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DISSOLUTION OF THE HOUSE OF REPRESENTATIVES
&
DISSOLUTION OF LOCAL SELF-GOVERNMENT ASSEMBLY

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1. Introduction

The Constitution of Japan provides the dissolution of the House of Representatives, and the Law of Local Self-government, 1947 provides the dissolution of local assemblies.

Though both are dissolutions of assemblies, they make some difference because the one is the dissolution of the House of Representatives, a House of Diet, and the other is the dissolution of assemblies of local public entities namely prefectural assemblies or city, town and village assemblies.

Here, I intend to make clear the difference between them through considering regulations concerning both sides.

2. Meaning of Dissolution.

When we call dissolution of the House of Representatives or dissolution of local self-government assemblies, the word "dissolution" is generally used in some fixed meaning.

It means that the existing House of Representatives or local self-government assemblies lose their existence before the full term of office of members is up when they are doubtful of standing for people's or inhabitants' concerned will.

The term of office of all members is terminated before the full term is up in case they are dissolved.

At this point the House of Representatives and local self-government assemblies are identical.

3. Person who can order or demand the dissolution.

We may consider that the House of Representatives and local self-government assemblies will be dissolved by their own decision, however, the laws actually in force do not provide it. Hence they are dissolved only by an order or a demand of someone else. Then who has the right of dissolution?

1) In the case of the House of Representatives.

He who has the right of order to dissolve the House of Representatives is the Emperor, and none can do it except him. This is clearly prescribed in Article 7, Paragraph 3 of the Constitution of Japan. However, he can perform this act with the advice and approval of the Cabinet and can not do it without them in accordance with Article 3 and Article 7 of the Constitution. If we take up only the prescription that the Emperor shall dissolve the House of Representatives with the advice and approval of the Cabinet, it would seem that this prescription and the prescription that the Emperor shall dissolve the House of Representatives with the advice of respective Ministers of State (Article 7, Article 55 of the Constitution of the Empire of Japan) in the age of Constitution of the Empire of Japan make little difference. But, in fact, it makes a great difference.

In the age of former Constitution, as the Emperor shall combine in himself the rights of sovereignty as a sovereign only the Imperial Diet could consent the Emperor's law-making power, as well as the judicial court execute its judicial power in the Emperor's name, and law-making power is originally vested in the Emperor, especially some fixed kinds of administration shall be executed without the consent of the Imperial Diet as matters concerning the Royal prerogative. It was prescribed as one of matters concerning the Royal prerogative that the Emperor shall order to dissolve the House of Representatives, therefore, it was not the simple expression of a decision which was due to anyone's will, but the decision entirely based upon the Emperor's will. Though the Emperor had to be advised by Minister of State, the Minister of State should advise the Emperor's act in the inside processes of its completion.

Minister of State, therefore, was neither to decide the external will of state nor to restrain the Emperor with an advice which Minister of State offered to him in the internal relation.

On the other side, in the Constitution of Japan, it is different from the above, that is, the sovereignty is vested in the people and the Diet which represents the people, the sovereign, is the highest organ of state power. Besides the Diet is the sole law-making organ of the State and is not an organ which consents the Emperor's law-making power. The judicial court is not an organ which executes its judicial power in the Emperor's name, but has its own judicial power. The executive power also is not vested in the Emperor but in the Cabinet. Now the Emperor is not any sovereign, in other words, combines in himself no rights of sovereignty, and came to have the essential function that he is the symbol of the State and of the unity of the people. And the Constitution also provides such a prescription that the Emperor shall perform some kinds of acts in matters of state. In this case, all acts of the Emperor in matters of state as well as the manner of the Emperor to perform them must be suitable to his position of the symbol of the State. About this, the Constitution of Japan prescribes in Article 4 that the Emperor shall perform only such acts in matters of state as are provided in this Constitution and he shall not have power related to government. Therefore, (1) The Emperor shall perform no other acts in matters of state except those which are prescribed in the Constitution. (Article 6, Article 7 of the Constitution of Japan) At this point the Emperor differs from the same in the age of the Constitution of the Empire of Japan, in which he had the whole power to perform acts in matters of state unless the Constitution restricted him on purpose. (2) The Emperor must not exercise powers related to government as if he had such powers in performing acts in matters of state. Powers related to government are vested in others but the Emperor, and he is to perform what they decide, as the acts in matters of state themselves. At this point the Emperor differs from the same in the age of the Constitution of the Empire of Japan, in which he had the whole power to perform acts in matters of state with his own decision while he exercised

his powers related to government being founded on the Constitution.

Thus, today the Emperor dissolves the House of Representatives not in the capacity of the person that has powers related to government but as a person who merely performs the fixed acts in matters of state. Easily speaking, he who actually decides the dissolution of the House of Representatives is not the Emperor, and the Emperor only expresses the decision itself to be done by others as acts in matters of state. And then who actually decides them? The Cabinet is that. All acts of the Emperor in matters of state require the advice and approval of the Cabinet. (Article 3, Article 7 of the Constitution) Now the Cabinet is essencially the highest general executive organ of the State to be different from the Minister of State in old ages that was a simple organ of advice. In this way the Cabinet which generally has executive power is qualified for a function to advise and approve the Emperor at the same time. And then it is to say that such advice and approval of the Cabinet, against the advice of Minister of State, restrain the Emperor's will. Because if the Emperor performs his acts in matters of state in contract to the advice and approval of the Cabinet he would come to have powers related to government in this sphere to the violation of the Constitution. Then the Emperor performs the act to dissolve the House of Representatives as it is, with the advice and approval to dissolve it. The Cabinet which advises and approves the Emperor decides actually the dissolution of the House of Representatives, while the Emperor performs the act in matters of state formally to dissolve it founded on the above decision. The person who dissolves the House of Representatives in the Constitution of Japan is the Emperor, but it is memorable that this makes a large difference from the dissolution of the House of Representatives by him in the Constitution of the Empire of Japan.

2) In the case of local self-government assemblies.

Persons who order to dissolve local self-government assemblies are the chief executive officers of local public entities concerned. Beside this, it happens that assemblies are dissolved by direct popular demand

within their communities.

a) The chief executive officers' order of dissolution.

In accordance with Article 178, Paragraph 1 of the Law of Local Self-government, "If the assembly of general local public entity passes a non-confidence resolution in the chief executive officer of local public entity concerned, the chairman has to report it to the chief executive officer of local public entity concerned. In this case, the chief executive officer of general local public entity may dissolve the assembly within 10 days since he received the report." So it is no doubt that the chief executive officers can dissolve the assemblies of local self-government. It is a question whether the chief executive officers are able to dissolve assemblies not only in the case above mentioned but also in other cases. And I will consider in the following section about this, but for the present to describe only my conclusion, the chief executive officers are able to dissolve assemblies in the sole case above mentioned and have no right generally to dissolve them.

Now was it admitted in the old system of local self-government to dissolve assemblies by the chief executive officers? The answer is "No." I will leave prefectures for the present because they were half-self-governing bodies (imperfect autonomies) in old ages. Concerning city, town and village which were perfect autonomies, the sphere of self-governing works was more limitted, self-governing powers were restricted by far and the right of State to superintend was extremely large and strong in comparison with the same in present time. The chief executive officers of each city, town and village were elected by assemblies of each city, town and village to be different from the present time, and not the chief executive officers of city, town and village but the Minister for Home Affairs that was the central government office of State could order to dissolve city, town and village assemblies. (Article 162 of the Law of City of 1910, Article 142 of the Law of Town and Village of 1911) That is, dissolutions of city, town and village assemblies were not the matters of internal relation of city, town and village concerned but were performed as one of operations of State to superintend each city, town and village. On the other hand, after the war the Constitution

of Japan was enforced and the former system of local self-government came to be fundamentally reformed one after the other, and then prefectures became general local public entities which are perfect autonomies as well as city, town and village, the sphere of self-governing works of these local self-government entities was enlarged, self-governing powers were strengthened and the superintendence of State was much restrained. Thus the case disappeared that the Minister of State for Home Affairs could dissolve the local self-government assemblies, and the chief executive officers of local self-government entities concerned came to be able to dissolve local self-government assemblies concerned. Besides such chief executive officers are elected, not by local self-government assemblies but direct popular vote within their communities. And when the chief executive officers dissolve local self-government assemblies they are able to perform the act with their own decision. This is different from the case that if the Emperor dissolves the House of Representatives the dissolution is only a formal act of the Emperor with the actual decision of the Cabinet.

b) The direct popular demand for dissolution.

It happens that dissolution of local self-government assembly bases upon the direct popular demand within its community, in addition to the dissolution by the chief executive officer. Namely in accordance with prescriptions of the Ordinance for the Enforcement of Law of Local Self-government, those who are inhabitants of the community concerned and have right to vote at the same time are able to demand to dissolve the assembly towards the election-committee, with the joint signature of one-third or more of the whole number from deligate of signatories. When the demand is required, the election-committee must make it public at once, while leave it to be voted by electors. When the result of vote comes clear, the election-committee must report it to the deligate above mentioned and the chairman of assembly, and make it public at once, while it must report, in prefecture, to the chief executive officer and the Prime Minister, and in city, town and village, to the chief executive officer and the chief executive officer of prefecture concerned. The assembly shall be dissolved with affirmative vote of a majority of

all votes in the voting for dissolution. (Article 13, Paragraph 1 and Article 76–78 of the Law of Local Self-government, Article 100–109 of the Ordinance for the Enforcement of Law of Local Self-government) Concerning the direct popular demand, the inhabitant must have right to vote, and not the inhabitant who has right to vote may demand individually, but with joint signature of one-third or more of all number. It is a kind of joint acts, so to say. It is only allowed that the inhabitant can demand the dissolution of the assembly and that demand does not necessarily mean the dissolution itself. If the demand is required, the vote of dissolution is performed by the election-committee, the assembly is dissolved only when the affirmative vote of a majority of all popular votes is gotten in the result of the vote, and if the affirmative vote of a majority of all votes is not gotten the assembly can not be dissolved. Therefore, the direct popular demand can not cause the dissolution of assembly by itself, against the chief executive officer can dissolve the same by himself. But the very fact that the direct popular demand is allowed by law is important for the self-governing by the inhabitant. This institution newly comes to be allowed as one of direct popular demands, as well as the demand to enact, amend and abrogate their own regulations, inspect of affairs and dismiss the members of assembly, the chief executive officer and such other local officials, and has never seen in the old institution of local self-government. And such an institution of the direct popular demand is now only allowed to the local inhabitant in the sphere of the local self-government, and not to the general people of the state in the sphere of the government. Therefore such an institution is not allowed that the people directly demand the dissolution of the House of Representatives.

4. The case in which the dissolution is performed.

As the dissolution is performed in such a case that the existing House of Representatives or local self-government assembly comes to be doubtful to represent the will of the people or the inhabitant concerned, in the logical point of view, the dissolution is to be certainly performed in all such cases. Such cases may be various and generally

considering for examples, (1) when non-confidence resolution is done for the Cabinet or the chief executive officer, (2) when the important bill presented by the Cabinet or the chief executive officer is rejected, (3) when the members of assembly who support the Cabinet or the chief executive officer are minority. It is the logical request that the assembly can be dissolved in all such cases. But in the actual institution it is not necessary to allow the dissolution in all these cases, but is possible to allow the dissolution in special cases limitted. How is this point prescribed on the law actually in force?

1) In the case of the House of Representatives.

"If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days." This is the prescription in Article 69 of the Constitution. It is no doubt that the House of Representatives can be dissolved by this prescription when the non-confidence resolution is done for the Cabinet. But it is the question whether the dissolution of the House of Representatives is limitted only in this case or not.

Some disputants assert that the House of Representatives can be dissolved only in the case prescribed in Article 69 of the Constitution, but the common opinion, against it, is as followed; the House of Representatives can be dissolved not only in the case above mentioned but also in every case that the existing House of Representatives is doubtful to represent the people's will and at the same time it seems to be necessary to ascertain the people's will. I support this common opinion, too. Because on one hand the prescription in Article 69 of the Constitution is certainly a prescription related to the dissolution, but it does not mean to restrict the case in which the House of Representatives is dissolved, for it originally prescribes one of the cases in which the Cabinet shall resign en masse, on the other hand, the Article 7, Paragraph 3 of the Constitution prescribes only that the Emperor shall dissolve the House of Representatives, and does not prescribe at all when he shall do so, as above mentioned. Though I say so, I won't assert that the House of Representatives can be dissolved wilfully

at any time, but the existing House of Representatives also can be dissolved when it is doubtful to represent the people's will, not always a non-confidence resolution is done.

2) In the case of the local self-government assemblies.

The local self-government assembly is dissolved by the chief executive officer or the direct popular demand as shown the above. So I will consider about it separately.

a) In the case to be dissolved by the chief executive officer.

The Law of Local Self-government prescribes in Article 178 that the chief executive officer can dissolve the assembly when the local self-government assembly passes a non-confidence resolution for him. And when the assembly passes the resolution to strike out or reduce the expenditure necessary for emergency or restoration establishment caused by disaster, for prevention against infectious disease, the chief executive officer must lay the matter before the assembly again with its reason. And then, when the matter is reconsidered and the assembly resolves again to strike out or reduce the expenditure, the chief executive officer can regard that resolution as a non-confidence resolution. (Article 177, Paragraph 2 and Paragraph 4 of the Law of Local Self-government) Therefore, the chief executive officer can dissolve the local self-government assembly likewise in this case. Then whether the dissolution of local self-government assembly is limitted in the case in which the non-confidence resolution is passed (contained the case regarded as when a non-confidence resolution is passed. The same, below), or the assembly generally can be dissolved if the existing local self-government assembly falls under the case in which it theoretically might be dissolved. The answer is that the dissolution is limitted in the case in which the non-confidence resolution is passed, because concerning the case in which the executive officer can dissolve the local self-government assembly, the Law of Local Self-government prescribes nothing but in Article 178.

b) In the case of the direct popular demand for the dissolution.

Concerning the direct popular demand for the dissolution of the local self-government assembly, the Law of Local Self-government only prescribes that the demand shall be allowed, and does not specially con-

strain when it can be done. So the inhabitants can demand whenever they recognize as a matter of course they should require the dissolution of the assembly. But the assembly is not always dissolved by the direct popular demand, but is dissolved with the affirmative vote of a majority of all popular votes at the voting for dissolution as above mentioned.

5. The time of dissolution.

Is any restriction set up about the time to perform the dissolution? About this, here is a question at first whether the dissolution must be constricted while the assembly is in session or not. But the House of Representatives or the local self-government assembly can be dissolved while it is not in session if needed, because the dissolution denies the existence of the House of Representatives or the local self-government assembly and they exist even while they are not in session. But in fact, the dissolution while they are in session is more frequently, and the House of Representatives and the local self-government assembly make no difference in this point.

Next, is such any restriction set up that the assembly must not be dissolved in a certain period from a datum time? Such restriction is not set up in the case of the dissolution of the House of Representatives at all. In the case of the local self-government assembly, such restriction is not also set up in the dissolution by the chief executive officer but in the dissolution by the direct popular demand. Namely, the direct popular demand for dissolution must not be performed for a year from the date of the ordinary election of the members of the assembly, as well as the date of the voting for dissolution of the assembly. (Article 79 of the Law of Local Self-government)

6. The measure after dissolution.

The dissolution has the function to deny the existence of the House of Representatives or the local self-government assembly, however, it is not the essencial function simply to deny the existence of them but to ascertain the true will of the people or the inhabitant within the community. Therefore, they can not leave the assembly dissolved but

must take a certain measure of it. Then what prescription is provided about this?

1) In the case of the House of Representatives.

When the House of Representatives is dissolved there must be a general election of members of the House of Representatives within forty days from the date of dissolution, and the Diet must be convoked within thirty days from the date of the election. (Article 54, Paragraph 1 of the Constitution. Article 31 of the Law of Public Officials Election, 1950. Article 1 of the Law of Diet, 1947.) The Diet convoked after dissolution is named the special session, to be different from the ordinary or extraordinary session of the Diet. (Article 1, Paragraph 3 of the Law of Diet.)

When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session. (Article 54, Paragraph 2 of the Constitution. Article 4 of the Law of Diet.) When the House of Representatives is dissolved and the House of Councillors is closed, the Diet is to cease its activity. Then in this time, how to deal with the matters that originally require the resolution of the Diet and must be emergently disposed? The Constitution of the Empire of Japan provided the prescriptions concerning the emergency ordinances and financial measures for this case, (Article 8, Article 70 of the Constitution of the Empire of Japan) and the Emperor could deal such matters by himself without ascertaining the opinion of the House of Peers. Differently from this, the Constitution of Japan prescribes that the Cabinet may convoke the House of Councillors in emergency session. This difference comes from the fact that in former times the Emperor was the sovereign and the Imperial Diet was only an assistant organ for him, especially the House of Peers did not consist of members elected by the people, while today the sovereign is the people, the Diet which represents the people is the highest organ of state power and the House of Councillors, the second House, consists of members elected by the people like the other House. Concerning the activity of the House of Councillors convoked in emergency session,

there is the Rule of the House of Councillors in Emergency Session, 1947. The measures taken by the House of Councillors at the emergency session have in its sphere the same effect as the measures taken by the Diet but are provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten days after the opening of next session of the Diet. (Article 54, Paragraph 3 of the Constitution) It is not prescribed that when the House of Representatives is dissolved, the Cabinet must resign en masse at once. But the Cabinet must resign en masse upon the convocation of the special session after a general election after dissolution, because there is a prescription that the Cabinet generally shall resign en masse upon the first convocation of the Diet after a general election of members of the House of Representatives. (Article 70 of the Constitution) This is not related to majority or minority of members that support the Cabinet after the general election. Even if the members that support the Cabinet are majority, there must be resignation en masse. When the Cabinet resigns en masse, it is required newly to make the Cabinet. For this purpose, the Prime Minister newly shall be designated by the Diet. (Article 67 of the Constitution) In this designation it happens that the person who was the Prime Minister of the Cabinet resigned en masse is designated again, or another person is newly designated. The person who designated by the Diet is appointed by the Emperor as the Prime Minister, (Article 6, Paragraph 1 of the Constitution) the Prime Minister appoints other Ministers of State, (Article 68, Paragraph 1 of the Constitution) and thus the new Cabinet comes into existence. The function of the Cabinet from the time when the Cabinet resigns en masse to the time when the Prime Minister is newly appointed is continued by the same Cabinet resigned en masse. (Article 71 of the Constitution)

2) In the case of the local self-government assembly.

When the local self-government assembly is dissolved, there must be an ordinary election within forty days from the date of dissolution. (Article 33, Paragraph 2 of the Law of Public Officials Election) Specially concerning the session first convoked after the ordinary election based upon the dissolution, there is not such any prescription that the session

shall be convoked within some days from the date of election, therefore, this session is convoked in accordance with the convocation of the ordinary or extraordinary session. (Article 101, Article 102 of the Law of Local Self-government)

When the matters required the resolution of the assembly must be taken measures emergently after the dissolution of the local self-government assembly, the chief executive officer can deal with the matters by himself. The chief executive officer must report about this disposition to the assembly at the next session and ask for approval. (Article 179 of the Law of Local Self-government) In the local self-government assembly that is the unicameral legislature, such a system is not considerable as the convocation of the House of Councillors in emergency session.

Besides, the chief executive officer may not resign upon the first convocation of the local self-government assembly after an ordinary election after dissolution, because there is not such prescription that the Cabinet shall resign en masse upon the first convocation of the Diet after a general election of members of the House of Representatives. Therefore, there is no trouble if the members that support the chief executive officer is majority after that ordinary election, but when the members that oppose to the chief executive officer come to make majority a non-confidence resolution would be passed again at the first session convoked after that ordinary election. It is rather worse to acknowledge that the chief executive officer continues his office, in spite of a non-confidence resolution passed again at this session as above mentioned, therefore, the Law of Local Self-government provides the prescription that the chief executive officer must retire from his office. When the assembly is dissolved by the chief executive officer since a non-confidence resolution, a non-confidence resolution is passed again at the first session convoked after that dissolution, and the chief executive officer is reported this fact by the chairman of the assembly, the chief executive officer shall retire his office at the date of his receipt of the report from the chairman. (Article 178, Paragraph 2 and Paragraph 3 of the Law of Local Self-government) When the chief executive officer

retires his office, there must be the election of the new chief executive officer. Then this election is called by-election to be different from the election at the expiration of term of office, and must be performed within fifty days from the date when the reason to perform this election occurs. (Article 34, Paragraph 1 of the Law of Public Officials Election) During the vacancy from the chief executive officer retires his office until the new chief executive officer is elected, the function of the chief executive officer is continued by the assistant governor in prefecture, by the deputy-mayor or headman's assistant in city, town and village. (Article 152 of the Law of Local Self-government)