



年終考績撤銷訴訟之審理範圍

－評最高行政法院 108 年判字第 22 號 及第 46 號判決

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關鍵詞：年終考績、平時懲處、權力分立、訴訟權、特別權力關係

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摘 要

公務員於年終考績之撤銷訴訟中，一併請求法院附帶審查平時懲處之合法性時，最高行政法院判決一貫認為平時懲處為內部管理措施，原非司法審查之對象，拒絕予以審查。本文認為，現行制度應係基於權力分立之考量，排除司法以平時懲處為程序標的之「直接」審查，但基於訴訟權保障，司法仍應經由考績處分「附帶」審查平時懲處之合法性。蓋因年終考績應以平時懲處為主要依據，平時懲處可能經由考績等次之決定，而重大影響公務員基於公法上職務關係之法律地位。年終考績訴訟之審查範圍，自應包含平時懲處是否違法。至於最高行政法院判決認為受處分人如未經申訴制度對平時懲處表明不服，即不得於考績訴訟中再行附帶爭執其違法性。本文認為，申訴制度乃是依照重大影響理論而設立之制度，其程序標的為不得向法院直接提起行政訴訟之人事行政行為，申訴制度之原始定位，並非司法救濟之前置程序，不應產生權利主張之失權效果。

The Scope of Judicial Review of Annual Performance Appraisal: An Analysis on Supreme Administrative Court Judgment No.22&46 (2019)

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Abstract

When public servants request the administrative court to review the illegality of disciplinary action in quash order of annual performance appraisal, the administrative court regards disciplinary action as internal management measures and rejects to review it because it is not in the scope of judicial review by the theory of special power relationship. This article argues that the administrative court may not “directly” review disciplinary action, but can “indirectly” review it in the quash order for annual performance appraisal. Since annual performance appraisal must be made in accordance with disciplinary action, disciplinary action may make a great impact on the legal status of public servants through annual performance appraisal. On the other hand, the administrative court notes that if public servants do not request grievance hearings, the administrative court will not review disciplinary action in quash order for annual performance appraisal. But grievance hearings are designed for internal management measures because public servants cannot bring direct attack suit against them. Thus, this article argues that grievance hearings would not have preclusive effects on disciplinary action.