
MAJOR JUDICIAL DECISIONS

Jan.–Dec., 2011

1. Constitutional Law

X v. Japan

Supreme Court, November 16, 2011,
Case No. (A) 1196 of 2010., 65 (8) KEISHU 1285

Summary:

The Constitution permits citizens' participation in judicial proceedings, and leaves it to the legislative branch to decide the details for a system for such citizens' participation, as long as the constitutional principles for realizing due criminal trials are secured. The Saiban-in system does not violate Article 31, Article 32, Article 37, paragraph (1), Article 76, paragraph (1), Article 80, Article 76, paragraph (3), Article 76, paragraph (2) of the Constitution. The duties of Saiban-ins cannot be regarded as "servitude."

Reference:

Constitution, Article 18, 31, 32, 33, 34, 35, 36, 37, 38, 39, 76, 78, 79, 80;
Constitution of the Empire of Japan, Article 24; Court Act, Article 3; Act on

Criminal Trials Examined through Participation of Saiban-ins, Article 1, 2, 6, 9, 16, 51, 66, 67; Cabinet Order to Specify Unavoidable Grounds Prescribed in Article 16, item (viii) of the Act on Criminal Trials Examined through Participation of Saiban-ins.

Fact:

The defendant conspired with unknown persons, concealed in a suitcase the illegal drugs containing a psycho-stimulant, and planned to import it from Malaysia to Japan. Based on the above-mentioned fact, the defendant was prosecuted for the violation of the Stimulants Control Act and the Customs Act.

Chiba District Court judged that the defendant recognized that the goods in a suitcase were illegal drugs, and sentenced the defendant to a punishment of penal servitude of 9 years and, and a fine of 4 million yen. This first trial was the trial in which the Saiban-ins (lay judges) participated. Tokyo High Court turned down the opinion by the side of the defendant that a Saiban-in system violates Article 80 paragraph (1) and Article 76 paragraph (2) of the Constitution. The appeal was rejected.

Opinion:

The final appeal is dismissed.

The Opinion of the Court:

The admissibility of citizens' participation in judicial proceedings for criminal trials

“The issue of whether or not citizens' participation in judicial proceedings for criminal trials is permitted under the Constitution, which is fundamental to criminal justice, should be determined by comprehensively examining the fundamental principles of governance and various principles for criminal trials adopted under the Constitution, the legislative developments of the Constitution including the historical backgrounds at the time of the enactment of the Constitution, and the texts of the relevant provisions of the Constitution.”

“[A] criminal trial is the exercise of a strong State power, which might even result in taking a person's life.” “In the Constitution of Japan, which places emphasis on protection of fundamental human rights, Articles 31

through 39, in particular, provide for various principles for realizing fair criminal trials, including guarantee of due process, ... most of which can be said to be universal principles that have been established through the histories of criminal trials in the respective countries.” “In the process of conducting a criminal trial, these principles must be observed strictly, and this requires a high level of legal expertise.” “The Constitution provides for these principles, and also under the principle of separation of powers, it provides for detailed rules for judges’ independence in the exercise of their authority and guarantee of their status in Chapter VI Judiciary.” “In view of all of these points, the Constitution seems to expect judges to play the primary role in conducting criminal trials.”

“[L]ooking from a historical and international perspective, there was a movement spreading in European countries and the United States from the 18th century to the first half of the 20th century, along with the development of democracy, toward reinforcing the public foundation of the judicial system by permitting citizens to directly participate in judicial proceedings, and thereby ensuring the authenticity of the judicial system, in addition to the aforementioned requirement of due process.” “In the middle of the 20th century, when the Constitution of Japan was enacted, the United States and many other democratic countries in Europe adopted the jury system or other criminal trial systems involving the participation of citizens.” “In Japan, under the Constitution of the Empire of Japan ..., the Jury Trial Act was enacted in 1923, and jury trial was conducted in some 480 criminal cases from 1928, and then this system was suspended in 1943 in the wartime.”

“While the Former Constitution provided that “No Japanese subject shall be deprived of his/her right to be tried by the judges as determined by law” (Article 24), the present Constitution provides that “No person shall be denied the right of access to the courts” (Article 32), and that “In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal” (Article 37, paragraph (1)).” “Furthermore, unlike the case of the Supreme Court, the present Constitution does not clearly stipulate that lower courts shall be composed only of judges (see Chapter VI Judiciary).” “[T]he government at the time of the legislation of the Constitution considered it possible to adopt a jury system or any other criminal trial system involving the participation of citizens.”

“[I]t is possible to fully harmonize citizens’ participation in judicial proceedings with the principles provided for realizing fair criminal trials, and there is no reason to consider that the Constitution prohibits any form of citizens’ participation in judicial proceedings.” “The constitutionality of a system designed for citizens’ participation in judicial proceedings should be determined depending on whether or not the system actually puts in place conflicts with any of the principles provided for realizing fair criminal trials.” “[T]he Constitution generally permits citizens’ participation in judicial proceedings, and if any system is adopted for this purpose, the Constitution leaves it to the legislative branch to decide the details for the system, including whether the system should be formed as a jury system or any other criminal trial system involving the participation of citizens, as long as the aforementioned principles are secured.”

About the opinion of each violation of a provision of the Constitution

“[T]he Constitution cannot be construed as prohibiting citizens’ participation in judicial proceedings at lower courts.” “Therefore, it cannot be said that a judicial body composed of judges and citizens fails to constitute a “court” under the Constitution, only because of such a composition.” “The question is whether or not a judicial body composed of judges and citizens under the Saiban-in system can be qualified as a “court” that meets various constitutional requirements in relation to criminal trials.”

“[A] judicial body that handles a case to be tried under the Saiban-in system is to be composed of judges, whose status and independent exercise of their authority are guaranteed, and Saiban-ins, who are appointed through the procedure that gives consideration to ensuring their impartiality and neutrality.” “In addition, Saiban-ins are vested with the authority to attend proceedings at open court together with judges, state their opinions in the deliberation concerning the finding of fact and the application of laws and regulations, as well as the determination of a sentence if the accused is found guilty, and to cast a vote.” “These matters in which Saiban-ins participate for making a determination constitute the elements of the judiciary, but Saiban-ins do not necessarily have to be equipped with legal knowledge or experience in advance in order to

determine on these matters.” “Moreover, the presiding judge is required to give consideration to enabling Saiban-ins to perform their duties sufficiently.” “In light of all of these arrangements, it can be fully expected that Saiban-ins, with the aforementioned authority vested therein, will reach a reasonable conclusion through the deliberation with judges, while reflecting their various viewpoints and senses in the conclusion.” “On the other hand, it is left to judges’ discretion to guarantee various constitutional principles for criminal trials.”

“In view of such framework of the Saiban-in system as described above, we can find that the system fully guarantees fair trial at an impartial court based on law and evidence (Article 31, Article 32, and Article 37, paragraph (1) of the Constitution), and that judges are to play the primary role in conducting criminal trials.” “Consequently, the defense counsel’s arguments alleging violation of Article 31, Article 32, Article 37, paragraph (1), Article 76, paragraph (1), and Article 80, paragraph (1) of the Constitution are groundless.”

“[I]n accordance with Article 76, paragraph (3) of the Constitution, judges shall be bound by the Constitution and laws.” “Therefore, since the Constitution generally permits citizens’ participation in judicial proceedings and the Saiban-in Act is the legislation of such citizens’ participation in a form that complies with the Constitution as mentioned above, even if judges sometimes have to agree with a conclusion that is different from their own opinions under the deliberation system provided in the Saiban-in Act, this is a result of their being bound by law that complies with the Constitution, so such situation would never be deemed to be in violation of the said paragraph.”

“[S]o the composition of the judicial body under this system cannot be deemed to be unconstitutional only because the judicial body would sometimes reach a conclusion that is different from the one that could have been drawn only by judges.” “Consequently, the defense counsel’s arguments alleging violation of Article 76, paragraph (3) of the Constitution are groundless.”

“[T]he judicial body under the Saiban-in system belongs to a district court, and against a judgment rendered by this judicial body as the court in first instance, an appeal and a final appeal may be filed with a high court and the Supreme Court, respectively, so the judicial body composed of judges and Saiban-ins obviously does not fall within the scope of extraordinary tribunal.”

“It cannot be denied that citizens would have to bear a certain amount of burden when they perform duties as Saiban-ins or appear at court as candidates to be Saiban-ins.” “However, as the purpose of introducing the Saiban-in system, Article 1 of the Saiban-in Act explains that the participation of Saiban-ins, elected from citizens, in carrying out criminal trial proceedings together with judges, will contribute to improving citizens’ understanding of and trust in justice.” “[W]hen citizens are given the duties, etc. of Saiban-ins, they are at the same time vested with the same authority as the right to vote in an election, by way of participating in exercising the judicial power, so it is not necessarily appropriate to regard such duties as “servitude.”” “In addition, from the perspective of refraining from imposing excessive burden on citizens, Article 16 of the Saiban-in Act typifies persons who may decline to serve as a Saiban-in, and item (viii) of said Article and the Cabinet Order enacted under said item provide for a flexible rule for such declination, while taking into consideration the circumstances of each individual”

“In light of these points, the duties, etc. of Saiban-ins obviously cannot be regarded as “servitude,” which is prohibited under the second sentence of Article 18 of the Constitution, nor can we find any aspect in such duties that could infringe the fundamental human rights of Saiban-ins or candidates to be Saiban-ins or any other persons.”

About a meaning of the Saiban-in system

“The Saiban-in system is similar to the jury system in that lay judges are elected for each case at random from among citizens and they do not have the status of professional judges.” “At the same time, the Saiban-in system has many features in common with other criminal trial systems involving the participation of citizens, in that citizens, together with professional judges, make a determination on the finding of fact,

application of laws and regulations, and determination of a sentence.” “In this respect, the Saiban-in system can be referred to as an original Japanese system for citizens’ participation in judicial proceedings.” “For this reason, in order for this system to take advantage of the jury system and other criminal trial systems involving the participation of citizens and to finally be established in society as an excellent system, all stakeholders for the operation of this system are required to make constant efforts to this end.”

“[T]his system aims to realize criminal trials in which citizens and those in legal professions, through the constant exchange of the former’s viewpoints and the latter’s expertise, can develop mutual understanding and make good use of their own merits.” “Needless to say, it would take considerable time to completely achieve this goal, but the process of working toward this goal also has great significance in realizing a judiciary that is rooted in the public.” “By making constant efforts from such long-term perspective, we all can finally realize the system of citizens’ participation in judicial proceedings that is most suitable to the reality of this country.”

Editorial Note:

In our country, in which the criminal trials had been performed by career judges traditionally, Saiban-ins trials based on the Saiban-in Act enacted in 2004 have also been performed since 2009. A Saiban-in trial makes application of a finding of fact and law, and a decision of assessment of a case in the first trial of a serious fixed criminal cases by six Saiban-ins members chosen from electors by the lottery, and the panel composed of three career judges (the Court opinion has called this panel the “judicial body”). The purpose of a Saiban-in system maintains the civic base of administration of justice through citizens’ participation in the criminal procedure as a Saiban-in. This purpose is also based on the opinion by the Judicial Reform Council which worked from 1999 to 2001 and proposed the foundation of a series of reforms for the judicial system including the Saiban-in system.

This case is a common incident in connection with the smuggling of the illegal drug. Nevertheless, in that the Supreme Court made a constitutional judgment about the new system also in connection with

itself, it seems that this case has become a leading case. Under a subordinate judicial review system (a system which examines the constitutionality of a related statute or governmental action when the judgment involving the rights-and-duties relation by the parties concerned is performed), the constitutionality of the Saiban-in Act which makes the premise of a determination of a defendant's punishment and judgment of assessment of a case is examined. The Court opinion rejects all arguments that the Saiban-in Act violates the Constitution. The posture of the judgment about the Saiban-in Act of the Court opinion is close to an abstract judicial review system (a system which examines the constitutionality of a statute without a problem of the rights-and-duties relation by the parties). The Court opinion emphasizes that the Saiban-in system is constitutional, explaining the main point and meaning of that system.

Some problems are left behind by this judgment even if based on the peculiarity of such a judgment. First, the duties of Saiban-ins are interpreted as the authority of the participation in a jurisdiction, and it is regarded as a thing similar to suffrage. This logic is used for the demonstration of the duties of Saiban-ins not corresponding to "servitude", which is prohibited by the article 18 of the Constitution. However, an invariable distance exists between the action of participating in a criminal trial and an action for the sovereignty which led the vote. Moreover, unlike the suffrage, the so-called "freedom or right not to participate in judicial procedure" is not permitted in the Saiban-in system. This is clear also from the point that the administrative fine for a misstatement on requirement of Saiban-in (Article 111 of the Saiban-in Act) and appearance duty (Article 52 of same) in the election procedure are defined by the law. It seems that a more detailed explanation is required about the point of argument in connection with the institutional basis of the character of citizens' participation in the judicial procedure.

Second, it seems that the Court opinion explains that the Saiban-in system, which enables citizens' participation in judicial procedure, is not only permitted by the Constitution, but also desirable or requested from it. However, when and after introducing the Saiban-in system, there are also just some dissenting opinions. A constitutional doubt which the appellant side asserts in this case had just been shown. To the adverse claim in a

judicial process like this case, the Court should not explain the meaning of the Saiban-in system as a positioner concerned with this institution and a promoter, but serve as an institutional evaluator and a referee standing in a more objective position.

In addition, it is important to point that the constitutionality of the citizens' participation system in the judicial procedure based on the Saiban-in Act does not mean that other constitutional problems accompanying a Saiban-in system, for instance, a Saiban-in's confidentiality of information, or, freedom of the press in informing the public of details of a criminal trial in which the Saiban-ins participate, are solved.

2. Law of Property and Obligations

X v. Y

Date of the judgment 2011.03.24

Case number 2009 (Ju) No. 1679

65 (2) MINSHU 903; 1528 SAIBANSYO JIHO 15;
2128 HANREI JIHO 33; 1356 HANREI TAIMUZU 81;

Summary:

1. A special provision on a deduction of certain amount of money from the security deposit, which is attached to a lease contract for a residential building categorized as a consumer contract, cannot immediately be regarded as impairing the interest of the lessee unilaterally against the principle of good faith; however, if the amount of the deduction from the security deposit set forth therein is judged to be too high in light of the amount normally expected as the maintenance expenses for any wear and tear of the building that would be caused from the normal use by a lessee according to the socially accepted standards or that would necessarily be caused due to aging; the amount of the rent; whether or not key money or any other lump-sum money has been paid and received, and the amount of such money if there is any, such special provision impairs the interest of the lessee, a consumer, unilaterally against the principle of good faith, and