
MAJOR JUDICIAL DECISIONS

Jan. — Dec., 1992

1. Constitutional and Administrative Law

a. Constitutional Law

A case in which it was held that the liquor sales licensing system is constitutional.

Decision by the Third Petty Bench of the Supreme Court on December 15, 1992. Case No. (*gyo-tsu*) 56 of 1988. 46 *Minshū* 2829.

[Reference: Constitution of Japan, Article 22; Liquor Tax Act, Articles 9 and 10.]

[Facts]

In an attempt to initiate a liquor sales business, the plaintiff applied to the head of the local tax office for a license pursuant to Article 9 (1) of the Liquor Tax Act, but met with refusal on the ground that the provisions of Article 10(x) of the Act, “If the [applicant’s] business has a weak base . . . ” applied to him. The plaintiff therefore filed a suit for rescission. On April 12, 1979 the first trial, held in the Tokyo District Court, found that the plaintiff’s business was not in a weak base, and overturned the decision of the tax office

on the grounds that it was illegal. In the second trial, on appeal by the government, the plaintiff added the claim that the provisions of the Liquor Tax Act that establish the licensing system are unconstitutional. On November 26, 1987 the Tokyo High Court overturned the original decision on the grounds that controls under the Liquor Tax Act cannot be considered to be unconstitutional, and that the reasons for the tax office's refusal was justified. The plaintiff filed a *jōkoku* appeal.

[Opinions of the Court]

Jōkoku appeal dismissed.

In view of the nature of the permit system, which in a narrow sense puts limitations on the very freedom of choosing one's occupation, the system must for the purpose of constitutionality be necessary and reasonable for the sake of vital public interests. However, when the matter involves restrictions imposed through an occupation permit system for the purpose of the proper and sound levying and collection of taxes, which is the mission of the state's public finance, legislative decisions are not unconstitutional unless they are clearly unreasonable.

The liquor sales licensing system is a reasonable measure initially taken for a vital public interest consisting of the necessity of reliably collecting liquor taxes, and of making sure that the tax burden is smoothly shifted to the consumer. Even in consideration of the various changes in social circumstances, one could not say that the system is no longer reasonable. Furthermore, if one takes into account the fact that, because liquor is an intoxicating beverage, restrictions to maintain order in sales are unavoidable, the legislative decision that the system should be maintained is not notably unreasonable.

Additionally, the licensing criteria stipulated by the Liquor Tax Act are reasonable in the light of the Act's purpose, and the Court therefore finds difficulty in recognizing that the ambiguous nature of its provisions allows arbitrary decisions by government administrative agencies. Thus, it is not possible to argue that the provisions of the Act represent a departure from the bounds of legislative

discretion and are therefore unreasonable and in violation of Article 22(1) of the Constitution.

[Comment]

There have been theoretical suspicions that the liquor sales licensing system infringes upon the freedom to choose one's occupation, meaning that despite the acknowledgment of court opinions such as the foregoing, some cogent opinions have thrown doubt on the reasonableness of the legislative purpose of maintaining liquor taxes. Additionally, there have been increasingly assertive opinions that by making it difficult for new businesses to enter the market, this system in effect serves to protect the vested interests of existing liquor dealers. This case represents the first decision by the Supreme Court on the liquor sales licensing system.

It would seem that Supreme Court decisions on the constitutionality of the right to choose one's occupation have in general always adopted examination criteria described in this way: For active, policy-related restrictions the Supreme Court has used the more lenient "principle of obviousness," which respects the legislature's discretion; for passive, policing-type restrictions, it has used the slightly more rigorous "strict criteria of reasonableness." For this reason there was intense interest over which position the Supreme Court would take with respect to the Liquor Tax Act's licensing controls. Under the doctrine of deference to tax law, the Court's decision left the necessity and reasonableness of these controls up to legislative discretion, and argued that in line with legislative discretion the system is constitutional "unless it is clearly unreasonable."

However, as Justice Sakaue stated in his dissenting opinion, there is the view holding that the act of making sure liquor taxes are paid and the liquor sales licensing system are not invested with the kind of necessity and reasonableness that existed when the system was adopted, and therefore the decision exercised by the legislature in adopting the licensing system has strayed from the reasonable bounds of discretion. It appears that this view enjoys the status of a generally held opinion among theorists. The legislature and the judicature will most likely have to reconsider the system in the light

of this view.

b. Administrative Law

A case concerning the constitutionality of orders prohibiting the use of structures built for the purpose of opposition activities by factions opposing the New Tokyo International Airport (Narita Airport).

Decision by the Grand Bench of the Supreme Court on July 1, 1992. Case No. (*Gyo-tsu*) 11 of 1986. 46 *Minshū* 437; 1425 *Hanrei Jihō* 45; 789 *Hanrei Taimuzu* 76.

[Reference: Constitution of Japan, Articles 21, 22, 29, 31 and 35; Law on Emergency Measures to Secure the Safety of the New Tokyo International Airport, Article 3.]

[Facts]

The Law on Emergency Measures to Secure the Safety of the New Tokyo International Airport (New Tokyo Airport Law), which was promulgated and became effective on May 13, 1978, was intended to secure the safety of the New Tokyo International Airport from interference by radical leftists. Pursuant to Article 3(1) of this law, each February since 1979 the Minister of Transport has issued a directive prohibiting the plaintiffs from offering the use of buildings in their possession for sabotage or other destructive activities.

The plaintiffs sought cancellation of the order to prohibit such use and compensation. They contended that the law is unconstitutional on the basis of Articles 21(1), 22(1), 29(1) and (2), 31, and 35 of the Constitution. The first trial was held in the Chiba District Court on February 3, 1984, and the second in the Tokyo High Court on October 23, 1985. The courts held that there is no benefit in actions against orders prohibiting use for which more than a one-year prohibition term has passed, and turned down the demand; additionally, they held that the law is not unconstitutional, and rejected the plaintiffs' demand. The plaintiffs then appealed to the Supreme Court.