

**Reexamination of the Applicable Scope and Function of the
Device of Ordering an Interested Person to Intervene under
Article 41 of Administrative Litigation Act**

Ming-Hsin Lin *

Abstract

The Taiwanese administrative courts, in applying the device of ordering an interested person to intervene as provided in Article 41 of Administrative Litigation Act, almost universally used this device as a mechanism to compel the interested person to join as a co-plaintiff for the purpose of remedying the procedural deficiency that indispensable parties did not jointly initiate the pending litigation. This paper argues that while such application may be consistent with the legislative purpose from the perspective of legislative history, this designated purpose itself and the application derived from such purpose raise serious concerns. To begin with, the occurrence of cases calling for indispensable plaintiffs is rare, if correctly defined, in the administrative litigation regime. Therefore, as long as the courts correct their current practices of erroneously requiring indispensable plaintiffs in a wide variety of cases, it is questionable whether the device provided in Article 41 is needed at all. Moreover, by ordering an interested person to join as an involuntary plaintiff without due regard to whether such person has a legitimate reason to refuse to do so, the current practice arguably violates the interested person's constitutional right of free from being compelled to litigate under Article 16 of Taiwanese Constitution. This paper proposes that the best course of action to take is to eliminate the device provided in Article 41 of Administrative Litigation Act altogether.

* Assistant Professor, College of Law, National Taiwan University.
Email: mhlin12@ntu.edu.tw

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