別紙 4

報告番号	※　　　　　第　　　　　号

主　論　文　の　要　旨

論文題目	Development of Administrative Litigation in Mongolia: From Administrative Control to Court Remedy? （モンゴルにおける行政訴訟の発展—行政監督から司法的救済へ？）
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論　文　内　容　の　要　旨

Abstract

In the area of administrative law, it is essential to determine the role of the judiciary as a protector of rights and interests granted by the Constitution, while at the same time not hindering the genuine tasks of the executive arm of the government to function in the public law sphere. To be specific, this research examined, within the Mongolian context, the question of why it is important to differentiate between the judiciary as a tool of control of the executive branch of government and as an instrument for the protection of rights and interests in relation to the citizens and the state. The concept of judicial review in relation to the initial conditions required for litigation in administrative law is a new and unchallenged area of law and practice in Mongolia in terms of theoretical roots and background.

From a structural point of view, this thesis examines the paradigm change of administrative litigation in Mongolia from historical, comparative, and

typological perspectives in each of its five chapters. Thus, a comparative typological analysis is made in three consecutive phases (from control, to remedy, up to the end of paradigm change). First, chapters one and two examine Mongolian administrative litigation from its initial status, as a Control Type administrative dispute settlement system, moving toward a Remedy Type system, which includes a historical and comparative study of French, German and Japanese models of administrative litigation. In next phase, chapter three and four scrutinized in detail based on the findings of previous chapters (first attempt of reform) to determine paradigm change in Mongolian administrative litigation, comparatively with Japanese institution and practice. Chapter five includes additional analysis of recent administrative law developments, which constitutes the (second attempt) to reform Mongolian administrative law. The final section of chapter five asks if the paradigm in Mongolian administrative litigation is complete from a typological perspective, transforming from Administrative Control to Court Remedy.

Concerning the argument presented in the thesis, there has been no prior research conducted that responds to the question of the status of Mongolian administrative litigation in terms of a comparative typology analysis: control type or remedy type, as well as a historical perspective in relation to the present paradigm and its tendency. Until there is an understanding of how and under what circumstances and influence Mongolian administrative litigation began and eventually formed its present status, it would be impossible to determine the exact cause of setbacks in development and suggest further improvement for administrative litigation in Mongolia. Therefore, the intended aim of the current

research, which is consistent with such an understanding, is to advance the development of administrative litigation, specifically contributing to paradigm change that facilitates greater protection of individual rights and legal interests through judicial review.

In relation to the first part of the research question for this thesis, particularly concerning the phrase "From Administrative Control," it must be noted, from the viewpoint of administrative litigation and history, that soviet administrative dispute settlement is one variety of control type (administrative control). Thus, in Mongolia the control type administrative settlement procedure was established. In other words, providing a remedy based on individual rights was not the purpose of administrative litigation in Mongolia, from the 1920s up to the 1990s. This was a non-contentious (non-litigation) type procedure; in other words, it was not an adversarial system. With regards to the second part of the research question, from Administrative Control "to Court Remedy," even though the law changed to an adversarial (litigation) type of procedure, in actual practice the control type of procedure is often utilized which reveals that the paradigm change is formal but not substantial. 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.

Finally, is the paradigm change complete? By the enactment of the GAL and the ACPL, Mongolian administrative law recognizes the categorization of litigation; thus, it now distinguishes between the different purposes of different

types of litigation. Based on this step, it will serve as a catalyst to further strengthen subjective litigation by developing preconditions such as the concept of administrative act and standing. The administrative law reforms in 2016 are another attempt to change to remedy type administrative litigation as a continuum of the first attempt that took place in the early 2000s. The Mongolian approach to legal interpretation includes first defining the legal concept in statutory law and then enforcing this concept through case law. In this circumstance, because of insufficient practice and poor theoretical basis, it is difficult to appropriately use abstract legal concepts in particular cases. With regards to some of the findings of the current research in the recent Mongolian administrative litigation law, the ACPL is one example of a practical application of the thesis claim. Thus, such reforms represent a preferred way in which to develop the law, where accumulation of practice and theoretical discussions related to the cases help to shape the further development of statutory law regulations.