

An Analysis of Municipal Ordinance in Japan: From Administrative Regulation to Legislative Act

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Abstract

There is a dispute in our country's legal discourse regarding whether local councils have legislative powers and whether municipal ordinance is applicable under the principle of lawful administration. However, our country's constitution has established a framework for the division of legislative powers between the central and local governments, and its interpretation should be based on the established constitution. In view of the municipal ordinance drafting power guaranteed by the Japanese Constitution, the evolution from "administrative regulation" to "legislative act" is clearly presented. This article investigates Japanese law from the following three perspectives to explore its insights for our country's law: (1) within the legal system, whether municipal ordinance is equivalent to the legislative act approved by the parliament and has its own democratic integration and unique functions of fundamental rights protection; (2) how to clarify the relationship between national law and municipal ordinance if municipal ordinance is used as a basis for restricting fundamental rights without being bound by the principle of legal reservation; (3) how to balance the unity of the national law and the necessity of adapting to local conditions when municipal ordinance competes with the national law without being bound by the principle of legal superiority.

Through the study of Japanese law, this article can point out the following three points as conclusions. (1) In the national legal system, the constitutions of Japan and Taiwan adopt the framework of legislative separation of powers.

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Therefore, according to the concept of resident self-governance, the municipal ordinance has its own democratic integration and unique functions of fundamental rights protection. (2) Since the municipal ordinance has direct constitutional basis, it can be used as a basis for restricting fundamental rights without any legal authorization. (3) Since both municipal ordinance and national law are based on the constitution, national law is not always superior to municipal ordinance.

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