
MAJOR JUDICIAL DECISIONS

Jan.–Dec., 2002

1. Constitutional Law

Supreme Court G.B., September 11, 2002

56 (7) MINSHU 1439, 1801 HANREI JIHO 28, 1106 HANREI TAIMUZU 64

A case in which the Supreme Court struck down the portions of Articles 68 and 73 of the Postal Law that immunize or limit the state's liability for compensation for damage with regard to registered mail and special delivery of legal documents as violating Article 17 of the Constitution.

Reference:

Constitution of Japan, Art. 17; Law Concerning State Liability for Compensation, Art. 5; Postal Law, Arts. 68 & 73.

Facts:

Article 68 of the "Postal Law" (Law No.165, 1947) limited the state's liability for damage with regard to the postal services to three events: when postal officers (1) lost or injured the registered mail; (2) delivered

collect on delivery mail without collecting money; (3) lost or injured the parcel post. And Article 73 limited the claimant for damages to the sender of the mail and the receiver getting the sender's consent.

X had sued A for damage and won the case. X demanded the court to issue the order to attach A's deposit debt in C branch of B bank. The court issued the order and sent the original of the order to C branch on special delivery of legal documents. But on the day before the original was delivered to C branch, A withdrew his deposit and the attachment failed. X sued the State managing the postal service for damage based on Article 1 of the Law Concerning State Liability for Compensation. X argued that the failure of the attachment was due to the State, because the postal officer, who should normally deliver the original to C branch, dropped it into the post-office box of C branch by his gross negligence and the delivery was delayed by one day, so A suspecting the attachment withdrew his deposit.

Amagasaki Branch of the Kobe District Court (March 11, 1999) dismissed X's claim. The court reasoned as follows: (1) Articles 68 and 73 did not violate Article 17 of the Constitution of Japan; (2) Articles 68 and 73 corresponded to the "special provision" of Article 5 of the Law Concerning State Liability for Compensation and so they applied to this case, receding to the Law Concerning State Liability for Compensation and the Civil Code; (3) The fact founding X's claim did not correspond to the case the State must bear the liability for damage provided by Articles 68 and 73. Osaka High Court (September 3, 1999) affirmed and X appealed to the Supreme Court. The Supreme Court struck down the portions of Articles 68 and 73 of the Postal Law as being in violation with Article 17 of the Constitution and reversed and remanded.

Based on the decision, the Cabinet submitted to the Diet the bill to amend the "Postal Law" in accordance with the Supreme Court's opinion. On December 4, 2002, the "Law Partially Amending the Postal Law" (Law No.121, 2002) was promulgated and effectuated.

Opinion:

Reversed and Remanded.

(1) Article 17 of the Constitution

With regard to the right to demand state compensation, Article 17 of the Constitution expects its embodiment by law. Article 17 leaves to the policy decision of the legislature the decision about under what requirement and for what acts of public officials the State or a public entity should bear liability. But, Article 17 doesn't grant unlimited discretion to the legislature because it made a principle that the State or a public entity should bear liability for the illegal acts of public officials. And whether the provisions of the law immunizing or limiting the state liability with regard to the illegal acts of public officials are consistent with Article 17 should be judged considering the legitimacy of the purpose of the provisions and the rationality and necessity of the provisions as the means to attain the purpose.

(2) Purpose of Articles 68 and 73

The purpose of the Postal Law is "to further public welfare by supplying universally and equally the postal service at as low a price as possible" (Article 1). The provisions of Articles 68 and 73 were provided to attain this purpose. If the State were to compensate for damage with regard to all the accidents in the postal service based on the standards set by the Law Concerning State Liability for Compensation and the Civil Code, it would require a lot of labor and cost. As a result, it could result in a rise in price and prevent the above purpose. Therefore, the purpose of Articles 68 and 73 is legitimate.

(3) Constitutionality of Articles 68 and 73 of the Postal Law in this case

① Constitutionality of the portions immunizing or limiting the state liability for compensation with regard to registered mail

Registered mail is a special mailing service that intends to secure the proper delivery of the mail by recording the undertaking and delivery of the mail. The senders must pay an extra fee for it. But even with the delivery of registered mail, the occurrence of damage due to slight negligence by the postal officers is an unavoidable matter because the postal officers must deal with much registered mail with limited staff and costs. However, with regard to the registered mail, the occurrence of the damage due to willful acts or gross negligence by the postal officers must be very exceptional, as long as the officers obey normal work standards. Therefore, we can not think that the purpose of Article 1 cannot

be attained if the state liability is not exempted or is not limited even in such an exceptional case.

Therefore, of the provisions of Articles 68 and 73 of the Postal Law, the portions that immunize or limit state liability to compensate for damage due to tort with regard to registered mail in the event of damage arising from willful acts or gross negligence on the part of the postal officers violate Article 17 of the Constitution and are invalid.

② Constitutionality of the portions immunizing or limiting the state liability for compensation with regard to the special delivery of legal documents

Special delivery of legal documents is a mailing method provided by the Civil Proceedings Act and is essential to the proceedings to enforce the citizen's right. So, it is particularly required that special delivery should be properly delivered to the receiver. And in addition to being only a part of registered mail, special delivery requires a special charge in addition to the charge for the registered mail. Furthermore, with regard to the documents relating to the trial, the senders of special delivery are law clerks, not the litigants. In the light of these special characteristics, with regard to the special delivery, we can not say that the purpose of Article 1 cannot be attained if the state liability is not exempted or limited for damage due to slight negligence on the part of postal officers. So, it is difficult to say that the provisions of Articles 68 and 73 immunizing or limiting the state liability have rationality or necessity.

Therefore, of the provisions of Articles 68 and 73 of the Postal Law, the portions that immunize or limit the state liability to compensate for damage with regard to special delivery of legal documents in the event damage arises from slight negligence by a person engaged in postal service violate Article 17 of the Constitution and are invalid.

Editorial Note:

The Constitution of Japan guarantees the right to demand state liability, providing as follows: "Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through the illegal act of any public official." Its significance is to deny "the principle that the State has no liability" deriving from the emperor's sovereignty under the Meiji Constitution. Under the

Meiji Constitution, no state liability was provided, not only in the Constitution, but also in the laws, and people could not demand damages from the State with regard to the exercise of public authority, such as the police, military affairs, tax matters, expropriation and so on, even if they suffered damages due to the tort of public servants. Reflecting on the irresponsible administration under the Meiji Constitution, Article 17 of the Constitution of Japan clarifies the state's liability and purports to serve the redress of the people's rights.

Article 17 expects the embodiment of the right to demand the state's liability by law, providing "as provided by law." The Law Concerning State Liability for Compensation is the general law of state liability. Article 1, Paragraph 1 of the Law Concerning State Liability for Compensation provides: "When public officials, in the course of performing their duties, exercise the public powers of the State or of a public body that violates a legal obligation toward a particular citizen, thereby inflicting harm on that person, the State or public body concerned shall be liable to compensate such damages." And Article 4 provides: "The State or a public body shall be liable to compensate damages according to the Civil Code in the case not provided by the Law Concerning State Liability for Compensation." On the other hand, Article 5 provides: "When the law other than the Civil Code has a special provision about the liability of the State or of a public body, the State or a public body shall bear liability according to the special provision." Therefore, when there are special laws concerning the state liability, they are applied preceding the Law Concerning State Liability for Compensation and the Civil Code. Articles 68 and 73 correspond to such special laws. And when the special law limits the state liability in comparison to the Law Concerning State Liability for Compensation and the Civil Code, it matters whether they violate Article 17 of the Constitution.

With regard to this issue, in academic circles, the argument has been influential that Article 17 does not grant the unlimited discretion to the legislature and when the laws ignore the spirit of Article 17, they are unconstitutional and invalid. But academic circles have not necessarily thrashed out the standard of review about Article 17 or the concrete considerations, such as under what circumstances the spirit of Article 17 can be said to have been ignored. Furthermore, the lower courts considering

Articles 68 and 73 of the Postal Law, including the lower courts in this case, have tended to hold these provision constitutional, recognizing the discretion of the legislature widely and deducing easily the rationality of the means from the legitimacy of the ends (e.g., Osaka High Court, March 15, 1994, etc.).

Against these circumstances, this decision set the framework of asking the legitimacy of the provision's purpose and its rationality and necessity as the means to attain that purpose as the standard of review about Article 17, and scrutinized the provisions of the Postal Law based on this standard. That is, the Supreme Court reached the judgement that while the purpose of Articles 68 and 73 limiting the scope of the state liability about the postal service was legitimate, its rationality and necessity as the means to attain this purpose could not be found. We can appreciate this decision as epoch-making and one that will activate future discussion about Article 17.

We can suggest the following factors as the background against which this decision struck down the provisions of Postal Law. First, Articles 68 and 73 of the Postal Law just copied the provisions of the old Postal Law enacted in 1900 under the Meiji Constitution. Second, while there are provisions limiting the liability of the civil traders operating a transport business in many laws, such as the Commercial Code and the Railway Operations Law, these provisions do not apply when damages arise from willful acts or gross negligence on the part of the traders. And finally, we can suggest the recent movement for the privatization of the postal service. Since the Koizumi Cabinet, embracing Prime Minister Junichiro Koizumi, whose pet theory was the argument for the privatization of the postal service, was born on April, 2001, the movement for the privatization of the postal service has accelerated more than in the past. On July 31, 2002, before this decision, the "Japan Post Law" (Law No.97, 2002), which established a public corporation engaged in the postal service provided by the Postal Law in place of the former Post Office, was promulgated. In such a movement towards the privatization, if the state operating the postal service could be excused from the liability for the damages arising from willful acts or gross negligence under the provisions copying the law passed under the Meiji Constitution, while the civil traders operating the transport business

must be charged with liability for the damages, it would be out of date.

This decision is the sixth Supreme Court's judgement to hold legislation unconstitutional on its face after an interval of fifteen years. While more than 50 years have passed since the enactment of the Constitution of Japan, the number of the Supreme Court's judgements of unconstitutionality were only about ten, even adding judgements of unconstitutionality other than judgements to hold legislation unconstitutional on its face. In other words, in the operation of the judicial review for more than 50 years, the overwhelmingly majority of decisions by the Supreme Court were judgements of constitutionality. It is not appropriate to call this Supreme Court's attitude "judicial passivism," because the judgement of constitutionality by the Supreme Court has the function of legitimating the legislation suspected of unconstitutionality and the effect of vitalizing the implementation of the Constitution by the majority of the legislature and administration. In this sense, the attitudes of Supreme Court for more than 50 postwar years should be called the "judgement of constitutionality activism." We cannot help doubting whether the Supreme Court has properly exercised its judicial review power.

2. Administrative Law

Osaka High Court, December 5, 2002

Case No. (gyo-ko) 58 of 2001

The Intermediate Appeal Case for Confirmation of the Status
of Atomic-Bomb-Victims under the Act on Backing

Atomic-Bomb-Victims

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Reference:

The Act on Backing Atomic-Bomb-Victims, Arts. 1, 2, & 27.