
MAJOR LEGISLATION & TREATIES

Jan.–Dec., 2005

1. Constitutional Law

A Partial Amendment to the National Holiday Act

Law No. 43, May 20, 2005 (Effective on January 1, 2007).

Background:

In the 162nd session of the Diet, on May 13, 2005, the House of Councilors passed a bill partially amending the National Holiday Act by a vote of 202 to 14, which had been approved in advance by the House of Representatives on April 5, 2005. In both Houses there was no substantive deliberation. The main purpose of the amendments is to replace the current name of a national holiday, “Green Day” (*Midori no hi*) on April 29 with “Showa Day,” and “People’s Day” (*Kokumin no Kyuujitsu*) with “Green Day” on May 4.

April 29 is the birthday of Emperor Hirohito and “Showa” is the official name for Hirohito’s reign, which lasted from 1926 to 1989. Following his death on January 7, 1989, the then Diet members needed to amend the National Holiday Act concerning the holiday which formally celebrated Hirohito’s birthday, and some members insisted

that the name of the holiday should have to do with Emperor Showa, for example "Showa Memorial Day." But social circumstances both within and outside Japan impeded the attempt, and as a result Emperor Hirohito's Birthday was renamed Green Day, an oblique reference to his passion for plants, but on which avoided using his name. At the same time, Heisei Emperor Akihito's birthday, December 23, became a new national holiday (Law No. 5 of 1989).

Since then enthusiastic conservative grass-roots groups and some Diet members together in concert have been carrying out an energetic campaign calling for the enactment of "Showa Day," a more direct reference to Emperor's era. The Amendment bill had been presented to the Diet twice, in the 147th session in 2000 and the 154th one in 2002, but scrapped because of political pressure and public criticism. They tried a third time in the 159th session in 2004, which carried the bill over to the future Diet session, and at last the 162nd session passed the bill. In the course of discussion of the bill, the Japanese Communist Party dissented from it, saying that making the late Emperor's birthday a national holiday would trample under foot the principle of peace and democracy based on the Constitution, and another dissenter, the Social Democratic Party, insisted that we the Japanese people should take into account the reaction from Asian countries which fell victim to the aggressive Pacific War. The discussion was, however, not so heated as to stir up public opinion.

Main Provisions:

The original National Holiday Act (Law No. 178 of 1948) consists of three main articles.

Article 1 explains the objective of the Act; Japanese people longing for freedom and peace, while making efforts to foster beautiful customs, try to establish a better society and lead a better life. For that purpose, specific days shall be fixed which we as one celebrate and thank, or commemorate, and they shall be named "National Holidays."

Article 2 enumerates fourteen National Holidays as follows, "Japanese New Year's Day" (*Ganjitsu*) (January 1), "Coming-of-Age Day" (*Seijin no hi*) (the second Monday of January), "National Foundation Day" (*Kenkoku kinen no hi*) (February 11 as stipulated by Cabinet Order No. 376 of 1966), "Vernal equinox" (*Shunbun*

no hi) (around March 21), “Green Day” (*Midori no hi*) (April 29), “Constitutional Memorial Day” (*Kenpo kinenbi*) (May 3), “People’s Day” (*Kokumin no kyuujitsu*) (May 4), “Children’s Day” (*Kodomo no hi*) (May 5), “Marine Day” (*Umi no hi*) (the third Monday of July), “Respect for the Aged Day” (*Keirou no hi*) (the third Monday of September), “Autumnal equinox” (*Shuubun no hi*) (around September 23), “Health and Sports Day” (*Taiiku no hi*) (the second Monday of October), “Culture Day” (*Bunka no hi*) (November 3), “Labor Thanksgiving Day” (*Kinrou kansha no hi*) (November 23), “The Emperor’s Birthday” (*Tennou tanjoubi*) (December 23).

Article 3 consists of three clauses and the first clause provides that a National Holiday shall be a day off, and the others deal with technical matters such as avoiding the holidays overlapping and so on.

The Amendment newly adds Article 2 “Showa Day,” in place of “Green Day” on April 29, “which shall cause the nation to reflect on the upheaval of the era and the accomplishments of rebuilding Japan during the postwar period, and think of the future of the country,” and moves “Green Day” to May 4 renaming it the “People’s Day.” Corresponding to these changes, Article 3 shall be changed slightly. The Amendment will take effect on January 1, 2007.

Editorial Note:

As the Sabbath day traces its roots back to the Book of Genesis in the Old Testament, most holidays usually have highly religious meanings. But in Japan, as both a secular and constitutional state, the National Holiday Act enacted in 1948 has provided the date and meaning of the special holiday. The original Act has been amended several times after the enactment, and this is the eighth one. Recent amendments mainly aimed at introducing the so-called Happy-Monday System, which creates three consecutive holidays making Monday a day off in consideration for the firm establishment of the five-day workweek system today, and thereby increases leisure for people (*e.g.* Law No. 141 of 1998, Law No. 59 of 2001).

Compared to those past amendments, this “Showa Day” amendment could take on a more political or sensitive meaning. One should not draw a hasty conclusion that it is only a change of a holiday name.

As noted above, because April 29 is the Emperor Hirohito's birthday, "Showa Day" will inevitably be associated with Emperor Hirohito's pre-war rule. Here, we should remember why the Government named the day "Green Day" not "Showa Day" immediately after his death. National Holiday is a day which we as one celebrate and thank, or commemorate (Art. 1), but Hirohito has been regarded by most Asians as a symbol of Japanese militarism and aggression in the past. Even in Japan, opinion remains divided on Hirohito's legacy. Many Japanese see him as being a benign figure out of touch with his militarist cabinet, while others insist he was intimately involved in the planning of the War. Thus, due to both respect for freedom of thought and the conscience of the people (Art. 1 of the Constitution) and considerations for Asian peoples, April 29 was given the less controversial name of "Green Day." For the same reason, Meiji Emperor Mutsuhito's birthday on November 3 has been "Culture Day" since 1948, and that of Taisho Emperor Yoshihito's on August 31 is not even a national holiday.

What has changed since the enactment of "Green Day"? Are there any persuasive reasons for this change of the name? "Showa Day," as provided by the amendment, will be the day "which shall cause the nation to reflect on the upheaval of the era and the accomplishments of rebuilding Japan during the postwar period, and think of the future of the country." The Diet members presenting the bill also explained the purpose of the bill as that "the nation will reflect on the Showa era and draw the lesson from history for the future of Japan as a peaceful country." It can be true that because sixty years have passed since the defeat on August 15, 1945, most Japanese people think of the Showa era only as post-war rebuilding period, and thus it is quite understandable that they might feel innocent affection for "Showa" rather than associate it with the bitterness of the War.

However, it should be appropriate to regard this "Showa Day" as a symptom of Japan's having been increasingly becoming reactionary these seventeen years. Just when the bill was first discussed in 2000, then Prime Minister Yoshiro Mori's remark that "Japan is the kingdom of God, honoring the Emperor" elicited much criticism. The Emperor was "sacred and inviolable" under the Constitution of the Empire of Japan Article 3, that is, heaven-descended, divine and sacred, but he is

now “the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power” (Art. 1 of the Constitution). Mori’s remark fortuitously revealed the true intention behind the longing for “Showa Day,” which should be, not wishing for peace sincerely or reflecting seriously on Japan’s pre-war aggression, but only returning to pre-war emperor worship. That is why the Democratic Party, the largest opposition party, opposed the bill at that time, though the Party backed the bill this time, only offering the insufficient explanation for their defection that the holiday would encourage public reflection on the turbulent 63 years of Hirohito’s reign, rather than glorify the emperor himself.

Moreover, in recent years, the Japanese Government has exacerbated Japan’s relationship with other Asian countries, in particular China and the two Koreas. The late Prime Minister Junichiro Koizumi has continued to visit the Yasukuni Shrine, since taking office in 2001, where class-A war criminals from during the Pacific War are enshrined with other war dead, against the fierce criticism of those countries. The Prime Minister’s visiting Yasukuni Shrine, even otherwise, would raise a doubt concerning its constitutionality in light of the principle of the separation of church and state [Const. 20(3)]. Exactly when this bill was under deliberation in March 2005, the friction concerning *Takeshima* (being called *Tokdo* in South Korea) which, Japan has begun to assert more vigorously its claims over and was a territory lost after defeat in the Pacific War, came to a head. Even worse, the demonstration in South Korea had repercussions in China, where demonstrators staged violent anti-Japanese protests at many Japanese diplomatic facilities and businesses, protesting against the possibility of Japan’s achieving a permanent seat on the U.N. Security Council. Nevertheless, the Japanese Government has never seriously patched up its strained relationship with them.

Therefore, it will be apparent that “the lesson of the history” emphasized by the “Showa Day” promoters should only indicate “the lesson of the post-war rebuilding period” excluding “the lesson of pre-war Japan’s aggression.” Japan now has one of the largest military forces, the Self-Defense Forces of Japan, regardless of Article 9 of the Constitution, which declares both the renunciation of war forever and that Japan would never maintain the potential for war, and at last in 2004, they were dis-

patched to Iraq, arguably a combat zone, for the first time since their foundation. On October 25, 2005, the Liberal Democratic Party in power announced their draft of a new Constitution of Japan, which aims at effectively undermining Article 9. Asian neighbors' uneasiness about Japan's reactionary tendency and militarism may be unfortunately not groundless.

One should not, however, focus only on the rightist tendency of the Government. Nobody can deny that it was the powerful grass-roots campaign by ordinary citizen that achieved "Showa Day." According to one of these grass-roots groups, "Showa Day" Promotion National Network (SDPNN), one million and seven hundred thousand signatures of people calling for the enactment of "Showa Day" were collected. It seems that, as ordinary people have been gradually getting more conservative, so the Japanese Government gets more and more so. But it is also the case that most Japanese people have not taken part in the campaign actually. Pro-"Showa Day" people would have never been a majority. Though SDPNN insists that the fact that there has not been an anti-"Showa Day" movement demonstrates that the silent majority have been supporting "Showa Day," this is simply misleading. Even if people who opposed "Showa Day" had cooperated with the anti-"Showa Day" political party, such as the Japanese Communist Party or Social Democratic Party, since the number of the Diet members in those parties was so small, they could not have succeeded in the campaign, and thus it should have been a lost cause from the start. Therefore, we cannot now evaluate all the campaigns around "Showa Day," much less the true meaning of the day. They will be evaluated in the near future.

2. Administrative Law

An Act to partially amend the Administrative Procedure Act 1993

Law No.73, June 29, 2005 (Effective on the day falling within a year of the day of the promulgation laid down by Government order).