
MAJOR JUDICIAL DECISIONS

Jan.–Dec., 2006

1. Constitutional Law

X v. Japan

Supreme Court 1st P.B., July 13, 2006

Case No. (o) 22 of 2005

1415 SAIBANSHO JIHO 10; 1946 HANREI JIHO 41

Summary:

In this case, the Supreme Court of Japan held that the Public Offices Election Law which did not provide appropriate opportunities to vote for persons who could not go to the polls because of mental disorder was not unconstitutional and illegal, so that the appeal was dismissed.

Reference:

Constitution, Article 14 (1), 15 (1), (3), 43 (1), 44 and 47; Public Offices Election Law, Article 44 (1) and 49 (2); Law Concerning State Liability for Compensation, Article 1 (1)

Facts:

The Plaintiff has a mental disorder, so that it is extremely difficult for him to move when he sees figures outside his home. Therefore, he could not go to the polls and exercise his franchise guaranteed under the Constitution. The revision of the Public Offices Election Law in 1952 abolished the system that enabled persons who could not go to the polls because of diseases and so on to vote at home. The revision in 1974 established the new system enabling voting by mail but the range of the application was very limited (Public Offices Election Law, Article 49 (2)). Only severely disabled persons could use the mail vote. Up to today, the revision of the law to provide opportunities to vote for persons to whom the mail vote system was not applied has not been carried out. It means that the persons who suffer from mental illness but to whom the exceptional measure of the mail vote is not applied can not exercise their franchises at all.

The plaintiff had a mental disorder but his condition was not so severe as to allow him to vote through the mail system. So, he could not exercise his voting right with that system. At the outset, he brought a case before the Osaka District Court, but the court dismissed his case, expressing the discretionary power of the Diet (February 10, 2002). Then, he appealed to the Osaka High Court, but he lost the case again (September 16, 2003). He finally appealed to the Supreme Court to seek to reverse the decision. The Supreme Court decided this case on July 13, 2006.

Opinion:

The appeal shall be dismissed.

Unanimous Opinion (Justice IZUMI Tokuji, Justice YOKOO Kazuko, Justice KAINAKA Tatsuo, Justice SHIMADA Niro and Justice SAIGUCHI Chiharu):

The illegality of enactment or omitting enactment by parliament's members, under the Law Concerning State Liability for Compensation, Article 1 (1), shall be decided, depending upon whether the content of the enactment or omission expressly infringes the rights protected by the Constitution, or whether the Diet has failed to enact any necessary laws without justifiable reasons for a long time, although its required enact-

ment is clearly essential in order to ensure the opportunities to exercise those rights. According to our precedent, only in those limited exceptional cases shall the enactment or omission of enactment be evaluated as illegal under the law.

In view of the content of protections for the election right under the Constitution, the limitations of that right are not permitted principally. So, it is thought that the government has the duty to ensure the exercise of that right. It is right in this case. However, differing from the case of the physically disabled persons, it is very difficult to decide the criterion in the area of psychiatry. In addition, the Diet had not had any occasions to discuss about the problems concerning this case, so that the extension of the mail vote system had not been considered in that context.

Accordingly, this case is not one that the content of the enactment or omission of enactment expressly infringes the rights protected by the Constitution, or that the Diet has failed to enact any necessary laws without justifiable reasons, although its required enactment is clearly essential in order to ensure the opportunities to exercise those rights. Therefore, it is said that the omission in this case is not illegal.

And it is clear that the revisions of the Public Offices Election Law do not invade the plaintiff's right. It is unnecessary to consider more constitutional claims, because, as stated above, the omission in this case is not regarded as illegal under the Law Concerning State Liability for Compensation.

Concurring Opinion (Justice IZUMI Tokuji):

I agree with the conclusion of the unanimous opinion of this Court, but I would like to add further to it relating to the constitutionality of the Public Offices Election Law in view of the importance of the election right.

Article 47 of the Constitution sets down that the way to vote shall be provided by law. It means that the election system, in which all the electorates can exercise their rights without particular burdens, should be established.

Article 49(2) of the Public Offices Election Law provides the mail vote system, but the persons available to it are limited to a part of the disabled and the like.

The limitations on the exercises of the nation's right to vote are not principally permitted. Those limitations might be accepted only when they

are necessary to retain the fair election on all accounts.

In this case, it could not be said that the right to vote is adequately protected. To be sure, the problem of the difficulty to decide the criterion in the area of the psychiatry remains. However, it is not easy, but possible. The fact that it is not easy to decide the criterion is never the justification. It is not when the limitations are necessary to retain the fair election on all accounts.

Therefore, the Public Offices Election Law, which does not provide any occasion to vote for the plaintiff, is in the situation that violates the protection of equal election right, which the Constitution requires.

Editorial Note:

The unanimous opinion in this case is said to be vacant in view of the constitutional law. It focuses only on the legality of omitting the adequate revision under the Law Concerning State Liability for Compensation, Article 1(1). The main obstacle to the judgment about the constitutionality is thought to be the infamous precedent of the Supreme Court, which holds that as for the enactment of law, state liability for compensation shall be limited to the exceptional case, where the content of the enactment or omission expressly infringes the rights protected by the Constitution, or where the Diet has failed to enact any necessary laws without justifiable reasons for a long time, although its required enactment is clearly essential in order to ensure the opportunities to exercise those rights. Such a wall prevents courts from taking the constitutional issues seriously.

Why did the Supreme Court restrain judgments concerning the constitutional law in this case? One possible explanation might be that suggested by Professor Richard H. Fallon. He maintains that courts, particularly which rule on the constitutional issues, decide the cases, seeking the appropriate overall alignment of doctrines involving justiciability, substantive rights, and remedies (he calls this the equilibration thesis). For example, judges dislike the award of remedies that would effect unacceptable intrusions on decision-making by other branches, so that they might manipulate the jurisprudence of substantive rights. On the contrary, judges, who accept the great importance of substantive rights, would permit litigants to obtain remedies, even if they were pretty intrusive. According to this theory, the Supreme Court might be apprehensive of the

intrusiveness of the remedy resulting from the judgment of unconstitutionality. However, in this case, Justices should have made a point of the significance of substantive right. They actually mentioned the meaning of the right to vote in the parliamentary democracy. They could have manifested the incompatibility with the Constitution. They could have done this without intrusive remedy, as Justice IZUMI actually did in his concurring opinion.

In view of the importance of the right to vote in the democratic state, it is very important that one Justice suggests the incompatibility of the present law with the Constitution. Whether the remedy in this case is unacceptable or not, it is clearly necessary that the Court identify the present system as being in the unconstitutional situation at least. It is not difficult to declare the unconstitutionality in order to urge the Diet to adopt proper measures. In this case, it is said that the Court could not fulfill even a minimum function.

2. Administrative Law

Xs v. Takane Town

Supreme Court 2nd P.B., July 14 2006

Case No. (gyou-tu) 35 (gyou-hi) 29 of 2003

60 (6) MINSHU2369; 1947 HANROEI JIHO45

Summary:

Dismissal of final appeal

The part of the municipal ordinance of Takane town, which changes a basic charge of a villa watering contracting party over this case, is invalid, because that part violates article 244 paragraph 3 of the Local Autonomy Law.

Appellees (Xs) do not carry need to pay a difference between the basic charge of this case attached list and the basic charge before a revision by this case of a change in the municipal ordinance concerning a villa watering contracting party.

Thus it is possible to approve the original judgment which approved of