

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.

[Opinions of the Court]

Jōkoku appeal dismissed (partial reversal of court's own decision, partial dismissal).

The benefits protected by this action consist in airport operations and the safety of passengers and others, while the benefit restricted by the law is nothing more than that of violent saboteurs to use the said structures as places to gather. Moreover, in view of the circumstances surrounding the passage of this law, the accomplishment of its purpose involved considerable and urgent necessity. Upon an overall consideration of this fact, it must be said that the action under this law prohibiting the use of the structures was essential for the public welfare.

Although Article 31 of the Constitution makes direct provisions for criminal procedures, this does not allow the conclusion that administrative procedures are outside the bounds of the guarantees under this article. However, even in instances where it is understood that the guarantees under this article also extend to administrative procedures, the dissimilarity with criminal procedures and the diversity needed to accommodate administrative purposes mean that the necessity for advance procedures must be determined upon a comprehensive consideration of the content and nature of the rights and benefits that will be restricted by an administrative disposition, and the extent of the restriction, as well as the content, extent, urgency, and other qualities of the public benefits that the administrative disposition attempts to achieve. If in this instance such specific considerations are made, then Article 31 of the Constitution will not be violated even without opportunities for advance notification, explanation, or defense.

[Comment]

The issue of this comment shall be limited to the relationship with Article 31 of the Constitution. The questions in this instance are whether or not Article 31 also applies to typical administrative procedures. This case, one could say, was the first opportunity the Supreme Court had to pass judgment head-on.

With respect to this matter, this decision avoided clearly stating a general opinion on whether or not Article 31 applies to administrative procedures, or, assuming that it does, what kind of administrative procedures it applies to. Even assuming that Article 31 applies, or applies with modifications, to administrative procedures, the court's decision goes no further than stating that advance procedures are not always necessary. It appears that this is because the diversity of administrative procedures means it is not realistic to uniformly demand advance procedures, thereby making it difficult to determine their necessity on a general basis.

There were also supplementary opinions: that of Justice Kaibe maintained that in principle, advance procedures should also be assured for administrative procedures, and that of Justice Sonobe, although recognizing the importance of advance procedures, stated that their need is a matter of legislative policy.

Prof. KENJI URATA
KENICHI YANAI

2. Law of Property and Obligations

A case concerning the employer's duty to prohibit sexual harassment.

Decision by the Fukuoka District Court on April 15, 1992. Case No. (wa) 1872 of 1989. 1426 *Hanrei Jihō* 49.

[Reference: Civil Code, Articles 709 and 715]

[Facts]

X, a single female worker was employed as a part-time worker in December 1985 by a publishing company. The next year she became a full-time worker and engaged in gathering information, editing, and so on. Because of the quality of her work she was steadily