



# Litigation Regarding Environmental Assessments

## 環境影響評価と環境訴訟

明治大学法学部 柳 憲一郎  
Meiji University  
Faculty of Law  
Ken-ichiro YANAGI

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# Environmental impact assessment related litigation in Japan

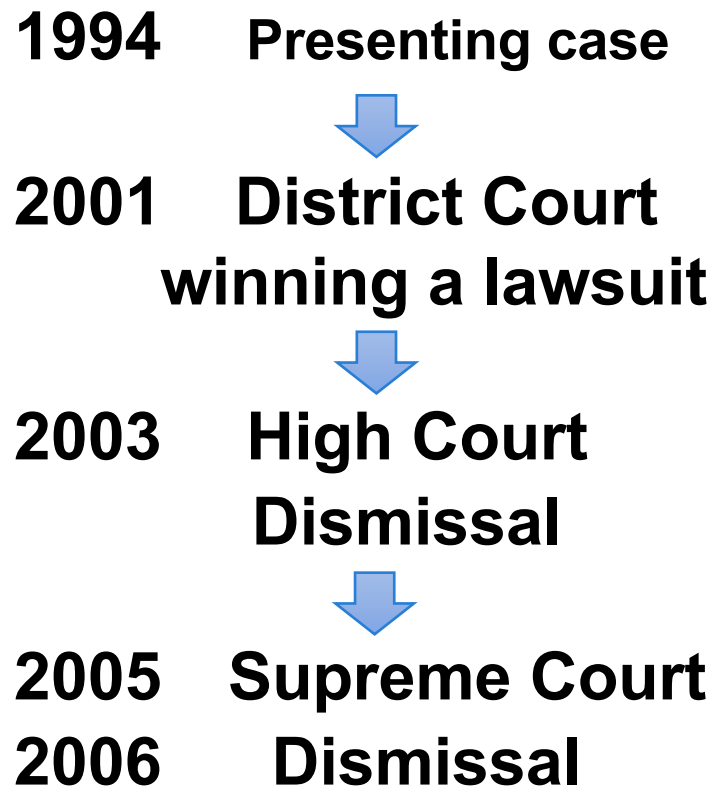
- ✓ In Japan, there are 42 legal cases about procedures and contents related to Environmental Impact Assessment(*lower instance court, appeal trial and Supreme Court*)
- ✓ In either case, the judgment has not been confirmed that the environmental impact assessment procedures and contents are illegal, and the issue concerning environmental impact assessment has been dismissed.
- Action for the revocation of the original administrative disposition **20** cases
- Citizens actions(*action popularis*) , suits by residents **13** cases
- Action for an injunctive order **6** cases
- Mandamus Action **2** cases
- A state reparations(*compensation of damages*) **2** cases

# The continuous grade separation of railroad crossing

## -Odakyu Line case-

### Action for the revocation of the original administrative disposition part 1

[Abstract]



Regarding the continuous three-dimensional intersection project of *Odakyu Co.*, plaintiffs, who are resident along the rail line, cause the action for the revocation of administrative decision (approval) which the Minister of Construction (at that time) had approved Tokyo Metropolitan Government, which was the enforcer of city planning projects, based on Article 59 (2) of the City Planning Act. They insist that there are illegal selection of the business scheme of the urban city planning in view of the fact that the project with underground type, which was an alternative method of business, was to be not adopted without any reasons, so as a result, which carried out the project with elevated type which gives plaintiffs extraordinary damage.

# **The continuous grade separation of railroad crossing -Odakyu Line case- Action for the revocation of the original administrative disposition part2**

## **[Matters concerning Assessment]**

### **District Court**

**The claim that the permission was illegal because there was a significant error in the environmental impact assessment this case, was approved.**



### **Supreme Court**

**The judgment of the environmental impact assessment had been fully taken into consideration. Therefore , this assessment could not be judged that it was illegal.**

# The hypothecated litigation and similar type

Suppose the case where the litigation is brought up in response to the content of the assessment about constructions of the road subject to legal assessment near the National State Park.

(See Otsuka, Kitamura, *Environmental Case Book*, Chapter 10 )

1. Land owner A, local resident B and nature conservation group C(「plaintiffs」) will file a legal action, in case of filing Environmental Litigation, what kind of appeal can be considered? and who has standing to sue in each case?
2. Plaintiffs insist that concerning environmental impact assessment and city planning decisions related to roads, there are defects due to inappropriate reasons such as the content of the assessment, how to hold a briefing session, comparison with multiple proposals, etc..
3. Is it considered that there are the defects on the assessment if plaintiffs cause the civil action for injunction order of the road construction?

# Case of Disputing a Defect of Environmental Impact Assessment in Litigation

As measures of disputing on the grounds of environmental impact assessment

## ① Action for the Revocation

(Administrative Case Litigation Act Art.3(2))

- a Revocation of decisions on city plans
- b Revocation of approval of city planning projects
- c Revocation of accreditation of compulsory purchase of land

## ④ Citizen Action

(financial accounting acts )

## ⑤ Civil injunction lawsuit

## ② Provisional Remedy Measures

(Stay of execution, Action for an injunctive order)

## ③ Substantive Public Law-Related Action

(Administrative Case Litigation Act second half of Art.4(2))

# About Action on the administrative case in Japan

## Action for the judicial review and others

- Administrative case litigation directly concerns the legal conformity of acts taken by administrative agencies. It is said that the purpose of this system is to protect the rights and interests of the citizens and to ensure the adequacy of the administration, and this purpose is achieved by judicial review.
- The difficult problem of what kind of dispute between the administrative agency and citizens can be called legal dispute and what act of the administrative agency is subject to administrative case litigation and can be subject to civil litigation.

# Types of Administrative Case Litigation 1

**The administrative case litigation is composed mainly of actions for the judicial review of administrative dispositions that can be brought up by those who appeal against the exercise of public authority,**

- Firstly, consider an action for the judicial review, in particular action for the revocation (revocation of disposition and revocation of disposition on appeal), which were traditionally regarded as typical examples. This type of action is to dispute over permission and approval by administrative agency as appeal, and there are many examples of this type such as permission and approval concerning installation of various facilities that have a serious impact on the environment such as nuclear power plants.
- Secondly, consider the other types of action for the judicial review. Action for the declaration of nullity, action of the declaration of illegality of inaction, mandamus action, and action for an injunctive order. For the latter two, it was created by the amendment of the administrative case litigation law in 2004 (hereinafter referred to as "law amendment"), and former action of revocation of administrative disposition can not relieve sufficiently, since law amendment is expected as a method to improve this, we will consider including future methods of utilization.



# Types of Administrative Case Litigation 2

- Thirdly, it is a public law-related action, a confirmation action. Regarding this type, before the law amendment, there have been cases of the action and the like disputing over the amount of compensation under Article 133 of *the Compulsory Purchase of Land Act*, but in other cases there was a dispute on the theory. According to the law amendment, a confirmation action in the public law is clearly stipulated, and how court by future judgement will evaluate a theory that de facto act can be settled by confirmation will draw attention.
- Fourthly, it is a citizen action. In recent years, avoiding action for the revocation that is strict about restrictions on plaintiffs, cases of citizen action is increasing to dispute over illegalities of public expenditure on activities that affect and destroy the environment, and importance as a type of environmental administrative litigation is increasing.

# Requirements for Action

- In cases where it is considered that planning act or licensing approval etc. by administrative organs causes or is likely to cause environmental degradation, it often happens to dispute over the illegality of the act itself.
- In that case, it is first questionable whether filing a action by types of actions can be permitted and maintained.
- Firstly, the requirements for action for the revocation of the original administrative disposition is addressed. This is because action for the revocation has traditionally been a typical example of the judicial review against the exercise of public power and *the Administrative Case Litigation Act* also stipulates centered around this.
- Requirements for action is a requirement to request "judgment on merits" which is the judgment of the court against the plaintiff's claim. The action lacking some or all of requirements for action is unlawful, then the court will dismiss the action by judgement.
- For this reason, fulfillment of requirements for action is a major problem.

- Originally, action for the revocation has been made mainly in the dispute between the administrative agency which made the disposition and the counterparty of the disposal (after the law amendment in 2004, the defendant was changed in principle from the administrative agency into the State or a public organization).
- Requirements, disposability, standing to sue, interest of action (in a narrow sense) and other requirements which are the items of requirements for action for the revocation will be examined in order below.
- It is necessary to carefully consider that as in many environmental problems, which action to dispute over, and who can dispute by action as possibly being affected or likely to be affected by the act, in this case like many environmental problems, how to handle third parties, such as citizens who are not counterparties to the act performed by the agency, and how to deal with ecosystems affected by the actions of administrative organs.
- According to the law amendment in 2004 (enforced in April 2005), there were additions and amendments to 'standing to sue clause' (addition of Article 9 (2) in relation to requirements for action.

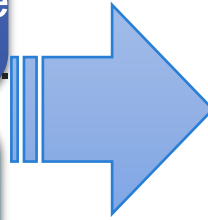
# Citizen Action

- Citizen action is an objective action prescribed in the *Local Autonomy Law* article 242-2 and citizens dispute over financial accounting acts such as illegal public expenditure and property management of local governments.
- This type of action has been used as a means of disputing over environmental or pollution problems by residents because it is not required to strict requirements for action, particularly standing to sue, such as the above-mentioned judicial review.
- However, it is difficult to determine whether the acts of administrative organs of local governments affecting the environment fall within the financial accounting acts that is the subject of this lawsuit, and there are many cases of environmental impact assessment.

# CONCLUSION

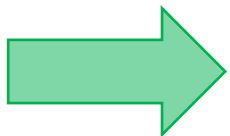
Non-implementation or defect of environmental impact assessment, It becomes a consideration factor in the subsequent permission and disposition.

In case of action for the revocation of the original administrative disposition, if EIA obliged by laws and ordinances is not implemented, it should be interpreted as grounds for revocation.



**It is considered desirable to dispute over environmental impact assessment at an early stage of the procedure.**

- If there is a defect only in the environmental impact assessment, the disposition is not necessarily revoked on the grounds alone, **so disputing over the disposition can not necessarily pursue a defect in the environmental impact assessment.**
- Many of the projects subject to laws and ordinances do not assume administrative disposition at the subsequent procedural stage. In such a case, **it is impossible to adopt the method of pursuing defects related to environmental impact assessment in action for the judicial review against subsequent administrative disposition.**



**There are such limitations when pursuing non-implementation or defect of environmental impact assessment by civil case litigation or action for the judicial review.**

# Future perspective

In the Kanagawa Prefecture Environmental Impact Assessment Ordinance case, the right to demand the assessment of the residents was not approved when seeking to implement the environmental impact assessment simply by public law-related action.

That is

If there is a violation of administrative laws and regulations, if there is no provision that stipulates appeal to stakeholders or any provision that serves as a clue to that effect,  
even if the action can be filed lawfully, the claim is not approved as a result.

To be approved to claim

In such a case, the residents will have to adopt a mode of action to allege and prove that there is a risk of health damage and living environment damage due to non-implementation of environmental impact assessment, which will increase the burden on residents.

Introducing the system of action or legal dispute complaints targeting the defect itself of the environmental impact assessment will become an issue.