commences from the day on which the person who seeks the revocation became aware of the fact that the original administrative disposition or administrative determination was made, the provisions then in force remain applicable.

(3) The provisions of the preceding two paragraphs do not preclude the

application of the provisions of Article 14, paragraph (4) in cases where a request for administrative review is made after the enforcement of this Act.

(Transitional Measures Concerning Actions for the Judicial Review of Administrative Dispositions Which Are Other Than Actions for the Revocation of Administrative Dispositions)

Article 8 (1) With regard to the standing to sue and to be sued in an action for the judicial review of an administrative disposition which is other than an action for the revocation of an administrative disposition and which is pending at the time of the enforcement of this Act, the provisions then in force remain applicable.

(2) The provisions of Article 5 of the Supplementary Provisions apply mutatis mutandis where both an action for the declaration of nullity, etc. of an original administrative disposition and an action for the judicial review of an administrative disposition against an administrative determination that has dismissed a request for an administrative review of that original administrative disposition may be filed.

(Transitional Measures Concerning Public Law-Related Actions)

Article 9 The provisions of Article 39 apply only to public law-related actions to be filed after the enforcement of this Act.

(Transitional Measures Concerning Citizen Actions and Interagency Actions)

Article 10 The provisions on the transitional measures concerning actions for the revocation of administrative dispositions apply mutatis mutandis to citizen actions and interagency actions seeking the revocation of an original administrative disposition or administrative determination, and the provisions on the transitional measures concerning actions for the declaration of nullity, etc. apply mutatis mutandis to citizen actions and interagency actions seeking the declaration of nullity, etc. of an original administrative disposition or administrative determination.

(Transitional Measures Concerning Action over the Effect of Disposition)

Article 11 The provisions of Article 39 apply mutatis mutandis to an action concerning a legal relationship under private law which is pending at the time of the enforcement of this Act, only where the existence or non-existence of or validity or invalidity of an original administrative disposition or administrative determination has become a new point at issue in the action after the enforcement of this Act.