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# MAJOR LEGISLATION

Jan. — Dec., 1988

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## 1. Constitutional and Administrative Law

### a. Constitutional Law

#### **Preservation of Quiet Environment Act.**

Promulgated on December 8, 1988. Ch. 90. Effective as of December 18, 1988.

#### *[Background of the Legislation]*

Japanese ultranationalists have traditionally been loud and active in expressing their views. Certain people and groups have been the target of their vocal harassment, most notably the Japan Communist Party (its offices), the Japan Teachers' Union (its annual conventions), and Communist Russia (its presence in Japan, i.e., the Soviet Embassy).

Having experienced a considerable nuisance caused by ultranationalists' vocal interference with an annual convention of the Japan Teachers' Union, the Okayama Prefectural Assembly had already enacted its preservation of quiet environment ordinance in 1984.

Just before Soviet Foreign Minister Eduard Shevardnadze's visit

to Japan, the preservation of quiet environment bill was submitted to the Diet by the members of the ruling Liberal Democratic Party and immediately passed without substantial debate. At that time most of the attentions of the public and politicians were paid to the condition of the ailing Emperor, the consumption tax bills, and the *Recruit Co.* bribery case.

### *[Contents of the Act]*

The purpose of the Act is to preserve a quiet environment around the Diet and foreign embassies in order to secure the Diet's integrity and keep good international relations by regulating the use of loudspeaker in these areas (Article 1).

No person shall use loudspeaker in such way as disturbs a quiet environment in the above-stated areas (Article 5).

Police officer may order a person to stop using loudspeaker or take necessary action to remove the violation of the Act (Article 6).

Those who do not obey the order of police officer are liable to imprisonment for up to six months or a fine not exceeding ¥200,000 (Article 7).

The areas covered by the Act shall be designated with a time limit by Prime Minister or Foreign Minister (Articles 2, 3, and 4).

### *[Comment]*

This Act is a regulatory scheme enforced by criminal sanctions. The target of regulation is the use of loudspeaker in public speech which deserves the strongest constitutional protection.

Although the Act reads like a content-neutral regulation, there is a strong suspicion that it is not. As the legislative history suggests, the principal target of regulation is ultranationalists' speech over loudspeaker, contents of which are usually right-wing criticism to Japanese government's policies or anticommunist propaganda. No other people have used loudspeaker around the Diet and foreign embassies so far. These facts may suggest that it is actually a content-based regulation, which demands strict judicial scrutiny and might not survive the challenge of its being unconstitutional.

The means the Act employs to attain its goal are extremely vague

and broad. The Diet gives an almost unlimited discretion to police officer to enforce the Act. When the legislature authorizes administrative agencies to regulate certain fields, it must set up specific enough standards to direct the use of agencies' regulating power. In addition, the Act is a criminal statute affecting public speech. The constitutional guarantee of due process (Constitution of Japan, Article 31) demands that criminal statutes be written in a clear and warning-giving manner. In this respect, the Act is extremely vulnerable to the attack of its being unconstitutionally vague and overbroad.

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## **b. Administrative Law**

### **The Consumption Tax Acts.**

Promulgated on December 30, 1988. Ch. 108. Effective as of December 30, 1988.

With the purpose of increasing tax revenue and revising the ratio between direct and indirect taxes, the Takeshita administration submitted to the Diet a package of tax reform bills introducing the consumption tax, a kind of indirect tax. Although it aroused strong public opposition, the bills were rammed through by the ruling Liberal Democratic Party which held a majority in both Houses of the Diet.

### ***[Outline of the Acts]***

(1) Items subject to taxation. Sales and lease of assets and services provided by business enterprises in Japan and foreign goods received from bonded areas.

(2) Taxpayers. Business enterprises and those who receive deliveries of foreign goods from bonded areas.

(3) Basis of taxation. The sales price of assets for domestic transactions and the delivery price of imported goods for import transactions.

(4) Tax rate. 3 percent.