

# A Prompt and Fair Operation of Administrative Appeals

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**Anti-Corruption and Civil Rights Commission  
Republic of Korea**

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# Overview of Administrative Appeals

## 1. Summary of Administrative Appeals

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### 1) Objectives

An administrative appeal has two objectives: to relieve rights of the people and to achieve voluntary control of administration. The relief of rights means protecting a person whose rights are infringed by an illegal and/or unfair administrative action. The voluntary regulation of administration is designed to achieve legitimacy and purposiveness for the purpose of an administrative action by giving an opportunity to an administrative agency to take a corrective action by itself.

Article 1 of the Administrative Appeals Act of Korea stipulates as follows: “The purpose of this Act is, through the procedure of administrative appeals, to relieve citizens of any infringement of rights due to an illegal or unreasonable disposition or other exercise or non-exercise of public power by administrative agencies, thereby achieving a proper operation of administration.” This definition represents that the objective of the administrative appeals lies in the relief of rights as well as in voluntary administrative control.

### 2) Main functions

#### A. Voluntary administrative control

It aims at ensuring the administrative autonomy by making an administrative agency or its superior/supervising authority decide by itself through self-control process before an administrative issue is submitted to a court.

## B. Ensuring administrative efficiency

In order to perform administrative works in an era that requires a prompt process, seeking a swift resolution of a conflict regarding administrative legal relations by acknowledging rapid and simple administrative appeals prior to taking judicial procedures is reasonable, enhances the conveniences of people and ensures the administrative efficiency.

## C. Using expertise of administrative agencies

Regarding an administrative appeal case requiring expertise and technicality, administrative appeals make it possible to resolve conflicts using the expertise of an administrative agency, which complements the judicial function of a court.

## D. Ensuring judicial economy

As an administrative appeal constitutes summary dispute resolution procedures, cost and time can be greatly reduced. Also, as it prevents unnecessary administrative litigation from being filed, a court is less burdened by litigations, contributing to judicial economy.

## E. Expanding the scope of rights and interests relief

Through an administrative appeal, not only legitimacy and purposiveness (appropriate or inappropriate) of an administrative decision can be judged but also a request for an administrative agency to do more can be made. Therefore, it is safe to say that an administrative appeal is more efficient to relieve people's rights than administrative proceedings.

## 2. Administrative Appeals Commission

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### 1) Overview

The Administrative Appeals Commission is a representative administrative agency established for the resolution and ruling of an administrative appeal case.

Originally, the Administrative Appeals Commission was in charge of resolution, and a separate ruling authority made a decision in compliance with the resolution made by the Administrative Appeals Commission. However, with the amendment of Administrative Appeals Act (February 2008), the Administrative Appeals Commission started to hand down a ruling. As such, the Commission has become an authoritative agency in name and substance that protects people's rights.

The Administrative Appeals Act defines that the Administrative Appeals Commission shall be independent of other administrative agencies to secure a fair and objective deliberation. Furthermore, to ensure objectivity in the organization of the Commission, not less than 4 persons out of 7 members (5 out of 9 members for the Administrative Appeals Commission under the Prime Minister) participating in every meeting shall be non-government persons like lawyer, professor or other experts.

### 2) Legal characteristics of the Administrative Appeals Commission

#### A. Deliberation and ruling agency

The Administrative Appeals Commission is a representative ruling agency authorized to deliberate and/or rule on an appeal case. It has a feature as a deliberation and ruling agency which judges and decides from the position of a third party on the assertions of the dispute parties by reviewing various evidences and relevant Acts and subordinate statutes.



## B. Representative administration agency

The Administrative Appeals Commission is a representative agency, which comes to order with the attendance of a majority of the total commissioners including its Chairperson, and a concurrence of a majority of the commissioners present shall be necessary for decisions.

## C. Quasi-judicial administrative agency

In deliberating and ruling on an appeal, the Administrative Appeals Commission applies various litigation procedures such as the intervention of interested parties, the exclusion, evasion of and challenge to a commissioner, appointment of agents, various types of examination of evidence and other judicial procedures. Regarding an appeal for adjudication, the Commission is authorized to make an independent ruling. A ruling of the Administrative Appeals Commission is the final decision of the Administration regarding the corresponding case.

### 3) Different types of Administrative Appeals Commissions

Administrative Appeals Commissions are categorized as follows: the Administrative Appeals Commission under the Prime Minister established within the Anti-Corruption & Civil Rights Commission, the Metropolitan/Provincial Administrative Appeals Commissions, and other types of Administrative Appeals Commissions.

Table 1. Jurisdiction of Two Commissions over Administrative Agencies

	Administrative Appeals Commission under the Prime Minister	Metropolitan / Provincial Administrative Appeals Commission
Administrative Agencies Concerned	<ul style="list-style-type: none"><li>• Central administrative organizations and their pertinent agencies</li><li>• Seoul Mayor, Metropolitan City Mayors and Province Governors</li></ul>	<ul style="list-style-type: none"><li>• Heads of Gu-Office (ward), City Mayors, Heads of Counties</li></ul>

## A. Administrative Appeals Commission under the Prime Minister

### a) Case jurisdiction

The Administrative Appeals Commission under the Prime Minister is established in the Anti-Corruption and Civil Rights Commission to deliberate and rule on an appeal against a disposition or omission made by following organizations:

- Mayor of Special Metropolitan City (Seoul), Mayors of Metropolitan Cities, Province Governors and Governor of Jeju Special Self-Governing Province (included Educational Superintendents)
- When the Prime Minister or central administrative organization corresponds to its immediately higher administrative agency or competent supervisory administrative agency
- Special national administrative agency (except special national administrative agency belonging to the central government organizations)
- Prime Minister and each minister belonging to the Administration

### b) Composition of commissioners

The Administrative Appeals Commission under the Prime Minister is composed of less than 50 members including 1 Chairperson, and the number of Standing Commissioners is not more than two.

The Chairperson of the Administrative Appeals Commission under the Prime Minister shall be selected among the Vice Chairpersons at the Anti-Corruption and Civil Rights Commission, and a Standing Commissioners may act on behalf of the Chairperson when deemed necessary. Standing Commissioners shall be appointed as public officials serving special service. A candidate for Standing Commissioner shall have worked for three years or longer as a public official at level 3 or higher or shall have expertise in administrative appeals.

The Standing Commissioners are appointed by the President on the recommendation of the Chairperson via the Prime Minister. The term in office for standing commissioners shall be 3 years, which may be renewed once. Commissioners other than Standing Commissioners are commissioned or nominated by the Prime Minister among candidates satisfying the provisions of each subparagraphs of Article 6(4) of the Administrative Appeals Act\*.

Article 6(4) of the Administrative Appeals Act: (4) The members of administrative appeals commission shall be those falling under any of the following subparagraphs, or those who are commissioned or nominated by the ruling authority concerned from among public officials under its control:

1. Those who are qualified as attorney-at-law;
2. Those who are or were in a position of associate professor or higher teaching law at schools as prescribed in subparagraph 1 or 3 of Article 2 of the Higher Education Act; and
3. Those who were public officials of Grade IV or higher in the administrative agencies or public officials in general service who belong to the Senior Civil Service, or those who are learned and experienced in the administrative adjudication.

### **c) Operating meetings**

The meeting of the Administrative Appeals Commission under the Prime Minister consists of 9 commissioners (1 Chairperson, 2 Standing Commissioners and 6 Commissioners designated by the Chairperson), but more than 5 qualified non-government persons such as lawyers shall be included. The Commission makes decisions with attendance of a majority of the total Commissioners and the approval of a majority of the Commissioners present.

Meanwhile, the Administrative Appeals Commission under the Prime Minister operates subcommittee and expert committee systems which review in advance an appeal designated by the Chairperson for an in-depth examination and prompt process of numerous cases. The subcommittee has 5 commissioners or fewer selected by its



Chairperson, including the Standing Commissioner of the Administrative Appeals Commission under the Prime Minister. Then, the subcommittee examines in advance an appeal case chosen by the Chairperson and reports the results to the Administrative Appeals Commission under the Prime Minister.

## **B. Metropolitan/Provincial Administrative Appeals Commission**

### **a) Case jurisdiction**

Aside from the Administrative Appeals Commission under the Prime Minister, the Metropolitan/Provincial Administrative Appeals Commissions are under the corresponding Mayor of Special Metropolitan city, Mayors of Metropolitan cities, Governors of Provinces and Governor of Jeju Special Self-Governing Province to deliberate and rule on an appeal against a disposition or omission made by a national administrative agency or an autonomous administrative agency in its jurisdiction belonging to the Mayor of Special Metropolitan city, Mayors of Metropolitan cities, Governors of Provinces and Governor of Jeju Special Self-Governing Province. As in the case of the Administrative Appeals Commission under the Prime Minister, they are representative administrative agencies.

### **b) Composition of commissioners**

The Administrative Appeals Commission shall be composed of not more than 15 members, including a chairperson. The Chairperson of the Administrative Appeals Commission shall be the ruling authority concerned, and may, if necessary, have a public official under its control act for him/her.

### **c) Operating meetings**

Commissioners of the Administrative Appeals Commission are commissioned or designated by the competent administration agency among those who fall under any of subparagraphs of Article 6(4) of the Administrative Appeals Act, or among public

officials of the competent agency.

The meeting of the Administrative Appeals Commission consists of 6 commissioners and at least 4 persons who fall under any of subparagraphs of Article 6(4) of the Administrative Appeals Act shall be included.

Each city and province still has no independent division solely in charge of affairs regarding administrative appeals. Instead, a division of planning management or a team in the office of legal affairs in administrative planning team is responsible for such affairs. Commissioners are generally composed of lawyers, public officials, professors and former public officials.

### C. Other Administrative Appeals Commissions

For public agencies directly under the President, the Secretariat of the National Assembly, the Ministry of National Court Administration, the Secretariat of the Constitutional Court, the Secretariat of the National Election Commission and other administrative agencies without competent supervisory administrative agency, an Administrative Appeals Commission is established within their own administration organization.

## 3. Special Administrative Appeals System

The Administrative Appeals Act, a general law regarding administrative appeals, stipulates in Article 3 that when a specific provision is defined in other laws, appeals procedures defined in such laws shall be followed, and in other cases, an administrative appeal shall be filed pursuant to the Administrative Appeals Act.

An appeal procedure to which special provisions regarding the application of the Administrative Appeals Act is applied is called Special Administrative Appeals.

There are a variety of organizations that deal with special administrative appeals cases:

the Tax Tribunal in charge of a judgment on tax imposition and collection, the Korean Intellectual Property Tribunal responsible for trials on patent, utility model, design and trademark, the Land Tribunal taking charge of trials on expropriation of land, the Appeals Commission dealing with disputes on personnel disposition, the Labor Relation Commission in charge of trials on unfair labor practices, the National Health Insurance Dispute Mediation Committee responsible for trials on insurance benefits, Industrial Accident Compensation Insurance Deliberation Committee, Employment Insurance Deliberation Committee, National Pension Review Committee, Public Officials Pension Payment Review Committee, Fishery Disaster Compensation Insurance Deliberation Committee, Mental Health Judgment Committee and Maritime Safety Tribunal.

# Operation of Administrative Appeals Commission

## 1. Overview of Receipt and Handling Process of Appeals

In 2008, a total of 24,190 cases of administrative appeals were received, and 23,142 cases were deliberated and resolved. Among them, 3,462 cases (15 percent) were accepted, 18,840 cases (81 percent) were dismissed, and 840 cases (4 percent) were rejected.

Table 2. Status of Receipt and Handling Process of Appeals

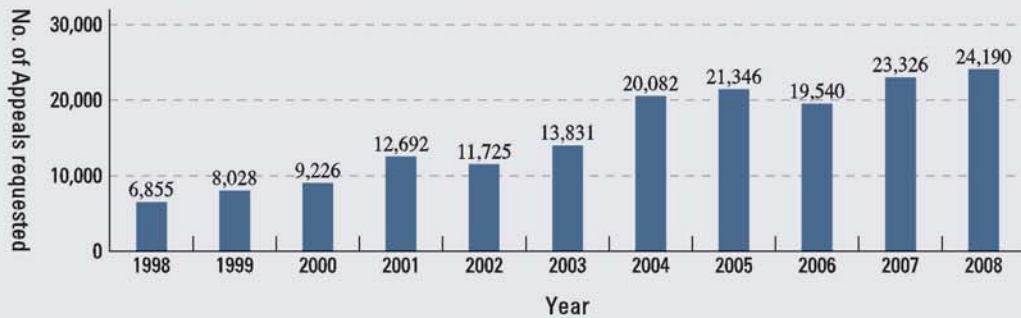
(Unit : Case(s))

Receipt	Deliberation · Ruling				Acceptance Rate (%)	Withdrawal · Transfer
	Total	Acceptance	Dismissal	Rejection		
24,190	23,142	3,462	18,840	840	15.0	1,275

The number of administrative appeals cases received has been constantly on the rise from 1998. With the amendment of the Administrative Litigation Act, transposition system of administrative decision before the litigation was changed from mandatory to optional procedure on March 1st, 1998. Notwithstanding the change, the number of administrative appeals is on the increase.



Figure 1. Annual Trends of Appeals



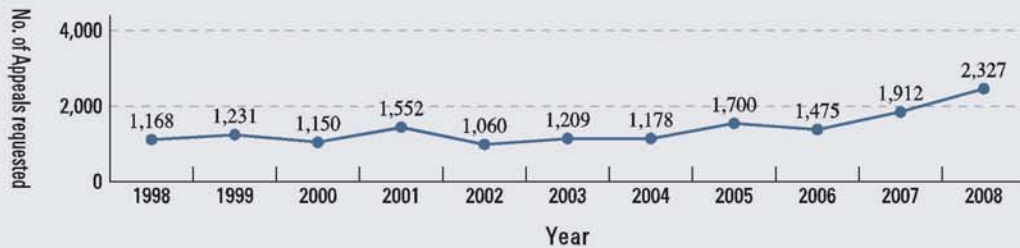
## 2. Status by Category

Requests for adjudication can be categorized according to various criteria but following categorization can be used in general: appeals on driving (cases related to driver's license), appeals on veteran's affairs (cases regarding registration as persons of distinguished service to the State), and general appeals excluding the former two categories.

The number of appeals received in 2008 by category is as follows: 2,327 general appeals (9.6 percent), 2,325 appeals on veterans affairs (9.6 percent) and 19,538 appeals on driving (80.8 percent). In terms of types of appeals handled, the result is as follows: 2,486 general appeals (10.6 percent), 2,045 appeals on veterans affairs (8.8 percent) and 18,608 appeals on driving (80.4 percent)

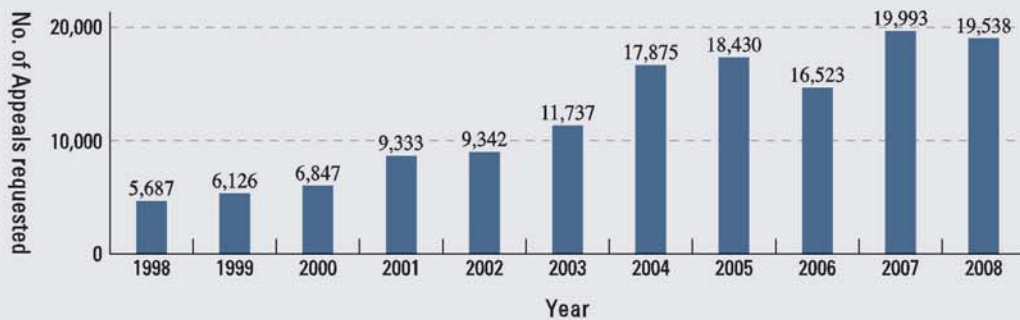
Appeals regarding industrial accident insurance, national licenses and permits, suspension of business, national exam and information disclosure are examples of the general ones in administrative appeals cases. Though the general appeals are hard to handle due to their high degree of difficulty and diversity compared to ones on driving or veteran's affairs, the number of appeals is constantly rising.

Figure 2. Annual Trends of General Appeals



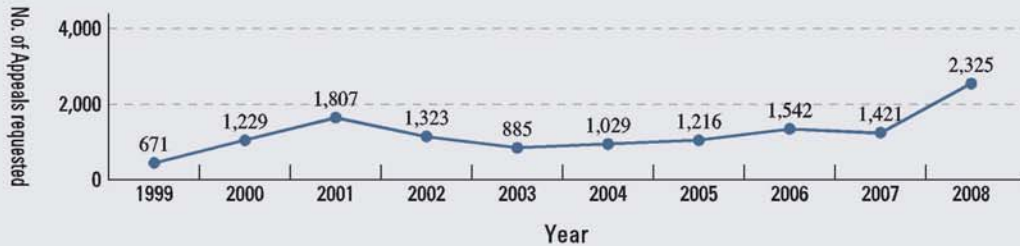
Appeals on driving are mainly related to the suspension or cancellation of a driver's license. Though their level of difficulty is lower than that of the other two categories, appeals on driving account for more than 80 percent of total appeals received, and have gradually increased since 2004.

Figure 3. Annual Trends of Driving Appeals



Meanwhile, appeals on veteran's affairs are mostly about a refusal disposition to register an appellant as a person of distinguished service to the State. Though their level of difficulty is relatively lower than that of general ones, medical expertise is needed to properly judge legitimacy and fairness in such disposition. Its increase was gradual from 2003 to 2007, but became dramatic in 2008.

Figure 4. Annual Trends of Veteran's Affairs Appeals



### 3. Status of Proceeding Period

In accordance with Article 34 of the Administrative Appeals Act, an administrative appeal case shall be decided within 60 days of the date when a ruling or an administrative agency receives a request for administrative appeal. Under inevitable circumstances, however, the Chairperson of the Administrative Appeals Commission may, in virtue of office, extend the period of time by 30 days.

The handling period of a case varies significantly depending on the type of an appeal. Usually, appeals related to driving, many of which are drunk driving cases, are relatively simple and handled faster than other types of cases. However, a general appeal takes longer time as the appeal itself is complicated and lots of things need be investigated. In particular, 1.8 percent of appeals on driving, 52.9 percent of appeals on veteran's affairs and 81.6 percent of general appeals took over 90 days to be completed. This pattern is shown in appeals from different years.

Table 3. Status of Handling Time by Case Type (2008)

Type of cases	Total cases Handled	Handling Period		
		60 days or less	61 to 90 days	Over 90 days
Driving	18,608 (100%)	15,245 (81.9%)	3,021 (16.2%)	342 (1.8%)
Veteran's affairs	2,045 (100%)	418 (20.4%)	546 (26.7%)	1,081 (52.9%)
General	2,489 (100%)	131 (5.3%)	327 (13.1%)	2,031 (81.6%)

## 4. Status by Administrative Agency

When appeals are classified by administrative agency (subordinate organizations included), the National Police Agency was ranked first with 19,626 appeals received, followed by the Ministry of Patriots and Veterans Affairs with 2,314 appeals received and the Ministry of Labor with 800 appeals. In terms of appeals accepted, the National Police Agency had 3,137, the Ministry of Labor was with 143, and the Ministry of Land, Transport and Maritime Affairs with 53.

When it comes to agencies appealed frequently for its dispositions and omissions that were found unlawful and undue, the Ministry of Education, Science and Technology, the Ministry of Public Administration and Security, and the Ministry of Land, Transport and Maritime Affairs had 17 percent of adjudication requests over general matters ruled later in favor of appellants. 16.8 percent of adjudication requests over matters related to driving, which are dealt with by the National Police Agency, were decided favoring appellants. Conversely, only 2.0 percent of adjudication requests for the Ministry of Patriots and Veterans Affairs over refusal to register applicants as persons of distinguished service to the State were ruled in favor of appellants.

Table 4. Status of Receipt and Handling of Appeals by Administrative Agency (2008)

Agency	Appeals received	Result of Resolution					Withdrawal	Transfer
		Sub Total	Ruled in favor of appellants	Ruled partially in favor of appellants	Dismissal	Rejection		
Min. of Education, Science & Technology	66	76	18	3	29	26	9	0
Min. of Public Administration & Security	59	72	8	6	28	30	19	0
Min. of Land, Transport & Maritime Affairs	365	311	44	9	196	62	30	1
National Police Agency	19,626	18,700	76	3,061	15,291	272	1,010	0
Ministry of Labor	800	999	114	29	634	222	64	3
Min. of Health, Welfare & Family Affairs	530	508	10	3	471	24	27	0
Min. of Patriots & Veterans Affairs	2,314	2,041	35	5	1,953	48	51	3



## 5. Status of an Oral Trial

Trials are largely divided into oral and written ones. In order to decide which is more reasonable, characteristics and circumstances of the two shall be taken into consideration.

Of an oral and written trial, one that is considered effective in a given circumstance is chosen. However, when an oral trial is chosen by a party, an oral trial shall be selected except for cases where a written trial is deemed the only way to decide on an adjudication request.

In 2008, an oral trial was selected for 47percent (or 340 applications) of the total applications for such trial method.

Table 5. Status of Oral Trial (2008)

No. of applications for an oral trial	No. of oral trials approved	Approval Rate
723	340	47.0%

## 6. Status of Suspension of Execution

The principle of no suspension of execution has been adopted pursuant to Article 21-1 of the Administrative Litigation Act: an appeal shall not adversely affect the effect of disposition, or execution thereof or continuation of a procedure.

There are some exceptions to such principle, where execution of a disposition may be suspended, but there are certain requirements that shall be met.

In order to prevent irreparable losses that may be incurred by an administrative disposition or its execution or the continuation of a proceeding, the Administrative Appeals Commission may make a decision to suspend the execution of a disposition when there is an urgent need to do so. However, there are certain conditions attached: 1) Suspension of effect of a disposition is not allowed when a halt in the execution of a disposition or continuation of a proceeding can bring desired effect to an appellant; 2) A decision to suspend the execution of a disposition may not be made when there is a concern that public welfare may be severely affected; 3) A decision to suspend the execution of a disposition may be canceled if the decision seriously affects public welfare.

In 2008, there were 74 dispositions that were suspended, which was 3.7 percent of the total applications for the suspension of execution.

Table 6. Status of Suspension of Execution (2008)

No. of application	Disposition Result				Suspension of Execution ex-officio
	Acceptance rate	Dismissal	Rejection	Cancellation · Transfer	
2,083	74 (3.9%)	1,781	35	137	3

## 7. Status of Using Online Administrative Appeals

Since the introduction of online administrative appeals system in July 2006, following services were available online: receipt of an appeal, transfer of written answer by an administrative agency, review and handling of an appeal, trial of an appeal, transfer of an approval to an administrative agency. The use of this system is gradually increasing particularly as more and more people get to know it.

Since the introduction of the online system, 8.3 percent or 2,001 appeals in total were requested online. Administrative agencies for their part, submitted 92.2 percent of responses online.

Table 7. Status of Online Administrative Appeals Used

Year	Appeals Received	Online Requests		Online Responses	
		Appeals Received	Online Rate	Appeals Received	Online Rate
2008	24,190	2,001	8.3%	22,298	92.2%
2007	23,326	991	4.2%	20,148	86.4%
2006	9,011	198	2.2%	6,405	71.1%

