OVERVIEW OF KOREAN ADMINISTRATIVE LAW

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Korean administrative law is divided into three different parts:

- **Jojik**: a set of rules governing the organization of administrative agencies
- **Jakyong**: covers all kinds of acts by administrative agencies
- **Gujae**: the remedial measures, mostly through judicial review for Jakyong.
II. SAILENT FEATURES

Influence from Japan and Germany

- The modern state in Korea has its origins in the Japanese Occupation.
- Law was used merely as a tool to facilitate the exploitation, transport and eventual shipment of commodities.
- Because Japanese administrative law was heavily derived from German law, the influence of German administrative law on Korean law is significant.
II. SAILENT FEATURES

- Subordination (Hierarchy)
  - Korean administrative law creates a relationship of superior and subordinate between the state and the individual.
  - The State, which is superior to the individual, can order and oblige individuals to follow its instruction in order to accomplish administrative goals.
  - This unequal relationship is not inherent in the Korean administrative regime, but comes from specific statutes.
II. SAILENT FEATURES

Political Questions (*Tongchihangwui* executive powers)

- *Tongchihangwui* is an act by government, which involves very important political matters, and thereby, is generally not subject to judicial review.

- In 1961, the Korean Supreme Court rule that the court did not have the right to decide whether the President’s declaration of a national emergency was reasonable or not.

- In 1996, the Korean Constitutional Court, however, stated that even an executive act by the President should be subject to the Court’s review if the act directly infringed upon the fundamental individual rights.
II. SAILENT FEATURES

Parties of Administrative Law

- Korean administrative law distinguishes between the objects and the subjects of administrative acts.
- In the past, the subject and object dichotomy was so clear that the interest of the subjects were thought to be in conflict with the interests of the objects.
- Today, the view is modified so that the relationship between the subjects and the objects is more cooperative.
II. SAILENT FEATURES

Immediate Effect of an Administrative Act

- An administrative act comes into effect as soon as it is brought to the notice of the person concerned and continues to remain until it is reversed by the administrative authority or by the court or loses its effect by the expiration of time or in some other manner.
II. SAILENT FEATURES

Stabilizing Effect of an Administrative Act

- Formal Stabilizing Effect: An administrative act with formal stabilizing effect is an act which is unchallengeable through regular remedies of complaint or objection before the administrative authority or suit before the court, if either the time limit for legal remedy has expired, or the concerned person waves his right to remedy, or the remedy does not exist at all, or it has already been exhausted.

- Material Stabilizing Effect: Material stabilizing effect means res judicata or that the administrative act is binding on the concerned individual as well as on the authority which has taken it.
III. JOJIK (ADMINISTRATIVE ORGANIZATION)

From a Unitary Leadership to a Council System

- Now, Korean administrative organizations are no longer under a unitary leadership, but they have adopted a council system that leaves the final decision to a council instead of an individual.

Government Organizations

- Korea has 18 administrative branches under the supervision of the President and Prime Minister.

Government Officials

- The Korea government first amended the National Government Organization Act and the Government Officials Act in 1999 in order to provide the legal ground for introduction of a more open hiring system.
IV. JAKYONG (ADMINISTRATIVE POWERS)

Administrative Legislation

- Korean law draws a clear distinction between delegation of legislative powers to the executive or the government departments and delegation to the autonomous bodies: Gukgahangjungkwon, Jachihangjungkwon

- Korean law also recognizes two other types of regulations which the executive or the administrative bodies may make. They are the administrative directions and special ordinances.
IV. JAKYONG  
(ADMINISTRATIVE POWERS)

Administrative Act

- Administrative act is every order, decision or other sovereign measure taken by an authority for the regulation of a particular case in the sphere of public law and directed at immediate external legal consequences.

- An administrative act is distinguished from a legislative act in so far as it regulates a specific concrete case and does not lay down general abstract regulations applicable to an indefinite number of cases.

- To be an administrative act, a measure must be aimed at creating external legal consequences.
IV. JAKYONG (ADMINISTRATIVE POWERS)

Administrative Guidance

- The Korean Administrative Procedure Act defines “administrative guidance” as guidance, recommendations, advice, or other acts by which an Administrative Organ may seek, within the scope of its duties or designated functions, certain feasance or non-feasance on the part of specified persons in order to realize administrative aims.

- Administration is oriented around the notion that “the formal use of regulatory power is not considered desirable.

- However, administrative guidance has been criticized because it is basically outside the principle of Rule of Law.
Obligation to Give Information and Advice

- According to the 1996 Act on the Disclosure of Information held by Public Authorities, any person may request the disclosure of administrative documents held by a concerned administrative organ.

- An administrative agency is also obliged to help protect the rights of a citizen during the course of any administrative proceedings.
IV. GUJAE (JUDICIAL REVIEW)

Article 27 of the Korean Constitution provides that “all citizens shall have the right to trial according to law by judges qualified and appointed under the Constitution and Act.”

Article 2 of the Act defines “disposition, etc” as exercise of public power or refusal thereof and other administrative action corresponding to it and a ruling to an administrative adjudication, made by administrative agencies as an execution of law in relation to a concrete fact.

- This clearly undermines the constitutional principle that all citizens have the right to a trial at law by qualified judges.

Another limitation of judicial review of an administrative act is that courts cannot issue a mandamus to instruct an administrative agency to perform a duty.
V. CONCLUSION

Jojik, Jakyong, Gujae

- **Jojik** (organization of the administrative agencies): marked by its hierarchy between the government and an individual and its clear distinction between subject and object of administrative acts

- **Jakyong** (administrative legislation, administrative acts, and administrative guidance): Jakyong has undergone radical changes since the enactment of the Administrative Procedure Act in 1996.

- **Gujae** (remedial measures-judicial review for administrative disposition, etc.): While the 1984 Administrative Litigation Act gives an individual the right to initiate an administrative litigation, the limitations on the administrative acts and eligibility of plaintiffs undermines constitutional guarantee of right to a trial.