

posed bill calling for state management of Yasukuni Shrine.

The current judgment, although concerned directly with the freedom of religion of an individual, contains constitutional problems peculiar to Japan reflecting its unique political, cultural and spiritual climate.

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## **b. Administrative Law**

### **1. A series of judgments concerning SMON suits**

—Judgment in the Hiroshima SMON suit (Hiroshima District Court, February 22, 1979. *Hanrei Jihō* No. 920); Sapporo judgment in the SMON suit (Sapporo District Court, May 10. *Hanrei Jihō* No. 950); Kyoto judgment in the SMON suit (Kyoto District Court, July 2. *Hanrei Jihō* No. 950); Shizuoka judgment in the SMON suit (Shizuoka District Court, July 19. *Hanrei Jihō* No. 950); Osaka judgment in the SMON suit (Osaka District Court, July 31. *Hanrei Jihō* No. 950); and judgment in the Gunma SMON suit (Maebashi District Court, August 21. *Hanrei Jihō* No. 950.)

#### **(a) Introduction**

These were follow-ups to the series of judgments in the previous year of 1978 including the judgment in the Hokuriku SMON suit (Kanazawa District Court, March 1. *Hanrei Jihō* No. 878), the judgment in the Tokyo SMON suit (Tokyo District Court, August 3. *Hanrei Jihō* No. 889), and the judgment in the Fukuoka SMON suit (Fukuoka District Court, November 14. *Hanrei Jihō* No. 910). In each case, the court ruled in favor of the victims who acted as plaintiffs.

Since the judgment in the Tokyo District Court, the virus theory contending that viruses are responsible for SMON has been completely denied. Moreover, since the judgment of the

Fukuoka District Court, the responsibility of both the state and pharmaceutical companies which have caused damage with medicines has been made clear.

In clarifying the responsibility of the State, the Fukuoka District Court narrowly interpreted the discretion of the Welfare Minister concerning safety, while noting that although the actions of the Welfare Minister, such as approving the production of drugs, are discretionary and the minister is obligated to pay strict consideration.

The Fukuoka judgment also outlined the following tentative tests in which breach of duty on the part of the minister's actions would run counter to the law in connection with its relations to the people: 1) the grave nature of danger to life caused by a breach of duties; 2) urgency of execution of duties; and 3) foreseeability of the outcome and the probability of avoiding danger. Since such tests were established, the legal obligation of the state concerning such cases has been verified.

#### (b) Future problems

The growing campaigns centering on SMON suits have resulted in the promulgation of two acts on pharmaceutical matters (See "Legislation" for details), a series of judgments in favor of the plaintiffs, and the exchange of "confirmed matters" on September 15, 1979 (among the victims, the state and pharmaceutical companies), thus paving the way for the relief of victims. Even then, there is no recovery from death or restoration of normal life for those who have become paralyzed or blind. A good many of the victims still remain unemployed. The relief of these victims and the prevention of such contamination accruing from medicines are the real tasks that must now be met.

## 2. Judgment in the first instance in a suit demanding compensation for the Tamagawa river flood damage

(Judgment by the Tokyo District Court, January 25, 1979. Case No. (wa) 987 of 1976, Damages Suit Case. *Hanrei Jihō* No. 913.)

*[Issues]*

- (1) This is a case concerning river flood damage in which the person in charge of management of rivers was found liable to compensation for such losses for defect in the management of rivers in accordance with Article 2 of the State Tort Liability Act.
- (2) This was the case in which a standardized damage assessment formula, including a "Damage Insurance Assessment Formula," was adopted to estimate material losses resulting from flood damage.

*[Facts]*

The Tokyo Metropolitan area along the Tamagawa River was flooded due to the typhoon which whipped the country from August 30, 1974, through September 1. The bank completely collapsed over 260 meters due to a catchment dam there. Nineteen houses with a total floor space of 3,000 square meters were washed away as a result.

*[Opinions of the Court]*

State liability for compensation was admitted in accordance with the State Tort Liability Act, Article 2, Paragraph 1. With regard to the question whether or not the collapse of the bank was a natural or man-made disaster, the court judged that it was a man-made disaster on the following ground: "Defects in the management of public installations should be interpreted as lacking safety ordinarily existent in such installations. In this regard, the liability of the State or public body concerned does not need the existence of negligence on their part. Hence, the case should be regarded as a man-made disaster."

*[Comment]*

- 1) Natural public property such as rivers, when compared with man-made public property which, as roads, has no particular restrictive standards on which to base the judgment.
- 2) It was made clear that the scope of management liability includes the river as a whole including man-made facilities such

as dams and banks in the current case, which are installed and managed by the third party with the permission of the person in charge of supervision and management of the river.

**[Reference]**

The State Tort Liability Act, Article 2, Paragraph 1 stipulates that when defects in the establishment or management of roads, rivers and other public installations have caused other persons to suffer losses, the State or the public body concerned shall be liable to compensate such losses.

**3. Judgment in the Appeal relating to the Law Suit against Ullage in Postal Savings.**

(Judgment at Osaka High Court, February 27, 1979. Case No. (*ne*) 1894 of 1975 . The case of an appeal calling for compensation for losses accruing from ullage in people's savings. *Hanrei Jihō* No. 924.)

**[Judgment]**

- i) A government decision on economic policies cannot be the object of judicial review.
- ii) The Postal Services Minister is obligated to act in accordance with Article 12 of the Postal Savings Act.
- iii) The right called the “right to enjoy a stabilized economic life” cannot be acknowledged.

**[Facts]**

In 1973, commodity prices went up abnormally. Consumer prices then registered a large-scale hike from 5–6 percent to 25 percent. As a result, the plaintiffs claimed they had suffered losses due to a decline in the value of nominal figures entered in their bankbooks. Stating that the losses were caused by an error committed by the government in its estimated economic outlook, they filed a suit calling for compensation on the basis of Article 1 of the State Tort Liability Act and execution of the obligation in the savings contract. In the first instance, their claim

was dismissed on the ground that decisions on economic policies are acts of discretion on the part of the government which are at once political and technical. Dissatisfied with the decision, the plaintiffs lodged an appeal at a high court.

### *[Opinions of the Court]*

The high court handed down a judgment as mentioned earlier on the following grounds:

- 1) The economic policies of the government belong to the action of the State.
- 2) Since there is no separate legal standard to inquire whether or not a policy decision is legal, the matter is left to the discretion of the government.
- 3) The various articles of the Constitution (§ § 12, 25, 27 and 29) on which they based their claim for the “right to enjoy a stabilized economic life” are program provisions, so to speak, and not legal rights.

### *[Reference]*

The State Tort Liability Act, Article 1, Paragraph 1 [Liability to compensate losses inflicted by the exercise of governmental power, right to reimbursement]. When a government official who is in a position to wield governmental power of the State or of a public body has, in the course of performing his duties, illegally inflicted losses upon another person either intentionally or negligently, the State or the public body concerned shall be liable to compensate such losses.

#### **4. Judgment by the Supreme Court on the Case relating to Acts of Violence in the Achievement Test Struggle in Osaka.**

(Judgment by the Supreme Court, October 1, 1979. Case No. (a) 1140 of 1979. Case of acts of violence. 33 *Keishū* 503.)

### *[Issues]*

With regard to the relation between Article 10 of the Funda-

mentals of Education Act and the enforcement of the 1961 nationwide achievement test by sampling, it was ruled that the enforcement of the said survey does not run counter to Article 10 of the Fundamentals of Education Act as improper control of education.

*[Facts]*

The defendants, for the purpose of preventing the nationwide achievement tests by sampling enforced on September 26, 1961, went to the Osaka Prefectural Yodogawa Technical High School and assaulted the principal of the school and the guidance director of the education board who were conducting the achievement test. They were indicted on charges of obstructing the execution of official duties. In both the first and second instances, the achievement test mentioned above was found illegal, and the constitution of a crime preventing the execution of official duties was denied, and that the constitution of a crime involving the violent act alone was admitted.

*[Held]*

The achievement test in question is an administrative survey since the survey was conducted by sampling, and it was not an educational activity aimed at the evaluation of achievements as part of the education for individual students. The rational relation can also be recognized between the jurisdictional matters of the Education Minister and the purposes of the current survey aimed at securing equal opportunities for education and the maintenance and improvement of educational standards. Hence, the Education Minister has the right to call on prefectural education boards to conduct achievement tests, and the current case does not violate Article 10 of the Fundamentals of Education Act as improper control of education.

*[Comment]*

In the current case, the judgment hitherto held by the Supreme Court that the achievement test cannot be considered

“improper control of education” was again adopted. However, many scholars and teachers have remained critical of such judgment.

**[Reference]**

Article 10 of the Fundamentals of Education Act [educational administration] stipulates that education shall not be subject to improper control, but it shall be directly responsible to the whole people.

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## **2. Law of Property and Obligations**

**Effect on the prescription period of the consolidation of farm land under the Land Improvement Act.**

Decision by the Second Petty Bench, Supreme Court, Sept. 7, 1979. (Case No. (o), 24 of 1979. Claim to register land transfer. Dismissed. 33 *Minshū* 640)

[Reference: Civil Code §162, Land Improvement Act §§102, 106]

**[Opinions of the Court]**

“When an acquisition or loss of farm land occurs in accordance with the Agricultural Land Improvement Act, the land to be acquired by a specific owner and that to be lost are not the same in nature. Since the Act guarantees the equality of the two areas of land (Article 102) and that the ownership of the two areas as well as related rights are treated as similar to those of the same (Article 106), if the independent possession of the two areas of land has been continued at the time and before and after the consolidation to the agricultural land in question, it is