DOI: 10.18999/nujlp.276.8

Article

Development of Administrative Litigation in Mongolia (2):
From Administrative Control to Court Remedy?

Tsogt Tsend

Chapter III: Conditions of Administrative Litigation

3.1. Introduction

In the previous chapter, it was demonstrated that since 2002 and 2004 Mongolia moved toward the remedy type administrative litigation by abandoning its former use of control type litigation, at least at the statutory law level. Also in the last chapter, the difficulty to achieve such a paradigm change once and for all is clearly acknowledged. Therefore, in substance control type administrative litigation prolonged in Mongolia. On the other hand, as it was discussed in Chapter II, Japan only formally made transition from control type to remedy type after WWII. For Japan in Chapter II and for Mongolia in Chapter III, it discovered general characteristics of paradigm change in administrative litigation. Consecutively, in this chapter the discussion will focus on the general character of administrative law in Mongolia and its transformation in making a more concrete institutional, theoretical, and practical base from a comparative analysis perspective. For the most part, this chapter seeks to examine judicial review type actions, based on subjective litigation from the viewpoint of preconditions required to initiate judicial review type action. In other words, it will make an

analysis of how difficult it is to initiate an action in protection of infringed rights and interests in Japan and Mongolia, as an indicator of paradigm whether it is control type or remedy type.

This chapter will identify what distinguishes judicial review type actions from the rest of the actions in subjective litigation. Based on those findings, it will then examine what preconditions are required for initiating judicial review type actions. And it continues to explore the concept of administrative act/disposition in two jurisdictions, specifically concerning the question as to what it means to have standing and how to determine who has it. Moreover, this chapter will present the concept of objective interest of litigation as it is the last requirement for initiating judicial review.

In order to determine the preconditions for administrative litigation, this chapter will first discuss the Japanese context as a comparative stance. For analyzing judicial review type administrative litigation, this chapter consists of three sub-sections respectfully with requirements for initiating judicial review action such as administrative act/disposition, standing, and objective interest of litigation. Therefore, in the first sub-section it will examine the concept of administrative disposition at the Japanese theoretical and institutional level. Then it will comparatively study the Mongolian concept of administrative act. Next, this sub-section includes the case study for the concept of administrative act in Japanese and Mongolian practice. Finally, this sub-section will sum up with concluding remarks on the subject. The second sub-section examines the concept of standing in the same manner and order as the previous sub-section. The end of this chapter will discuss relatively briefly the concept of objective interest of litigation. The brevity of this discussion is not because it is weakly positioned among the requirements necessary for administrative litigation, but it is due to a lack of understanding and relevant practice experience in Mongolia that limits commentary here.

3.2. Administrative Disposition/Act

The concept of administrative act in Japanese law, which is referred to as ‘administrative disposition,’ is the object of this sub-chapter. Administrative act is

not only a core element of administrative litigation in Japanese law and practice but also in Mongolia. Therefore, the similarities and differences concerning the concept of administrative act from the view point of institution will be examined in a comparative light first. A discussion with regards to practice in both jurisdictions will then follow.

3.2.1. Mongolian Institutions on the Administrative Act

In 2002, the LPAC provided a definition for administrative act, which is the first time this new concept was introduced in Mongolian statutory law. Prior to this, the general term 'administrative decision and activity' was used in statutory law and practice. For instance, Article 200 of the Civil Investigation Procedure Law of MPR (1967) regulates mostly administrative sanctions, which includes the terms "act of administrative fine."[1] Furthermore, the 1990 Special Law on Complaint Procedure recognizes and uses the general term "illegal activity" of state administrative organ.[2] Article 2 of the 1990 Special Law on Complaint Procedure recognizes the state administrative organ's activity that illegally limits or infringes citizens' rights provided by law and/or burdens citizens with unlawful obligations and duties. However, in Article 11, it provided that this law will not apply to a "normative administrative act," which shows the recognition of the concept of a normative administrative act, as distinct from the rest of the administrative decision and activity. In 2002, just before the adoption of the LPAC, the revised Law on Civil Procedure not only continued to use a general term to refer to administrative decision and activity, but it also presented a new term, "legal act"[3] when describing a complaint against an administrative organ or official. However, all of these terms previously discussed were nothing like to the concept of administrative act which was introduced by the LPAC.[4]

1）　БНМАУ-ын Иргэний байцаан шийтгэх тухай хууль, art. 200 (5) and 201 (2, 3) (1967).

2）　1990 Special Law on Complaint Procedure (1990 оны 3 дугаар сарын 23-ны өдөр).

3）　Article 12 Paragraph 1.4 of the Law on Civil Procedure before amendment of August 03, 2007. [12.1.4. Захиргааны байгууллага, албан тушаалтны **үйл ажиллагаа** болон **эрх зүйн акт**ын талаар гарсан гомдол]

4）　P.Odgerel (back then Professor Odgerel was recent graduate from LL.M program at

The following provision defines "administrative act under the LPAC. According to Article 3 paragraph 1.4 of the LPAC,[5] "an administrative act is an imperative decision issued or one time commanding action by an administrative agency or official in written or oral form which directed outward causing direct legal effect in order to regulate the concrete issue arising within public law sphere. In addition to individual administrative act, normative administrative act can also be considered as administrative act by this law."[6] This definition is similar to other definitions that are generally recognized, such as the definition under German law.[7]

On the other hand, Article 12 paragraph 1.4 of the Law on Civil Procedure prescribes that civil procedure may be commenced upon receiving complaints about activity and an administrative act of those organizations or officials other than described in Article 4 paragraphs 1 and 2 of the LPAC.[8] Therefore, Article 12 paragraph 1.4 of the Law on Civil Procedure is in stark contrast to Article 4 paragraph 1 of the LPAC because it allows for a broader scope in which legal action can be taken. Article 4 paragraphs 1 and 2 of the LPAC, on the other hand, uses a listing approach when it describes the administrative agency and enlists the names of administrative agencies whose administrative act can be sued at administrative court. However, the amendment to the Law on Civil Procedure on August 03, 2007 did not effectively solve overlapping jurisdiction since it still

---

Bayreuth University, German) Odgerel Purevdolgor, "Захиргааны актын тухай ойлголтын шинэлэг тал" [New Aspects of the Concept of Administrative Act], *State and Law of Mongolia* 2 (2004): 11–18.

5） After revised version of LPAC under the name of ACPL similar definition emerged.

6） Article 3 Paragraph 1.4 of the LPAC. From this original article following part, /i.e. judgments, rules, instructions, regulations/ was removed by the amendment on October 29, 2010. In that time, the LPAC also included a normative administrative act as to be treated same as an individual administrative act.

7） Definition of an administrative act. Art. 35 APA, 88 (1993). An administrative act shall be any order, decision or other sovereign measure taken by an authority to regulate an individual case in the sphere of public law and intended to have a direct, external legal effect. A general order shall be an administrative act directed at a group of people defined or definable on the basis of general characteristics or relating to the public law aspect of a matter or its use by the public at large.

8） Regarding August 03, 2007 amendment. ["12.1.4.Захиргааны хэрэг хянан шийдвэрлэх тухай хуулийн 4.1, 4.2-т зааснаас бусад байгууллага, албан тушаалтны **үйл ажиллагаа** болон тэдгээрийн гаргасан **захиргааны акт**ын талаар гаргасан гомдол;"] (and before February 04, 2016 amendment).

retain the terms such as administrative act. For instance, if there is an action related to an administrative act which is issued from an organ that is not listed in Article 4 paragraph 2, then the administrative court will refuse to accept it as administrative litigation. Then consecutively, this administrative dispute will be decided by an ordinary court through civil procedure.

Moreover, Article 8 paragraph 1.3 of the Civil Code acknowledges that in accordance with law an administrative decision, which sought to initiate a civil legal relation, it can serve as a basis for the establishment of a civil legal relation.[9] Although, this is not a description of "administrative act," it specifies that an administrative decision can serve as a basis for a civil legal relation. This created a confusing state of parallel jurisdiction.

An important question that arises concerns why these three laws have simultaneously regulated the concept of administrative act in certain degrees and provided for dispute settlement sometimes through civil procedure sometimes administrative procedure. The background problem related to this issue is derived from the transition process Mongolia is currently experiencing in its transformation from a socialist to market system.

How can civil law come to regulate public law relation? In this case, the Civil Code has included provisions that allow some administrative decisions to be a basis for civil law relation or can provoke a civil law relation. From this concept, it can be understood that some administrative decisions can be regulated by civil law, namely the Civil Code. However, this is a transition problem for Mongolia as a former socialist country that is moving towards a market system. In the transition period, though the market system has been introduced, its regulatory framework is weak and covers a limited area. Along with newly introduced market system, another very wide and strong sphere of administrative (public) law is still regulated by civil law and civil procedure, and even public law as a separate legal discipline has not yet fully emancipated from private law. Administrative law is weakly positioned as a regulatory norm at this time in public relation sphere. Lawyers who have drafted and proposed laws during this period of transition are

9）Article 8 paragraph 1.3 of the Civil Code. [8.1.3.хуульд заасан бол иргэний эрх зүйн харилцаа үүсгэхэд чиглэсэн захиргааны шийдвэр;]

also affected by its many challenges. It was and still is not easy to clearly understand the division of public law and private law. There is a strong division of private and public law imported from Germany in theory, but in the institutional sphere and at the practical level it is difficult to properly ascertain and apply.

Then again, the question of the Law on Civil Procedure that regulates the public law relationship has been a common problem during transition period among former soviet countries. Certainly, a new and market based legal system was transplanted to Mongolia, beginning in the early 1990s; however, the old legal thinking remained. The enumeration approach, which has been used in the newly established administrative court procedure in Mongolia, is a weakness in administrative litigation. For instance, identical to a soviet era in Mongolia when the ordinary court had jurisdiction over certain administrative decisions through civil procedure, as a special complaint procedure, the Law on Civil Procedure had kept complaint procedure section despite the fact that separate administrative procedure exists. This overlapping and confusing jurisdiction is not completely solved yet.

Elements of Administrative Act

In the case of Mongolia, an imperative[10] decision which can be made either in written or verbal form by an administrative agency or official, that is meant to dispose of a concrete problem arising from the administrative (public) law sphere, constitutes an administrative act. The most important element of the administrative act in Mongolian institution is the concept of imperativeness. The element of imperativeness, which has direct external legal consequences, is fundamental to determining whether a certain act qualifies as an administrative act. The element of imperativeness can be interpreted as requiring conformity from others, especially the addressee of an administrative act. However, the second element 'power or public authority' which is pursuant to law is also an important element. This element was not expressed concretely in the definition of administrative act by the LPAC in 2002. Instead, in Mongolian practice, this element of administrative act which express an authority to govern others, is understood as it

10） Term 'imperative' in Mongolian is '*захирамжилсан*'.

is incorporated in the element of imperativeness. In this regard, the character of public authority of an administrative act has been developed through administrative law history.

According to Professor Chimid the element of imperativeness of a legal act is to always express state power or interest, therefore, a legal act of an administrative organization is a form of execution of state authority.[11] After the LPAC was adopted, and during the same time the administrative court had just begun operating, Professor Odgerel opined, the core characteristic of imperativeness is administration, which only expresses its unilateral interest independently from others, when issuing a decision.[12]

The presumption of legality (effectiveness) of administrative act was the most important element in traditional (German, Soviet, Japanese) administrative law. The presumption of legality allows an individual administrative act to be legally effective, regardless of the possibility of defects, until it's revoked by a competent entity which has authority to do so. However, there has been little scholarly work devoted to Mongolian administrative law theory concerning the element of presumption of legality of an administrative act.

3.2.2. Mongolian Practice on the Administrative Act

Before June 2004, the cases that involved administrative disputes were dealt with by ordinary courts with civil procedure. At that time the concept of the administrative act had not been specifically considered in practice and theory as a specific legal concept, therefore there was no necessity to analyze it in practice. The concept of administrative act was not a point of interest for the ordinary civil court and civil procedure law scholars. On the other hand, administrative law scholars also had no interest because the concept of administrative act was only an abstract notion. The perception was that it did not have legal relevancy because

11) Biraa, *БНМАУ-ын захиргааны эрх*, 285.
12) Odgerel Purevdolgor, *Захиргааны эрх зүй Ерөнхий анги* [General Part on Administrative Law], 1st ed. (Ulaanbaatar, 2004), 105–6; Purevdolgor, "Захиргааны актын тухай ойлголтын шинэлэг тал," 16.

did not have a practical objective as a legal tool of interpretation.

Beginning with the new administrative court and LPAC in June 2004, a new and challenging practice began to scrutinize administrative decisions in Mongolia, asking whether it fit the requirements of administrative act, which were defined by the new law concretely. On the other hand, this definition was not derived from experience that had accumulated and developed over time through practice, and it was not based on scholarly theory either, but it came to be only through new institution that was introduced and supported by German legal assistance.

Therefore, the practice from 2004 is crucial to understand how a legal concept is interpreted, thus it is important to discuss the relevant cases. The concept of administrative act is defined firstly in Mongolian statutory law in 2002, and then actual practice began to apply the statutory definition to specific cases in 2004. In section 4.2.2 of this chapter, it discussed the institution of the concept of administrative act in relation to the LPAC. From this new law, significant influence flows to practice. Using the new legal concept of administrative act for legal interpretation purposes, in practice the court began to analyze how to use the concept of administrative act. Since Mongolia had acquired the German legal concept of administrative act initially and directly into its statutory law, without much theoretical development in advance, the question of how to productively embed this concept in practice is very important for actual problems. Because unlike Japan, it must acknowledge that there is no theory and practice to support statutory law.

In form, an administrative act can be written or oral and it can also be unwritten and unspoken and constitute an *action*. However, the difficulty has been how to determine the imperativeness of a specific administrative act. In Mongolian practice, in order to determine whether an administrative act has occurred, one must look first for a legal definition of administrative act set forth in Article 3.1.4 of the LPAC before deciding whether or not that particular decision matches the definition of administrative act. To qualify as valid administrative litigation, the matter at hand must challenge an administrative act. The act needs to be issued by an administrative agency or official; it must have effectively functioned as a final decision for that particular issue; and its effect must be directed out to a citizen(s)

or legal entity, forcing them to obey a certain order. The following cases clearly demonstrate such challenges in Mongolian administrative legal practice today.

Registration of Immoveable Property Case[13)]

An action was brought to the administrative court seeking revocation of state registration of an immovable property and issuance of license dated on May 24, 2012. The Peace and Friendship Organization of Mongolia, a non-governmental organization, asserted that registration of its immovable property to another organization was in contradiction to the Law on the State Registration of Property Ownership Right and Other Property Related Rights. Plaintiff (seller) entered a contract with a company (buyer) for the sale of its office building, the Peace and Friendship Palace, for 1 billion *tugrug* on June 28, 2011. However, the defendant's contractual duty was not fulfilled, so the plaintiff did not register transfer of ownership with the state. The buyer still owed 250 million *tugrug*, therefore the defendant's contractual duty had not been fully carried out yet. According to Article 3.3 and 3.10 of the contract, "it is agreed that after the full payment is made, transfer of the ownership right in the state registration takes place." Because the contract was not fully implemented by the other party, the Peace and Friendship Organization of Mongolia did not apply to the state registration office for the transfer of ownership to be registered in the name of the other party. The defendant made registration of transfer of ownership.

Therefore, plaintiff asserted that the state registration office erred in registering transfer when the application and attached documents submitted by the defendant were not consistent with the requirements of Article 26 paragraph 1 and 2 of the Law on the State Registration of Property Ownership Right and Other Property Related Rights. Plaintiff argued that Article 26 paragraph 1 and paragraph 2 required that registration of the transfer of ownership be based on the terms of the contract. In addition, plaintiff asserted that the agency did not fully examine the contract, which specifically provided for the condition required for the transferring of the ownership right. Plaintiff concluded that, because of this wrongful act of the

13) Энхтайван найрамдлын ордон ба Улсын бүртгэлийн газар [The Peace and Friendship Organization of Mongolia, a non-governmental organization] Case no 122 (Mongolia|MN Захиргааны хэргийн давж заалдах шатны шүүх).

registration office, a certification of ownership of the Peace and Friendship Palace was issued in the name of the defendant which therefore breached the plaintiff's ownership's right.

The action in this case is related to an administrative act because the act altered the ownership status of the particular immovable property, through state registration by an administrative agency, the State Registration Office. The argument, put forth by the plaintiff seller, was that the administrative agency failed to check whether all legal requirements were fulfilled, concerning the transfer of ownership through state registration, when acting upon the defendant's application for transfer of the registration of ownership.

The first instance court refused to accept the action, reasoning that the dispute was not in the administrative court's jurisdiction set forth in Article 3 paragraph 1.4 of the LPAC. The first instance court found that the issue in dispute did not arise out of, nor was it related to an administrative act, and concluded that the suit was based on contract. On appeal, the appellate court reversed the judgment of the lower court on the following grounds. The appellate court found the first instance court's examination, which stated that this action was related to an obligation arising from the contract, was in error and hence it was in contradiction with Article 3 paragraph 1.4 of *the LPAC*.

Dispute in the area of state registration of immovable property is often unclear in terms of jurisdiction. It is because that establishment of the right to own the immovable property is a question of private law in Mongolian law. However, in order verify real property ownership rights, which is essential to transactions involving the buying, selling, leasing, and renting of real property, the state registration process is necessary. This process is regulated by *the Law on the State Registration of Property Ownership Right and Other Property Related Rights* and the State Registration Office is obliged to adhere to a certain set of duties by this law.

In this case, the plaintiff asserted infringement of its right and interest, believed to be linked with this administrative agency's official duty. Plaintiff's claim is based on the argument that the State Registration Office fell short in carrying out its official duty to closely examine relevant documentation, when deciding on the

application to transfer ownership in the state registration process. Then the only way to find out if the claim has grounds is to review the agency's action concerning the transfer of ownership registration. According to Article 3 paragraph 1.5 of the LPAC,[14] action is counted as an administrative act.

Nonetheless, the Mongolian variety of the concept of administrative act is derived from the practice of Mongolian law, and as such, has a unique characteristic. Perhaps one good example of its uniqueness is evident in the Registration of Immovable Property case, where a registration is accepted as a legal act type of administrative act. The understanding of the concept of administrative act in Mongolia practice is one variation of the original German meaning. The background cause of this confusing state is how the element of imperativeness of administrative act is understood in Mongolian interpretation. Quite the opposite, as a general rule, the concept of administrative act is categorized as a legal act type and a sub-legal act type. However, this conceptualization has not been developed in Mongolian administrative law. Though registration by state has an element of legal effect, a registration is considered as a sub-legal act type of administrative act. In the original German theory, a sub-legal act type of administrative act has no such strong public authority (imperativeness as in Mongolian understanding) and it is not the same as a legal act type of administrative act. In other words, a sub-legal act type administrative act such as registration of immoveable property documented by the state only has the effect of a public certification to provide information for the public, but such registration does not carry full public authority. This is a common understanding of administrative act in Germany. In this case, it can be seen the surplus of administrative act in Mongolia.

The Gatsuurt Village Heating Plant Case[15]

The plaintiff "Jardzev" company asserted that the General Manager of Ulaanbaatar city breached its right to continue operating the newly built heating

14）According to the definition provided in Article 3.1.5 of the LPAC, both action and non-action are included in the definition of 'Activity'

15）Жардзэв ХХК ба Улаанбаатар хотын Ерөнхий менежер ["Jardzev" company v. General Manager of Ulaanbaatar City] [2004] Case no 33 (Mongolia|MN Нийслэлийн захиргааны хэргийн шүүх, November 4, 2004).

plant by stopping it from providing heat to the village, supplied by plaintiff's heating plant, based on the illegal request of the Governor of the Gatsuurt Satellite Village (Bayanzurkh District of Ulaanbaatar city). Instead, the General Manager demanded by an official letter issued on July 15, 1998, to provide heat to the village by operating the old heating plant, which was built in 1950 and has been prohibited from operating since 1993. The "Jardzev" Company explained that by reusing the old heating plant, the new heating plant had been rendered useless because there was no other building left in the village to obtain heating serves. The plaintiff Company obtained the ownership rights of a new heating plant in 1991, through privatization, and began providing heating for the village based on the contract with the village administration according to the general plan for the village.

The first instance court accepted the action as it met with all requirements of administrative act, despite the defendant's argument which asserted that it did not contain any imperative order. The Court reasoned that the form of the decision was not important, but its effect on the plaintiff's rights and obligations were central. The decision of the court stated that the official letter in this case qualified as an administrative act under the LPAC. The relation between the plaintiff's rights and the effect of the administrative act on those rights was established in this case. Because the General Manager's decision to re-operate the old heating plant caused a termination of operation of the new heating plant, it was an infringement of the plaintiff company's exercise of its property rights and right to continue to operate its heating plant.

"Jardzev" Co.Ltd filed an action at the Capital City Administrative Court in 2004 at the newly established administrative court. This is one of the first cases to decide whether this type of decision qualifies as an administrative act, after the 2004 new administrative procedure law and the establishment of the administrative court. In this case, the question was when an administrative decision is in the form of an official letter and directed to another agency, can it qualify as an administrative act under the LPAC? The administrative decision in

this case was in the form of an 'official letter'[16] not in the form of an order which is understood as the usual form of an administrative act. In other words, it was not in an imperative form. By the definition of Article 3 paragraph 1.4 of the LPAC, the administrative act must have imperative power. The decision does not contain any order that obligates plaintiff to do something; however, by enabling the General Manager of Ulaanbaatar city to use the old heating plant, it effectively terminated the continued operation of plaintiff's plant.

An important lesson that can be learned from this interpretation of the elements, required for a finding that an administrative act occurred, reveals that traditional understanding influences Mongolian understandings of this new concept. Thus, even a civil dispute can be transformed into an administrative dispute and be decided through administrative litigation. From the General Manager's side, this decision was just an inward order for re-operation of its own facility to provide a heating for a village. While the General Manager's decision certainly had an impact on the normal operation of the new plant, the impact had no legal effect but de facto effect. The impact to the new plant by the General Manager's decision had a de facto effect, which means that the statutory law that governs this relation does not provide legal remedy or protection to third party or in this case plaintiff.

This is one of the first cases which required the interpretation of the new concept of administrative act provided by the LPAC. Therefore, it is an important representation of those cases which were decided during the early period in which administrative court procedure was introduced in Mongolia. In this case, the Mongolian administrative court clearly struggled with the complexity of interpreting and applying newly minted law. Specifically, the court was faced with the task of utilizing administrative law concepts it had not considered before. Consequently, it fundamentally misunderstood concept of legal effect. From this misunderstanding, the action taken by the court to accept the official letter for judicial review was incorrect. In traditional Japanese (and German) administrative law understanding, because the letter was addressed from one administrative agency to another, it constitutes an inside relationship between agencies.

16）This is the form that is usually used when exchanging information, but it is not used to issue a binding order.

Therefore, this action had no legal effect in terms of changing the legal status of the plaintiff directly. This is because the request was not directed to the company, which owned the new heating plant, so it did not directly affect their rights. Thus, this case shows that at the beginning of the administrative litigation process in 2004, the court, the party who brought the suit, and the defendant, all struggled to correctly understand the issue of 'legal effect.' This can be referred to as the 'triple mistake stage' of development of administrative case litigation in the Mongolian context.

The Tax Office Case[17)]

The District Tax Office (hereinafter the Tax Office) filed an action at the administrative court claiming that the Capital City Tax Dispute Commission erred when it accepted and revoked a tax assessment notice (tax act) which was issued by the Tax Office. The Tax Office conducted an inspection of a company within its authority and issued a tax act which obligated the company to pay a specified sum of tax. The company did not submit a complaint in accordance with the law and did not pay the owed tax that was determined by the tax act within the time set forth in the tax act. Therefore, the Tax Office filed an enforcement action at the civil court against the company. While the civil case was pending in procedure, the taxpayer company submitted an appeal with the Tax Dispute Commission which resulted in a decision to revoke the tax act.

The legal issue in this case was whether a decree of the Tax Dispute Commission can be accepted as an administrative act when the Tax Office disagrees with the decision of the Tax Dispute Commission. The Capital City Administrative Court refused to accept the action submitted by the Tax Office based on Article 34 paragraph 1.1 of the LPAC.

According to Article 4 paragraph 2 of the LPAC, in order to qualify as an administrative act, the act must be directed outward to an individual which is not a lower level agency or an insider within the hierarchy of an agency. The Tax Dispute Commission's decree, which revoked the District Tax Office's act could not be accepted as an administrative act as described in Article 4 paragraph 2 of

17）Дүүргийн татварын хэлтэс [District Tax Office v. Capital City Tax Dispute Commission] Case no 237 (Mongolia|MN Нийслэлийн захиргааны хэргийн шүүх).

the LPAC. In addition, Article 1 and Article 12 of the LPAC provides that only a citizen or a legal entity is able to submit an action at administrative court. Thus, the Tax Office did not qualify as a plaintiff in this case.

In this case, the Mongolian administrative court's decision represents a typical interpretation of the legal concept of administrative act in terms of the LPAC. However, the definition of the LPAC was not the only relevant provision applied in this and other similar cases, but also the provision that defines who can bring the action at court and the issue of standing to be sued play important roles as well. The Tax Office clearly has a reasonable argument concerning the status of limitation and the jurisdictional issue within this case, which shows the existence of a dispute. However, the question is not whether or not a dispute exists but whether or not the dispute is resolvable by this court through administrative litigation. This leads to a discussion and explanation as to the purpose of administrative court procedure. The common understanding in Mongolian administrative law is that the administrative court serves as a venue for disposing of disputes between a private person and an administrative agency. Such dispute must arise out of a specific administrative agency's decision or action.

The objective interest of the litigation is to protect and recover the rights and interest of the private party from the adverse effects resulting from the exercise of administrative authority. The purpose of administrative litigation is not to facilitate disputes among the agencies. In contrast, the issue in this case concerns a dispute between administrative agencies. The Tax Dispute Commission is a tribunal which was established for resolving disputes between taxpayers and the tax office. The Tax Office, as the lower administrative agency under the hierarchy of the Tax Dispute Commission, must obey the decision made by the higher positioned agency.

The relevancy of this case to the current research is the problem of categorization of administrative litigation. The first issue is to define the concept of judicial review and its conditions and seek clarification as to why it only relates to subjective litigation but is not relevant to objective litigation. However, prior to 2002 (when the LPAC introduced administrative litigation) there was no understanding of categorization of litigation as objective and subjective.

Specifically, the questions concerning what is subjective litigation, what are the conditions of subjective litigation, and the differences between subjective litigation and objective litigation are unanswered and yet undiscovered.

In addition, this case represents the problem that is caused by the element of external effect of administrative act or as it is described in Article 4.2 of the LPAC, that is the administrative act must be directed outward.[18] The external effect requirement has caused confusion when the concept of administrative act is interpreted in concrete cases. Defining an administrative act is based on who filed the action, which has contributed to confusion regarding interpretation. For example, when the Tax Office as a lower level administrative agency files an action against the Tax Dispute Commission, it is understood as an inside dispute. Therefore, the decision of the Tax Dispute Commission does not qualify as an administrative act because an external effect is not present. Such an understanding of inside and outside has caused confusion. From this case, confusion on the division between inside effect and outside effect of administrative act was revealed in Mongolian context.

In general, if a particular administrative decision qualifies as an administrative act then it is an administrative act for every one and from every side. In other words, one particular decision cannot be an administrative act to one person and not administrative act to another. In Japanese administrative law, a decision rendered by the tax dispute commission qualifies as a relative administrative act, even with regards to the tax office and only if individual law allows, can it then be decided through objective litigation. Nevertheless, based on this case in Mongolian practice, a decision from the Tax Dispute Commission qualifies as an administrative act for the taxpayer company but not from the view point of a tax office.

18） Article 4.2 of the LPAC [Энэ хуулийн 4.1-д заасан байгууллагын зөвхөн гадагш / бусдаас/ дагаж мөрдөх буюу заавал биелүүлэх захиргааны акт нь захиргааны хэргийн шүүхэд хамаарна.] states that the Administrative Courts jurisdiction shall cover only binding, external administrative acts of bodies specified in Article 4.1 issued for public implementation.

The National Human Rights Commission (NHRC) Case[19]

Mr. B used to work as a supervisor for the International Project Implementation Team. He was fired from that position based on the demand from the National Human Rights Commission (NHRC). As a member of the NHRC, the commissioner issued a demand to Mr. B's employer, asserting that there had been an office harassment incident, in which Mr. B was involved. Article 19 paragraph 1 and 2 of the Law on the National Human Rights Commission, authorizes the Commissioner to, "issue demands and/or make recommendations during the course of exercise of his/her authorities in case of violations of human rights and freedom to relevant organizations in order to restore human rights and freedoms and eliminate the violations." Moreover, Article 17 paragraph 1.2 empowers the Commissioner to, "request the competent authorities or officials with regard to imposing administrative sanctions on officials who have violated human rights and freedoms."[20] Mr. B challenged the employer's action for firing him and filled an action against the NHRC at the administrative court. The action sought to invalidate the NHRC's demand. Mr. B asserted that his rights were violated because the NHRC's demand was allegedly the cause of his employer's decision to fire him.

The first instance court did not question plaintiff's action to bring the action related to the NHRC's demand. However, the second instance court concluded that the NHRC's demand did not qualify as an administrative act under the LPAC. The appellate court reasoned that the demand did not have the power to directly affect the plaintiff's rights because the NHRC's demand merely suggested that the employer act upon the demand. Therefore, the demand issued by the NHRC lacked the element of direct legal effect because it did not cause an alteration to the legal status of the plaintiff.

The Administrative Chamber of the Supreme Court terminated the appellate court's decision. The Court reasoned that the NHRC was a public legal entity

19）Иргэн Б ба Монгол Улсын хүний эрхийн үндэсний комиссын гишүүн П.Оюунчимэг, Мянганы сорилтын сангийн гүйцэтгэх захирлын үүрэг гүйцэтгэгч Б.Батбаатар нар [Mr.B v. Member of the National Human Rights Commission (NHRC)] Case no 040 (Mongolia|MN Улсын дээд шүүх).

20） Article 17.1.2 of the Law on the National Human Rights Commission.

which issued a demand that had legal effect. The Supreme Court explained that when the NHRC acted upon its authority to guarantee human rights prescribed in the Constitution, as well as International and domestic law, it had the power to issue a legally effective demand to affect third parties. Therefore, the demand the defendant issued in this case qualified as an administrative act.

The question in this case was whether the National Human Rights Commission's demand was an administrative act. The consequences of the issuance of the Commissioners' demand or recommendation is a central component of The Law on the National Human Rights Commission, which prescribes that entities, organizations, or officials must respond in writing on measures undertaken in regards to the demand. Such response must be issued within a week for demands, and within 30 days for recommendations. If relevant measures are taken, then the Commissioners may approach the Court or publish and report the demand or recommendation through the mass media. The demand or recommendation issued by the Commissioners will be enforced through the judicial process if it is not voluntarily obeyed by the recipient.

The Supreme Court decided this case on March 09, 2014. This recent example suggests that the scope of the concept of administrative act in Mongolia, which is derived from the original German concept, is expanding. If the action itself does not have self-imperative power, then it should not be considered an administrative act. This is because one of the decisive legal elements, in the determination of the existence of an administrative act, is to produce a final legal effect by itself not requiring additional approvals or finalization to be legally effective which binds the addressee. Yet, this case displays that even an indirect demand (i.e., one that is placed on the employer, not the employee, by the Commission) is considered an administrative act. Therefore, the concept of administrative act is clearly broadening in terms of Mongolian practice.

In this case, plaintiff could have filed an action in ordinary court against the employer's decision through civil procedure, which is more appropriate. Instead, the action was filed in the administrative court. Plaintiff requested that the administrative court review and assess the legality of the NHRC's demand, which is an expression of a legal consciousness of control type administrative procedure,

similar to the 'Procuracy protest'[21] in the soviet era. It is important to note that the dispute in this case was essentially a labor dispute, which is more appropriately decided through a civil law action. However, in Mongolian practice, plaintiff wanted to file the action in the administrative court; therefore, changing the direction of the litigation into the sphere of administrative procedure. This change of direction of procedure reveals the existence of a contemporary legal consciousness in Mongolia that still finds control type administrative procedure important and attractive in practice, despite the intention of the new statutory procedural law. It can be seen that the surplus of administrative act in this case too.

3.2.3. Conclusion on Mongolian Administrative Act

Mongolian statutory law provides a concrete definition for the concept of administrative act, so the deductive approach is difficult to use when determining administrative act in a particular case. This is due to 'path dependence'[22] which has had a very strong influence on the practice of law in Mongolia, even though there is a concrete and theoretically correct institutional definition of administrative act in statutory law. For instance, in the Registration of Immovable Property case, the fundamental problem was that generally a civil law relation framework is utilized to settle real property ownership issues, but if an administrative agency intervenes in this relation then this civil law relation changes to an administrative law relation. Consequently, the settlement procedure for this dispute changes from civil to administrative litigation. In other words, parties to the case, especially the plaintiff, sought the settlement of this dispute through administrative litigation. In contrast, in Japan, it is easy to establish ownership through civil law and the role of administration is only to publicly certify the ownership.

21）The Procuracy protest was the legal instrument to exercise the general supervision over the administrative activity.

22）"In broad terms, "path dependence" means that an outcome or decision is shaped in specific and systematic ways by the historical path leading to it." Oona A. Hathaway, "Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System" (2000): 104, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=239332 (accessed February 17, 2017).

In the case of Mongolia, in addition to the case that civil law can establish ownership, parties have always sought a guarantee from an administrative agency. This is because the intervention of an administrative agency is necessary to transfer the ownership of immoveable property; thus, such transfer requires not only certification but authorization from the relevant administrative agency. Ownership always requires an authorization type act. Civil law transactions are valid together with a relevant administrative agency's guarantee. In other words, the civil law cannot establish a one hundred percent ownership right. Because the state registration requirement is an administrative intervention in civil legal relations when a dispute occurs, it is subject to administrative litigation. In many cases, what are essentially civil law disputes transform into administrative law disputes, if an administrative act intervenes a civil law relation at the time of the dispute. Civil procedure then is superseded with administrative law procedure. This is an important characteristic that reflects main stream legal practice regarding civil and administrative procedure in Mongolia. Another notable characteristic is the surplus of administrative act which presented by the cases in this sub section.

An administrative disposition on appeal qualifies as an administrative disposition in Japanese law and practice. However, it cannot be attacked by the lower administrative agency at court which issued original administrative disposition unless individual statutory law expressly allows to do so (as an interagency action). Conversely, in Mongolian practice, it is analyzed from the point of elements of administrative act that requires outside effect therefore rejected as not qualifies as administrative act because it did not directed outside. This is because the background difference between subjective and objective litigation is not clear and not recognized in Mongolia. Traditionally, administrative litigation is control type for objective legality over administrative activity; therefore, the development of subjective right type administrative litigation is weak. The Tax Office Case, discussed above, is an example of the kind of jurisdictional confusion that has occurred among Mongolian courts due to an administrative litigation system that is currently in a transformational state.

An additional example of such transformation can be seen in a case that was

based on administrative inaction. Assume a case involved a contractual legal relation between a private person and an administrative agency. When the dispute occurred one of the parties (a private person) then appealed to a higher level agency asking for review. However, when the higher administrative agency refused to exercise administrative review, then the plaintiff filed an action in administrative court, asking for a declaration of illegality of inaction of the higher administrative agency. This is how a civil dispute changes into an administrative dispute in a post-soviet state, such as Mongolia. In another case, an NGO, "Center for Dairy Product Consumers" which focuses on rights of consumers of dairy products applied for inspection of particular milk and when relevant agency did not act on the application it files an action for illegality of inaction.[23)]

To conclude, on the one hand, recently Japanese cases show belated progress concerning the development of inductive legal theory that allows for flexible outcomes of cases that relatively similar but different when careful looking into the issue of legal effect in which administrative disposition of the case. On the other hand, in Mongolia, firstly at the institutional level the concept of administrative act is defined in almost the same way as it is in Japanese law; however, secondly, the theory on administrative act is not well developed. Therefore, the concept of administrative act, in Mongolian practice, is very confusing because there is insufficient theoretical understanding and study devoted to its development. Moreover, the application of the concept of administrative act in Mongolian administrative law practice is problematic, because it has not been properly understood.

Through the enactment of the LPAC, Mongolia introduced the traditional German theory of administrative act, but the actual practice itself did not correlate with the original theory. Nevertheless, this does not mean that the acceptance and application of legal theory for administrative act was undermined. The problem exists in process of interpretation of law and theory to the particular cases. But this is not because Mongolia lacks the theory. Rather, this is a result of path

23）"Сүүн бүтээгдэхүүн хэрэглэгчийн төв" ТББ ба Мэргэжлийн хяналтын ерөнхий газар ["Center for Dairy Product Consumers" NGO v. State Inspection Agency] Case no 0134 (Mongolia|MN Захиргааны хэргийн давж заалдах шатны шүүх).

dependence of soviet law and lack of fully understanding the new theory, and at least partly due, to the fact that Mongolia did not have enough legal practice to thoroughly develop the concept of administrative act, prior to introducing it through statutory law. Comparatively, Japan has a rich experience of law and theory concerning the concept of administrative disposition. This can be seen as it developed the theory through case law but not rush to define it in the statutory law. And an important lesson learned by Mongolia's experiences over a decade of practice is to develop and focus in the study on legal effect element of administrative acts, comparing with other administrative activities. Additionally, the role sharing between Administrative Litigation and Civil Procedure must be evaluated.

3.3. Standing

3.3.1. Mongolian Institutions on Standing

Standing Provided by the General Law

Generally speaking, under Mongolian law, standing requirements are determined based on the threshold question of whether a plaintiff has a subjective right to bring an action. Therefore, when an administrative court receives an action, the court must first examine whether the administrative act in question has direct consequences on plaintiff's subjective right. Mongolian statutory law has not in the past contained, nor does it presently adhere to, precise standing requirements. Therefore, it is problematic to say exactly what constitutes standing under Mongolian statutory law.

The question regarding who has standing to bring a legal action to challenge an administrative act needs to be analyzed from two different approaches. From the formalism approach, Article 12 of the LPAC[24] allows: (1) 'citizens',[25] and (2)

24） Захиргааны Хэрэг Хянан Шийдвэрлэх Тухай, art. 12 (2002).
25） Article 3 para 1.3 of the Law defines citizen as a citizen of Mongolia, foreign citizen and stateless person.

'legal entities',[26] to file an action against an administrative act in administrative court. Article 12 of the LPAC only answers to the question of when an action can be filed.[27] In other words, it does not regulate the substantive matter of the standing requirement. For instance, it does not specify how to determine who has standing, but only determines the timing of filing an action. Because Article 12, which is consistent with the formalism approach, is insufficient in determining substantively who has standing under Mongolian administrative law, another approach is necessary.

While formalism adheres to a (=listing) approach, the substantive (=generalization) approach is more decisive in determining whether standing is present. The substantive approach examines: (1) the existence of his/her infringed rights and legal interest (2) which are individually and concretely protected by the law. Article 1.1 of the LPAC contains core regulations on the issue of standing in administrative litigation. Further analysis based on the following Articles of the LPAC play a key role in determining the presence of standing.

Article 1.1 of the LPAC speaks to the purpose of the law as it is to regulate court procedure concerning an action filed to seek protection of one's own rights and interests. Article 3.1.7 of the LPAC specified such action as a petition submitted to the administrative court by a citizen or legal entity, for the protection of its infringed rights and legitimate interests, caused by an illegal administrative act. Thus, both Article 1 paragraph 1 and Article 3 paragraph 1.7 are the most important provisions regarding the determination of standing at the statutory law level.

---

26) However, the Law does not provide definition of "legal entity". In Civil law fixed business and non-profit legal entities in general. *Law on Property of State and Local Authority* classified state legal entities based on the property right. It says "State can establish an entity that is solely based on its own property in order to carry out its duty and pursue society's need. These state property entities can be divided by 1/government organization, public office and 2/state property industry based on the property right".

27) In addition, the LPAC provided counter-action against plaintiff by defendant (administrative agency). A counteraction by an administrative agency was allowed by the LPAC. Article 39 paragraph 1 of the LPAC allowed the defendant, which is an administrative agency, to file a counteraction during the ongoing administrative litigation against a plaintiff, but only if it is related to and within the scope of the original dispute. In 2009, the Administrative Chamber of the Supreme Court published the first edition of Commentary for the LPAC. This work is done with support of Hanns-Seidel Foundation and even some German professors took part in writing. Unofficial Commentary for LPAC 2009, (amended in 2012). p.156.

Derived from this definition of law and the adopted concepts of subjective right from German theory,[28] standing is available only to those whose rights and legal interests have been breached by the administrative act in question. Though the LPAC does not speak explicitly on the issue of subjective right, customarily, filing an action by those who are litigating on behalf of themselves, automatically establishes standing to bring a legal action in Mongolia. Article 34.1.1 of the LPAC requires a court to reject an action on the basis of a failure to pursue its own (subjective) rights and interests. In addition, Paragraph 1.5 in the same Article prohibits the court from accepting an action if it is filed by a person who has no right to file the claim. Article 34 Para 1.5 was introduced by the 2010 amendment to the LPAC.

Standing Provided by Individual Law

The LPAC can be regarded as a general legal source. Besides the LPAC, there are individual substantive laws that contain specific provisions which grant the right to file an action to the court regarding the administrative act. For instance, Article 28 paragraph 1 of the Law on Advertisement provides that a intellectual property inspector's action can be challenged in court. Moreover, some laws provided a right for administrative organs to file a claim in court. The Law on Competition, for example, gives the competition authority a right to file a claim against central and local authorities regarding their decisions affecting fair competition and protection of consumer rights matters. A similar provision is included in the Law on the Protection of Consumer Rights.

If the action is objective litigation, not subjective litigation, then standing should not be an issue. However, this creates confusion in Mongolian legal practice regading standing and objective litigation. It is uncertain if the individual law grants the right to file an action. The requirements for standing, provided by the LPAC, still need to be met by the plaintiff. In this regard, the relationship concerning the right to submit an action between individual law and the LPAC, reveals that the confusion is based on a lack of understanding of the categorization of litigation as objective and subjective.

28） In addition, Germany does not have the provision of standing in Code of Administrative Court Procedure. Case law decide standing.

Such a categorization of objective and subjective litigation is not recognized in Mongolian law and theory, which causes great confusion. If the action is subjective litigation, the decisive point for the presence of standing is the presence of his/her infringed rights and legal interests which are protected by specific laws individually and concretely. Thus, this must be checked thoroughly in relation to the possible adverse impact of the administrative act in question and plaintiff's right that is protected by the law. However, if the right to file an action is given by the specific law, it is more likely going to be objective litigation. Therefore, the question of standing is no longer at issue. Moreover, the Commentary[29] on the LPAC (later amended in 2012) stated that the concept of subjective right is the limitation on the subjects who can file a law suit at administrative court, and that a citizen or a legal entity can file a law suit only on behalf of itself when they believe that their legal right is breached by administrative action.

Conclusion on Standing

In general statutory law, Article 1.1, and Article 3.1.7 of the LPAC indirectly defines the standing requirements from the viewpoint of subjective right. Analyzed logically from these dispersed provisions of the LPAC, the concept of standing can be ascertained in institutional level of Mongolian administrative litigation. The concept of a subjective right is introduced when filing an action, and it is only allowed for those who are litigating on behalf of their right and interest.

However, beside the LPAC there are individual substantive laws that contain specific provisions which grant the right to file an action to the court regarding an administrative act. Therefore, in practice, this expresses the confusion that considers standing for objective litigation. The relationship of the right to submit an action under various individual laws and under the LPAC, reveals the confusion based on the standing requirement from the lack of understandings of the categorization of litigation as objective and subjective.

The LPAC did not entirely depend only on actions related with an administrative act.[30] In comparison, an Article 4 type action in Japanese law and

29） See footnote 27.
30） For instance, initial Article 32.5.4 before the amendment in 2010 enabled to file an

an action related to article 70.2.2 of the LPAC[31] are both derived from the German model.[32] However, in the LPAC, there is no distinctive characteristics set worth in relation to action for revocation and action for declaration of existence or non-existence of legal relationship as the standing requirement. Public law related action or anything equivalent to it was not included in Article 32.5 (before 2010 amendment), but Article 70.2.2 (types of judgment) specified that the court could grant a declaratory judgment concerning the existence or non-existence of a legal relationship.

According to the research data which focused on cases decided by the Capital City Administrative Court[33] between 2004 to the first half of 2007, among all 284 judgments which were in favor of plaintiff, there were only 4 cases[34] decided according to Article 70.2.2 (judgment on declaration of existence or non-existence of legal relation) of the LPAC. Another article[35] confirms that between 2004 and 2010 there were only 5 cases decided in accordance with Article 70.2.2 of the LPAC. It is true that, to date, there is no precise theoretical study and practical experience regarding actions for declaration concerning the existence or non-existence of a legal relationship.[36] Later practice reveals that some cases[37] have

action for declaration of illegality of inaction. This action for illegality of inaction was not specifically required to be filed against administrative act.

31）Because there were no concrete provisions on types of action in the LPAC, it is only feasible to determine the types of actions in relation to the types of judgments prescribed in the Article 70.2 of the LPAC. [70.2.2.эрх зүйн харилцаа байгаа эсэхийг тогтоож хүлээн зөвшөөрөх]

32）Verwaltungsgerichtsordnung (VwGO), 686 § 43 (Federal Law Gazette 1991).

33）The Capital City Administrative Court is one of the 21 first instance administrative courts but the busiest court in terms of case numbers. Statistics show that this court decided 50.1 percent of all cases received in first instance courts between 2004 and 2013. Overview of the cases decided in administrative courts 2004-2014, The Supreme Court of Mongolia, 2014, p11.

34）Dondov, "Захиргааны хууль бус шийдвэрийн улмаас хохирсон хохирогчийн эрхийн хэрэгжилтийн төлөв байдал," 78.

35）Atartsetseg Lkhundev, "Selected issues on litigation of an action declaration of existence or non-existence of legal relationship," *The Judicial Power* 2 (2014): 27.

36）Tsogt Tsend, "Монгол Улсын захиргааны хэргийн шүүхийн эрх зүйн орчин, дүн шинжилгээ" [Legal Environment and Analysis of Administrative Court in Mongolia], *The National Legal Institute of Mongolia Law Review* 2016/03 (58) (2016).

37）"Түүчээ тэрэг" ХХК ба Ашигт малтмалын газрын Кадастрын хэлтэс [Tuuchee tereg Company v. Mineral Authority] Case no 0380 (Mongolia|MN Захиргааны хэргийн анхан шатны 20 дугаар шүүх). "Эм Си Си Си корпорэйшн" ХХК ба Барилга, хот байгуулалтын яам болон Барилгын хөгжлийн төв Case no 448 (Mongolia|MN

been decided through actions filed with the court for declaration of existence or non-existence of legal relationship.

In comparison, while Article 10 Para (1) of the Japanese ACLA is not a condition concerning an initial requirement of litigation, it restricts filing for a revocation of administrative disposition, by explicitly prohibiting plaintiffs from initiating litigation based on an alleged breach of law which is irrelevant to their legal interests.[38] This means that even in the case where the law is breached, if the person filing the action does not specify his/her adversely affected legal interest or establish the feasible adverse effect in connection with his/her legal interest, the action is not allowed on the grounds of lack of standing for revocation of administrative disposition. The next section compares and analyzes Japanese and Mongolian practice from the viewpoint of the above mentioned different characteristics among these two jurisdictions.

3.3.2. Mongolian Practice on Standing

In practice, the question of whether a party has standing to assert a claim in administrative court in Mongolia is closely related to the "subjective right"[39] issue which is derived from the German concept of legal standing.[40),41)] Mongolian administrative court judges analyze every action in terms of whether there is direct subjective (personal/individual) impact on the person or entity filing the action. In other words, this effect must be personal to the person who brought the action and the injury/affect must be inseparable from the plaintiff itself (concept of subjective right). However, in the past, there was no definition of standing in statutory law, nor was there a generally agreed or understood definition of what constituted the standing requirement. The general concept has been understood to some degree,

Захиргааны хэргийн давж заалдах шатны шүүх).

38）Even though it is not the initial requirement for standing but when deciding merit it may be used for dismissal.

39）Commentary for Law on Procedure for Administrative Cases 2009, (amended in 2012). Page 18 (21). In Mongolian "*Субьектив эрх*", see footnote 426.

40）Art. 42(2) Verwaltungsverfahrensgesetz [Administrative Procedure Act], 718 (Federal Law Gazette 1976).

41）Verwaltungsgerichtsordnung (VwGO), 686 (Federal Law Gazette 1991).

but when it comes to concrete cases, there were various opinions concerning its meaning among lawyers and judges. The following are the relevant Mongolian cases on this issue.

Bayan Mongol Apartment Case[42)]

A person who worked as the Head of the State Building Inspection Commission, responsible for determining whether new buildings meet the requirements for permanent usage, filed an action at the administrative court against decisions of the Capital City Governor, City Council, and City Land Office. The plaintiff, who worked as a head of the State Building Inspection Commission for Bayan Mongol Apartment Complex, alleged that the Governor's decision to grant a land license for the construction of an apartment complex breached laws and regulations, when the license was granted for land which was within a restricted area for special protection purposes according to the General Plan for Ulaanbaatar City.

In accordance with the Governor's decision for land usage, for the apartment complex that was planned to be built on this site, the City Council issued a decision which ordered 6 water-sources to be transferred to different locations which were originally in this area. The person who worked as the head of the State Building Inspection Commission for this apartment complex believed that the relocation of the water-source would cause serious harm to the public interest. The plaintiff claimed that because he had an official duty, as a person who was appointed as the head of the State Building Inspection Commission for this particular building, he was compelled to file an action seeking a correction of administrative acts conducted by an agency, which he alleged, did not conform to the law.

The court decided that the LPAC only allows an action to be brought by a person who asserts personal or individual injury from an administrative act. Therefore, the court could not accept plaintiff's action based on Article 3 Paragraph 1.7 of the LPAC, which defines "action" as "a petition submitted to the

42）О.Лхагвадоржийн нэхэмжлэлтэй Баянмонгол хороололын газрын зөвшөөрөлтэй холбоотой хэрэг [O.Lkhagvadorj v. Governor of Ulaanbaatar city, City Land Office, and City Council] (Mongolia|MN Нийслэлийн захиргааны хэргийн шүүх).

administrative court by a citizen or legal entity for the protection of its infringed rights and legitimate interests caused by an illegal administrative act." The court reasoned that an individual can only file an action in order to get protection from the wrongful administrative act if the act breached his/her rights. In other words, a person who has been appointed to uphold his/her duty as the head of the State Inspection Commission cannot file an action in an official capacity in furtherance of his/her duty, in relation to a particular building, but must only file if his/her own rights and legal interest have been affected. Therefore, it is not possible for the plaintiff in this case to file an action on the behalf of the public. In the present case, the action was filled by the plaintiff in his authority as the Head of the State Inspection Commission, thus the court denied the plaintiff's action. This decision is consistent with Article 34 paragraph 1.1 and 1.5 of the LPAC which provides that if the action does not belong to the jurisdiction of the administrative litigation/ court and the action is filed an individual who does not have the right to file the action, the action will not be accepted.

The action in this case was filed by a person but not in the pursuance of his/her rights and interests. As was explained in the action, the legal concern or interest in this claim was a correction of administrative acts conducted by an agency which allegedly did not conform to the law. Therefore, the plaintiff's goal in initiating this litigation was not consistent with the purpose of administrative litigation under Mongolian law. The person who filed the action failed to present a concrete link between the administrative act and an adverse effect upon the plaintiff's individual rights and interests. Instead, the action sought to eliminate an error in administrative activity which contradicted the law for the protection of rights and interests of the general public.

The answer to the question of why the head of a governmental commission filed an action in this case presents a fundamental phenomenon in Mongolian administrative law. It reveals a failure in terms of a correct understanding of who has standing under the new administrative law in Mongolia. For instance, in this case plaintiff's legal consciousness is very clear as it seeks toward control type litigation, which was a core instrument during the soviet era, and one which remains favorable. Such favorability is evident in this case. Even though the

issuance of the land license was out of plaintiff's official competence, by filing an action to the court, plaintiff apparently attempted to signal the alleged illegality of the administrative activity. Because of the persistence of path dependence from the soviet experience, even after Mongolia's statehood change from socialist to post-socialist status, it is likely that the plaintiff believed that he had a duty to always inform relevant government officials or to the administrative court about illegality concerning administrative activity.

Land License for Korean Citizen Case[43)]

A Korean citizen purchased a 428 square meter piece of immovable property (a building) from a Mongolian citizen. The property was located within a 1003 square meter parcel of land that the Mongolian citizen had a right of possession. The new owner of the property, a Korean citizen, applied to the relevant agency (the City Land Office) for a transfer of usage rights of the 1003 square meter land for the purpose of operating a shop business. On July 21, 2009, the Governor of Capital City issued a decree and granted a license for land usage appertaining to only 428 square meters (equal only to the size of the property) of the originally requested 1003 square meter parcel of land. The Korean citizen then filed an action for the revocation of this decree and an action for seeking a declaration concerning the size of his land usage license with regards to the original 1003 square meters. The Korean citizen claimed that the decree issued by the Governor of Capital City infringed his rights because it reduced the size of land originally agreed upon through a land transfer contract.

The question that the court faced was whether a foreign citizen had standing to file an action seeking protection against an administrative agency which issued a land usage license. The court denied the action, reasoning that according to Article 3.1.3 and 3.1.7 of the LPAC, it is possible to claim only the rights that have been specifically provided by statutory laws. The court further explained that, under the Law on Land, a foreign citizen cannot have a right to own or possess land except

43） Land License for Korean Citizen Case Capital city administrative court, 585 decree on May 10, 2010 (Нийслэлийн Захиргааны хэргийн шүүхийн шүүгчийн 2010 оны 5 дугаар сарын 10-ны өдрийн 585 дугаар захирамж) [2010] Case no 585 (Mongolia|MN Нийслэлийн захргааны хэргийн шүүх, May 10, 2010).

a special type of right referred to as a 'usage right.' Moreover, Article 44 paragraph 4 of the Law on Land provides that Governors may issue a land usage license for foreign citizens and stateless persons who are permanently residing in Mongolia (for more than 183 days) through auctions but only for the purpose of household needs. The court further noted, in this case, the land usage license issued for the Korean citizen, was for conducting a business which is not in accordance with the Law on Land.

In other words, land usage licenses for foreign citizen cannot be issued for a business activity but only a household purpose. Therefore, a right that is not provided by statutory law cannot be infringed. Consequently, the court found that the Korean citizen, the person who brought this action, did not have standing to file an action in this matter. In its decision, the following points were made clear by the court. The whole purpose of administrative litigation is to determine whether there is an infringement of the plaintiff's right in relation to a specific administrative act. If the infringement of a right is asserted, but that right is not provided by law, then there cannot be an infringement. Thus, there is no need to initiate litigation based on an action that is asserting a right which is not provided by the law.

In this case, the core reasoning of the denial of the action is based on the plaintiff's lack of standing because the court reasoned that the right which the plaintiff believed to be infringed by agency action is not provided by law or does not exist. However, this case certainly speaks to the threshold issue of whether a person can file an action, which is a procedural issue, when a right is not expressly granted by statutory law. Conversely, an important point that the court needed to acknowledge was that the Korean citizen in this case was the addressee of the administrative act. Therefore, based on the general concept of standing, the Korean citizen should have had no problem satisfying the standing requirements.

In this case the court conflated a subjective law matter with a procedural law matter and this played a significant role in the court's finding that plaintiff lacked standing. A condition issue, such as standing for administrative litigation, is an entrance level problem not a merit problem. In other words, standing is a procedural law issue not a substantive law matter. A lack of this kind of legal

distinction is problematic. Unfortunately, this case was decided before the October 29, 2010 Amendment to Article 34 paragraph 1.5 of the LPAC[44] which added a requirement related to the right to file an action. In conjunction with the 2010 amendment, it is important to recognize that this may signify a change in the right direction for Mongolian administrative law concerning the issue of standing. With the passage of such an amendment, administrative law judges are more likely to look to relevant laws and regulations in determining whether there is any protection available concerning plaintiff's rights. Therefore, this is an important step forward. It diverges from the old approach of almost no requirements for determining standing, which means the focus is primarily on legality; however, substantially it depends on the how the court chooses to interpret standing. Compared to the development of the standing requirement in Japan, the 2010 amendment is analogous to the ACLA before the 2004 amendment, which was centered to seek exclusively a legal interest in provisions of laws and regulations in order to determine standing.

Borderless Rivers NGO Case[45]

Borderless Rivers is a non-governmental organization (hereinafter the NGO) registered in Mongolia. The NGO filed an action at the administrative court seeking a declaration of nullity of a decision issued on August 12, 2014 by the Citizenship and Naturalization Agency (the Immigration Agency) which prohibited Mr. Yevgeny Alexievich Simonov (hereinafter Simonov), a board member of the organization, from entering Mongolia for the duration of a 10-year period. The NGO sought to reinstate Simonov's right of re-entry into Mongolia. Simonov is a citizen of the Russian Federation and visits Mongolia for the purpose of environmental policy related work. Simonov was one of the founding members of the NGO in 2011. On the way back from the regular organization meeting in Ulaanbaatar on August 12, 2014, upon leaving Mongolia from the Zamiin-Uud

44） Added new text in Article 34.1.5, it states as 'have no right to file an action.' [34 дүгээр зүйлийн 34.1.5 дахь заалтын "бүрэн эрхгүй" гэсний дараа "болон нэхэмжлэл гаргах эрхгүй" гэж нэмж өөрчилсөн.]

45） "Хил хязгааргүй гол мөрөн" ТББ -ын нэхэмжлэлтэй Иргэний харьяалал, шилжилт хөдөлгөөний ерөнхий газарт холбогдох хэрэг [Borderless Rivers NGO case] [2014] Case no 446 (Mongolia|MN Захиргааны хэргийн давж заалдах шатны шүүх, November 5, 2014).

border point, an officer of the Citizenship and Naturalization Agency made a decision to prohibit Simonov's reentry for 10 years and stamped a prohibition notice in his passport without his knowledge. During the preliminary procedure, the higher administrative agency reasoned that the decision had been issued according to Article 37 paragraph 1.10 of the Law on Legal Status of Foreign Nationals which states, "That deportation may be used when a relevant agency determines that a person is deemed to be harmful to the national security." The higher administrative agency upheld the initial decision to prohibit Simonov from reentering the country for 10 years.

The first instance administrative court declined to accept the action pursuant to Article 34 paragraph 1.5 of the LPAC. The court reasoned that the NGO had no right to file an action on behalf of Simonov; therefore, the NGO had no standing for this dispute concerning the decision of the Citizenship and Naturalization Agency that prohibited Simonov from reentry for 10 years. On appeal, the intermediate administrative court rescinded the first instance court's procedural judgment. The appellate court ruled that lower court erred when determining what the plaintiff sought to achieve by filing this claim. The appellate court noted that if the NGO argued that it filed this action on behalf of Simonov then the first instance court's judgment was correct.

However, the court reasoned that the NGO could file an action of declaration of nullity, of the administrative act which prohibited reentry to one of its board members, because without this member's active involvement the NGO's regular operation was impaired. Since plaintiff's claim was based on the fact that Simonov was an active and important member of the NGO and if he was prohibited from entering Mongolia for 10 years, the NGO would be impaired in carrying out its regular activity. Based on the assertion that Simonov's involvement was very important for the NGO's regular activity and by the decision to prohibit Simonov's reentry, the NGO's own right and interest would be harmed, the appeals court decided that the NGO could file an action against the Citizenship and Naturalization Agency's decision to prohibit Mr. Simonov's reentry for 10 years on behalf of NGO itself.

In this case, if Simonov filed an action, because he is the addressee of the

administrative act, there would be no problem concerning his standing to file the action. By the traditional approach, the NGO has no standing on behalf of Simonov. Examining this case from a Japanese administrative law perspective, specifically Article 9 paragraph 2 of the ACLA (amendment), the court would be required to look for a purpose of not only the law that gives a basis for the administrative act but also relevant laws which share common objectives. However, in the case of the Mongolian Passport Control Law (which provided the legal basis for the administrative decision to prohibit Simonov's reentry) and the NGO, the status of this law is not relevant. Certainly, an NGO has a right to function or normally operate though, but the Passport Control Law or the Law on Legal Status of Foreign Nationals does not contain provisions to protect an NGO's right. The decision to prohibit reentry for Simonov affects the normal functioning of the NGO, but this is a de facto interest. Because the purpose of the Law on Legal Status of Foreign Nationals does not contain relevant provisions regarding the functioning of the NGO and it does not protect the NGO's interest.

It is generally understood in Japan that the chance of de facto damage and thus establishing the required standing for a third party to bring a legal claim is very small. In recent Japanese cases, this is because only substantial threat to: life, health, the environment, and property, can be accepted as basis for standing for a person who is not an addressee. Conversely, in Mongolian practice, from this case, it can be understood that standing can be recognized easily when there is a de facto effect to a third party. A notable characteristic in this case was that the court (judge) allowed an action that was filed on behalf of a weak individual to protect the law. It expresses the existence of a characteristic prolonged from the experience of control type administrative litigation from the cause of path dependence.

"Owners of the Khuvsgul Lake" NGO Case[46)]

"Owners of Khuvsgul Lake", an environmental NGO with some local herdsman (Myagmarchuluun, Bazarragchaa, Davaajav, Davaachuluun), collectively challenged the legality of the license for phosphorus in the Alag-Erdene and Tunel

46）Owners of the Khuvsgul Lake NGO case [2013] Case no 117 (Mongolia|MN Улсын дээд шүүх, June 24, 2013).

counties in Khuvsgul province. Plaintiff herdsmen were residents of Burentogtokh County in the same province and the disputed mining licenses had been issued for the company named "Talst Margad" which permitted it to mine in the counties Alag-Erdene & Tunel where the plaintiffs did not reside. The Plaintiffs, including the herdsmen and those who lived in the Alag-Erdene and Tunel counties in Khuvsgul province, asserted that their rights to live in a healthy and safe environment would be breached if Talst Margad were allowed to explore and mine phosphorus near in Khuvsgul Lake.

The first and second instance courts dismissed the action based on Article 34.1.5 of the LPAC which says "if claim was submitted by the person [···] who has no right to file an action." The court in the lower instance ruled plaintiffs were not living in and no other business was conducted in the counties in which the exploration license was issued to the company. In other words, there was no foreseeable adverse effect for the plaintiffs, thus they had no standing to file an action against the granting of the exploration and mining licenses in Alag-Erdene & Tunel Counties. However, the Supreme Court reversed that decision and revoked the exploration and mining licenses by reasoning that the NGO was meant to protect the local people's right to live in a safe environment and to be protected by environmental disaster. Therefore, the environmental NGO had standing. Additionally, the Court stated that citizens who brought this action were guaranteed the right to live in a healthy and safe environment, and to be protected against environmental pollution and ecological imbalance by the Mongolian Constitution.

In this case, the Supreme Court did not give a precise explanation concerning exactly when the plaintiffs had acquired standing to sue. The court ruled that 'by the wrongful decision of the administration issuing the permission to explore and mine in Burenkhaan area it is proven by the evidence in the case that plaintiffs' right and lawful interest has been breached." Thus, the Court opinion does not speak to the issue of whether or not the plaintiffs have standing, instead it seems to assume that they had standing and goes on describing the breach of right.

The Law on Environmental Protection was amended on July 08, 2010 to allow environmental NGOs to file suit for recovery and restoration of environmental

damage against those responsible for such damage.[47] On its face, the amendment does not expressly allow a legal cause of action to be asserted against administrative acts, but nevertheless some environmental NGO's have tried to bring such claims in the administrative courts. From this case, statutory law only allowed damage claim but action for revocation of license was accepted based on this damage related provision.

In addition, to the extent that the Court did not provide enough reasoning for its acceptance of the plaintiffs' action, from the viewpoint of standing, it may be interpreted as an expression of the existence of control type litigation. In other words, the citizens and the NGO act as a signal of illegality of administrative activity. Otherwise, the Court must provide additional reasoning for its decision. It is important to make an analysis of the effect of an administrative act in order to determine whether a party has standing, but it should not be mechanically decided. For instance, standing should not be solely decided by what county plaintiffs live in and whether it is the same county in which the mining license was issued (reasoning in lower court's judgment).

In objective litigation, there is no limitation for the area of effect of administrative act, whereas, in subjective litigation, assessment of influence of administrative act needs to me made carefully. For instance in this case, the effect of a mining license can be strong in the center of relevant area in terms of environmental affect. However, if the plaintiffs reside in the area, then it would be important to determine whether they have standing to file an action. If the influence is weak then the chance of standing is weak. Nevertheless, such an analysis was not made in this case in Mongolian context.

3.3.3. Conclusion on Standing

In Mongolian practice, it is not difficult to obtain standing, for addressees and third parties, for several reasons. Because control type procedure is still common in Mongolia, a deductive approach is generally not utilized, even though the

47） Article 32.1.1 of the Law on Environmental Protection.

standing requirement can be extracted from the purpose of statutory law. In the past, the Administrative Chamber of the Supreme Court[48] was not able to address every procedural question because of its large case load and given the fact that it operates[49] simultaneously as both an intermediate court of appeals[50] and as the court of last resort. However, in 2011 since the establishment of the intermediate administrative court, it focuses on procedural matters including standing questions.

Because of the lack of understanding of the 'categorization'[51] of objective and subjective litigation, there is confusion concerning the requirement of standing for objective litigation cases in practice. In addition to the LPAC, as a general legal source for standing questions, there are also individual substantive laws that contain specific provisions which allow the filing of actions. There is a controversy among lawyers on the question of whether standing requirements

48）According to Article 90 Para 1 of the Law on Procedure for Administrative Cases, when the court of first instance dismisses action on lack of standing or jurisdiction /for example act in the claim does not qualify as an administrative act/ its decision is only appealable to the intermediate appellate court level not further appeal to the Supreme Court allowed. Therefore, the intermediate court is an important player in determining the initial requirements of litigation.

The Supreme Court is only able to have a say in initial requirements issue when the case gets to the Supreme Court. It means that only in cases that two lower courts agreed plaintiff has standing and rendered judgment on the merit then Supreme Court can decide on the standing matter. For example, a dispute over standing gets to the Supreme Court only when first instance administrative court agreed the plaintiff had a standing and ruled on merit but on the appeal intermediate appellate court decided that the plaintiff lacks standing and dismissed the action according to Article 88 Para 1.3 of the Law on Procedure for Administrative Cases. The Supreme Court has a jurisdiction over this decision as of every other judgment as set forth in Article 87 and 88 of the Law on Procedure for Administrative Cases rendered by intermediate court. Since intermediate appellate court, namely the Administrative Court of Appeals is single court and deals all appeals from every first instance courts it became resource for unified practice applying procedural laws not with limited but including the standing question.

49）Article 15 Para 2 of the Law on Procedure for Administrative Cases before amendment on October 29, 2010.

50）On December 31, 2010 the Parliament passed the law that created an intermediate appellate court which has jurisdiction over all appeals from all first instance administrative courts. The intermediate appellate court which has its seat in Ulaanbaatar begun its operation on April 1st, 2011. From then[50] Administrative Chamber of the Supreme Court began operating as only a last instance court.

51）Verwaltungsgerichtsordnung (VwGO), 686, art. 42 (2) (Federal Law Gazette 1991). Unless otherwise provided by law—This language shows the German recognition of objective litigation.

provided by the LPAC also apply to the filing of actions under such individual substantive laws. For instance, Article 15.1.7 of the Competition law provided a provision that enabled the agency for Fair Competition and Consumer Protection to file an action against another administrative agency that allegedly breached the competition law. Based on this provision, the agency for Fair Competition and Consumer Protection filed a series of actions against the Ulaanbaatar City.[52), 53)] In a controversial case, the deputy prime minister as plaintiff filed an action against the State Council for Civil Service[54)] (which is an independent agency), and the administrative court accepted the action because the Law on Civil Service specifically provided right to file an action for this matter.[55)] Moreover, as discussed in this sestion, two cases that NGO's filed were accepted as they have standing represents the easiness of obtaining standing caused by the history of supervision of legality.

Regarding article 70.2.2 of the LPAC, an action for the declaration of the existence or non-existence of a legal relationship[56)] is similar to an Article 4 type action in Japan. An important point to note is that in Mongolian legal practice, legal relation (public law-related) actions are very rare. There is almost no practice for this type of case. Accordingly, this reveals that Mongolian practice is mostly centered on the administrative act, similar to Japanese practice in the 1960s when Article 4 type actions were not utilized. Because of the transplantation of the

52）Шударга өрсөлдөөн, хэрэглэгчийн төлөө газрын нэхэмжлэлтэй НИТХ-ын тэргүүлэгчдэд холбогдох хэрэг [Fair Competition and Consumer Protection Agency v. Ulaanbaatar City Council] [2015] Case no 2390 (Mongolia|MN Захиргааны хэргийн анхан шатны 20 дугаар шүүх, April 8, 2015).

53）Шударга өрсөлдөөн, хэрэглэгчийн төлөө газрын нэхэмжлэлтэй Нийслэлийн засаг даргад холбогдох хэрэг [Fair Competition and Consumer Protection Agency v. Ulaanbaatar City Mayor] [2015] Case no 2409 (Mongolia|MN Захиргааны хэргийн анхан шатны 20 дугаар шүүх, April 9, 2015).

54）Тэргүүн шадар сайд Н.Алтанхуягын нэхэмжлэлтэй Төрийн албаны зөвлөлд холбогдох хэрэг [Deputy Prime Minister v. The State Council for Civil Service] [2011] Case no 338 (Mongolia|MN Нийслэлийн захиргааны хэргийн шүүх, September 1, 2011).

55）Article 39.7 of the Law on Civil Service. [Төрийн албаны төв байгууллагын шийдвэрийг эс зөвшөөрсөн тал уг шийдвэр гарснаас хойш 30 хоногийн дотор шүүхэд гомдол гаргаж болно.]

56）Захиргааны Хэрэг Хянан Шийдвэрлэх Тухай, art. 70.2.2 (2002). [70.2.2.эрх зүйн харилцаа байгаа эсэхийг тогтоож хүлээн зөвшөөрөх]

concept of administrative act and by the adoption of LPAC in 2002, judicial review type actions have dominated in practice which is originally based on the theory of Initial Judgment.

3.4. Objective Interest of Litigation

At the institutional level, especially under the LPAC, the concept of objective interest of litigation cannot be outlined. The theory on the subject is not clear. Since the soviet period, there was no need to pay attention to the concept of objective interest of litigation because the purpose of administrative adjudication was not to provide a remedy for an individual. Instead, it pursued objective legality of administrative activity. This means, even though there is no legal effect resulting from an administrative act or no remedy available for the plaintiff, a procedure can be prolonged in order to rule on the legality of an administrative decision.

Accordingly, the concept of objective interest of litigation cannot be presented in practice as well. However, in practice, administrative courts tend to dismiss an action if the challenged administrative act is no longer effective. The following hypothetical case is instructive on this point. Since 1946, the name of the central square in Ulaanbaatar was Sukhbaatar Square.[57] In 2013, the Ulaanbaatar city council changed the name of the square to Chinggis Khaan Square. Following this decision, a series of law suits were filled in administrative court by the opposing political party members in the parliament and the city council,[58] a citizen, and lastly descendants of Sukhbaatar. However, most of those actions were denied because they failed to show a direct harm to their subjective right and interest. In other words, they lacked standing. Only the action brought by Sukhbaatar's descendants was accepted as a valid action, but the case was later dismissed on

57）Named after Sukhbaatar Damdin person who emerged as revolutionary hero during 1920s.

58）Capital City Administrative Court Decision Decree 887 dated on February 4, 2015 [Нийслэлийн захиргааны хэргийн шүүхийн 2015 оны 2 р сарын 04-ны 887 шүүгчийн захирамж]

the ground of defendant's agreement to accept the action.[59] In 2016, a new city council once again re-named the square to the original name, Sukhbaatar Square. If the legal proceedings in this case continued until the new city council renamed the square, it could serve as an informative example of dismissal based on the lack of objective interest of litigation. This is because Sukhbaatar's descendants would not be able to recover because the legal effect of the administrative disposition, renaming the city square, would no longer be effective.

Under Article 9 paragraph 1 of the ACLA, there is an additional requirement only for Judicial Review type actions. Article 9 paragraph 1 states that an action for revocation of an administrative disposition may be filed by, "... a person who has legal interest to be recovered by revoking the original administrative disposition ... even after it has lost its effect due to the expiration of a certain period or for other reasons." Thus, it allows subjective litigation to be initiated in cases where the administrative disposition has lost its effect, but only when the plaintiff has a legal interest to be recovered by revoking the said administrative disposition. For example, it is only permitted when an administrative disposition has lost its legal effect due to the expiration of a certain amount of time. In this case, the plaintiff has the right to assert a claim monetary damages.

On the other hand, in the Mongolian instance, at the theoretical, institutional and practical level, this requirement is not clearly recognized or acknowledged. This is because of the long history of control type administrative procedure which only focuses on objective legality of administrative activity. The purpose of control type administrative litigation is not to provide a remedy based on individual rights; thus, there was no need to specifically study or develop the concept of objective interest of litigation. However, recently and in some cases, the court's tendency has been to discontinue procedure if the disputed administrative act is no longer effective.

59）З.Хайдарын нэхэмжлэлтэй, Нийслэлийн Иргэдийн Төлөөлөгчдийн Хурлын дарга, Тэргүүлэгчид холбогдох [Khaidar v. Ulaanbaatar City Council] [2016] Case no 573 (Mongolia|MN Нийслэлийн захиргааны хэргийн шүүх, August 16, 2016).

3.5. Conclusion

Preconditions for judicial review type administrative litigation consists of three main concepts: (1) administrative disposition (act), (2) standing (3) and objective interest of litigation in Japanese administrative law. The administrative act concept is clearly established in Mongolia, even if it is not the same as the original concept derived from Germany, it is one variety. The latter two concepts, standing and objective interest of litigation, are not fully understood at the institutional and practical level in the Mongolian context. In Japanese practice, there are strict requirements for qualifying as an administrative disposition at the entrance level, including, establishing standing and a showing of an objective interest of litigation. On the other hand, Mongolian practice often has no strict requirements because of the influence of path dependence. The Mongolian administrative court still acts as a protector of objective legality. Consequently, though the procedural law does not allow such a practice, sometimes the court accepts objective litigation.

Compared to Japan, Mongolia did not recognize the categorization of litigation as objective and subjective (until very recent acknowledgment in law, in 2016). In addition, no distinction has been acknowledged between judicial review type actions and public law related actions in theory, institution, and at the practice level in Mongolia. Paradigm change from control type to remedy type has been somewhat achieved at the institutional level in the sphere of administrative litigation; however, legal thinking and practice in Mongolia is difficult to change, as it endeavors to transition toward a remedy type litigation, because of path dependence. There was and still is a gap between law and practice in terms of understanding the purpose of administrative litigation. Therefore, a careful analysis of the Mongolian cases reveals that practice, in substance, is often the same as control type procedure that existed during pre-transition period. Path dependence strongly seeks to maintain objective legality; therefore, civil dispute cases often easily change into administrative dispute cases. In that way, it can initiate a control type administrative litigation even after constitutional and statutory law level Mongolia made transition to remedy type litigation. In

conclusion, paradigm change from control to remedy was not achieved fully in Mongolia in the contemporary situation.

Erratum for Development of Administrative Litigation in Mongolia (1), Issue 275

Page 258, Line27

Incorrect:“the LPAC introduced an inclusive enumeration approach”

Correct: “the LPAC introduced an exclusive enumeration approach”