

# 行政救濟法上行政處分停止執行之研究 －以相關問題爭點為中心

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**關鍵詞：**停止執行、暫時權利保護、略式審查模式、階段審查模式、訴願法第 93 條、行政訴訟法第 116 條。

**Keywords：**Suspension From Execution, Temporary Rights Protection, Brief Review Mode, Stage Mode, The Art.93 of Petition Law, The Art.116 of Administrative Procedure Law.

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## 摘 要

訴願或行政訴訟之提起，原則上對於行政處分之執行並無影響。至於因訴願或行政訴訟之提起而影響原處分之執行者，則規定於訴願法第 93 條第 2 項及行政訴訟法第 116 條第 2 項以下，囿於條文內容似有缺漏；致在具體操作標準及規範體系上滋生爭議，且原處分機關、受理訴願機關及行政法院對於該申（聲）請俱有管轄權，管轄機關之認定上亦有疑義。況因上開規定對於當事人得否逕向行政法院為停止執行之聲請）未訂有明文，且有關停止執行之審查模式究應採取何種標準似非一致。以上相關議題均有待釐清及確定，是拙文試以此為題，而就相關問題，於整理我國相關學理及實務見解後，嚐試觀察行政訴訟法第 116 條部分規定所師法之德國行政法院法之部分規定進行探討，以期對於我國相關問題之解決得有所助益。

### **The Study about Suspension from Execution of Administrative Injunction in Administration Relief Act — with related problems as the point**

**Tsang-Wen Chang**

#### **Abstract**

The Appeal or administrative litigation filed, in principle, does not affect the implementation of the administrative disposition. As a result of the petition or administrative litigation influences the disposition of the executor, it is stated in the Department of provisions on administrative appeal Act 93, paragraph 2, and the Administrative Procedure Law Article 116, paragraph 2 or *infra* in which certain clauses seems omitting that results in dispute. The original disposition authorities handling petitions and the administrative courts within jurisdiction have found difficulty in determining the bound jurisdiction. Moreover, the administrative court rules on whether the parties should suspend from execution not stated in clear texts, and regarding which reviewing mode should be adapted to stop implementation seems having no consistent patterns about the standards. The related issues above-mentioned need to be clarified and identified above is this paper's subject trying to explore. In addition, on the related issues, we have collected and cited many theories and practical insights in order able to observe the Art.116 of the administrative procedures in which partial provisions applied taken out directly from the German administrative courts' rules of Law will be discussed in the paper. Furthermore, we also expect the solutions helpful to the relevant problems in our country.