

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.

Prof. KENJI URATA
AKIHIKO KIMIJIMA

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;

1306 *Hanrei Jihō* 5; 694 *Hanrei Taimuzu* 73.

[Reference: Administrative Litigation Act, Article 10; Civil Aviation Act, Articles 1, 100 and 101.]

[Facts]

Annoyed by a jet noise, which made conversation, watching TV, and listening to the radio extremely difficult, Junkichi Ohashi, who lives near Niigata Airport, filed an administrative lawsuit against Transportation Minister seeking cancellation of licenses given to Japan Air Lines (Niigata—Komatsu—Seoul) and All Nippon Airways (Niigata—Sendai).

Residents near Osaka International Airport previously filed a similar suit, but in December 1981 the Supreme Court rejected their demand by ruling that the civil suit was not appropriate for the plaintiffs' legal action. Ohashi's action is the first administrative suit heard by the Supreme Court on the airport noise problem.

In 1981 both the Niigata District Court and the Tokyo High Court rejected the suit on the ground that the plaintiff lacked the standing to sue the government. The plaintiff appealed to the Supreme Court.

[Opinions of the Court]

Jokoku appeal dismissed.

Generally speaking, a plaintiff has standing to challenge the legality of administrative action under the Administrative Litigation Act and the Civil Aviation Act if the plaintiff's suffering from noise reaches a (socially defined) unbearable degree and thus it infringes the plaintiff's interests protected by the Civil Aviation Act.

But since the plaintiff in this case did not succeed in proving that his legally protected interests had been infringed by the Transportation Minister's action (giving licenses to Japan Airlines and All Nippon Airways), he lacks the standing to challenge the action of Transportation Minister.

[Comment]

The Administrative Litigation Act provides in Article 9 that a lawsuit seeking cancellation of an administrative action can be filed

only by a person who has legal interests in seeking cancellation of that administrative action. By and large, courts, including the Supreme Court in this case, have interpreted the “legal interests” in Article 9 as “the interests protected by law” (what is called the “legally protected interests doctrine”). What the “law” means, however, has differed from court to court.

This Court interprets the “law” as the “statutory provision authorizing the administrative action.” And the Court held that the authorizing provision must be read not in isolation but in conjunction with other related statutory provisions. At the end of this line of reasoning, the Supreme court theoretically admitted the standing of a resident suffering from a jet noise to sue Transportation Minister for cancellation of licenses given to commercial airlines.

The Court, however, held that the interests argued by the plaintiff in this case could not be regarded as “legally protected” even under the liberal interpretation of this Court.

The evaluation of this ruling varies. One commentator considers this decision to be the transformation of the “legally protected interests doctrine” while another thinks it to be a sophistication of the doctrine.

Prof. KENJI URATA
AKIHIKO KIMIJIMA

2. Law of Property and Obligations

A case on a mistake of tax liability.

Decision by the First Petty Bench of the Supreme Court on September 14, 1989. Case No. (o) 385 of 1988.

[Reference: Civil Code, Articles 95 and 768, Income Tax Act, Article 33.]