

idea of religious neutrality of public schools? In this college, students who fail to move up into an upper class for two successive years are expelled under the college rules. If so, since the students would probably suffer serious disadvantage by carrying out their own religious beliefs, it seems that the school could have constitutionally accommodated such religious minorities as long as there is no strong necessity for the school to compel them to renounce their freedom of religious practice. The idea of religious neutrality should have more flexibility in this context. In any case, this ruling is not safe from criticism in that it made the problem too clear-cut.

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b. Administrative Law

A case in which the expulsion of a student from a private school for getting driver's license and riding a motorbike in violation of a school rule was held illegal as exceeding the discretionary latitude of the principal.

Decision by the Fourteenth Civil Division of the Tokyo District Court on May 27, 1991. Case No. (*wa*) 878 of 1989. A case claiming damages. 1387 *Hanrei Jihō* 25; 764 *Hanrei Taimuzu* 206.

[Reference: Constitution of Japan, Article 13; School Education Law, Article 11; School Education Law Enforcement Regulations, Article 13 III.]

[Facts]

While the plaintiff was a second-year student of the Shuutoku High School, a private school, he was expelled because he had violated the model student life code, which prohibits getting a driver's license and riding a motorbike without permission. Under the school rule, the violation of this prohibition was directly related to withdrawal from school. The plaintiff insisted that the code was unconstitutional because it infringed upon his right of autonomy guaranteed

by Article 13 of the Constitution. The plaintiff also argued that the code was illegal because it exceeded the authority empowered to the school body in that it regulated a student's private life after school, and that the disciplinary measure was illegal as well, because it amounted to an abuse of discretionary power authorized to the principal of the school. The plaintiff claimed damages against the school.

[Opinions of the Court]

The provision of Article 13 of the Constitution is not expected to directly regulate the relation between private actors. Although a private school carries with it some public nature and receives subsidies from the government, it cannot be put in the same category as state or local public bodies, and the same civil rights regulations as toward the public power cannot be applied to the relation between a private school and students.

The school body can regulate a student's activities out of school if the regulations are related to the purpose of educating students and the contents of these regulations are reasonable in light of commonly accepted ideas. It is clear that riding a motorbike out of school will cause an obstacle to a student's activities inside school if the student is involved in an accident. In addition, if a student neglects his studies as a result of being absorbed in motorbike riding, there is a danger of obstructing educational circumstances inside school and of hindering the accomplishment of the educational purposes for the person in question and for other students. Therefore, the prohibition of getting a driver's license and of riding a motorbike should be sufficiently reasonable in light of commonly accepted ideas.

The disciplinary measures taken against a high school student are left to the reasonable discretion of the principal of the school, who is well acquainted with the school affairs and is directly engaged in education, except when the decision is found not to be based on the factual basis altogether or it is substantially improper from the viewpoint of commonly accepted ideas. However, the decision to expel a student from school demands particularly deliberate considerations compared with other measures. Because the educational purpose toward the plaintiff could have been accomplished by other lesser

disciplinary measures by taking all the circumstances into consideration, the decision in question substantially lacks propriety from the viewpoint of commonly accepted ideas and is illegal in that it exceeds the discretionary latitude of the principal who has authority to make such a decision.

[Comment]

Recently, as the evils of control-oriented education have become conspicuous, the cases involving school regulations have sharply increased. Although the decisions vary depending on the individual circumstances, the courts have never invalidated school rules. The case presented here is worth noticing in that the court exceptionally ruled against the school and ordered damages for the plaintiff. However, the decision is not beyond question.

First, the decision totally excludes the applicability of the Constitution to the disputed school rule by using the classical public-private dichotomy theory very rigidly. However, in light of the current constitutional law theory, the court should have at least examined the nature of the relevant constitutional right and the disputed private relation much more concretely. In any case, by refusing to enter into constitutional arguments, the court was able to avoid the difficult task of defining the autonomous right to ride a motorbike.

Second, the reasoning on the legality of the disputed school rule is not persuasive at all. According to the decision, the school body has broad authority to regulate students' private lives even after they leave school as long as the regulations are related to the purpose of educating students and the contents of these regulations are reasonable in light of commonly accepted ideas. However, these criteria are not sufficient to define a school's authority to make its own rules. There are various kinds of school rules covering from educational matters inside school to students' private activities out of school, but at least those affairs which are not necessarily related to educational activities inside school are to be left to the students' own decisions. In addition, as to the disputed motorbike rule, the Road Traffic Law allows minors over the age of 16 to obtain a motorbike driver's license. Therefore, even though the school can have some legitimate interest

in protecting students' lives and bodies, preventing their misconduct, and promoting their devotion to study, the total prohibition of getting a driver's license and of riding a motorbike is beyond the authority empowered to the school body. At the very least students should be able to freely ride a motorbike once they leave school. After all, the decision easily confirms the prevailing paternalistic attitude in the society and completely lacks consideration for an individual's autonomy.

It is quite natural for the school to make deliberate considerations if it decides to expel students. There can be no objection to this conclusion.

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2. Law of Property and Obligations

A case concerning compensation for delays in certification as Minamata Disease victims.

Decision by the Second Petty Bench of the Supreme Court on April 26, 1991. Case Nos. (o) 329 and 330 of 1986. 45 *Minshū* 653.

[Reference: Civil Code, Article 709; State Tort Liability Act; Article 1(1); Administrative Litigation Act, Article 3(5)]

[Facts]

The Chisso Corporation polluted the water by dumping methylmercury into the Siranuikai Bay. Many local residents had been eating the fish and shellfish caught in the Bay and suffered from Minamata Disease, a disease of the central nervous system. The victims showed symptoms of numbness in the limbs or disturbances in mov-