MAJOR JUDICIAL DECISIONS

Jan. — Dec., 1998–99

1. Constitutional Law

Supreme Court G.B., November 10, 1999
Yamaguchi v. Tokyo Metropolitan Election Commission
53 (8) MINSHŪ 1441, 1018 HANREI TAIMUZU 114,
1696 HANREI JIHŌ 46 (1st case)
Okura v. Central Election Commission
53 (8) MINSHŪ 1577, 1018 HANREI TAIMUZU 114,
1696 HANREI JIHŌ 46 (2nd case)
Koshiyama v. Tokyo Metropolitan Election Commission
53 (8) MINSHŪ 1704, 1018 HANREI TAIMUZU 114,
1696 HANREI JIHŌ 46 (3rd case)

A single-member district system combined with a binding-list-system of proportional representation for the members of the House of Representatives and the reapportionment scheme were held to be constitutional.

Reference:

Constitution of Japan, art. 14, para. 1; art. 4, para. 1; Public Office

Election Law, art. 13, para. 1; Schedule 1; Foundation of the Council of the House of Representatives Electoral District Act, art. 3; appendix 2, para. 3. (1st case)

Constitution of Japan, art. 14, para. 1; art. 15, para. 1 & 3; art. 44; Public Office Election Law, art. 46, para. 2; arts. 86.2, 87, 95.2. (2nd case)

Constitution of Japan, art. 14, para. 1; art. 43, para. 1; Public Office Election Law, art. 13, para. 1; art. 95, para. 1; art. 131, para. 1; art. 141, para. 1, 2 & 7; art. 141.2, para. 1, art. 142, para. 1, 2 & 9; art. 143, para. 1 & 3; art. 144, para. 1 & 4, art. 149, para. 1; art. 150, para. 1 & 4; art. 151.5; art. 161, para. 1; art. 161.2. (3rd case)

Facts:

The election for the members of the House of Representatives was held in Oct 20, 1996, for the first time after the Public Office Election Law was revised in 1994. The revised act provided a single-member district system combined with a binding-list-system of proportional representation. Cases here are three of thirty-one cases ruled on in the Supreme Court on the same date. In these cases, the plaintiffs claimed that this electoral system was unconstitutional on the following grounds: gross inequality among legislative electoral units, plenty of dead votes in the single-member district system, unconstitutionality of the dual candidacy system (system in which the candidates can be elected through proportional representation after losing in a single-member district), and differentiation in an electoral campaign of a candidate who does not belong to a political party, etc.

Opinion:

(1st case)

Appeal Dismissed.

The Constitution provides that the number of the members of each House, electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law with the restriction that such members shall be representative of all the people. The new electoral system should be judged unconstitutional when the concrete provisions by the Diet are beyond the

limit of its power, even considering the broad discretion of the Diet.

The Constitution shall be interpreted that it requires the equality of the value of a vote. However the equality of the value of a vote is not the only and absolute determinant for the electoral system, and it should be realized in harmony with the other political purposes that the Diet has power to consider rationally. For that reason, the system that the Diet provided concretely is beyond our control, even though it violates the equality of the value of a vote, as far as it is approved reasonable as an exercise of the legislative discretion.

Article 3, paragraph 1 of the Foundation of the Council of the House of Representatives Electoral District Act provides that the disparity of the value of a vote among districts should stay less than two times. On the other hand, Article 3, paragraph 2 provides that one seat is apportioned to each prefecture in order to reflect the voice of people who live in sparsely settled prefectures; then the rest of the seats are apportioned on a population base. This provision can not be said to be beyond the discretion of the Diet, because the Diet can consider other factors than the population.

The weight of a vote in the most overrepresented district was 2.309 times that in the most underrepresented. Certainly this disparity is questionable, as it is more than the standard of the Act. But it can not immediately be said to reach the degree to which it is considered to be unreasonable.

Thus the apportionment provisions cannot be held to violate Article 14, paragraph 1, Article 15, paragraph 1, Article 43, paragraph 1 and others of the Constitution.

(2nd case)

Appeal dismissed.

It is questionable in view of the popular will showed in a single-member district to adopt the dual candidacy system, in which it is possible for the unsuccessful candidate in a single-member district to be a member of the House depending on the ranking of the list through the proportional representation system. However it is the matter that the Diet can determine by its discretion. Thus adoption itself of this system does not violate the preamble, Article 43, paragraph 1, Article 14,

paragraph 1, Article 15, paragraph 3, or Article 44 of the Constitution.

Only the candidate who belongs to the party or other political groups admitted by Article 86, paragraph 1 of the Revised Public Office Election Law, can stand dually. However it is in the scope of discretion of the Diet to make the election system based on the policies or political party. Thus this limitation to dual candidacy has a proper rationality and is not interpreted to be beyond the discretion of the Diet. To make such differentiation against a candidate not belonging to the political party does not violate Article 15, paragraph 1 and 3, Article 44, Article 14, paragraph 1, Article 47, Article 43, paragraph 1 of the Constitution.

The binding-list-system of proportional representation, in which people vote for a political party, has no difference from the system that people vote directly for an individual candidate in the respect that the general will of the voters elects the members of the House. The proportional representation system can not be said that it is not a direct election, and it does not violate Article 43, paragraph 1, or Article 15, paragraph 1 and 3 of the Constitution.

(3rd case)

Appeal dismissed.

The single-member district system has the merit of causing a change of government, and it is not a system that advantages only particular political parties. Certainly, it is difficult to deny that this system brings about plenty of dead votes. However, because dead votes are brought about by any other systems, the fact that there are plenty of dead votes alone does not cause the unconstitutionality of the single-member district system. The single-member district system can be said that it is a reasonable system that achieves a fair and effective representation for all citizens. Consequently the adoption of the single-member district system is not beyond the discretion of the Diet.

In a single-member district, in addition to individual candidates, only the entry parties (political parties with more than five members of Diet, or with more than 2% of all the votes at any last national election) are permitted to campaign. The other political parties aren't permitted to campaign in a single-member district. This disparate treat-

ment among political parties, which is understood to be for the political purpose of having the election based on policy or political party, conducts inevitably to favor a candidate of the entry party against a candidate of another party. Especially with respect to the broadcasting of political views, when the former can broadcast his political views, the latter cannot. This would be an impermissible discrimination, if separated from the entire electoral campaign. But the broadcast of political views is only a part of an electoral campaign, and the candidate of another party can appeal sufficiently to his constituency through other resources than broadcasting. Thus it cannot be concluded that the differentiation of candidates reached the degree to which it is regarded to have no rationality at all, by the one thing that some candidates were not permitted to broadcast their political views.

Editorial Note:

The electoral system challenged here (the single-member district system combined with the binding-list-system of proportional representation) was a result of an important political reform in Japan, which was caused by a great graft scandal in late 1980s.

This scandal started the Electoral System Council, an advisory organ for the Prime Minister, resuming work after a more than 16-year-gap. Its first report, published in April 1990, recommended the establishment of the new electoral system, instead of the multi-member district system, in which more than one candidate of the same political party fight each other in 3 to 5 member districts (and thus a political party could not control its candidates). In order to stimulate political controversy in the election and make possible change of government, the new system is based on political parties, not on individual politicians who might be interested in only personal or electoral concerns.

The election system introduced in 1994 according to the recommendation was a single-member district system combined with proportional representation. Here, the Supreme Court examined the constitutionality of this system for the first time, and the Court confirmed it on the ground that the Diet has broad discretion concerning the electoral system (Constitution, art. 47). This conclusion had been foreseen.

However it is remarkable that the dissenting opinions held unconstitutional some parts of the present system (districting scheme and electoral campaign), applying a stricter scrutiny than the majority opinion.

With respect to the equality of the value of a vote, the Court had accepted that this is a constitutional principle. However, it still adheres to the significance of traditional political subdivisions (prefectures and so on) and some other factors, like achievements in past elections, the composition of residents, and changes in social circumstances, including the gravitation of the population toward large cities, in order to justify some deviations from population-based representation. So the equality of vote is not treated as the threshold requirement to limit discretion of the Legislature. *See* Supreme Court, G.B., April 4, 1976 [Kurokawa v. Chiba Prefecture Election Commission] 30 (3) MINSHŪ 223. However this style of argumentation is not persuasive. As a dissenting opinion by four Justices points out, the assignment of one seat to each prefecture not only disturbs the realization of the fundamental principle of equal representation for equal numbers of people, but it also hardly serves its purpose. The other dissenting opinion by Justice Fukuda insists that the value of a vote between districts should be as nearly equal as possible, emphasizing that the Constitution does not permit the representatives to manipulate the value of the votes of elector.

As to the dual candidacy system, the Court held that it was questionable that an unsuccessful candidate in a single-member district has the possibility of being elected in the proportional representation system. However the Court left the problem to the broad discretion of the Diet, showing indifference to the question of the reflection of people's will in the election.

The discrimination among candidates concerning electoral campaigns was also justified under broad legislative discretion. It may be conceded that the legislative has broad discretion in fixing the electoral system. But, as stated in the dissenting opinion, the Court should apply stricter scrutiny to cases in which the freedom to run for the Diet and campaign in elections is concerned. Thus legislative discretion should not be permitted in these cases without sufficient justification.

It is true that the Constitution leaves the determination of the electoral system to the Diet. However it is very difficult for the members of the two Houses to discuss this problem without considering their own interests. The attitude the Court showed on these cases is excessively deferential to the Diet, and it results in an infringement of the crucial right of citizens to vote. Justice Fukuda wrote, "when the Diet ignores the constitutional principle of equality of the value of a vote, it is the duty of the Judiciary to declare the Diet's political decision unconstitutional."

MOTONARI IMASEKI
JUNKO NAKAJIMA

2. Administrative Law

Supreme Court 2nd P.B., April 10, 1998

Che v. Minister of Justice
52(3) MINSHŪ 677, 1638 HANREI JIHŌ 63, 973 HANREI TAIMUZU 121

A refusal to permit reentry of a Korean permanent resident who refused fingerprint registration was held to be within the discretion of the Minister of Justice.

Reference:

Immigration-Control and Refugee-Recognition Act, art. 26, para. 1; Alien Registration Law (before 1987 Amendment), art. 14, para. 1; Act to enforce the Agreement between Korea and Japan concerning the Legal Status and the Treatment of the Nationals of the Republic of Korea Residing in Japan, art. 1; Administrative Case Litigation Law, arts. 9, 30.

Facts:

Plaintiff X was born and resided in Japan. She is a national of