

訴願及其前置程序之必要性研究*

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關鍵字：權利救濟、訴願程序、訴願前置程序、職權主義及友善原則。

Keywords：the relief of rights, the procedure of Administrative appeal, the leading procedure of Administrative appeal, functionalism, the principle of friendliness.

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摘 要

有權利必有救濟（ubi jus, ibi remedium），人民之權利受侵害或未獲必要之保護時，國家應保障人民無漏洞且暢通之權利救濟途徑，以實現人民之司法受益權。尤其當人民與行政機關之間發生公法上法律權益爭議時，基於依法行政原則，該項爭議屬於行政救濟之範圍。行政救濟制度主要目的在於保障人民，使其得藉由行政機關內部審查程序之審議、復（複）查、申訴、訴願等制度保障其權利。若前述行政機關內部審查之程序無法滿足人民權利救濟之需求時，並得尋求以行政訴訟作為外部權利救濟制度。現行行政救濟途徑大致可分為三類，第一類訴願前置程序，例如：異議、申訴、復查及審議程序之必要性；第二階段為訴願審查程序；及第三階段，不服訴願決定，而進一進提起行政訴訟。本文將著重於訴願前置程序之必要性及其與訴願程序之關連性。

Study for the necessity of Administrative Appeal and leading procedures

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Abstract

ubi jus, ibi remedium, The people's right is encroached on or when not obtaining essential protection, the country should ensure the people to have no loophole and unblocked right to relieve the route, in order to realize the people's benefited right of administration of justice. Especially happen at the time of the legal benefit dispute on the public law between the people and administrative organ, on the basis of the principle of administering the state according to law, this dispute belongs to the range that the administration relieves. The administration relieves the main purpose of the system and lies in ensuring the people, make it must be by examining the review of the procedure, replying (reply) inside the administrative organ. The system of checking, appealing, appealing etc. ensures its right. If procedure that check inside the aforesaid administrative organ unable to meet people at the demand that right relieve, and must seek to regard administrative litigation as the external right and relieve the system. The current administration can roughly be divided into three kinds while relieving the route, the first kind appeals the leading procedure, for example: Objection, appealing, reexamining and reviewing the necessity of the procedure; The second stage is to appeal and examine the procedure; And the third stage, does not agree with the decision of appealing, but enter to bring administrative litigation. This text focus on, appeal leading necessity of procedure and and appeal to close of connecting with procedure.