



# *Jak odbieramy kontakty z administracją?*

– Potential influence of legacy of Japanese administrative law tradition on the behavior of Japanese investors in Poland

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## Introduction –Why are Japanese administrative organs "friendly"?

- ▶ The following voices are often heard among Japanese investors:
  - ▶ *In Japan, when you visit municipality offices, there are maps showing all necessities and locations of each section where you may go next, visible guidelines to help you fulfilling applications and there are several civil servants waiting for you at the entrance to assist you in the office with a smile....*
  - ▶ *In my region, there is no job matching services provided by the municipality offices targeting foreign investors whose foreign delegated HR managers are not necessary speaking fluent Polish. Events organized by the municipalities are necessary to make acquaintance with locally influential people, such as Polish-English bilingual conferences. The municipality office is reluctant to provide us with forthcoming important legal act amendments etc.... (I personally heard that in recent years such services have been provided by an increasing number of municipality offices in Poland.)*



# Introduction –Why are Japanese administrative offices "friendly"?

The main messages of my today's presentation:

- ▶ In Japan, administrative services seem to be provided in a customer-friendly style at a glance;
- ▶ However, specific Japanese legal traditions in the administrative law can be observed. Historically speaking, the administrative power overwhelmed legislative power and justice in Japan. Paradoxically as it may sound, such legacy might strengthen the relationship between administrative bodies and civilians;
- ▶ Japan is currently changing to apply softer, more flexible and transparent administrative law ensuring comprehensive protection of civil rights;
- ▶ My hypothesis: The specifics of the Japanese administrative legal system and its traditions might influence the mindset of Japanese investors in Poland when contacting Polish administrative bodies. If so, knowing it and keeping a small note of my today's story may be helpful ☺



## Chimera – Japanese administrative law under influence of the German and US law tradition

- ▶ In the mid-XIX century, Western countries (USA, England, France etc.) expanded their colonies in Asia. Especially after the 1<sup>st</sup> Opium War between China and the UK (1839-42), a direct colonization threat for Japan occurred.
- ▶ Japan signed the Japan-US Friendship Treaty in 1854 to open several ports for trade. Japan was deprived of the tariff autonomy. Western consuls held the consular jurisdiction (*eksterytorialność*) all over Japan for their citizens.
  - ▶ Cf) *capitulation between France and Ottoman Turkey (Kapitulacje Osmańskie)*
- ▶ Japan tried to introduce Western legal systems to obtain full jurisdictional power both over foreigners and Japanese citizens as soon as possible. Japanese law, especially administrative law, followed the German (Prussian) model, where the administrative power together with the sovereign power played the most important role, overruling the legislative power (parliament) and justice.
  - ▶ Cf) *the Constitution of the Empire of Japan from 1889 as the second oldest constitution in Asia after Turkey's.*





## Chimera – Japanese administrative law under influence of the German and US law tradition

- ▶ The administrative court was established in Tokyo in 1890.
  - ▶ One-trial system (with the first and last instance only)
  - ▶ Closed catalogue of grounds for declaration of invalidity (*Enumerationsprinzip / klauzula enumeracyjna*).
  - ▶ Before commencing court proceedings, a plaintiff should try to settle the issue before administrative authorities (*powodowi przysługuje prawo do sądu po wyczerpaniu środków zaskarżenia przed organem administracyjnym*)
- ▶ In the 30s of the 20th century, Japanese lawyers tried to introduce a two-instance system in the Administrative Court with an opened catalogue of grounds for declaration of invalidity (*Generalklausel / klauzula generalna*).
  - ▶ The attempt failed due to the militarization of Japan in the 30/40's
- ▶ The Allied Army occupying Japan after WW II liquidated the Administrative Court in 1947.
- ▶ The intention of the Allies was to establish as many *Independent Agencies* as in the U.S. to take over certain administrative competences from the central (federal) administrative bodies (*Federal Executive Departments*).



## Chimera – Japanese administrative law under influence of the German and US law tradition

- ▶ In the end, however, most of the newly established Independence Agencies (*gyōsei iinkai*) were liquidated and only a few exist now:
  - ▶ Eg.): Anti-competitive commission (*kōsei torihiki iinkai*), Central labor commission (*chūō rōdō iinkai*), Arbitration commission of the environmental pollution and related issues (*kōgai-tō chōsei iinkai*) etc.
- ▶ Independent Agencies initiate quasi-court procedures regarding appeals and objections against decisions of administrative bodies as well as arbitration procedures between parties.
- ▶ In the U.S.A., the activities of the Independence Agencies (U.S. court judges, not always administrative law experts can rely on the previous decisions/arbitrations conducted by professional independent agencies) substitute the administrative court system.
- ▶ In Japan, the administrative competences have been centralized at the ministry level and cannot be easily transferred to such independent, autonomous commissions without exceptions.
- ▶ As a result, after liquidation of the Administrative Court, there were quite few administrative cases judged by Japanese courts.



## Chimera – Japanese administrative law under influence of the German and US law tradition

Re. 1)

- ▶ According to the traditional Japanese legal doctrine, all administrative decisions issued by the administrative acts (*gyōsei kōi* / *Verwaltungsakt* / *akt administracyjny*) are legally valid ( $\hat{=}$  *kōtei ryoku* 公定力 / *Rechtskraft* / *prawomocność*).
- ▶ Therefore, even illegal decisions must be repealed (*torikeshi* / *uchylenie*) by the relevant state administrative bodies, otherwise remaining binding.

Re. 2)

- ▶ So-called "administrative guidelines" (*gyōsei shidō*) were common in Japan. Administrative guidelines are not treated as administrative acts because they may be followed only upon obtaining the other party's approval.
- ▶ In reality, when civilians do not follow the guidelines, in certain cases names of such individuals and guideline contents can be published.
- ▶ Eg.) Law on location of big retailers (art. 9 pt. 1 & 7) allows for the prefectural offices to issue administrative guidelines to protect living environment of the adjacent areas. If such a entity does not agree to follow the guidelines without justified reasons, the relevant prefectural office can publicize such a fact.)





## Changing Japanese administrative law –To chase a harmony between solid administrative functions and...

In 2004, Administrative Case Litigation Law was modified:

Ad.1)

- The courts not only proceed to repeal administrative acts (whose legality is questionable) but also with regard to failure to act by the administrative organs (*gimuzuke soshō* ≙ *skarga na bezczynność*) (art. 3 par. 6 ), so-called “public law related actions” (art. 4) or suspension of the administrative acts (art. 3 par. 7 ).

Before: a citizen who was refused a pension, having exhausted procedures before the administration bodies, was allowed to sue the relevant body in the court of law; however the court could only repeal a decision and send the case back to a competent administrative body for re-examining.

At present: in the same situation, having exhausted procedures before the administration bodies, the person may sue the body in the court and have a decision issued in which the body confirms his/her right.

- From cassation to revision: a fundamental change of the court function under the recently amended law.



## Changing Japanese administrative law –To chase a harmony between solid administrative functions and...

In 2004, Administrative Litigation Case Law was modified:

Ad. 2)

- Before the amendments introduced in 2004, it had not been clear if court actions to confirm the illegal character of obligations imposed by the administrative bodies (including administrative guidance) are classified as “public law related actions” (*tōjisha soshō*).
- After the amendments, such actions are clearly classified in the law as “public law related actions” along with claims for financial compensation for the losses inflicted by illegal administrative acts (*roszczenie odszkodowawcze za szkodę wyrządzoną przez organ administracyjny*).

Even when the other party has agreed to follow the administrative guidelines, the party is allowed to sue the relevant administrative body to confirm that the party is not obliged to follow the guidelines due to lack of legal grounds to do so.



## Epilogue – *Not Gone with the Wind*: Hysteresis effect of the legacy?

Despite the fact that Administrative Litigation Case Law was liberalized in 2004....

**JAPAN:** (Source: National Tax Agency; Ministry of Justice)

Year	No. of newly accepted admin. cases in 1 <sup>st</sup> instance	Of which tax law related cases
2006	2,081	401
2007	2,211	345
2008	2,170	355
2009	2,029	339
2010	2,195	350
2011	2,268	391
2012	2,417	340

**POLAND:** (Source: NSA / Supreme Administrative Court)

Year	No. of newly accepted admin. cases in 1 <sup>st</sup> instance	Of which tax law related cases
2006	60,399	20,030
2007	56,661	18,562
2008	55,118	17,794
2009	56,068	17,028
2010	64,619	20,698
2011	66,020	20,597
2012	68,006	21,786



## Epilogue – *Not Gone with the Wind*: Hysteresis effect of the legacy?

- ▶ Fast development of the post-war Japanese economy was supported by the strong financial policy of the MinFin and BoJ on the banking sector and active industry policy of the METI (Ministry of Economy, Trade and Industry):
  - Establishing specific banks such as long-term credit banks for heavy industries (eg. *nihon kōgyō ginkō*) as well as for SMEs (eg. *chūshō kigyō kin'yū kōko*) to draw low-interest loans from the Bank of Japan;
  - METI organized numerous councils (*shingi kai*) or investigating committees (*chōsa kai*) for specific industries with participation of private businesses to discuss mid- & long-term industry policy.  
Eg.) Merger of Prince Auto & Nissan Auto in 1966, Forming “Research Associations” (*kenkyū kumiai*) to establish a common R&D platform in many industries. METI & MinFin provided them with subsidies & tax incentives.
- ▶ In Japan such a legacy of mutual relationships between administrative bodies and private businesses are fading out due to the international pressure to sustain a prudential competition policy.
- ▶ However, the hysteresis effect from the legacy system is still roaming. Japanese Private Business and Administrations are in process of finding an adequate distance.



## Epilogue –*Not Gone with the Wind*: Hysteresis effect of the past legacy?

1. Every culture has its specific historical background to form standardized relationships between Administrations and Private Business.
2. Such a historical background could be embedded into managements' mindset for a longer period. Sometimes it would remain there even in the time of undergoing paradigm shifts in a given system.
3. It is very important for the Polish Administration to maintain mutual contacts with foreign investors, who do not necessarily speak Polish.
4. They want to access information that may be obtained on the local level, such as the latest trends in the local labor market, significant reshuffling of important persons in the local administration, the latest development plan of the local municipalities, opportunities to take part in cultural exchange events, etc.
5. For example, organizing Polish-English bilingual conferences participated by foreign investors and local private businesses, English language-based seminars to share hot economic topics or future development plans of the local municipality etc. would be helpful.





Thank you for your attention.

Dziękuję Państwu za uwagę.

ご清聴有難う御座いました。