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TEXT

Introduction

- 1 How could an ombudsman be generally defined? According to Fawcett,¹ an ombudsman speaks for the interest of Parliament and the people; it is a form of administrative review conducted through hearings, investigating complaints and inquiries. Considering the state of the art, the ombudsman system has its roots in the basic principle of human rights protection and its essence in monitoring administrative agencies by directly receiving the claims of the citizens.
- 2 Within this conceptual framework, this paper analyses the functions of the Japanese Ombudsman system from the perspective of public policy studies, considering the cultural characteristics of Japan. It raises a set of questions. Firstly, has the Ombudsman system fulfilled a meaningful function in the Japanese administrative dispute system? Adopted only by some local governments since 1990, the institution of the Ombudsman has not been very prominent and widespread among local governments to date. Considering this fact, this article tackles a second main issue: why did the introduction of the system not spread remarkably, except in some municipalities? Are there any structural problems in Japanese local administrative system that may be hindering the spread of mediation?
- 3 Since there are not enough accumulated researches on the division of functions between the ombudsman system and the traditional administrative dispute system in Japan, this study aims at contributing to the international comparative research on that matter.
- 4 Due to the very limited literature on Japanese Ombudsmen, the methodology of this research had to include original statistics mainly based on an interview organized with Yoshinori Tomita, Kawasaki Citizen Ombudsman (Representative Ombudsman) and Kikuko Seino (Ombudsman) on 28 June, 2024.²

- 5 Indeed, in Japan, as previously mentioned, there is no ombudsman set up by the national government under national law. Instead, approximately 5,000 administrative advisors³ have been established nationwide to provide consultations on matters of a considerable practical nature. On the other hand, at the end of March 2015, 71 local governments have had set up an ombudsman (hereafter: “Municipal ombudsman”).⁴ The activities of Municipal ombudsmen have led to more significant administrative grievance handlings and administrative improvements, such as institutional reforms through ordinances and regulations improving the way local governments implement their policies. Specifically, among Municipal ombudsmen in Japan, Kawasaki city was the first local government to establish an ombudsman in 1990: this year has played a leading and representative role among municipalities nationwide. Akira Hamasaki evaluates the city's role, stating that Kawasaki City has strengthened its operational system by placing specialized investigators who carry out complaint investigations and surveys together with the ombudsman.⁵
- 6 That is why this city has been selected as the subject of this study, without ignoring its limit. Indeed, more surveys on the efforts made by other Municipal ombudsmen are needed in the future in order to reduce the versatility of our results. Furthermore, in examining the status and functions of the Japanese ombudsman system, a quantitative analysis made on a Report “on the Public Ombudsman System in Local Governments” is also very useful.⁶
- 7 As the Japanese ombudsman system is closely related to the administrative dispute system and the local administration system, our study requires a previous general overview (1). A framework of the Japanese municipal Ombudsman model is then provided, from both national and international perspectives (2). In the third section, the article evaluates broadly the Japanese model of local ombudsmen (3), before tackling the specific case of Kawasaki city both in a general way (4) and through the specific and crucial issue of the interrelationship between the ombudsman, the court litigation and the administrative appeal systems in this city (5). Eventually, the conclusions suggest both explanations of the data gathered and recommendations for the future (6).

1. Overview of the Japanese Administrative System

1.1. Japanese Administrative Dispute System

- 8 In Japan, the entire system under which individuals seek redress against administrative activities is referred to as “administrative dispute system”. It consists of the following three subsystems: the administrative case litigation system, the administrative appeal system and the grievance system. The ombudsman system falls within the third one (See Table 1-1).

Table 1-1 The three Administrative Dispute Systems of Japan

System	Subject of judgment	Contents of the petition	Conclusion	Legal basis for the system
Administrative Litigation Court		Illegal / Legal	Court Rulings	Administrative Litigation Act
Administrative Appeal	Agency (Most senior Administration Office (principle))	Illegal / Legal Unjust / Just	Adjudication	National Act Administrative Appeal Act
Ombudsman (Grievance)	Ombudsman (Ancillary body of executive body of local government)	(Illegal / Legal) (Unjust / Just) Inadequate / Adequate (Administrative justice and Grievance resolution)	Recommendation	Bylaw

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1.1.1. Administrative case litigation system

- 9 The administrative case litigation system seeks to correct illegal administrative actions through judicial decisions and to provide relief for citizens whose rights and interests have been infringed by illegal administrative actions. The subject matter of the lawsuit is an

administrative provision. A provision by an administrative agency is considered to be an act made by a national or local government, which is a public authority legally authorized to directly regulate the rights and obligations of the citizens or to determine the scope of such rights and obligations. The subject of the lawsuit is the illegal administrative action, and a sentence is reached by a court decision.

- 10 Given this context, what is the role of mediation within the Administrative case litigation system?⁷ In Japanese administrative litigation, the prevailing view states against mediation. First of all, Administrative provisions are made by administrative agencies with an authority based on laws and regulations, in the exercise of public power through unilateral decisions. Therefore, an administrative agency's obligation to revoke, change, or make a new administrative provision by contract signed up with a private party is contrary to the essence of administrative law. Secondly, since the existence or non-existence of illegality of an administrative provision should be judged objectively in light of laws and regulations, and cannot be changed by a contract between an administrative agency and an individual, a settlement between an administrative agency and a plaintiff that revokes or changes a provision seem “unnatural” from a litigation perspective. In other words, the prevailing view is that such settlements are not permissible.
- 11 However, this general view does not mean that the national and local governments are totally unwilling to accept settlements. According to the statistics published by the Supreme Court, there were 20 judicial settlements out of a total of 2,034 administrative cases during the fiscal year of 2009. In addition, there are also cases where, depending on the course of litigation, the defendant (administrative agency) realizes the illegality of the case and resolves the plaintiff's grievance by rescinding, changing, or redispensing the original provision outside of litigation, followed by a “*de facto* settlement” in which the plaintiff withdraws from the lawsuit. Of the 2,034 administrative cases previously referred to, 350 were terminated that way.

1.1.2. Administrative appeal system

- 12 Administrative actions must be in conformity with the law and in conformity with public interest purposes. However, in reality, there

are cases in which administrative actions are not in conformity with the law (*illegal*) or do not meet the public interest objectives (*unjust*). When not only an illegal but also an unjust administrative action is taken and the rights and interests of the people are infringed by it, it is necessary to correct the administrative action and provide relief to the people concerned. As a method of achieving this, the Administrative appeal system is an *ex-post* relief procedure incorporated into the administrative process.

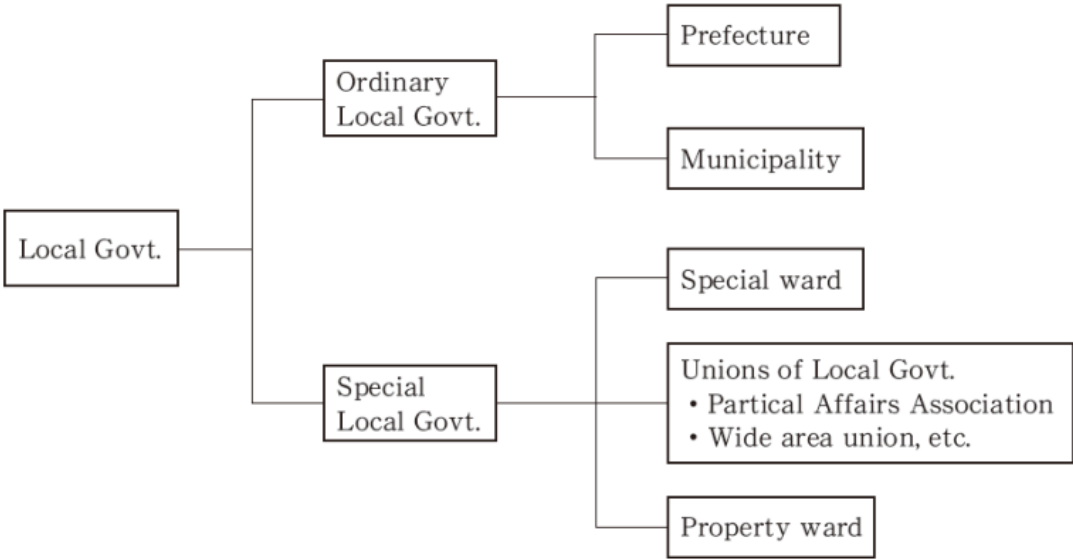
1.1.3. Grievance system

- 13 In this system, a government agency takes some action after hearing complaints from the public about its *inadequate* operations. Here, there is no legal obligation on the part of the administrative agency to handle the complaints. Even if some action is taken, the action is not legally binding. Thus, the grievance system is flexible and easy to use, and disputes between citizens and administrative agencies can often be resolved if the administrative agency hears the complaints and makes appropriate improvements.
- 14 The ombudsman falls within this system. Institutionally, it can deal with illegal or unjust issues, but in practice, it deals more often with the issue of *inadequate* administrative action to achieve administrative justice and resolve complaints about the administrative action in question (See Table1-1 above).

1.2. Japanese local government system

- 15 In Japan, there are two types of local governments: ordinary local governments and special local government. The latter includes wide-area organizations set up for specific purposes, while the former plays a major role (See Figure1-1).
- 16 Prefectures and municipalities are specified in the Local Autonomy Law as the two basic types of local authorities. Japanese local autonomy system adopts a two-tier system: prefectures at regional level, the municipalities being the remaining basic local government units.⁸ In April 2024, there were a total of about 1,700 local governments, 47 prefectures and 1,724 municipalities (See Table 1-2).

Figure1-1 Types of Local Governments in Japan



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Table 1-2 Number of Local Governments in Japan

Kind of Local Government			Number (1st Apr., 2024)
Prefecture	To	Tokyo	1
	Do	Hokkaido	1
	Fu	Kyoto, Osaka	2
	Ken	All others	43
	Total		47
Municipality	City	Designated City	20
		Core city	62
		(Remaining) Special City(*)	23
		Other city	687
	Town		743
	Village		189
	Total		1,724

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2. National and international frameworks of the Japanese Local Ombudsmen

- 17 The ombudsman can be divided by nature into private ombudsman⁹ and public ombudsman.¹⁰ This paper will focus on the public ombudsman. Public ombudsman focuses on remedying cases in which citizens have had their rights and interests violated by the actions of government agencies and others, with the goal of improving public administration.

2.1. Public ombudsman among governmental sectors

- 18 Reif describes three types of ombudsman: legislative ombudsman, executive ombudsman, and hybrid ombudsman.¹¹ Public ombudsmen can first be divided into two types: legislative-branch type and executive-branch type. The legislative branch type is based on Parliament and is tasked with resolving disputes between the executive branch and the public; U.K. and New Zealand are examples of this category.¹² The executive branch type is based on the authority derived from the executive branch and is also tasked with mediating between citizens and the executive branch (in other words, mediating and resolving disputes between citizens and the executive branch); the french *Médiateur de la République* (now named “*Défenseur des droits*”) is an example of this type.
- 19 In Japan, nowadays, there is no parliamentary ombudsman, neither at national level nor within the local governments. The executive ombudsman does also not exist at national level, but it does in some local governments (See Table 2-1).

Table 2-1 Public ombudsman system among Japanese governmental sectors

	Ntional Government	Local Governments
Executive Branch Type	—	Several organizations have set up; 71 LGs
Legisllative Branch Type	—	—

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- 20 Why is that so? The structure of the Japanese executive branch provides a background. The following two basic points should then be noted.
- 21 Firstly, Japanese local autonomy is based on the general authorization principle rather than the restrictive enumeration principle of subject-matters falling within local governments. The Local Autonomy Law provides that “ordinary local governments deal with their affairs in their region”, and confers a general authority on prefectures and municipalities, which are legally referred to as the “ordinary local governments”. By using this general power, in addition to powers authorized by separate laws, prefectures and municipalities act as comprehensive administrative bodies to perform various activities that are considered necessary for the citizens of these regions.
- 22 Secondly, there are two main branches of an ordinary local government. One is the legislative branch that makes decisions on the budget and local ordinances. Prefecture councils and municipal councils fall under this heading. The second is the executive branch that carries out the policies decided upon by the legislative branch. Governors of prefectures and mayors of municipalities fall under this heading. Japanese local governments use this dual representative system, in which both council members and head of local government (governor or mayor) are directly elected by residents, and both perform their duties while maintaining an independent and equal stance, acting as checks on each other to achieve democratic local public administration.

23 The chief executive of a local government ensures the overall consistency of all government operations and is empowered to act as the government's representative to the outside world. Among the powers held by the chief executive, some important ones are the right to enact regulations, to prepare budgets, to propose bills, and to appoint or dismiss staff. In Japanese local administrative system, it is generally assumed that the chief has a significant authority over the council because it has the exclusive right to propose the budget, to veto the decisions of the local council and to dissolve the council as a countermeasure against a vote of non-confidence.

24 This combination of the generalized power of local governments and a chief-dominated dual representation resulted in an ombudsman system only set up by executive chiefs, and never by councils. This sums up the general framework of Japanese local ombudsmen that are gradually developing. Hamasaki defines Japanese executive ombudsman as

“an ombudsman which accepts complaints and grievances concerning disadvantages of citizens caused by administrative activities or actively deals with issues that may affect all citizens on his or her own initiative. It watches over administrative activities from a fair and neutral standpoint *vis-à-vis* administrative agencies. It is a control device protecting and remedying the rights and interests of citizens, gaining citizens' understanding and cooperation with the administration and ensuring that the activities of the administration are based on citizens' sovereignty, through making requests, recommendations and expressing opinions”.¹³

25 This definition appears to be accurate when looking at the on-going functions of local government ombudsmen, such as Kawasaki City. Since the Japanese ombudsman system is required to enhance citizen participation, it can be evaluated as being compatible with the executive type Ombudsman, together with the fact that it fulfills the same function than the executive body. In our view and regarding Reif's categories previously mentioned, the Ombudsman of Kawasaki city is a hybrid ombudsman¹⁴ since it exercises a considerable degree of influence over the mayor's department.

2.2. Characteristics of the Japanese Ombudsman from an International Perspective

- 26 What are the characteristics of the Japanese ombudsman system that are striking from an international perspective?
- 27 First of all, contrary to other countries, there is no national ombudsman system in Japan. Why is that so? As far as legislative ombudsman is concerned, according to Ikemura, “in a national context of divergent public attitudes and values, it is believed that (...) the legislature does not necessarily provide a path to reasonable resolutions”. Regarding the executive ombudsman, the Ombudsman is somewhat similar to the national system of administrative advisor. Indeed, around 5,000 advisors have been established nationwide. However, they have not been able to exercise a strong authority because (a) they have jurisdiction over administrative complaints only against the national government, (b) they do not have the authority to independently investigate or make recommendations, and (c) they cannot deal with specific matters, such as juveniles, police, environment, construction, or information and data protection.¹⁵
- 28 Secondly, Japan has a system of three-tiered citizen remedies. By contrast, the parliamentary systems set up in the majority of European countries is strongly characterized as confrontational, in the sense that it involves political tensions between the legislative and the governments, involving a Parliamentary oversight over the executive branch. Bousta brings up these political considerations, that are at the heart of the majority of the existing definitions of the Ombudsman: “the political tension between Parliament and government is at the heart of this idea: the ombudsman is defined as an instrument of parliamentary control¹⁶”. By providing a critical analysis of the existing definitions that are focused on political and constitutional considerations, powers, and role, Bousta recommends that the ombudsman should rather be viewed in terms of function (mediation), and other derivative tasks.¹⁷ This proposal allows then a comprehensive approach of the ombudsman system, independently from its historical development over the years and countries.

29 Indeed, the relationship between parliament and government involves an important third party: the citizen. Fundamentally, the ombudsman's special powers empower citizens through, for example, the ability to access administrative documents. Thus, contrary to the majority of European Ombudsmen, the Japanese municipal ombudsman is based on a three-tier structure. For the relief of citizens, each system targets different subjects: administrative lawsuits for *illegality*, appeals for *unfairness* and ombudsman for *complaints* as shown in Table 1-1 above.

30 These characteristics are also influenced by the Japanese court system. With the enforcement of Japan's new constitution in 1947, the administrative courts that had been established until then were abolished, and the ordinary courts assumed jurisdiction over not only civil disputes, but also administrative disputes. With this change, it became a very high hurdle for ordinary citizens to raise their grievances against administrative agencies in the form of disputes, within a background that they had little experience on.

31 On the other hand, the normative factor played by the ombudsman system became a valuable complaint resolution function. Vitale describes it as follows:

“in fact, the normative factor is of crucial importance in the action of the Ombudsman, and this marks a similarity between this institution and that of the Judge. [...] Yet, unlike the Judge, the Ombudsman is the interpreter of an expectation of justice that sometimes results in a different interpretation or application of existing laws, other times it requires overcoming them. Finally, the Ombudsman, unlike the Administrator and the Judge, cannot impose its decisions, but can only carry out activities of influence and persuasion to the parties involved through recommendations, exhortations or through the publication of reports addressed to the political authorities.”¹⁸

32 From the citizens' perspective, the proximity of the municipalities with their daily lives, combined with the normative factor of the ombudsman system, made the municipal ombudsman a unique institution among the three-tier system of citizen relief.

33 Finally, as previously mentioned, the municipal ombudsman system was adopted by 71 local governments. Sowa describes it as a system:

“[...] in which an individual (often a university professor or a lawyer) with a certain degree of independence within a local government is appointed as an ombudsman. They receive the opinions and requests of citizens, conduct investigations, and make recommendations for improvement. It is not *stricto sensu* a procedure, such as the administrative appeals system.”¹⁹

34 Sowa also gives the following assessment:

“the system is not as rigid as the administrative appeals system and can be used easily by citizens. Compared to the grievance system, this system is more independent and neutral, and is therefore more likely to gain the trust of citizens. If an ombudsman (ombuds person) can be hired, it is likely to become a meaningful system that is easy for citizens to use.”

3. Evaluation of the Japanese Municipal Ombudsmen

3.1. General Statement

35 Reif described the municipal ombudsman in these terms:

“municipal government bureaucracy plays a role in the lives of many urban residents. Given increased levels of urbanization worldwide, municipal government bureaucracy is a reality for millions. The concept of the municipal ombudsman has become increasingly popular over the past few decades to give city residents a vehicle for submitting complaints about municipal maladministration, and having their concerns investigated fairly and supported when justified.”²⁰

36 What the author points out here applies well to Japan, since Japanese local governments provide a wide range of administrative services. But what are the statuses of the municipal ombudsmen within the local governments? They are distributed as follows: 12.8 % in prefectures,²¹ 20.0 % in designated cities²², and 3.5 % in other

municipalities (See Table 3-1). Among local governments, the *ratio* of ombudsmen in designated cities is remarkably high.

Table 3-1 Status of the ombudsmen among local

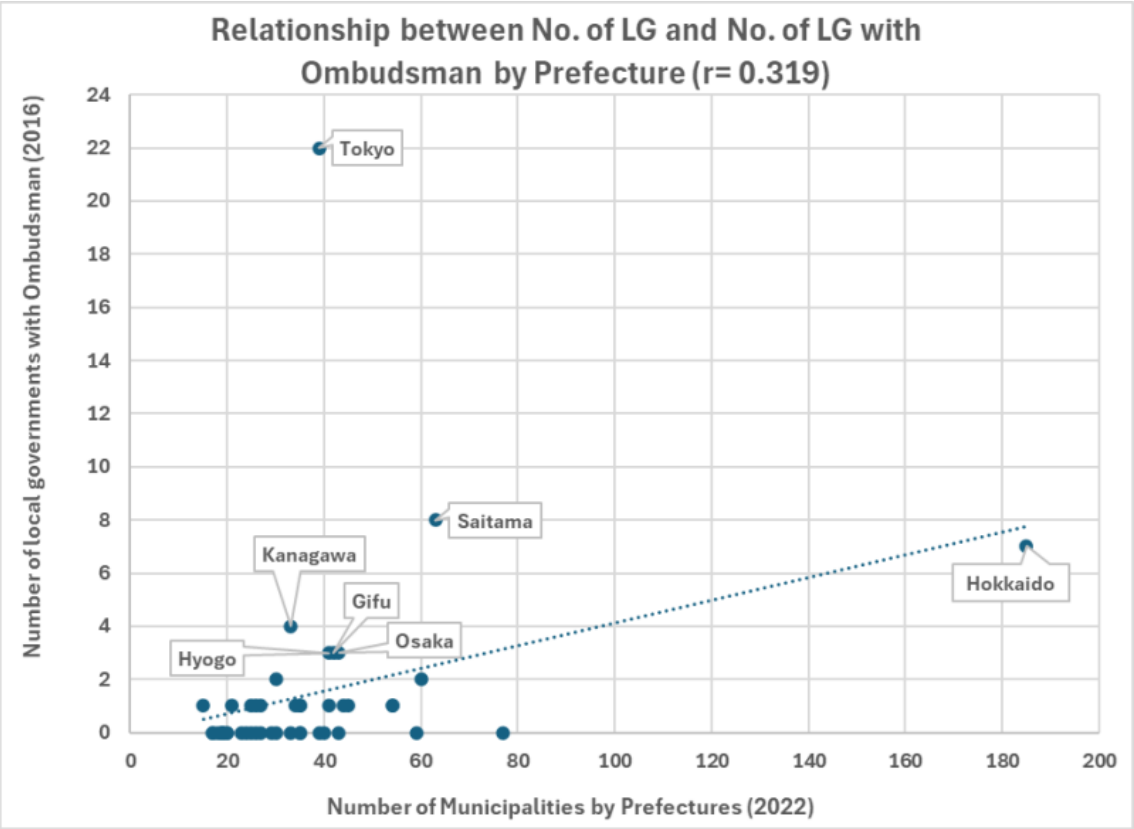
Local Government	Organization implemented Ombudsman	Total	Share (%)
Prefecture	6	47	12,8
Designated City	4	20	20,0
Municipality	61	1 724	3,5

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- 37 Two important comments can be added.
- 38 Firstly, the *ratio* between the number of all municipalities and local government's Ombudsmen is as follows. The correlation coefficient is 0.319, which is not significant. The number of local ombudsmen is remarkably large in Tokyo.²³ Saitama and Kanagawa Prefectures have a large number of ombudsman organizations relative to the number of municipalities in those prefectures (See Figure 3-1).
- 39 Secondly, the *ratio* between the population and the number of organizations with an ombudsman by prefecture reveals the following. The correlation coefficient is 0.789, indicating a certain degree of positive correlation. The number of local ombudsmen is remarkably large in Tokyo. In addition, the number of organizations settled in highly urbanized areas, such as Saitama and Fukuoka prefectures tends to be higher. However, among prefectures with similar population size, there are large differences in the number of ombudsmen, and this number is not necessarily proportional to the population (See Figure 3-2).

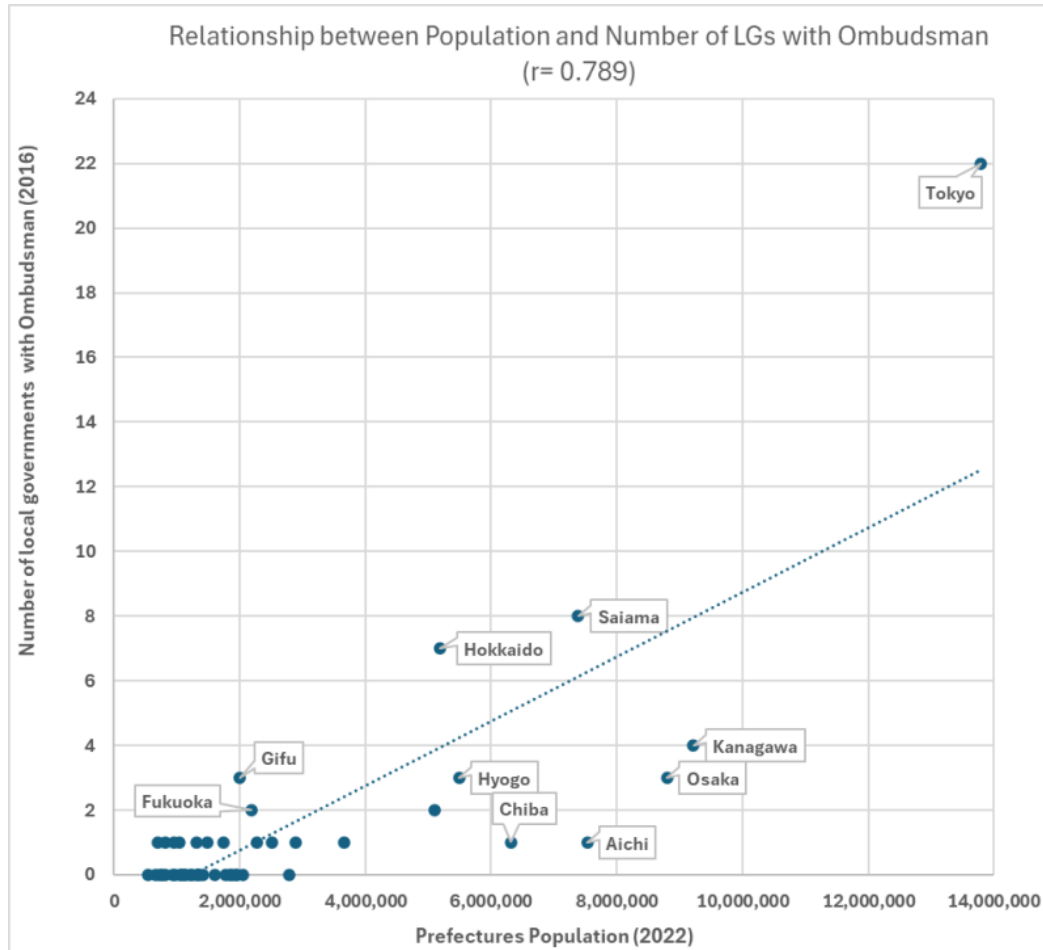
40 Generally speaking, it can be said that the diffusion of the ombudsmen within the local governments is not yet well-established.

Figure 3-1 Ratio between number of all municipalities and number of local governments' ombudsmen by Prefecture



Created by the Author

Figure 3-2 Ratio between population and number of local governments' ombudsmen by Prefecture



Created by the Author

- 41 This finding is quite surprising for Japan. Indeed, even if internal organization of local governments may vary according to their policies, in general, a high degree of uniformity in the content of local government administrative services is one of the characteristics of Japanese local governments. In this regard, The Japanese Council of Local Authorities for International Relations states that

“although prefecture and municipal governments in Japan have various populations and sizes, basically they are all given the same powers and deal with the same affairs. Furthermore, many aspects of their organization are provided for by laws such as the Local Autonomy Law or, as in the case of the direct public election of local heads of government, based on the Constitution. Consequently, local

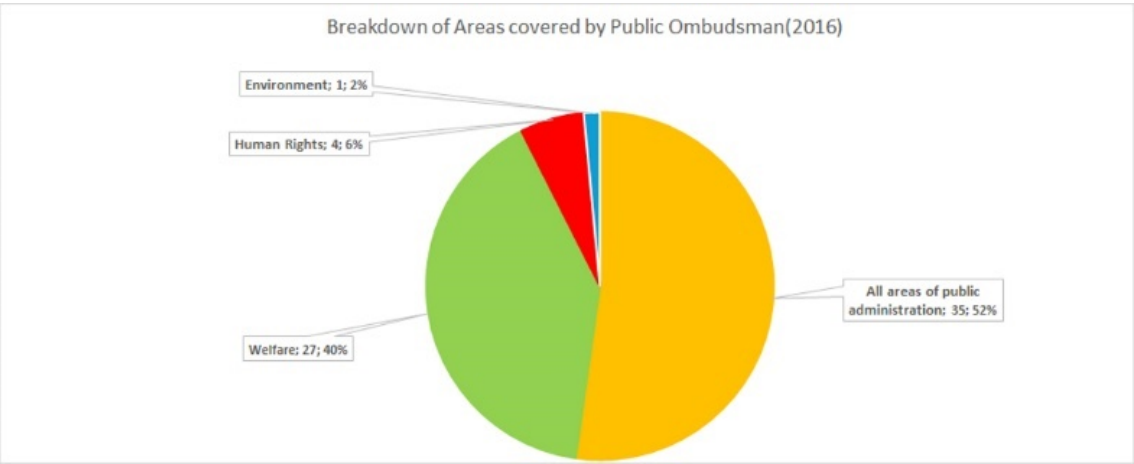
governments in Japan are strongly uniform in both their organization and their administrative operations. Part of the reason for this is a strong feeling that administrative services provided by local governments should, like those provided by the central government, be uniform in their contents and standards in every region of the country.”²⁴

42 By contrast, there is a high diversity of situations regarding the implementation of Ombudsmen by local governments as shown above in Table no. 1-4.

3.2. Areas covered by Japanese local ombudsmen

43 Despite this diversity of situation, the existing local ombudsmen share the same areas of activities. In 2016, the comprehensive tasks represented the largest number of cases (35,52 %), while the specific matters were distributed as follows: 27,40 % for welfare, 4,6 % for human rights, and 1,2 % for the environment (See Figure 3-3).

Figure 3-3 Breakdown of areas covered by public ombudsman



Created by the Author

44 How can this situation be explained? The ombudsman system can flexibly handle any case of administrative dispute. Its advantage is that the subject-matter is not limited to administrative provisions (administrative acts involving changes in individual concrete rights and obligations), as it is the case with administrative case litigation

and administrative appeals. For this reason, the “summary type,” which can handle any kind of complaint, is often adopted.

- 45 On the other hand, there are a certain number of ombudsmen designed for specific fields. Indeed, it can be understood that a specialized ombudsman is needed for areas such as welfare, human rights, and the environment, where citizens are compelled to respond very sensitively to phenomena and problems that are currently occurring.

4. The Kawasaki ombudsman system: general observations

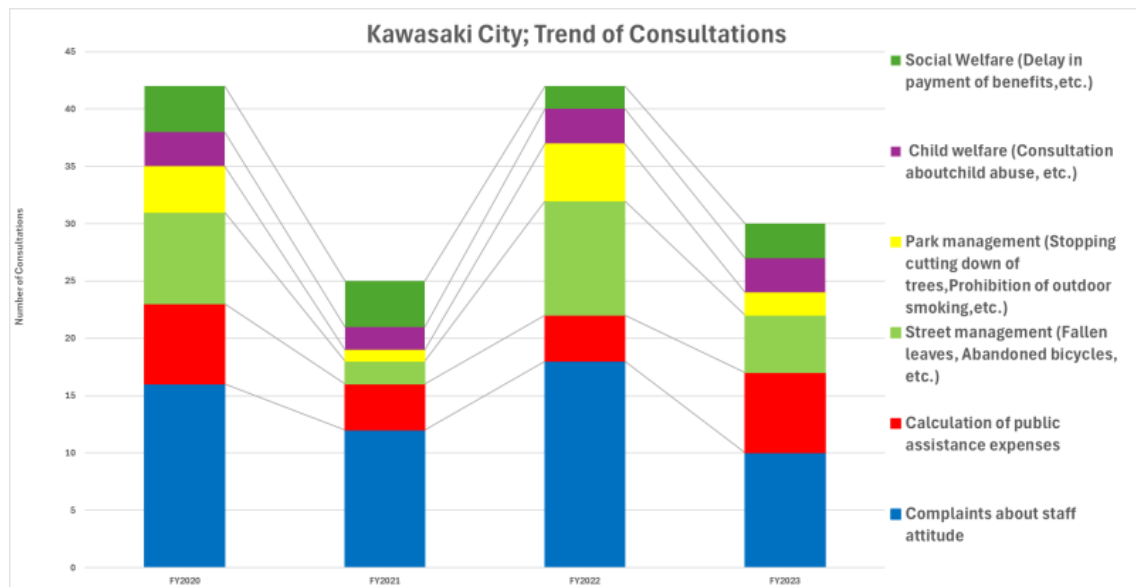
- 46 As stated previously, Kawasaki was the first organization among designated cities to introduce an ombudsman system in 1990,²⁵ and it has played a pioneering role.

4.1. General functioning

- 47 The Kawasaki City Ombudsman was established under article 138-4, Paragraph 3 of the Local Autonomy Law, as an attached body of the mayor (with an ordinance as its legal basis). According to the ordinance, the mayor’s appointment of the ombudsman requires the consent of the majority of council members. Indeed, a group of experts set up by the city made recommendations emphasizing the need for the ombudsman to be independent. The ombudsman can thus obtain legitimacy for his/her activities based on the consent of the council, and he/she can operate by being independent from the administrative organization, although he/she is an attached body of the chief executive. The Ombudsman has a fixed number of three members and serves a term of three years; judges, lawyers and legal researchers are commonly appointed.
- 48 Trends for the past four years (that is, since fiscal year 2020) are as follows. Firstly, complaint about staff attitude has been consistently the most frequent.²⁶ Secondly, the three areas consistently accounting for a large percentage of complaints are calculation of public assistance expenses and management of streets and parks (See Figure 3-4).

- 49 Many complaints deal with the *inadequateness* of the response of administrative agencies involving administrative services related to the daily lives of the citizens.

Figure 3-4 Trend of consultations



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4.2. Interview with the Ombudsman

- 50 As a result of our interview,²⁷ the following points can be identified as characteristics of the Kawasaki ombudsman system.

Trends of the complaints filed in recent years²⁸

- 51 In the past 5 years, there have been generally some new complaints related to Covid-19, with a slight increase or decrease in the number of complaints filed per year depending on the period of the pandemic. The content of the complaints was about the staff, followed by those related to welfare, such as public assistance, child welfare and social welfare. In the last couple of years, complaints about road management, park management, and other public property have increased.

- 52 If the complaints received are worth investigate, the Ombudsman will seize the relevant competent divisions and conduct hearings based on their responses, in order to confirm the facts. Once the facts have been checked, the Ombudsman will determine the reasonableness of the act or statement. Although the Ombudsman is a municipal agency attached to the mayor, it has an impartial and neutral standpoint as a third-party organization, bearing in mind that it is an advocate for the rights and interests of citizens.

Issues of the Ombudsman System²⁹

- 53 It has been 33 years since the Citizen Ombudsman System was enacted. During this time, changes have been seen in the nature of government, and the number of operations that are not directly executed by city departments has increased due to the outsourcing of operations, public establishment and privatization, etc. Furthermore, as the operations themselves have become more segmented, they are not being handled by specific departments.
- 54 As a result, the work itself has become more segmented, and there are circumstances in which a single department is not able to solve the problem. For this reason, it has become difficult for the Ombudsman to obtain a full picture of the content of a complaint unless he or she conducts hearings with multiple departments. This tends to lengthen the number of days required to process each complaint investigation.
- 55 For instance, the contract department and the business department of the city only deal with the matters falling within their respective scope, and there is no common section that comprehensively inspects and provides consultation on business content and contracts. The persons interviewed believe that in the process of investigating complaints, this has created a burden on the competent *bureaus* and a delay in resolving complaints.

Future Role of the Ombudsman System³⁰

- 56 The city has the following policy and credo: “there is always room for improvement in a system where there are complaints.” In the rapidly changing domestic and international situations, the city government

is also required to be flexible in its responses. The citizen ombudsman system aims to achieve an “open city government,” and the persons interviewed believe that it will continue to fulfill this role even when lifestyles, attitudes, and values change. For this reason, to the Ombudsman’s point of view, its role will become increasingly important when the diversity of citizens is respected.

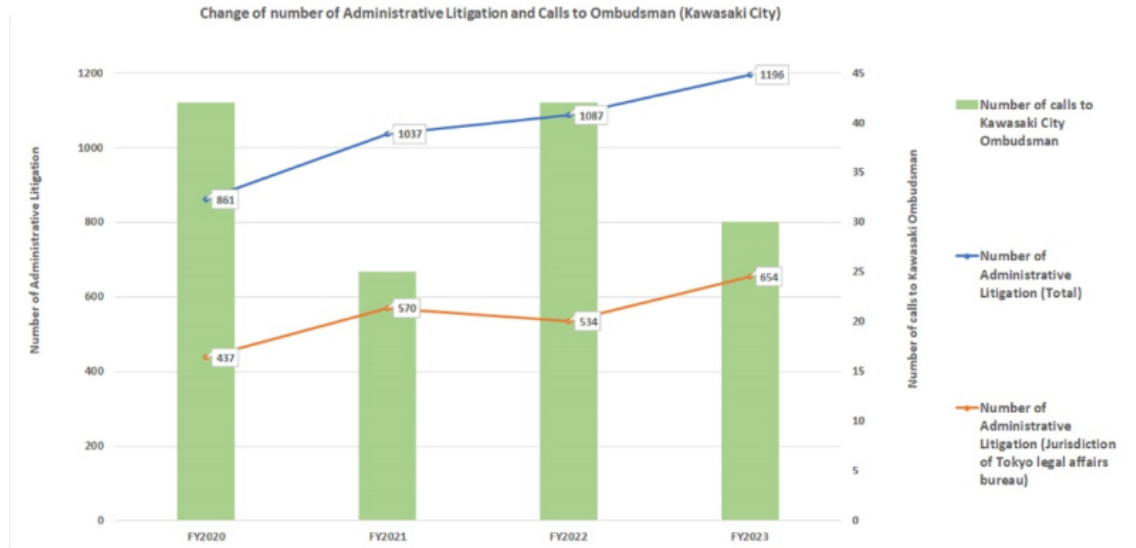
- 57 As a third-party organization independent from the city organization, the Ombudsman will act from a fair and neutral standpoint in order to protect the interests of citizens, and will continue to perform the functions of administrative monitoring and improvement. The persons interviewed believe that this is expected to contribute to the further development of the city government and to the realization of the citizens' trust in it.

5. Interrelationships between the three administrative dispute systems in Kawasaki city

5.1. General trends of the administrative dispute system

- 58 Generally speaking, the number of administrative case lawsuits is on the rise nationwide. Moreover, the number of administrative case lawsuits in the Tokyo jurisdictional area³¹ tends to increase more than the national trend.³² Compared to these trends, the number of calls to the ombudsman has not shown a constant increasing or decreasing, although a considerable number of cases are generated each year (See the bar chart of Figure 3-5).
- 59 How can this situation be explained? Compared to administrative case lawsuits, claims addressed to the ombudsman are related to the inadequateness of the administration (e.g. the inadequate attitude of officials toward citizens) and the routine nature (administrative services related to daily life), suggesting that they are not affected by major trends in the socioeconomic situation. In other words, the ombudsman system is a function of an administrative body that is always needed.

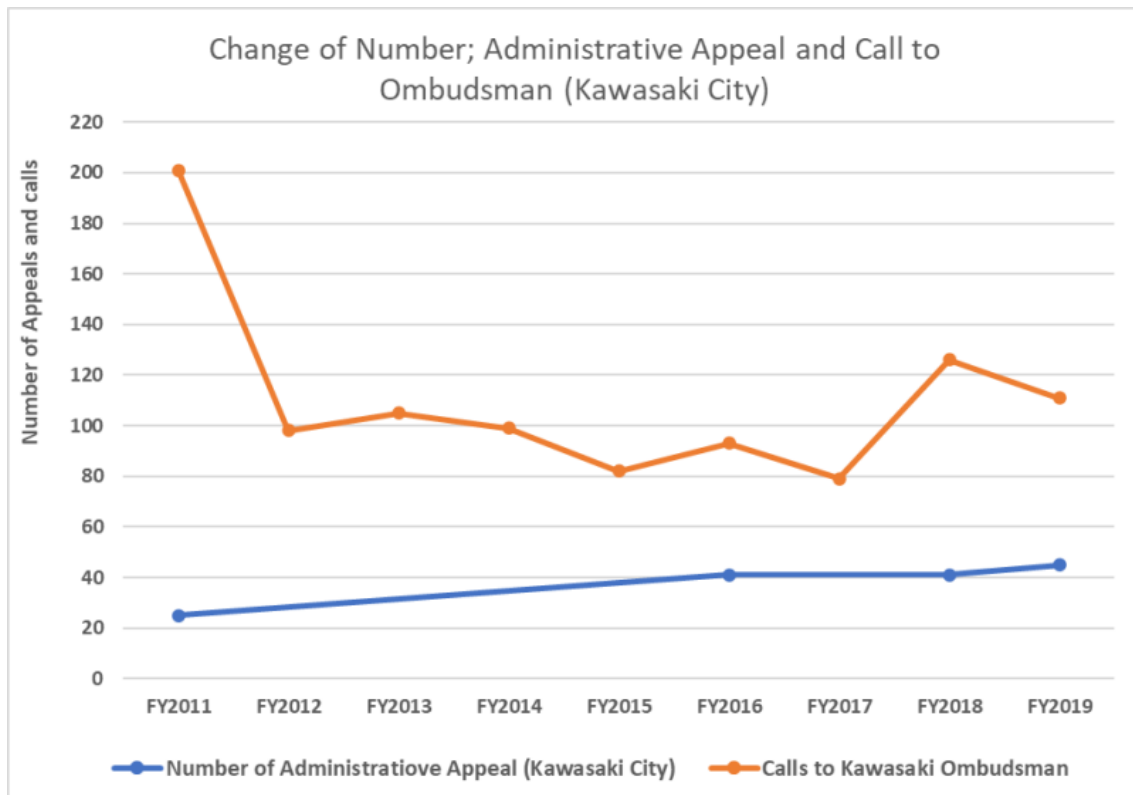
Figure 3-5 Numbers of Administrative litigation and calls to the ombudsman



Created by the Author

- 60 As for administrative appeals, their number has consistently and gradually increased, but the range of fluctuation in the number of appeals between fiscal years is extremely small. Compared to that, the number of reports to the Ombudsman represents more than twice the number of administrative appeals, but the range of fluctuation in the number of cases is remarkably large. Administrative appeals, which are filed for unjust or illegal administrative actions, involve a large administrative and time burden, whereas reports to the ombudsman can be filed much more easily.
- 61 These data show the “ease” of the ombudsman system, and also indicate the accidental nature of reporting, which is caused by some triggers (e.g. inappropriate attitude of an administrative official or smoking scene in a park).

Figure 3-6 Numbers of Administrative appeal and calls to the Ombudsman



Created by the Author

5.2. Interrelationships between illegality, unjustness and inadequateness

5.2.1. The point of view of the Ombudsman (interview³³)

- 62 Considering the role of the three administrative dispute systems in Japan, the ombudsman's perception of its own role, which is presented next, is an important basis for our evaluation.
- 63 The citizen ombudsman system is a body that assesses not only the violation of laws and regulations, but also the *inadequacy* of the administration or its officials from a third-party standpoint. The Ombudsman system is the only organization that comprehensively explains what should be done to improve laws and regulations.

- 64 Now, the Kawasaki City Ombudsman's bylaw does not exclude, under its jurisdiction, administrative provisions that are subject to administrative case litigation and administrative appeals (collectively referred to as "litigation-appeal" hereafter). However, in practice, the Ombudsman excludes from its investigations the cases that are already subject to a lawsuit, to avoid complications. The Ombudsman does not have substantive investigative authority, so it does not examine its own evidence; the persons interviewed thus think that litigation-appeal is appropriate for cases that require an evidentiary examination.
- 65 In addition, unlike the administrative appeal system, the citizen ombudsman is required to accurately respond to complaints that are difficult to properly address under the existing systems and procedures. This will allow for an appropriate division of functions between the existing systems and will strengthen both.
- 66 In other words, the Ombudsman believes that it has its own *raison d'être*.

5.2.2. Cases study

- 67 This section provides specific examples of cases addressed to the ombudsman³⁴, as a complement to our interview.

Case 1 (2023)

- 68 *Complaint: In the baseball field located in a park, many people are seen smoking in the aisle by the first base benches.*
- 69 *Response of the Ombudsman:* The baseball field in question is an outdoor facility, so smoking is not prohibited by law, but the designated manager has the authority to prohibit it in order to encourage users to quit smoking. Signs prohibiting littering were posted at the baseball field and adjacent tennis courts to foster environmental awareness of not dumping litter at the facility.
- 70 However, and as a result of this complaint, the City has implemented a total smoking ban on a trial basis in six parks of the city, including this one, from March 1 to April 30, 2024, and has conducted a

questionnaire survey among the park users. The City will consider the handling of smoking in parks in the future.

Case 2 (2022)

- 71 *Complaint: An individual applied for the Grant for Needy Persons with new-type Coronavirus Infection into the designated Post Office Box before 5 p.m. on January 25. However, he/she received a notice of rejection for the grant by mail. He/She spoke with the competent officers and found out that they only collected the Post Office Box on January 25 at 10:00 a.m. and not after that hour. According to the claimant, the City hall should share the view of time that is widely accepted among the general public, providing clear and specific notice. If the city only collects the forms at 10:00 a.m., the deadline for this case should be clearly stated as “must be received by 10:00 a.m. on the 25th”.*
- 72 *Response of the Ombudsman: The City set a deadline of January 25 for the submission, but in reality, the City collected the application from the Post Office Box between 10:00 a.m. and 11:00 a.m. daily, and the application resubmitted by the petitioner was not accepted because it arrived on January 26. On the other hand, the city says that due to the numerous paperwork, it picked the 25th as the deadline (must arrive) because if the documents are received by the morning of the 25th, the officers can still handle the cases on time.*
- 73 *The Ombudsman believes that the deadline set by the city should have allowed more time for further correction in the event that there were deficiencies in the submitted documents. Thus, the City is requested to consider the time allowance for the amendment period when setting such a deadline in the future. Although this specific program has already been completed, the deadline for submitting documents for similar ones in the future should be set in consideration of the City's administrative processing period, and should be specifically stated in order not to create misunderstanding among users. The deadline will be set in consideration of the City's paperwork procedures.*

5.2.3. Discussion

- 74 Considering the Ombudsman's own perception of its role and the data presented above, there is a marked difference in the factual roles between litigation-appeal and the ombudsman systems.
- 75 The level of illegality and unfairness targeted by the litigation-appeal is of serious nature to the citizens. For plaintiffs, litigation-appeal is such a serious commitment. In contrast, the inadequateness targeted by the ombudsman functions is an "*ad hoc* but necessary" way of resolving lighter problems in Japan.
- 76 As far as administrative case litigation is concerned, the increasing trend in the number of cases in recent years is a phenomenon that should be noted, but the amplitude is not that strong from year to year³⁵. Administrative appeals continue to consistently increase slightly³⁶. In contrast, the number of cases reported to the Ombudsman increases notably from year to year, and the demand for the Ombudsman has taken on an *ad hoc* character. These *ad hoc* demands are not something to be taken lightly: it is an indication that citizens expect a high level of responsiveness from administrative agencies.
- 77 In addition, the Ombudsman's scope of action excludes investigations that are already subject to a litigation-appeal procedure, in order to avoid the coexistence of lawsuits and Ombudsman investigations, as stated above.
- 78 All in all, the Kawasaki Ombudsman has maintained a certain number of claims, and can be evaluated as picking up demands that are difficult to respond to for litigation-appeal systems, thus contributing to improve administrative activities.

6. Conclusions

- 79 In order to draft consistent conclusions, three research issues will be addressed.
- 80 Firstly, does the Ombudsman system fulfill a meaningful function within the administrative dispute system in today's Japanese society?

- 81 According to the data collected, it seems that the ombudsman system can be evaluated as fulfilling various relevant functions, such as creating opportunities to face the inadequacies of ordinances and regulations. For example, in 2021, Parent teacher Association (hereafter: PTA) dues were deducted without providing information to the persons concerned and without having received a confirmation of their intention to join such PTA. The Ombudsman considered that there was a deficiency in proceeding to the PTA fee debits in a haphazard manner. Seeking improvements, the city established the “Outline for Handling PTA Dues at Kawasaki Municipal Schools.”³⁷ As this case demonstrates, the Ombudsman's activities have led to the awareness of inadequate aspects of administrative regulations and their improvement through recommendations.
- 82 Indeed, administrative agencies can obtain relevant information through the complaints of citizens and then set up new administrative services thanks to the legal and professional advices of the ombudsman, as shown in the first case analyzed above. To give another example, the accumulation of fallen leaves and abandoned bicycles on the streets are information that cannot be obtained easily through the patrols and other administrative agency staffs.
- 83 Added to that, the Ombudsman contributes to friendlier services from a citizen's point of view: that is also beneficial for the administration, as illustrated by the second case previously studied. Indeed, the function of resolving grievances arising from unfriendly processes plays an important role in Japan. Among the consultations, complaints about staff attitude have been consistently the most frequent.³⁸ In this regard, the statement of the Economic and Social Commission for Asia and the Pacific is of prime importance: “good governance has eight major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law.”³⁹ Transparent, responsive, equitable and inclusive are adjectives related to the honest attitude of administrative officials toward citizens. The ombudsman system plays an important role in making administrative agencies aware of this fact. That particular point is becoming increasingly significant in terms of defending the human rights of the citizens, given the expansion of modern bureaucracy.

- 84 However, as shown in this study,⁴⁰ just a few Japanese local governments have yet established public ombudsmen, and the movement to do so is hardly growing.
- 85 This finding brings up a second question: Why has the system not spread remarkably, except in some municipalities? Are there any structural problems in Japan's local administrations that may be hindering the spread of the system?
- 86 The response is, to our point of view, multifactorial. First of all, it is sometimes pointed out that in Japanese local communities and culture, the group cohesion is more important than the individual, and it is difficult for certain individuals to express their unique opinions. For example, in 2020, while the COVID-19 pandemic was spreading, Japanese government did not take any mandatory measures such as lockdowns, but rather, prefectural governors *requested* voluntary curfews. According to Kogami,⁴¹

“A ‘state of emergency declaration’ was issued with no enforcement power and no clear compensation. It was all *self-restraint* and *requests*, and even from abroad there was criticism that it was “too loose.” In Japan, however, this is sufficient. [...] Even if the *self-restraint* and *requests* are not mandatory, the Japanese people are overly sensitive to them, and self-regulate. If one does something contrary to the *self-restraint* and *requests* of others, pressure is exerted on one to ‘read the air’.”

- 87 It can be inferred that the existence of such social characteristics makes it difficult for the Ombudsman system to spread easily, since a formal complaint addressed to the local government would attract the attention of the local community. It is thus difficult to anticipate a high demand.
- 88 Another reason is that administrative agencies generally believe in the infallibility of the government. Indeed, in Japan, the principle of state non-responsibility was enforced by the former Constitution of 1890; the system of state compensation was introduced only after World War II in the current Constitution. Given this historical context, and knowing that a system of litigation already exists, it is difficult for local governments to actively and voluntarily set up

ombudsmen since it could lead to pointing out further administrative responsibilities derived from administrative practices.

- 89 Moreover, there are challenges in securing competent human resources for these ombudsmen. An urban metropolis with a population of 1.47 million, such as Kawasaki, can secure a professional staff, such as former judges and lawyers. However, it might be much more difficult in rural areas.
- 90 Added to that, other organs with similar functions already exist, such as the audit committees, the external auditors, the administrative advisors, the resident lawsuit system, or even the possibility to send a direct email to governor/mayor, and such. It is thus difficult to encourage local governments to set up ombudsmen on a voluntary basis.
- 91 Moreover, Japanese local councils are generally vulnerable. As previously mentioned, in Japanese local administrative system, it is indeed the chief who has a significant authority over the council. As a case in point, he/she has the exclusive right to propose the budget. This background undermines local councils, and as a result, as stated before, no council-established ombudsman has been introduced in Japan. Indeed, in the Japanese local government system, authority over organizational management is considered the primary competence of the chief executive. Therefore, the decision to create an ombudsman depends solely on the policy judgment of the head of the local government. To date, it is apparent that many chiefs have not had high incentives to establish an ombudsman. Thus, it is essential to convince them that the ombudsman system is useful in terms of administrative implementation, in order for the system to spread in the future.
- 92 Local government administrative reforms also discourage the creation of such ombudsmen. By the end of the 1970's, Japan faced a serious fiscal crisis due to declining tax revenues resulting mainly from the two oil crises. Under these circumstances, the Second Provisional Administrative Investigation Committee, whose basic policy was "fiscal reconstruction without tax increases" consistently aimed at "small governments" and recommended that local governments rationalize and optimize their capacity, salaries, and retirement allowances,"⁴² among other things. In January 1985, the

central government formulated the “Outline for a Local Government Reform” to provide guidelines for the promotion of local government reforms. Since that time, local governments have continuously implemented strict capacity control measures. Under these circumstances, for a local government to establish an ombudsman system as an auxiliary body of the chief executive, it is necessary to strongly convince on its advantages.

- 93 Nevertheless, a final question is still worth rising: in view of the functioning of the Japanese ombudsman system studied in this article, can it be relevantly used for administrative justice in the future?
- 94 To answer this question, it seems interesting to recall that nowadays, the bureaucracy is expected to further develop as the technical and specialized nature of administrative activities increase and the public agencies face technological innovations, such as the introduction of Artificial Intelligence. Furthermore, since the percentage of single-person households is expected to further increase in Japan, it is important for municipalities to respond to “*ad hoc* but necessary” citizens’ demands.
- 95 Under such circumstances, the above-mentioned ombudsman's normative function will become even more important in protecting the human rights of citizens. For this reason, although a national ombudsman system has not been yet introduced in Japan, it is hoped that municipal ombudsmen, who are at the forefront of administrative activities, will spread.
- 96 On the other hand, the realization of this hope depends on the development of appropriate human resources. Therefore, in line with the training of auditors provided by the national and prefectural institutions, the national and local governments should establish programs for municipal ombudsmen, in order for them to understand the importance of their “normative function” and exercise their authority to investigate specific administrative issues from the same perspective than the citizens.
- 97 For the citizens, the proximity of municipalities to their daily lives, combined with the normative function of the ombudsman, made the

municipal ombudsman a relevant human rights protection among the three-tier citizen's reliefs system in Japan.

NOTES

- 1 J. E. S. FAWCETT, "The Spread of the Ombudsman System in Europe," *The World Today*, vol. 31, no. 11, nov. 1975, p. 469.
- 2 I would like to express my deepest gratitude to the Kawasaki City Ombudsman and the Ombudsman's Office for their valuable information and suggestions in the course of my research on the operation of the ombudsman system.
- 3 Administrative advisors are private-sector experts commissioned by the Minister of Internal Affairs and Communications ('MIC' hereafter.) based on the Administrative Advisors Law. They oversee citizen's complaints about the operations of the administrative organs and such. They provide necessary advice to the complainants, notify the relevant administrative organs of their complaints, and facilitate their resolution in liaison with the Administrative Evaluation Bureau of MIC.
- 4 Administrative Management Research Center, *Report on Survey Research to Understand the Actual Conditions of the Public Ombudsman System in Local Public Organizations Fiscal Year 2015*, Tokyo, Administrative Management Research Center, 2016.
- 5 A. HAMASAKI, *A Study on Policy Legal Management for Public Property through the Operation of the Public Ombudsman System*, *Annual Report of Public Administration Research* n° 48, Tokyo, Gyosei, 2013.
- 6 National Association of Chairpersons of City Council, *Report on the Public Ombudsman System in Local Governments (2015)*, Tokyo, Administrative Management Research Center, 2016.
- 7 M. ETO, Instructor of International Cooperation Division, Ministry of Justice, "Settlement in Administrative Litigation - A Comparison between Japan and China," 49 ICD News, 2011, p. 109-111.
- 8 Taking a look at the number of tiers of administrative units in federal countries, a standard pattern is a four-tier arrangement of federal, state, regional, and local government units. In the case of countries with single state governments, like Japan, a standard pattern is to have a three-tier arrangement of national, regional, and local government units.

- 9 The private ombudsman primarily investigates expenditures of public funds and focuses its attention on the problem of insufficient oversight over these expenditures, even though they should have been monitored by the local government's auditor general. See: R. HAYASHIYA, *Ombudsman system*, Tokyo, Iwanami, 2002, p. 75.
- 10 The public ombudsmen are established by administrative agencies.
- 11 L. C. REIF, *The Ombudsman, Good Governance and the International Human Rights System*, Leiden, Springer, 2004, p. 25.
- 12 R. HAYASHIYA, 2002, *op. cit.*, p. 32-33.
- 13 A HAMASAKI, *op. cit.*, p.107.
- 14 This type of ombudsman is appointed by and reported to the legislative branch, and has jurisdiction over many departments, agencies and state corporations. See L. C. REIF, 2004, *op. cit.*, p. 26.
- 15 T HIRAMATSU, *Institution and operation of ombudsman in each country* [kakoku no onbuzuman no seido to unyo], Tokyo, Seibundo, 2012, p. 47.
- 16 R BOUSTA, "The Ombudsman: Proposal for a Definition," 9 International Ombudsman Yearbook 44, 2005. (commenting here, specifically, Gil-Robles's book).
- 17 *Ibid.*, p. 43-51.
- 18 M. A. QUIROZ VITALE, "The Ombudsman and the Protection of Human Rights in Europe: Case Study of Italian Civic Defender," 8 US-China Law Review, 2014, p. 959.
- 19 T. SOWA *et al.*, *Introduction to Modern Administrative Law* [= Gendai Gyousei Hou Nyumon], Tokyo, Yuhikaku, 4e éd., 2019, p. 361.
- 20 L. C. REIF, 2004, *op. cit.*, p. 28.
- 21 In this paper, Ombudsmen established by Prefectures are included in the expression "municipal ombudsmen."
- 22 The Council of Local Authorities for International Relations (hereafter: "CLAIR") describes the features of the designated city as follows: "Japan has a formal designation system for its largest cities. The Local Autonomy Law defines a designated city as one with a population of 500,000 or more that has been designated by cabinet order. However, in practice, this designation is reserved for cities that already have a population of more than 1,000,000 or cities of at least 700,000 that are expected to reach the 1,000,000 mark in the near future. In April 1, 2023, a total of 20 cities were thus designated:

Osaka, Nagoya, Kyoto, Yokohama, Kobe, Kitakyushu, Sapporo, *Kawasaki*, Fukuoka, Hiroshima, Sendai, Chiba, Saitama, Shizuoka, Sakai, Niigata, Hamamatsu, Okayama, Sagamihara, and Kumamoto. Designated cities have, through allocated duties, powers similar to those of prefectures in areas such as social welfare, public health, and urban planning, and other individual laws grant them similar powers in fields such as the management of national roads and compulsory education.” Source: CLAIR, *Local Government in Japan 2020* (Revised ed., CLAIR 2023) p. 7.

23 The first example of a public ombudsman in Japan was the ombudsman established by Nakano Ward, a special ward of the Tokyo Metropolitan Government, in 1990, and since then municipalities within the jurisdiction of the Tokyo Metropolitan Government have taken the lead.

24 CLAIR, 2023, *op. cit.*, p. 6.

25 See Table1-4 above.

26 Rather than the appropriateness of administrative procedures, there are many cases where there is a problem with the response of the staff of the administrative agency. Issues related to fact recognition may be a factor of disputes. For example, an administrative official gives administrative guidance, and when the Ombudsman concludes that is was inappropriate, the official concerned may argue that he or she did not say such a thing.

27 Interview realized by the author with Yoshinori Tomita, Kawasaki Citizen Ombudsman (Representative Ombudsman) and Kikuko Seino (Ombudsman) on June 28, 2024.

28 Question asked: “What kind of consultations have you received in recent years (e.g. 5 years) and how have they been resolved?”

29 Question asked: “Are there any obstacles to the ombudsman system in fulfilling its role?”

30 Question asked: “What role is the ombudsman system expected to play in the future, given the changing lifestyles, awareness, and values of citizens?”

31 The Tokyo jurisdictional area refers to the area consisting of 11 prefectures including Tokyo Metropolis.

32 There were 1.39 times more cases in 2023 than in 2020 nationwide, while there were 1.50 times more cases only in Tokyo region, at the same period: a marked increase.

33 Question asked: “We believe that the ombudsman system may be addressing issues that are difficult to deal with in other legal systems related to administrative disputes (administrative case litigation, administrative appeals, etc.). In what ways is the ombudsman system fulfilling meaningful activities between the city - administrative agencies - and citizens.”

34 Kawasaki Citizen Ombudsman, *Kawasaki Citizen Ombudsman report of the fiscal year (2022,2023)*, 2023.

35 See Figure 3-1 above.

36 See Figure 3-2 above.

37 Kawasaki City Citizen Ombudsman, *Report for Fiscal Year 2021*, p. 14.

38 See Figure 3-4 above.

39 United Nations, Economic and Social Commission for Asia and the Pacific, *What is Good Governance?*, Bangkok, ESCAP, 2009, p. 1-3.

40 See Table 3-1, Figure 3-1 and 3-2.

41 N. KOUGAMI and N. SATO (ed.), *Concentration Pressure* [Docho Aturyoku], Tokyo, Kodansha, 2020, p. 24-25.

42 Extraordinary Administrative Research Council, *First Report on Administrative Reform*, 1981.

ABSTRACTS

Français

Cet article propose de confronter l'institution internationale de l'Ombudsman à la culture administrative japonaise, et plus précisément à son système ternaire de contrôle administratif (contentieux juridictionnel, recours administratif et système de plaintes adressées à des organes indépendants). Proposant une étude inédite et documentée de l'Ombudsman de la ville de Kawasaki en s'appuyant sur un entretien spécialement réalisé à cette fin, l'auteur décèle les raisons de l'inexistence d'un Ombudsman national au Japon et de son caractère limité au niveau local : croyance en l'infailibilité des pouvoirs publics, vulnérabilité des conseils locaux, importance culturelle conférée au groupe et à la communauté plutôt qu'à l'individu, etc. La diffusion de l'Ombudsman semble néanmoins nécessaire au Japon, afin de faire face à la bureaucratie et à la complexité croissante des fonctions administratives.

English

This article compares the international institution of the Ombudsman with the Japanese administrative culture, and more specifically regarding its ternary system of administrative review (administrative justice, administrative appeals and complaints addressed to independent bodies). Offering an original and documented study of the Kawasaki City Ombudsman, which is supported by an interview specially done for this purpose, the author reveals the reasons for the inexistence of a national Ombudsman in Japan, as well as the limited number of local Ombudsmen: belief in the infallibility of public authorities, vulnerability of local councils, cultural importance given to the group or community, rather than the individual, etc. Nevertheless, the spread of the Ombudsman seems necessary in Japan, in order to cope with bureaucracy and the growing complexity of administrative functions.

INDEX

Mots-clés

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