
MAJOR JUDICIAL DECISIONS

Jan. — Dec., 1989

1. Constitutional and Administrative Law

a. Constitutional Law

The constitutionality of the Self-Defense Forces.

Decision by the Third Petty Bench of the Supreme Court on June 20, 1989. Case No. (o) 164 and 165 of 1982. A *jokoku* appeal claiming judicial confirmation of landownership. 43 *Minshū* 385; 1318 *Hanrei Jihō* 3; 705 *Hanrei Taimuzu* 68.

[Reference: Constitution of Japan, Preamble, Articles 9, 81 and 98; Civil Code, Article 90.]

[Facts]

The 4.3 hectare Hyakuri Air Base, which has a 2,700-meter-long runway, was built in Ogawa-machi, Ibaraki-ken, to protect the airspace over the metropolitan area. The construction of the base started in 1956 as part of the Defense Agency's First Defense Buildup Plan, but met opposition from local residents.

Kiyo Yamanishi, who was then a town elder, led the anti-base movement. In 1958, using the name of a relative, Tsutomu Ishizu-

ka, she purchased part of the land designated for the base from landowner Hiroshi Fujioka, to block construction. Yamanishi paid ¥1.1 million as a deposit against the total price of ¥3.06 million for the 2.2 hectares of land inside the air base, and had Ishizuka's name registered as the owner of the land. However, the check she passed for the balance was not accepted. Fujioka then canceled the contract and sold the land to the state. The state and Fujioka brought the case to court in 1958 to establish ownership of the land.

The defense counsel for Ishizuka and Yamanishi insisted during the trial that the land transaction for the base by what they termed the unconstitutional Self-Defense Forces has no legal basis. The debate developed into a full-scale controversy over the constitutionality of the SDF.

Ishizuka and Yamanishi based their case on Article 9 of the Constitution, which prescribes the renunciation of a military force. They asserted the land transaction by the state for the construction of the base not only violated Article 9 but also violated the right to live in peace prescribed in the Preamble of the Constitution.

[Lower Courts Decisions]

The Mito District Court ruled in favor of the state side in 1977. After stating generally that defensive war and defensive war potential do not conflict with the Constitution, the court held that the constitutionality of the SDF was rather a political question the court should not interfere with and that the right to live in peace prescribed in the Preamble of the Constitution was too abstract to be judicially enforced.

The Tokyo High Court also ruled in favor of the state at the second trial in 1981. But this time, the court did not make any judgment on the constitutionality of the Self-Defense Forces. It justified the land transaction by denying that the Self-Defense Forces constituted harm to society.

[Opinion of the Court]

Jokoku appeal dismissed.

Article 98 of the Constitution provides that when contrary to the

provisions of the Constitution, any “act of state” shall have no legal force or validity. “Act of state” within the meaning of Article 98, however, is limited to those which lay down legal rules. Although the contract between Fujioka and the state in this case was an act of the state, the state acted as a private party and did not lay down legal rules. Thus, it does not constitute an “act of state” within the meaning of Article 98.

Pacifism and the right to live in peace are an abstract ideal and cannot be used as a standard in reviewing a private action in a specific case. Article 9 of the Constitution is not designed to govern private actions directly. Article 9 of the Constitution does not directly apply to a private contract between the state and a private citizen in this case.

Although Article 9 of the Constitution does serve as a “guiding principle” in interpreting and applying statutory provisions, it does not become part of the “public order and standards of decency” in Article 90 of the Civil Code, private actions in disagreement with which have no legal force.

The standard in reviewing the validity of private actions under Article 90 of the Civil Code should be whether or not the action in question is generally regarded as having an anti-social nature. In the sphere of private law, entering into a private contract with the Self-Defense Forces cannot be regarded as an anti-social action not socially allowed. The contract in this case is valid.

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b. Administrative Law

The standing of resident in the neighborhood of airport to sue Transportation Minister seeking cancellation of licenses given to commercial airlines.

Decision by the Second Petty Bench of the Supreme Court on February 17, 1989. Case No. (*gyo-tsu*) 46 of 1982. 43 *Minshū* 56;