

crete and insular minorities,” is awarded only a weak presumption of constitutionality. No matter how compelling the purpose of the legislation is, the means to reach the end must be those means which are the least intrusive on the rights of individuals.

The United States Congress did not adopt testing and reporting requirements in its AIDS Bill after a series of health experts testified and argued against these measures as unnecessary and counter-productive.

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b. Administrative Law

[Review of Principal Legislations]

Reflecting a strong tendency towards administrative and financial reform in recent years, throughout the year 1987 there were numerous pieces of legislations, amendments, and the abolition of laws regarding the privatization of national enterprises, taxation and public finance. Furthermore, laws concerning trade, which has been becoming an increasingly serious issue on a worldwide scale, have been adjusted. On the other hand, though urban problems have become more serious, especially regarding the issue of land as represented by skyrocketing land prices, any preparation for legislation has been delayed, and a fundamental solution is still being awaited.

1. Laws Concerning the Privatization of National Enterprises.

In 1987, an example of laws which deserve to be described particularly in this field was “An Act for the Abolition etc. of the Japan Air Lines Co., Ltd. Act.” (Ch. 92 of 1987. Promulgated on September 11, 1987. Effective as of November 18, 1987.)

By this Act, the legal systems in the field of air transport business were unified, as in the fields of railway transport and electric communication business, etc. In other words, what is called “the dy-

namism of privatization” was introduced into these enterprises.

The privatization of Japan Air Lines Co., Ltd. seems to be similar to the privatization of the three other public corporations, i.e. Nippon Telegraph and Telephone Public Corp., the Japan Tobacco and Salt Public Corp. and Japan National Railways; however, it cannot be evaluated on the same basis. For example, the privatization of Nippon Telegraph and Telephone Public Corp. reflected the demand from the industrial fields to free the market by opening up the profitable divisions, whereas the privatization of Japan Air Lines Co., Ltd. can be evaluated in terms of the government’s objective to raise management efficiency and thereby reduce government expenses. As a matter of fact, Japan Air Lines Co., Ltd., from the very beginning, was a joint-stock company of which half of the stock was owned by the government and the other half by the general public. From this perspective, Japan Air Lines was different from the other three public corporations in terms of its management structure.

In addition to the Act covering Japan Air Lines, there were many laws established, amended or abolished due to the dividing and privatizing of Japan National Railways as of April 1 of this year.

2. Laws Concerning Taxation and State Finance.

As part of the taxation system reform which has been an important political subject in recent years, “An Act for a Partial Amendment of the Income Tax Act, etc.” (Ch. 96 of 1987. Promulgated on September 25, 1987. Effective as of October 1, 1987, but in part effective as of the day following promulgation, i.e. September 26, 1987, January 1, 1988, and April 1, 1988.) was established.

The contents of this Act covered a wide range of topics but the most important points of the amendment were as follows:

(1) The Income Tax Act was partially amended, and the tax rate structure was reviewed. A tax rate of 10.5% was set on taxable revenue not more than 1,500,000 yen (the former amount was not more than 500,000 yen). The maximum tax rate was cut down to 60% (the former rate was 70%), and, to alleviate the income tax payable, various kinds of provisions regarding deductions were either amended or newly established. Thus, as alternative measures of finan-

cial resources, the Tax-Free Small-Sum Saving System and the Tax-Free Postal Saving System were changed to the Tax-Free Interest Income System for the Aged etc., and a tax rate of 15% was set on the interest revenue, which is separate from other revenues.

(2) A partial amendment has been made of the Act for the Exceptions to Taxation in order to increase taxes on the speculative trading of land. That is, within the legal period (from October 1, 1987, to March 31, 1990), if a person sells the land which he has owned for not more than two years at the time of January 1 of the year in which he sells, the Act levies a tax that is the larger of either 50% of the business income or 120% of the upper taxable amounts in the case of imposed taxation on aggregate income of business in connection with the sales of land, etc.

(3) A taxation on revenue from goods similar to money market goods.

(4) A partial amendment of the Corporation Tax Act.

(5) A partial amendment of the Tobacco Consumption Tax Act.

(6) A partial amendment of the Bourse Transaction Tax Act.

(7) A partial amendment of the Securities Transaction Tax Act.

(8) A partial amendment of the Stamp Tax Act.

(9) A partial amendment of the Common Rules of National Taxes Act.

However, reform of the various taxation systems by this Act can not be considered sufficient. Even after this Act was established, people still had strong feelings that the present system of taxation was unfair. Moreover, reforming of the Tax-Free Small-Sum Saving System might lead to increased taxation for small-sum income earners. There was a wide range of discussions in the Diet about the problems involved in reforming the taxation system. One of the targets of debate was the propriety of the new indirect tax phasing.

3. Laws Concerning Trade.

First, by a remarkable change in the international economic circumstances, "An Act for the Temporary Measure for the Smooth Change of Industrial Structure Act" (Ch. 24 of 1987. Promulgated on April 1, 1987. Effective as of May 1, 1987.) was established be-

cause it had become necessary to change the industrial structure of Japan. The major parts of this Act are as follows:

(1) The proprietor of a business in the mining or the manufacturing industry, whose ability to maintain overproduction is expected to continue over a long period, may receive special tax privileges when he puts into operation his business plan which he makes in the appropriate form, if he has the plan approved by the competent minister.

(2) By government ordinance, the Japanese government is able to designate a local area as an area in which it is acknowledged that the economic and employment situations have grown worse, e.g. where a company has gone out of business, and to give economic assistance, etc.

(3) The Japanese government expanded the coverage of the funds of the Industrial Adjustment Foundation and will proceed to smoothly convert Japan's industrial structure.

In the background of this legislation was the situation in today's foreign currency markets and the competition with the newly industrialized countries in Asia. This Act will be abolished by May 29, 1996.

Secondly, as a law concerning trade issues, "An Act for a Partial Amendment of the Foreign Exchange and Foreign Trade Control Act" (Ch. 89 of 1987. Promulgated on September 11, 1987. Effective as of November 10, 1987.) was established. The major amended points are as follows:

(1) The adjustment of regulations involving approval by the Minister of International Trade and Industry of the export of cargo and the transfer of technology which are recognized as hindering the maintenance of international peace and security.

(2) The strengthening of punishment of any person who has made such transactions (described in (1) above) without the necessary approval.

(3) The exchange of bilateral opinions between the Minister of International Trade and Industry and the Minister of Foreign Affairs with regard to the approval of such transactions.

In the background, there was the case of the violation of the COCOM (Coordinating Committee for Multilateral Export Controls) rules

by the Toshiba Machine Co., Ltd. However, there is doubt as to whether this Act has improved the practical effect of the COCOM rules. On the one hand, even after the current amendment, violations of the COCOM rules, by Kyokuto Boeki, occurred. On the other hand, the amended Act made it difficult for a foreign student in Japan to take back to his home country the personal computer he uses for study. Other such bad effects have come about due to the amendment.

4. Laws Related to Land Issues.

In order to cope with the rapid increases in land prices recently, "An Act for a Partial Amendment of the National Land Utilization Planning Act" (Ch. 47 of 1987. Promulgated on June 2, 1987. Effective as of August 1, 1987.) was established concerning the control of land transactions. The major contents of this amendment are as follows:

(1) The local prefectural governor has the power to designate an area where land prices are rising rapidly as an area under observation. As a result, it is necessary in the case of a transfer, etc. of the rights in land in the area under observation to be reported to the prefectural governor.

(2) The prefectural governor is able to reduce the size of land that needs to be reported in the case of a transfer, etc. of the rights in land in the area under observation.

(3) The prefectural governor is able to survey the trend of land price, etc. in the area under observation, and may also request that parties under a contract involving the buying, selling, etc. of land should report.

(4) The Japanese government, or any other public body, trying to complete a land transaction, etc., will give careful consideration to formation of the proper price for the land in question.

This amendment has had the effect of holding back the rapid increase in land prices. However, once the price of land has risen, the amendment has not been able to get the land price back down to its former price, and it has not had any effect in eliminating the cause of rising land prices. Thus, from these standpoints, the amendment is not adequate. The Japanese market price of land is so ex-

traordinarily high as compared with the rest of the world that it is probably necessary to establish a policy in the near future which will fundamentally solve these problems.

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2. Family Law

An Act Partially Amending the Civil Code, etc.

Promulgated on September 26, 1987. Ch.101. Effective as of January 1, 1988.

This Act includes the introduction of the special adoption system, partial amendment of the old adoption system, and the rationalization of the provisions concerning the change of a child's family name which accompanies the alteration of his family relationships. The Act amended the Civil Code, and also partially revised the Domestic Relations Adjustment Act and the Family Registration Act. The main amendment is the introduction to the Civil Code of the special adoption system; this is the most drastic reform since 1947 when the family law in the Civil Code was reformed overall.

The reform of the adoption system had been examined at Family Law Subcommittee in the Civil Law Section of the Advisory Committee on the Legal System since September 1982. In December 1985, "the interim tentative draft on the amendments to the adoption system" was published (See 6 Waseda Bulletin of Comparative Law 67), and the opinions of the general public, especially those of academic and judicial circles, were sought. The general principles of the interim tentative draft were supported by an overwhelming majority of opinions, and in light of those opinions, the bill for this Act was decided upon. Essentially, the outline of the Act is not different from