

Comparison of the Principle of Proportionality in the Environmental Administration Process between Japan and China —— Focusing on the Air Pollution Control Act ——

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Summary: In Chinese jurisprudence, studies on the proportionality principle have been limited to the introduction of the content of the proportionality principle from the prohibition of excessive intervention, and few studies have focused on the field of environmental administration to examine the specific application of the proportionality principle. In contrast, in the case of Japan, studies related to the proportionality principle in the environmental field include the presentation of the “application of the proportionality principle in the presence of scientific uncertainty”, the submission of the “underprohibitive proportionality principle”, and the selection of the “optimal measure” when taking emergency measures in administration, i.e., the criteria for applying the proportionality principle in a narrow sense and other studies. Based on the results of these studies, it seems that the principle of proportionality may be a legal principle that extends beyond the regulatory enforcement process of administrative enforcement and applies to regulatory enforcement in general and to the regulatory enforcement process of the entire administration. Therefore, this paper is limited to the area of environmental administration, and attempts to present the criteria for the overall application of the principle of

proportionality, including the three partial principles, in the regulatory enforcement process of environmental administration, and then, in order to ensure the application of this principle of proportionality, to compare the legal systems of Japan and China regarding environmental administration regulations and to suggest directions for improvement. The main contents of this paper are as follows: II is “Comparison of theories on the principle of proportionality in environmental administration between Japan and China,” and based on the comparison of theories, it is concluded that 1) the degree of conformity should be determined by the principle of suitability to eliminate completely inappropriate measures, 2) environmental interests should be considered as the direction of protection under the principle of necessity, and 3) measures that fulfill the necessity should be considered. criteria for the application of the proportionality principle, which is to select the most appropriate regulatory measure by the method of balancing interests when scientific uncertainty does not exist (or by calculating gains and losses in over-intervention and under-intervention when scientific uncertainty exists). The third section, “Comparison of Legal Systems for Environmental Regulation between Japan and China,” compared the legal systems for environmental regulation from the principle of proportionality, focusing on the Air Pollution Control Law of Japan and China. Regarding institutional improvement, he argued that the proportionality principle should be stipulated as a supplement to the “prevention principle” and “precautionary principle” in the Basic Environmental Laws of Japan and China, and then divided the law into three regulatory stages: ex ante regulation, ex post regulation, and emergency regulation, according to the violation of orders, prohibitions, and obligations and the occurrence of emergency situations, and then clearly indicated the direction of legislative improvement regarding the proportionality principle. The direction of

legislative development regarding the principle was clarified.