

scrutiny unless a vote in any one district received overall weight more than twice that of a vote in any other district. This "two-for-one" standard was also the prevailing favorite of a majority of Japanese constitutional lawyers. On appeal, however, the Supreme Court passed up an opportunity to establish any such "bright line" rule. It only confirmed that the levels of inequality in the 1980 election were unconstitutional.

Second, in the present case on the 1980 election, the concept of "reasonable time period," within which no further revision is required in apportionment, played a key role. However, if the level of inequality between districts at the time of the last revision in 1975 was overly great, but that level was allowed to prevail by a failure of the Supreme Court to overturn it, then the "reasonable time period" becomes useless as a tool to protect voting rights. Obviously, the tests for measuring unconstitutional levels and the rules for deciding how long those levels may continue without revision are closely linked.

By Prof. HIDETAKE SATO  
KIYONOBU MIYAI  
AKIHIRO KIMIZIMA

## **b. Administrative Law**

### **1. Removal of underground petroleum tanks as a result of the construction of an underground pedestrian crossing and the adequacy of compensation for the resulting loss.**

Decision by the Second Petty Bench of the Supreme Court on February 18, 1983. Case No. (*gyo tsu*) 155 of 1983. A case demanding revocation of the decision awarding damages. 37 *Min-shū* 59.

**[Facts]**

The Supreme Court overturned a lower court decision that had awarded damages to the owner of a gas station in Takamatsu, Kagawa Prefecture, for the removal of underground petroleum tanks as a result of the construction nearby of an underground pedestrian crossing.

The dispute stemmed from the construction of the underground pedestrian crossing by the Construction Ministry's Shikoku Regional Construction Bureau at an intersection in Takamatsu in December 1974. Under the Fire Services Law, petroleum product storage tanks must be more than 10 meters from roads. The four underground tanks of a gas station near the intersection came within 10 meters of the newly-built underground crossing. To comply with the law, Mobil Oil K.K., the owner of the gas station, moved the tanks elsewhere.

When a private pathway, ditch or fence facing roads is rebuilt as a result of the construction or renovation of a road, the owner of the private property involved is entitled to receive a compensation payment under the Road Law. On the application of Mobil Oil, the Kagawa Prefectural Eminent Domain Committee awarded damages of about ¥9 million to the oil company as the cost for moving the tanks. However, the national government filed a lawsuit with the Takamatsu District Court, seeking to cancel the award given by the committee.

In the suit, the national government argued that the owner of the private property which was moved as a result of not complying with legal requirements was not entitled to receive compensation provided for under the Road Law.

Both the Takamatsu District Court and the Takamatsu High Court ruled in favor of the defendant and upheld the damages awarded by the eminent domain committee. However, the Supreme Court ruled that compensation provided for under the Road Law had not to be paid even if a private property owner was forced to move his property because it turned out to be in conflict with legal requirements as a result of road construction.

*[Comment]*

The public loss compensation scheme in Japan covers losses of properties directly expropriated or encumbered for the execution of public works. In such cases, compensation may be made by public authorities for the loss in value of such properties. However, the execution of public works may also damage the property of third parties. Such damage is usually called *jigyo sonshitsu* (loss resulting from public works), and the remedy for the loss is often controversial; the relevant laws currently in force do not adequately consider the damage suffered by third parties. The so-called “*mizo-kaki hoshō*” (compensation for the construction of a ditch, fence, etc.) at stake in this case is an example of compensation exceptionally and explicitly allowed to third parties under the current law.

The main issue in this case was the scope of the application of Art. 70 of the Road Law prescribing “*mizo-kaki hoshō*.” The legislative intent of this provision is to provide an exceptional compensation for the cost of new construction, if the transformation of land resulting from the execution of public works makes new construction works necessary for the continued use of an adjacent site. Such compensation is questionable within the scope of the tort principle but it is desirable for reasons of equity and the smooth execution of land expropriation. Therefore, the Supreme Court was correct in rejecting Mobil Oil’s claim for compensation because it fell outside the scope of that provision.

May Mobil Oil demand “just compensation” for expropriation, as provided for by Art. 29 (3) of the Constitution, for their loss “beyond the limit of endurance”, resulting from the execution of public works? Hitherto the practice has been that “there is no compensation for the cost of improvement of facilities” when the state exercises its police powers. Generally speaking, the opinion of the Court that damage due to uses of the police power may not be compensated even in case of expropriation is not totally persuasive. In this particular case, however, the removal of Mobil Oil’s petroleum tanks could have been due to construction of a basement by a private citizen and not to the

construction of the public pedestrian crossing. Therefore, Mobil Oil's removal of their underground petroleum tanks was required by the mutual duty of safety maintenance generally demanded among private citizens and was not uniquely related to the execution of the public works. This argument also justifies the decision of the Supreme Court.

[References: Art. 10 of the Fire Service Law; Art. 70 of the Road Law.]

## **2. A residents' suit against a local government giving a dinner.**

Decision by the Second Civil Division of the Tokyo High Court on Aug. 30, 1983. Case No. (*gyo ko*) 17 of 1983. An appeal demanding damages. 1090 *Hanrei Jihō* 109.

### **[Facts]**

The City of Ichikawa, Chiba Prefecture, developed a plan for the construction of a comprehensive welfare center and other facilities in 1980. The sums needed to carry out the plan, including pertinent public works, were estimated to total about 2.5 billion yen; part of that amount was expected to be granted as a state subsidy. In an attempt to receive authorization for such a grant, municipal officials including the mayor twice invited prefectural officials to a dinner where the former gave an explanation of their public works projects. The reception expenses were appropriated from the Municipality's social expenses account.

X et al., residents of the city, representing the Municipality pursuant to Art. 242.2(1)(4) of the Local Government Act, filed a claim for damages against Y, the mayor, asserting that the reception expenses were greater than the socially acceptable amount and might not be considered reasonable expenses of a municipal corporation. The court of the first instance rejected X's claim on the grounds that the expenses were legitimately within the socially acceptable limit and that Y did not abuse or go beyond his authorized discretionary power to appropriate funds for the Municipality's social expenses. X et al. filed a *koso* appeal.

*[Opinions of the Court]*

The *koso* appeal dismissed and the original decision quashed.

In Art. 243.2 of the Local Government Act, a special rule is laid down as to the liability of treasury personnel, whose liability is judged on a principle different from that of the Civil Code; no provision of the Civil Code is applicable in such a case.

Therefore, when X et al. attempted to file a representative suit demanding that Y should pay damages to the Municipality of Ichikawa because of his allegedly illegitimate appropriation for the social expenses, they should have filed a suit pursuant to Art. 243.2 of the Local Government Act. Thus this suit based on Art. 243.1 is not sustainable.

*[Comment]*

Up to this decision, neither academic theories nor judicial precedents had ever denied that “illegal spending of public money” by the head of an ordinary local government corporation might be grounds for a claim for damages in a representative suit based on Art. 242.2(1)(4). The controversy had been whether or not the particular act in question of such a local government head was socially acceptable as a matter of substantive law.

In the present case, the Court dismissed the appeal and quashed the original decision on procedural grounds. This decision is significant in the sense that by bringing up this new procedural issue the Court very strictly limited the scope of a residents’ suit.

[References: Arts. 242.2(1)(4), 232.3, 232.4(1) and 243.2 of the Local Government Act.]

By Prof. HIDETAKE SATO  
YUKIHIRO TANAKO  
AKIHIKO KIMIZIMA