MAJOR JUDICIAL DECISIONS

Jan. — Dec., 1987

1. Constitutional and Administrative Law

a. Constitutional Law

The constitutionality of a right-of-reply claim.

Decision by the Second Petty Bench of the Supreme Court on April 24, 1987. Case No. (*o*) 1188 of 1980. Japan Communist Party v. The Sankei Shinbun Newspapers Co. A case of claim for an injunction. 41 *Minshū* 490.

[Reference: Constitution of Japan, Articles 13 and 21; Civil Code, Article 723.]

[Facts]

On December 2, 1973, the Liberal Democratic Party, the ruling party since 1955, ran an opinion advertisement in the *Sankei Shinbun* newspaper. The advertisement claimed that the Japan Communist Party's new "Platform on Democratic Coalition Government," adopted at the 1973 party convention, contradicted the old "Japan Communist Party Platform."

The JCP, which usually obtains about 10% of the vote in national elections, responded that the advertisement was a distortion and defamation, demanding that its counterargument be run in the newspaper free of charge. After the *Sankei Shinbun* rejected the JCP's demand, the JCP sought judicial enforcement of its claim. Both the Tokyo District Court and the Tokyo High Court rejected the JCP's claim. The JCP appealed to the Supreme Court.

[Opinions of the Court]

Constitutional protections of civil liberties, which are designed to guarantee the freedoms of individuals from governmental actions, are not applicable to disputes between private parties.

A constitutional right of reply, in addition to the judicial remedy against defamation available in tort law, would help protect individuals' reputation and privacy. At the same time, however, newspaper publishers would be obliged to carry counterarguments against their published articles which, they are convinced, are right. It demands the cost in printing and in taking up space that could be devoted to other material the newspaper may prefer to print. Faced with such a cost, editors might well conclude that the safe course is to avoid controversy. Thus, the right of reply dampens the vigor and limits the variety of public debate. A right of reply cannot be found anywhere in the Constitution. (A statute which establishes the right of reply is a possibility.)

Although the LDP's advertisement has had some influence on the public image of the JCP, this court considers it to be normal criticism expressed by one political party against another. Therefore, the act of the LDP does not constitute libel under tort law.

[Comment]

This case is a Japanese version of *Miami Herald Publishing Co. v. Tornillo* (418 U.S. 241, 1974). In *Tornillo,* the United States Supreme Court considered the constitutionality of a Florida right of reply statute which provided that if a candidate for political office is assailed by any newspaper regarding his personal character or offi-

cial record, the candidate has the right to demand that the newspaper print, free of cost to the candidate, any reply the candidate may make to the newspaper's charges. The reply must appear in as conspicuous a place and in the same kind of type as the charges which prompted the reply, provided it does not take up more space than the charges. The Court, in a unanimous decision, held the statute invalid. Chief Justice Burger's opinion of the Court said, in essence, that government may not compel editors or publishers to publish that which reason tells them should not be published.

The common constitutional question in *Sankei* and *Tornillo* is the relationship between the public's right of access to the press (right of reply is one of its specific forms) and the integrity of an editor's right of free expression. Both decisions cannot be interpreted as a flat, unqualified denial of a right of reply. Although sweeping access rights will not be approved, narrow, specific access guarantees, designed to implement particular and weighty social objectives with the least possible jeopardy to editorial commentary, may be upheld.

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b. Administrative Law

There were many judicial cases in 1987 in which disputed points were significant from the point of view of administrative law. Among those cases, there were two judgments of particular interest in the field of state tort liability which we should focus on. One was "The Third Kumamoto Minamata Disease Civil Lawsuit," which contested whether it was a violation of the law when administrative agencies failed to exercise their authority. The other was "The Tama River Flood Case," which contested whether there was administrative mismanagement of the Tama River and demanded compensation for damage resulting from the mismanagement. These two cases can be considered to be important cases which provide a means for analy-