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# MAJOR JUDICIAL DECISIONS

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Jan. — Dec., 1990

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## 1. Constitutional and Administrative Law

### a. Constitutional Law

**The constitutionality of editing the broadcast of political opinions.**

Decision by the Third Petty Bench of the Supreme Court on April 17, 1990. Case No. (o) 800 of 1990. A *jokoku* appeal claiming damages. 44 *Minshū* 3–547; 1357 *Hanrei Jihō* 62; 736 *Hanrei Taimuzu* 92.

[Reference: Constitution of Japan, Article 21, Public Office Election Act, Articles 150(1) and 150–2.]

#### **[Facts]**

According to the Public Office Election Act, Article 150(1), any candidate for the House of Representatives, the House of Councilors, or Prefectural Governorships may broadcast his or her own political opinions for free on NHK (*Nihon Hoso Kyokai*) stations and commercial broadcast stations. Stations must broadcast the candidate's message without any change or revision.

When Ken Togo, who ran for election to the House of Councilors in 1983 as the representative of the Zatsuminto Party, recorded his and party's political opinions with NHK equipment, he used derogatory terms referring to the handicapped. After Togo's refusal to eliminate any portion of the message following a request from NHK, the Ministry of Home Affairs confirmed that NHK could legally omit those portions of his message considered to be offensive by broadcasting them without sound. The plaintiffs, Togo and the Zatsuminto Party, insisted that NHK and the Ministry had infringed on their right to broadcast political opinions and demanded that both NHK and the state pay each of them 1 million yen in damages.

The Tokyo District Court ruled in favor of the plaintiffs in 1985 and ordered that NHK (but not the state) pay damages.

On a *koso* appeal by NHK, in 1986 the Tokyo High Court reversed the judgment of the first trial on the grounds that although NHK appeared to have violated the law, NHK was not liable because NHK was allowed to do so as an emergency measure. The plaintiffs then appealed to the Supreme Court.

### *[Opinions of the Court]*

*Jokoku* appeal dismissed.

The eliminated portions contained vulgar and insulting expressions referring to the handicapped and violated Article 150-2 of the Public Office Election Act, which provides that any broadcasting of political opinions which is derogatory to the dignity of others may be prohibited. Because Article 150-2 may constitutionally prohibit any derogatory speech in order to prevent a bad effect in the light of the fact that a television broadcast has direct and immediate influence upon viewers nationwide, the plaintiffs have no legally protected interests even though their opinions were not broadcast in their original form.

The measure taken by the defendants, NHK, is not prohibited by the absolute ban of censorship prescribed by Article 21(2) of the Constitution because NHK is not an administrative organ of the state, and NHK made its own decision to eliminate the sound of the

portions of the broadcast, although NHK had asked the opinion of the Ministry of Home Affairs on this matter.

**[Comment]**

This is the first case concerning the question of whether editing broadcasts of political opinions may give rise to claims for damages in torts. Contrary to Article 150(1) of the Public Office Election Act, NHK edited derogatory words by broadcasting those portions without sound. The issue to be solved is, thus, whether NHK must broadcast any words by political candidates even though those words are derogatory to viewers. Although the conclusion of the lower courts was the opposite, they considered this issue as the vital one, while the Supreme Court did not deal with this issue directly. Instead, it denied the claim for damages by resorting to Article 150-2 of the Public Office Election Act, which is legally regarded only as a caution to candidates. As a result, the Supreme Court approved NHK's editing and held that no censorship was involved.

There may be much difference of opinion on this decision. Critics argue that because political speech assumes a vital role in democratic society and elections are of particular importance to such a system, any editing without permission by the person in question should not be allowed. If so, NHK would have been liable for its illegal act. In addition, although NHK is not a state organ, so long as NHK engages in the broadcast of political opinions according to the Public Office Election Act, editing by NHK can be equated with censorship prohibited by Article 21(2) of the Constitution regardless of the fact that NHK asked the government for advice.

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