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Historyczna ewolucja systemu sądownictwa administracyjnego Tajwanu

STRESZCZENIE

Artykuł przedstawia tajwańską percepcję prawa kultury zachodniej, historyczne pochodzenie procedury administracyjnej Tajwanu oraz jej rozwój od końca XIX wieku do czasu reformy w 1998 roku. Przedmiotem analizy jest rosnący zakres ochrony praw jednostki wprowadzany w drodze kolejnych reform – w kontekście tajwańskiej demokracji. Przedstawiono porównanie tajwańskiej i japońskiej drogi westernizacji systemów prawa administracyjnego ze szczególnym uwzględnieniem przyjęcia rozwiązań prawa niemieckiego. Dyskusja prowadzona jest na tle prawa międzynarodowego i poparta została danymi statystycznymi. W artykule wskazano, że Tajwan uniknął losu krajów, w których westernizacja prawa doprowadziła jedynie do tworzenia „martwych przepisów". Porównanie danych statystycznych prowadzi do wniosku, że obywatele Tajwanu wykorzystują możliwości prowadzenia sporów na gruncie prawa administracyjnego częściej niż w Japonii. System sądownictwa administracyjnego dobrze funkcjonuje i cieszy się rosnącym zaufaniem obywateli.

Słowa kluczowe: sądownictwo administracyjne, procedura administracyjna, Tajwan

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1

INTRODUCTION

In Northeastern Asia, there are three models of administrative adjudications: 1) a model where ordinal courts adjudicate both administrative and other cases, 2) a model where administrative courts are independent from other courts, 3) a model with independent administrative court functions, but only at the first instance[1,2]. The People's Republic of China (PRC), Hong Kong Special Administrative Region, Japan and South Korea fall into the first group[3]. Taiwan as a jurisdiction in this region has uniquely adopted a two-tier administrative court system consisting of the High Administrative Court (*gaodeng xingzheng fayuan*) and the Supreme Administrative Court (*zuigao xingzheng fayuan*), thus has been classified into the second group. In 2011, however, as a result of the amendment to the Administrative Litigation Law (ALL) and the relevant articles in the Civil Procedure Law, the Administrative Division has been established in the local courts. The local courts now adjudicate administrative cases as the first instance when the value of the subject matter in litigation is lower than 400,000 New Taiwan Dollars ("NTD". On 20.10.2015, 1 EUR was equivalent to 37 NTD)[4]. Wunyu Chang, a law scholar welcomes the amendment arguing that "this has facilitated citizens to bring a lawsuit, because local courts have already been

[1] Yuwen Li and Yun Ma, *Introduction: Battling in the Courts: Dynamics of Administrative Litigation Systems across Jurisdiction"* in Yuwen Li (ed.), *Administrative Litigation Systems in Greater China and Europe* (Surrey: Ashgate, 2014), p. 5.

[2] North Korea abolished the Ministry of Justice in the 1950s and integrated it into the Supreme Court to "strengthen not only the Central Government's supervision and control over trials and court proceedings, but also to enable local courts to realise, through their trials, Party policies" (Ilpyong J. Kim, *The Judicial Administrative Structure in North Kore*a, "The China Quarterly", (1963) No. 14, p. 102.

[3] Japan had a separate administrative court (*gyōsei saibansho*) system between 1891 and 1947 inspired by the Austrian and Prussian legal systems.

[4] Therefore, for example, when a tax authority decides that the amount of tax in arrears should be 600,000 NTD but the tax payer (plaintiff) only intends to challenge a part of the decision amounting to 390,000 NTD, the case should be filed with a local court (*Taiwan International Patent & Law Office (TPLO) News on Oct. 2012 (J158)*, available at <www.tiplo.com.tw/jp/tn_in.aspx2mnuid=1258&nid=43832>, last accessed on 28 Feb. 2015.

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broadly established at the county or city levels[5,6]". In contrast, Macao Special Administrative Region introduced a three-tier court system, with the Court of Final Appeal on the top, the Intermediate Court as the second instance and the Administrative Court as well as the Primary Court as the first instance. In Macao, the Intermediate Court and the Court of Final Appeal adjudicate not only the administrative cases appealed from the lower-level courts but also other cases[7]. Also, the administrative litigation system in each jurisdiction is deeply related with its domestic historical, cultural and political contexts. However, as Yuwen Li and Yun Ma point out, a converging process in the administrative justice was taking place on an international scale due to an increasing recognition of the significance of administrative litigation in strengthening the rule of law to protect the individual rights[8].

In this article, the author discusses the Taiwanese reception of the western law in the first part and investigates the historical origin of the administrative litigation law in Taiwan and its development till the 1998 Reform in the second part. In the third part, the paper focuses on the dynamics between ongoing democratization process in Taiwan and the realization of the further protection of the individual rights by successive reforms in the administrative justice.

2

THE RECEPTION OF THE WESTERN LAW IN TAIWAN UNDER THE JAPANESE RULE (1895–1945)

The reception of the western law in Taiwan was taking place in the late XIX to the early XX century when she was under the Japanese colonial rule

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[5] Wunyu Chang, *The Past, Present and Future of then Administrative Litigation System in Taiwan*, in Yuwen Li (ed.), *Administrative Litigation Systems in Greater China*..., p. 104.

[6] He is a professor of law at National Taipei University. Previously he was assigned Public Advocate in Taiwan Hualian District Court and Taiwan Taoyuan District Court. He obtained his doctor's degree in law from the University of Munich (Ludwig-Maximilians-Universität München) in 1997.

[7] Chaoyang Jiang and Yang Feng, *The Administrative Litigation System in Macao*, in Yuwen Li (ed.), *Administrative Litigation Systems in Greater China*..., pp. 80–81. Prior to 1991, all binding laws in Macao were written in Portuguese without any corresponding Chinese translation, while 95% of residents in Macao does not know Portuguese (!). (Ibid., p. 75; Yuwen Li and Yun Ma, op. cit., footnote 1, p. 4).

[8] Yuwen Li & Yun Ma, Ibid., pp. 2–3.

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(1895–1945)[9]. The author briefly summarizes the era of the westernization in Japan and its colonial policy applied in Taiwan from the administrative judicial point of view.

The so-called Tokugawa Shogunate, a feudal power signed the Treaty of Amity and Commerce with the USA, France, Netherlands, Russia and the UK in 1858, a decade prior to the Meiji Restoration during which the feudal power was overthrown. These Treaties were referred as "unequal treaties" by setting up the extraterritoriality for the citizens of the above 5 countries in Japan and by depriving Japan of tariff autonomy. Thus, it had become one of the first priorities for the newly established government with the restored authority of the emperor (*tennō*) and former-*samurai* reformists to introduce the western legal system and to lift such disadvantageous provisions in these treaties entered into with the Western powers. As Tay--Sheng Wang states, "the establishment of Japan's modern legal system was a response to internal and external needs of the state rather than to social necessity[10]". The statesmen of the Meiji era selectively chose the absolutist political system and philosophy of the Prussian Empire (*Staatswissenschaft*) to guarantee a rapid and radical modernization (westernization) of the state led by the executive power[11]. Modern Japanese imperialism was also influenced by the legacy of imperial China. "Meiji leaders thought that now, in the late XIX century, modern Japan had succeeded in absorbing the advances of Western civilization and was the power center of all Asian nations, which should now be arranged under Japan's leadership"[12]. In this context, the Japanese government in the later stage took such a position that the Constitution of the Empire of Japan being in force since 1890 was partially, but directly applied to Taiwan. By doing so, the Japanese government propagated in the West that Japan's treatment of Taiwan was in line with the western

[9] Tay-Sheng Wang points out that "In Taiwan, Japan gradually enforced the laws that it had just received from the West. Taiwan's experience (and that of Korea) is therefore unique among countries receiving modern Western law in that Western law was imposed to replace traditional Chinese law by an Asian colonialist power". (Tay-Sheng Wang, *Introduction, Legal Reform in Taiwan under Japanese Colonial Rule, 1895—1945: The Reception of Western Law* (Seattle and London: University of Washington Press, 2000, p. 5).

[10] Ibid., p. 33. Tay-Sheng Wang is a Chair Professor of Law at National Taiwan University. He received his PhD from the University of Washington in 1992. He specializes in Taiwanese legal history, including Chinese legal traditions and the colonial law under the Japanese rule.

[11] Kazuhiro Takii, *Staatswissenschaft in Germany and the Meiji State*, (*Doitsu kokka hōsei to meiji kokka*), (Kyoto: Minerva Shobō, 2012), pp. 166—167.

[12] Tay-Sheng Wang, op. cit., p. 34.

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standards applied to their colonies[13]. For the imperial Japan, her colonies, especially, Taiwan, Korea and in the later stage, its puppet government of Manchukuo, functioned as "showcases of Imperial power" for foreigners just same as the Baltic States in the era of the Cold War for the Soviet Union.

In the sinicized (chinalized) World which included China, Japan, Korea, Taiwan and parts of Vietnam, the King/Emperor did not execute his power to resolve disputes between individuals (*roi justicier*) nor to regulate private economic activities[14][15]. For them, the western notion of the courts where citizens can expect neutral justice on disputes between individuals under the name of the state authority was totally unknown. Marie Seong-Hak Kim argues that "custom was *created* from practice, habits, and rites as preparation for the codification of modern civil law at the time of each country's mutation into a modern nation-state"[16]. In Northeastern Asia, the first attempt to collect examples of *living customs* by officials or legal professions took place in Japan during 1870–80 and in China during 1900–30 respectively[17]. Based on these collected customs, the lawmakers in each newly-born modern jurisdiction in Asia drafted its own westernized legal acts such as a civil code, commercial code or penal code and, by the same token, established courts, legal professions, modern jail system etc. In Taiwan, "shortly after its annexation in 1895, Japanese began collecting Taiwanese laws and practices, and the survey reports were compiled in 1902 by Santarō Okamatsu"[18]. Tay-Sheng Wang points out that "the Taiwanese gradually learned how to use the modern court system to resolve their civil disputes", since the Japanese established western-style courts in most large cities in Taiwan[19]. However, "the maintenance or abolition of old Taiwanese customs in fact depended on whether they were considered advantageous or disadvantageous to the Japanese colonialists"[20].

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[13] Ibid., p. 39. The introduction of the Chapter 2 of the Constitution on the Rights and Duties of Subjects was, therefore suspended in Taiwan. Japan acquired Taiwan as a result of the Sino-Japanese War (1894–95). The Qing Dynasty ceded Taiwan to Japan by the Treaty of Shimonoseki.

[14] Marie Seong-Hak Kim, *Law and Custom under the Chosŏn Dynasty and Colonial Korea: A Comparative Perspective*, "The Journal of Asian Studies" (2007) No. 4, p. 1072.

[15] The Sinicized World refers to the area where Chinese civilization had large impacts for centuries.

[16] Marie Seong-Hak Kim, op. cit., footnote 14, p. 1076.

[17] Ibid.

[18] Op. cit., p. 1077.

[19] Tay-Sheng Wang, op., cit., footnote 9, p. 104.

[20] Ibid., p. 51.

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Regarding administrative justice, the Government-General of Taiwan, the supreme executive power under the Japanese rule never established administrative court in Taiwan. Only the Law on the Administrative Review (*sogan hō*) (before the administrative organs) of mainland Japan (Legal Act No 105 in 1890) was introduced in 1922. The Japanese colonists were afraid that the introduction of the administrative court system could be a challenge for the absolute power of Japan's rule over Taiwan[21].

3

THE ADMINISTRATIVE LITIGATION SYSTEM IN TAIWAN FROM THE LATE XIX CENTURY TILL THE 1998 REFORM

Taiwan inherited all binding laws of the Republic of China (ROC) including its Constitution which was adopted by the National Constitution Amendment Conference on Dec. 25, 1946 in Nanjing with later amendments. Consequently, the ROC's ALL from 1932 with later amendments are also enacted in Taiwan[22]. Therefore, it is inevitable to quest for the origin of the ALL in Taiwan in the late Qing Dynasty period and in the era during which the ROC existed in the mainland China before the establishment of the PRC on Oct. 1949.

The Qing Dynasty prepared the Governmental Project on the Law on Administrative Trial Chamber in 1909[23]. The preamble of the Project reads that the Qing Dynasty intends to establish the separate administrative court referring to the German, Austrian and Japanese models. According to Hiroshi Ono, the Project resembled the Japanese ALL (Legal Act No 48) and Law on the Administrative Litigation for the Unlawful Acts Issued by the

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[21] Hiroshi Ono, *The establishment of the administrative justice system in Taiwan under the colonial rule with a special attention on the legislative procedures of introducing the Law on Administrative Review (Shokuminchi Taiwan ni okeru gyōsei kyūsai seido no seiritsu: Sogan hō shikō no kēi o chūshin ni*), "Kobe University Law Journal", (2013) No. 1, p. 121.

[22] However, as later discussed in this paper, in Taiwan, parts of the Constitution of the ROC was suspended by the Temporary Provisions Effective During the Period of Communist Rebellion for the subsequent four decades. The one-party system under the dictatorship of Chiang Kai-shek hampered democratization for years (Margaret K. Lewis and Jerome A. Cohen, *How Taiwan's Constitutional Court Reined in Police Power: Lessons for the Peoples' Republic of China*, "Fordham International Law Journal", (2013) Vol. 37, pp. 866–867).

[23] Yuwan Li and Yun Ma, *The Hurdle is High: The Administrative Litigation System in the People's Republic of China,* in Yuwen Li (ed.), *Administrative Litigation Systems in Greater China...,* p. 15.

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Administrative Organs (Legal Act No 106), both enacted in 1890, for the following reasons: 1) the scope of cases to be accepted by the Chamber was enumerated and its coverage was mostly the same as the relevant Japanese law, 2) the administrative appeal to the upper administrative authorities should be preceded by a suit with the Chamber, and 3) the single tier system without the possibility to lodge an appeal to the Chamber for a retrial[24][25]. However, the Project never promulgated due to the collapse of the Qing Dynasty which lasted for almost 300 years.

As a result of the Xinhai Revolution in 1911, the ROC (*zhonghua minguo*) was founded in 1912. In the same year, the Provisional Organic Law of the ROC, a prototype of the Provisional Constitution of the ROC (*zhonghua minguo linshi yuefa*) was drafted with corporation with the Japanese legal advisers employed by the Chinese government, such as Tōru Terao (a professor of Tokyo University, studied law in France) or Giichi Soejima (a professor of Waseda University who studied law in Berlin) and Song Jaoren, a representative politician of the early era of the ROC, a revolutionist studied at Hōsei University in Tokyo. Indeed, Article 14 of the Provisional Organic Law adopted the independent administrative court system under the name of *Pingzheng-yuan*[26][27]. Nagao Aruga, an authority of the Law of War (*ius in bello*) being employed as a legal adviser for Yuan Shikai, the Provisional President of the ROC (so-called Beijing Government), drafted the Regulations on *Pingzheng-yuan* in 1914[28]. The Regulation was further modified and also in 1914, the first Chinese ALL was enacted with 35 articles. Hiroshi Ono, in his recent article, compiles a table in which he compares the articles of the Beijing Government's and Japanese ALL[29]. He finds that both legal acts are quite similar in its context, reflecting the fact that the Chinese

[24] Hiroshi Ono, *The characteristics of the administrative justice systems in Manchukuo with a special atention on Law on the administrative reviews from 1937 (Manshū-koku no gyōsei kyūsai hōsei no seikaku ni kansuru ichi-shiron: 1937 (Kōtoku yonen) sogan tetsuzuki hō o chūshin ni)*, "Kobe University Law Journal" (2014) No. 1, p. 43.

[25] The cases allowed to be lodged to the Court included 1) cases on taxes and other public imposts, 2) cases on irrigations and public engineering works, 3) cases on establishing borders between public and private owned lands, and 4) cases on refusal of issuing business permits (Hiroshi Ono, Ibid.).

[26] Hiroshi Ono, op. cit., p. 44.

[27] The Provisional Constitution from 1912 provided that "citizens are entitled to bring a lawsuit to the Pingzheng-yuan against the actions of officials that violate their rights (Article 10)" (Yuwen Li and Yun Ma, op. cit., footnote 23, p. 16).

[28] Hiroshi Ono, Ibid., pp. 44–45.

[29] Hiroshi Ono, op. cit., pp. 59–65.

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modern law had been evolved by embedding the Japanese modern law which accepted western principles for the first time in Asia. This was achieved through highly active intellectual exchanges between both countries at the end of the Qing Dynasty[30]. However, the Beijing Government's ALL (BG-ALL) was not a simple duplication of its Japanese counterpart. First, the law created a post of "public interest representative" (*Vertreter des öffentlichen Interesse* or *suzheng-shi* in Chinese) who are entitled to act as a participant in proceedings independent from the plaintiff[31]. Wunyu Chang argues that the system of *suzheng-shi* being transplanted into the Chinese law from the German administrative law, though later abolished, had its merits[32]. Second, as mentioned above, the Japanese ALL strictly limited the possibility for citizens to file a suit with the Administrative Court by introducing a narrow enumerative clauses in the relevant law. On the other hand, the BG-ALL adopted the general clause principle (*Generalklauzelprinzip*) which allows plaintiffs to bring an action in *Pingzheng-yuan* against any unlawful administrative acts unless otherwise stipulated by the law (Article 1)[33]. Hiroshi Ono evaluates the BG-ALL from 1914 as "the most advanced ALL in East Asia which improved the demerits of the Japanese ALL promulgated at the end of the XIX century"[34]. The *Pingzheng-yuan* existed from march 1914 till 1928 when it was replaced by the Administrative Court (*xingzheng-fayuan*) established by the Nanjing Kuomintang (KMT) Government. The Organic Law of Administrative Court and the Law on Administrative Litigation both from 1932 gave a fundamental legal framework for the administrative litigation system of the Nanjing KMT Government. Compared to the *Pingzheng--yuan* regime of the Beijing Government, the administrative court system under the Nanjing KMT Government shows a certain degree of evolution.

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[30] Ibid.

[31] Wunyu Chang, op. cit., footnote 5, p. 93.

[32] Wunyu Chang, Ibid.

[33] Hiroshi Ono, op. cit., pp. 46–47. The Article 1 regulates that it is allowed to bring lawsuits to *Pingzheng--yuan* unless otherwise stipulated by the law against: 1) an unlawful acts of the central or regional supreme administrative organs by which lawful rights of individuals were infringed, or 2) when the plaintiff was not content with a final decision of the supreme administrative organ conducting an administrative review on the basis of the petition filed against unlawful acts of the central or regional administrative organs by which rights of individuals were violated (the above legal text was translated from Chinese into Japanese by the Department of Political Affairs of the Ministry of Foreign Affairs of Japan. Original translation was published in "*Gaiji Ihō*" (1914) No. 6, pp. 83–84).

[34] Hiroshi Ono, op. cit., 47.

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First, the Administrative Court of the KMT Government (KMT-Administrative Court) was affiliated to the supreme judicial organ, while the *Pingzheng-yuan* was a part of the Presidential executive organ of the Beijing Government. Second, the law allowed citizens to not only file a suit against unlawful administrative acts but also bring the suits of incidental compensation caused by them[35]. Unfortunately, statistics show that during the period in which *Pingzheng-yuan* and the KMT Administrative Court had functioned in the mainland China, the number of the cases heard by both institutions was very small even compared with its restrictive counterparts in Japan. The *Pingzheng-yuan* only heard 407 cases over nearly 15 years of its activity (1914–1928) with an average of 28 cases per year, while the KMT Administrative Court received 404 suits, of which 179 were rejected, from 1933 to 1935[36]. It means that the Court only accepted on average 75 cases per annum during the above 3 years. The other survey revealed that the KMT Administrative Court handled around 100 cases per year during 1933 to 1946[37]. On the other hand, the Administrative Court in Tokyo received 14,765 suits from 1890 to 1939, with an average of 295 cases per annul[38]. These statistics imply that the Japanese citizens utilized the Court more frequently than citizens in China. The internal war and Sino-Japanese war which caused a disorder and malfunctions of the administrations is the primary reason for this low profile of the Chinese administrative litigation system[39].

Following the declaration of the establishment of the PRC in 1949, in the mainland China, the previous legal system was totally abolished and the construction of the new legal order based on the socialist ideology has been commenced. After losing the Chinese Civil War, the KMT Government took refuge to Taiwan in 1949. The KMT Government claimed the legitimacy of the continuity of the ROC. Therefore, in Taiwan the 1932 ALL with later amendments in 1935, 1936 and 1937 has been directly applied after the Japanese left the island[40]. The 1937 version of the ALL had been used until 1998 when the further important amendment was passed. Wunyu Chang

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[35] Yuwen Li and Yun Ma, op. cit., footnote 23, p. 16.

[36] Ibid., p. 17.

[37] Op. cit.

[38] *50 Years of History of the Administrative Court*, (*Gyōsei saibansho gojyūnen shi*), (Tokyo: The Administrative Court, 1941), pp. 547—550.

[39] Yuwen Li and Yun Ma, Ibid.

[40] Wunyu Chang, op. cit., footnote 5, p. 93.

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points out that before the 1998 Reform, the Court only accepted the cassation complaints (*chexiao susong*), while a claim to the remedy related to the damages caused by the execution of the unlawful administrative acts could be lodged "incidentally" together with the cassation complaints[41]. Before the 1998 Reform, the plaintiffs were allowed to bring a lawsuit to the Administrative Court in Taipei (the capital of Taiwan) only when the citizen were not content with the two-tiered administrative reviews, administrative appeal (*suyuan*) and re-appeal (*zai-suyuan*) respectively. In this way, the KMT Government made it difficult for citizens to lodge a complaint to the Court[42]. The systemic failure of the administrative litigation system was apparent, although there was an impossibility to reform the system prior to the democratization process in Taiwan which commenced during the 1980s and had lasted till the end of the1990s.

4

FURTHER DEVELOPMENT OF THE TAIWANESE ALL SINCE THE 1998 REFORM

The KMT regime in Taiwan had repeatedly infringed the individual rights by establishing a set of restrictive laws to concentrate power in the hands of the Party and its leader, Chiang Kai-shek[43]. The KMT regime enjoyed a special protection of the US government as the "breakwater against Communism" and its international legitimacy as the representative of China. However, since Taiwan lost its seat in the UN to be replaced by the PRC in 1971, the KMT regime was forced to count solely on the support of its citizens[44]. From the late 1980s to the early 1990s, Taiwan experienced several

[41] Wunyu Chang, Ibid.

[42] Wunyu Chang, op. cit. Yuwen Li and Yun Ma argue that "conventionally, the Chinese regard government officials as 'bureaucrats shielding one another' (*guan guan xiang hu*)". Yuwen Li and Yun Ma, op. cit., footnote 23, p. 29.

[43] Tom Ginsburg points out that "the KMT relied on traditional Chinese notions of government as modified by Sun Yat-sen's political thought to legitimize quasi-Leninist authoritarian party system" (Tom Ginsburg, *Constitutional Courts in East Asia: Understanding Variation*, "Journal of Comparative Law" (2008) No. 80, p. 81).

[44] Tsung-fu Cheng, *The Rule of Law in Taiwan*, in: *The Rule of Law: Perspectives from the Pacific Rim*, p. 108. These collected papers were edited, based on the papers presented in the conference, "Benchmarking

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reforms to transform itself into a democratic country. In 1986, the first Taiwanese opposition party, the Democratic Progressive Party (DPP) (*minzhu jinbu dang*) was established to challenge the KMT's monopoly in the political scenes[45]. The Martial Law was lifted in 1987, and the Taiwanese citizens were allowed to visit mainland China in the same year. The notorious Temporary Provisions Effective During the Period of Communist Rebellion which had suspended the part of the Constitution were repealed. In 1996, the President of Taiwan (*zongtong*) was elected through the direct election and in 2000, the former opposition party, DPP won the presidential election and finally took the power away from the KMT[46].

Comparing the Constitutional Courts in Asia (Indonesia, Mongolia, South Korea, Taiwan and Thailand), Tom Ginsberg points out that the military authoritarian regime hinders the development of judicial review. However, it was often the case in Asia that during the period in which militant government loosened up the reign, the Constitutional Court played a crucial role in the democratization process of the regime. According to Ginsberg, Taiwan's Council of Grand Justice (CGT or *dafaguan-huiyi*), counterpart of the Constitutional Court, "has systematically dismantled the military-Leninist system of control of civil society"[47]. One of the breath-taking features during the dictatorship of the KMT was that all parliamentarians of the National Assembly (*guomin dahui*), Taiwan's legislative body, had never been replaced since 1948 when they were duly elected in the mainland before the KMT's evacuation to Taiwan. The CGT issued Interpretation (*shizi*) No. 261 in June 1990 which denies the constitutionality of the mandates of the members of the National Assembly and called for a new election[48]. "This was undoubtedly the most important case in the history of the CGT and

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the Ten-Year Development of the Rule of Law in Asia from 1999–2009", organized by the Maureen and Mike Mansfield Foundation between September 9–12, 2009 in Taipei, Taiwan, available at <http://www.mansfieldfdn.org/backup/programs/program _pdfs/ 09chen.pdf>, last accessed on 22 Feb. 2015.

[45] Ibid., p. 109.

[46] Op. cit.

[47] Tom Ginsburg, op. cit., footnote 43, p. 96.

[48] In Taiwan, the CGT's Interpretation about the Constitution is regarded as the same as the Constitution itself, thus it has a binding effect on authorities and people. All courts should follow it to deal with the cases (Jingbo Zhao, *The Revelation of Administrative Case System in Taiwan to the Transformation of Administrative Case Guidance System in Mainland China*, *Cross-Cultural Communication* issued by the Canadian Academy of Oriental and Occidental Culture (2001) No. 3, p. 24).

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removed the last legal barrier to rapid institutional reform in Taiwan[49]". Again in 1999, the members of the National Assembly this time tried to prolong their term by amending the Constitution with anonymous voting. The CGT issued Interpretation No. 499 in 2000 to judge the amendments unconstitutional and null. The CGT asserted that "the procedure to amend the Constitution shall be publicly known, and that the principle of a republic, the principle of citizens' sovereign powers, the principles concerning the protection of individual rights and the separation of powers were all of essential importance.[50]"

The background of the 1998 ALL Reform can be explained in the context of Taiwan's democratization. Prior to the 1998 Reform, the CGT issued Interpretation No. 466 in which CGT judged that if the Administrative Court rejects the plaintiff's claim on the basis of the lack of competence, the ordinary courts should hear the case to avoid the citizens' rights not to be remedied. Wunyu Chang suggests that this argument might come from Article 19(1) of the Basic Law of the Federal Republic of Germany. At the same time, the Interpretation encourages Judicial Yuan, Taiwan's counterpart of the Ministry of Justice to undertake the reform in the administrative litigation system[51]. The following points were the most important in the 1998 ALL Reform[52]:

a) Establishment of the High Administrative Court: formally there was only one Administrative Court nationwide. The reform established three High Administrative Courts in Taipei, Taizhong and Gaoxiong as the courts for the first instance. Three judges jointly hear the cases but for the simple cases, only one judge is assigned. If a party refuses to accept the judgment of the first instance, then the party could raise a petition (*kanggao*) to the Supreme Administrative Court;
b) Increasing the variety of actions: Affirmative relief (*jifu susong*) and declaratory action (*queren susong*) were added alongside with the existing cassation complaints (*chexiao susong*). In the affirmative reliefs, citizens request the court to impose to take an appropriate action in case of inaction upon the administrative authorities. While in the declaratory

[49] Tom Ginsburg, Ibid., p. 83.

[50] Tsung-fu Chen, op. cit., footnote 44, pp. 112–113.

[51] Wunyu Chang, op. cit., footnote 5, p. 95.

[52] Ibid., pp. 95–109.

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actions, citizens can claim the compensations when their rights have been infringed upon due to the withdrawal of administrative actions by the administrative organs;

c) Joint action: There are three types of joint actions in which a third party is allowed to take part in the litigation in Taiwan. The indispensable joint action is applied when the object of the litigation (*susong biaodi*) needs to be co-determined (*einheitlich festgestellt werden*) by the third party, while the independent joint action takes place when the Administrative Court deems that the outcome of a cassation complaint might cause harm to the rights and legal interests of a third party. Lastly, the auxiliary joint action takes place when the Administrative Court deems it necessary for other administrative organs to assist one of the parties;
d) Oral statements and cross–examinations of the parties were adopted (formally all cases had written nature);
e) Public interest litigation: Citizens are entitled to lodge an administrative action in the court if the administrative organ fails to perform its duties and responsibilities that impeded upon the public welfare. According to Wunyu Chang, this provision is often used in the field of environmental protection;
f) Application for the suspension of the execution of the administrative actions could be sent by parties when specific legal conditions are fulfilled (though, the principle of "non-suspension" is basically adopted);
g) Re-trial by a third party: A third party can claim for a re-trial against a valid administra-tive judgment, in the case that the citizens' rights are damaged by the judgment.

The ALL was further reformed in 2007 and 2010, but the impacts of these two reforms were limited compared to the 1998 Reform. The latest reform on ALL was completed in 2011 in which 1) the administrative division was established within the local courts and 2) the competence to hear the cases on the administrative decisions on traffic accidents were moved from the ordinal court to the administrative division of the local court. The administrative division in the local court is affiliated to the system of administrative courts. The two-tier admi-nistrative litigation system was changed into the three-tiered one.

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5

CONCLUSION

The Taiwanese administrative justice has greatly evolved since the late 1990s when Taiwan experienced the fundamental political changes toward her democratization.

Among Asian countries, Japan had succeeded in maintaining a stable democratic political system during the Cold War. Taiwan and South Korea had directly faced up with the PRC and North Korea, sharing the common national borders. For Taiwan or South Korea, to keep the national independence by introducing a strong dictatorship was not a *sine qua non*, but rather, it was an option, taking consideration that there would be no reliable force, other than the USA, to guarantee the legitimacy of their existence vis-à-vis its Communists' peers. Such political situation was the reason for a delay in democratization of Taiwan and South Korea after their militant regimes had been relegated to history.

Nowadays, in these "renewed" democracies in Asia, lawmakers have initiated a radical systemic reforms on the administrative justice inspired by the advanced administrative litigation/review models like in Germany. These undergoing reforms may imply that there is a certain trend to facilitate drafting radical legal acts similar to the *Pingzheng-yuan* in the early XX century China. However, such advanced legal acts established in the "renewed" democracies may easily become "dead letters" at the end of the day.

In Taiwan, the administrative courts of the first instance commenced 4,861 cases in 2013 according to the official statistics published by the Judicial Yuan. As Taiwanese population has reached 23 million, there were, arithmetically speaking, 3 861 citizens per one administrative litigation case. The same calculation for Japan and Poland would result in 14,340 and 508 respectively (all figures only include cases of the first instance)[53]. From this basic comparison, it can be already said that in Taiwan, citizens actively utilize the administrative litigation system more often than in Japan. While the author in this article concentrated in analyzing the administrative court

[53] Available at http://www.judicial.gov.tw/juds/report/eg8.htm; http://www.courts.go.jp/app/files/toukei/286/007286.pdf and http://www.nsa.gov.pl/index.php/pol/Media/Files/roczna-17, last accessed on 28 Feb. 2015. In Japan all cases are heard in the ordinal courts (*futsū saibansho*). The Japanese judicial statistics divides cases according to each category of the cases.

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system in Taiwan, it transpires that the administrative review system in Taiwan functions well and increasingly wins the trust of the citizens[54].

Thus, the author intends to further investigate the administrative justice systems in East Asia and South East Asia at large. They will be compared to the cases from Central and Eastern Europe in the future, considering the German influence which was highlighted in the case of China, Taiwan, and Japan.

BIBLIOGRAPHY

Chaoyang Jiang and Yang Feng, *The Administrative Litigation System in Macao*.

Hiroshi Ono, *The characteristics of the administrative justice system in Manchukuo with a special attention on Law on the administrative reviews from 1937 (Manshū-koku no gyōsei kyūsai hōsei no seikaku ni kansuru ichi-shiron: 1937 (Kōtoku yonen) sogan tetsuzuki hō o chūshin ni)*, "Kobe University Law Journal", (2014) No. 1, p. 43.

Hiroshi Ono, *The establishment of the administrative justice system in Taiwan under the colonial rule with a special attention on the legislative procedures of introducing the Law on Administrative Review (Shokuminchi Taiwan ni okeru gyōsei kyūsai seido no seiritsu: Sogan hō shikō no kēi o chūshin ni*), "Kobe University Law Journal", (2013) No. 1, p. 121.

Kazuhiro Takii, *Staatswissenschaft in Germany and the Meiji State*, (*Doitsu kokka hōsei to meiji kokka*), (Kyoto: Minerva Shobō, 2012), pp. 166–167.

Marie Seong-Hak Kim, *Law and Custom under the Chosŏn Dynasty and Colonial Korea: A Comparative Perspective*, "The Journal of Asian Studies", (2007) No. 4, p. 1072.

Ilpyong J. Kim, *The Judicial Administrative Structure in North Korea*, "The China Quarterly", (1963) No. 14, p. 102.

Takao Tanaka, *The practice of the Law on the Administrative Review in Taiwan, Vol. 1, (Taiwan ni okeru soganhō no un'yō ni tsuite (1)), Hōsei Kenkyū* issued by the Faculty of Law of Kyūshū University (2007) No. 2, p. 27.

Tay-Sheng Wang, *Intr**o**duction, Legal Reform in Taiwan under Japanese Colonial Rule, 1895–1945: The Reception of Western Law* (Seattle and London: University of Washington Press, 2000, p. 5).

[54] Takao Tanaka, *The practice of the Law on the Administrative Review in Taiwan*, *Vol. 1, (Taiwan ni okeru soganhō no un'yō ni tsuite (1))*, *Hōsei Kenkyū* issued by the Faculty of Law of Kyūshū University (2007) No. 2, p. 27.

DOI: 10.7206/kp.2080-1084.80

Tom Ginsburg, *Constitutional Courts in East Asia: Understanding Variation*, "Journal of Comparative Law", (2008) No. 80, p. 81.

Tsung-fu Cheng, *The Rule of Law in Taiwan*, in: *The Rule of Law: Perspectives from the Pacific Rim*, p. 108.

Wunyu Chang, *The Past, Present and Future of then Administrative Litigation System in Taiwan*.

Yuwen Li (ed.), *Administrative Litigation Systems in Greater China.*

Yuwen Li and Yun Ma, *Introduction: Battling in the Courts: Dynamics of Administrative Litigation Systems across Jurisdiction.*

DOI: 10.7206/kp.2080-1084.80