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THE ROLE OF PRELIMINARY HEARINGS IN JAPANESE COURTS

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ANNOTATION

This article discusses the legal document adopted for the introduction of the institution of preliminary hearings in Japan, the significance of this document in the practice of administrative courts, as well as the procedure for conducting preliminary hearings in administrative courts of this country.

Also, the general aspects of the application of the initial institute in foreign countries and some important cases in judicial practice are highlighted, foreign and national legislation is comparatively studied, and information on the relevance of introducing this institute into our judicial practice is included.

Keywords: legal document, preliminary hearing, active participation of the court, international standards, judicial practice, trial, public claim.

The emergence of administrative law in Japan is linked to the adoption of the Meiji Constitution in 1889, which serves as the initial legal basis for Japanese administrative law. Based on a number of changes and reforms that have occurred in the history of the Japanese state over the past years, the Law "On Judicial Proceedings in Administrative Cases" No. 139 was adopted on May 16, 1962¹. This law establishes strict rules for the consideration of administrative cases in courts and the conduct of judicial control. Laws adopted in subsequent years,

¹ The Law "On Judicial Proceedings in Administrative Cases"/https://www-japaneselawtranslation-go-jp.translate.goog/en/laws/view/3781/en?_x_tr_sl=en&_x_tr_tl=ru&_x_tr_hl=ru&_x_tr_pto=sc



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namely the Laws "On Administrative Procedure" of 1993 and the Laws "On Disclosure of Information" of 1999 gave impetus to the further development and establishment of the sphere of administrative law in Japan. By 2004, the Law "On Judicial Proceedings in Administrative Cases" was adopted, which played an important role in the consideration of administrative cases in courts. According to this law, the following reforms were carried out:

1. The scope of judicial proceedings has been expanded and procedural rights have been increased.
2. The procedure for filing a lawsuit has been expanded, and it has become possible to consider many disputes related to administrative actions.
3. New types of claims regarding the imposition of obligations have been introduced.
4. Temporary measures were developed for the preparation of cases for trial and the protection of human rights during the trial. Laws adopted in recent years have focused on ensuring transparency, accountability of courts, and public participation in administrative courts².

Today, Japan has a unique judicial system. Japan has the following judicial system:

- Summary Courts - considers minor civil and criminal cases
- District Courts - the main instances for considering civil and criminal cases.
- Higher Courts - appellate instance
- The Supreme Court (Supreme Court) is the highest judicial instance, which considers cases within the framework of appellate and constitutional law.

District courts are the primary instances for civil and administrative cases, as this country does not have a separate judicial system for administrative cases.

² library-fiveable-me.translate.google.com/japanese-law-government/unit-8/administrative-litigation/study-guide/2zGV4rQFkK631Mep?_x_tr_sl=en&_x_tr_tl=ru&_x_tr_hl=ru&_x_tr_pto=sc&_x_tr_hist=true



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District courts have the following types of hearings:

- a) The first type of court proceedings mainly concerns disputes on property rights between individuals or private individuals, for example, disputes related to the repayment of debts, damage caused.
- b) The second type of disputes, called "Administrative Litigation Disputes," resolves disputes in the administrative court concerning rights and obligations between individuals or private individuals, as well as between government agencies (or local authorities), such as disputes related to taxes or driver's licenses.

Cases of this category are carried out in accordance with the special provisions of the Civil Procedure Code and the Law on Administrative Proceedings, since they have a more serious impact on public interests than on personal interests.

Administrative court cases are generally divided as follows:

- Subjective judicial proceedings are administrative cases arising from a subjective claim, in which administrative actions directly affecting the person are understood.
- Objective judicial proceedings consist of ensuring the legality of administrative activity, which does not directly affect the person, in addition to the rights and interests of the person. A distinctive feature of objective judicial proceedings is the existence of "institutional judicial process" and "people's claim."³

In institutional jurisdiction - disputes between state bodies or public organizations related to the exercise of power, in other words, disputes between administrative bodies. In court proceedings, a "people's claim" is understood as a statement made by citizens living in a certain territory against the actions of local authorities of that territory. On June 22, 2022, administrative proceedings will begin with the

³<https://gyosyo.info/%E6%B0%91%E8%A1%86%E8%A8%B4%E8%A8%9F%E3%83%BB%E6%A9%9F%E9%96%A2%E8%A8%B4%E8%A8%9F%EF%BC%88%E5%AE%A2%E8%A6%B3%E8%A8%B4%E8%A8%9F%EF%BC%89/>



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filing of a statement of claim in court that meets the relevant requirements of the Law "On Administrative Court Proceedings."⁴ According to Article 4 of this law, individuals, legal entities, central or local government bodies, as well as non-profit associations, participate in the case as parties.

After the application is accepted for proceedings by the court, the judge's secretary first notifies the defendant about the statement of claim, which is usually sent along with the ruling on the appointment of the preliminary hearing. Any defendant is obliged to prepare and submit to the court a written response to the plaintiff's application. After this, the judge carries out the preparation of the case for trial. In Japanese law, there are the following types of preliminary proceedings:

1. Preliminary oral hearing (discussion)
2. Documentary preparation of the case for trial (written)

In this case, the judge, based on the nature of the case, chooses the optimal type of resolution of the case.

In most cases, the parties are invited to the courtroom, and this process is conducted not in the courtroom, but around a round table (conciliation room), where everyone is seated equally. In this way, the parties are indicated that they can alleviate the pressure in the courtroom and present all their information and arguments, feeling at ease.

This type of preliminary hearing is mainly conducted to prepare for subsequent debates, and unlike the main court hearing, this process is not considered to be public. If the case is heard by a panel, the chairperson of the panel designates one or two judges as responsible for this preliminary hearing process.

⁴ Law "On Administrative Proceedings"/https://law-moj.gov-tw.translate.google/ENG/LawClass/LawAll.aspx?pcode=A0030154&_x_tr_sl=en&_x_tr_tl=ru&_x_tr_hl=ru&_x_tr_pto=sc



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Another peculiarity of Japanese administrative law is that the use of video or web conferencing is widely emphasized in the preliminary hearing. In this case, the parties may participate in the case without appearing at the preliminary hearing, that is, one or both parties may participate in the case using information technologies, but the parties must explain that they cannot appear in person in court, for example, about the distance of the house, and request permission to participate in the case using video or web conferencing. This practice has been widely used in courts since 2020 and is mainly used to find answers to certain questions posed to the parties and in the process of presenting evidence.

Within 10 days of receiving the application, the judge must prepare the case and transfer it to the main court hearing. According to Article 121 of the Law "On Administrative Court Proceedings," within these 10 days, the judge conducts a preliminary hearing and performs the following actions:

- 1.Ensures the personal appearance of the parties, their representatives, or administrative entities in court.
2. Orders the parties to submit documents, drawings, and lists relevant to the case.
- 3.Consider the issue of involving the relevant agency or organization for conducting an examination or inspection.
4. Obligates the involvement of witnesses in the case or the provision of relevant evidence to third parties.

It is also considered that the evidence presented in this process can be seized for temporary storage.

The purpose of the preliminary hearing is:

- Clarification of disputed issues: The judge, together with the parties, considers and clarifies legal, factual issues;
- Clarifies the composition of evidence: The judge determines which evidence should be included in the case and considered for further judicial proceedings;



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- Errors of a procedural nature are eliminated: Shortcomings in the application, deadlines for filing the application are reviewed.
- The possibility of resolving the dispute is considered: The judge acts as a mediator between the participants in the case, if the participants in the case reach a mutual agreement and this agreement does not harm the public interest. Also, with the permission of the judge, a third party may participate in the process of this agreement.

During the preliminary hearing, the judge, ensuring their active participation, performs the following actions:

- a) Participates in the discussion of the disputed issue between the parties, but does not have the right to prejudge the presented evidence.
- b) Explains to the parties their rights and obligations
- c) Focuses on the consideration of actually disputed issues in the main court hearing.

When studying the activities of the courts in Japan, several peculiarities of the preliminary hearing are evident, primarily the consideration of the case not in the courtroom, but in separate rooms around a round table, in which each party who comes to the court feels free and can freely express their opinion, and this also gives the court the opportunity to hear the parties.

The 10-day period for conducting the preliminary hearing will allow for faster consideration of the case, avoid wasting time, and allow the parties to be prepared for the main court hearing as soon as possible.

In Japan, the institution of the preliminary hearing plays a special role in the activities of the courts, primarily reducing the time for consideration of the case, and also performing the main task of preparing the case for trial, since the parties arrive ready for the trial and contribute to the maximum reduction of procedural errors.



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In particular, it plays an important role in optimizing the trial process, contributing to the full conduct of the trial, fair consideration of cases, and saving the time and resources of the parties.

List of used literature:

1. The Law "On Judicial Proceedings in Administrative Cases"/https://www-japaneselawtranslation-go-jp.translate.goog/en/laws/view/3781/en?_x_tr_sl=en&_x_tr_tl=ru&_x_tr_hl=ru&_x_tr_pto=sc
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- 5.Law"OnAdministrativeProceedings"/https://law-moj-govtw.translate.goog/ENG/LawClass/LawAll.aspx?pcode=A0030154&_x_tr_sl=en&_x_tr_tl=ru&_x_tr_hl=ru&_x_tr_pto=sc