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Devolved Consensus? The United Kingdom's response to COVID-19 and effects on economic and social policy

*Sean P. Vincent**

The past 8 years has seen one of the biggest upheavals in British political and social life. The decision by the British electorate to withdraw from the European Union (EU), and the subsequent political and social divisions which have resulted still divides the public until this day. Pressure from nationalists in Scotland and Wales, and republicans seeking to make Northern Ireland part of Ireland once again, continues to put pressure on the central UK government in Westminster. And, like the rest of the world, the UK has had to deal with the unprecedented political, economic and social effects of the Covid-19 pandemic. As of the end of May 2022, the UK suffered over 22 million cases of Covid-19, and almost 180,000 people dying with the disease. In the early days of the pandemic, the UK had some of the highest infection rates in the world and was one of the first countries to enter a period of almost total "lockdown", in which people were unable to leave their homes[1)], go to places of work, or see family and friends. Many people were left helpless as loved ones died alone in hospital. However, the UK was also one of the first countries to administer vaccinations after the successful development of the Oxford-AstraZeneca vaccine by UK researchers.

It cannot be said that the UK government was passive during the 2 years of crisis. Ordering lockdowns and other social restrictions, investing public money in vaccine research, paying the wages of people who could not work and supporting private business with what were essentially taxpayer funded bailouts; the influence of the UK government has not been as significant since the immediate aftermath of the Second World War. This article aims to explain how government policy has led to "bigger" government, not just against the backdrop of the pandemic, but also with the Brexit process which has been developing at the same time. The question of whether the UK state has gotten bigger is a nuanced one and requires looking not just at the actions of the government during the pandemic, but also the trend of

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1) Except for weekly food shopping or medical reasons.

government growth in the post-WW2 period. Even before the pandemic, it can be argued that the British government was much closer to the European big state model compared to advanced industrial democracies outside of Europe such as America or Japan. As this chapter will demonstrate, the combined effect of Covid-19 and Brexit have undoubtedly led to a bigger government.

At the same time, the article will also explore the effects of Covid-19 and the Brexit process on the powers and relationships of the devolved administrations in Scotland, Wales and Northern Ireland. While the UK government has retained its "big" moniker, power has been given away to national parliaments since the devolution process began in 1998. A second question to be explored in this article is what effect has Covid-19 and Brexit has had on the power dynamics between the central UK government in Westminster and those in the devolved administrations? Prior to 2016, the trend had been for greater devolution of powers from the center to the periphery. With the dual "crises" Britain has experienced over the past 8 years, has this trend continued or has the central government, either by design or by necessity, strengthened its power? In the post-war era, British social policy was based on the idea of "consensus"; a support for basic social policies which all sides of the political spectrum supported. In the wake of devolution, that consensus has started to be challenged by ideologically opposed governments in Westminster and Holyrood and Cardiff. While the post-war consensus was built on political party consensus, this article examines a "new" consensus, namely the ability, or lack thereof, for devolved governments pursue common policy goals and how the powers given to devolved governments are being interpreted by central and devolved administrations. We may also ask what effect central government policy has had on the relationships between the different UK governments and what this means for the idea of a UK-wide consensus in the future.

A history of consensus

Before the Second World War, Britain's welfare system was based on a decentralized, Victorian model. The original Poor Law, established in the 17th century, gave the responsibility of financial assistance to people who were too ill or old to work to "parish" councils, who had the power to collect and spend taxes for this reason.[2] The 1834 Poor Law Amendment Act was one of the first significant pieces of legislation which increased the

2) Parish councils are the lowest level of local government in the UK and still exist today.

power and responsibilities of the central government in regards to the welfare state. While this legislation gave the government greater control over welfare policy, it was actually designed to "encourage" people to work by cutting financial assistance to able-bodied people who had previously been receiving it (UK Parliament, 2022). During the First World War, millions of Britons were conscripted into military service and hundreds of thousands would suffer life changing injuries. This, combined with the effects of *demobilization*, which saw soldiers returning home to mass unemployment, caused the British government to take greater responsibility for welfare. In 1919, the modern-day Ministry of Health was established, making it the first-time public health had been organized into one, central government department. This also put administration of the Poor Law under direct government control, although many hospitals and workhouses were still administered at the local level. Despite these early reforms, until the end of the Second World War the provision of healthcare, education and culture was still mostly done at the local level and was the responsibility of a "voluntary" sector, a combination of Christian and middle-upper class organizations (Daunton, 1996). However, governments across Europe, afraid of the appeal of communism in Eastern Europe, were beginning to understand the need to provide social welfare to citizens both as a way to create greater equality and to rebuild their crippled economies. Millions of soldiers faced the same unemployment and discrimination the previous generation had faced and it was clear that the role of government would have to dramatically change in order to deal with a changing society. In short, government in Britain was about to get much bigger. Because both Labour and Conservative parties supported this increase in state intervention through the post-war era up until the first Thatcher government, this period has been known as the post-war consensus.

Like many countries in Europe, the post-Second World War period saw the role of the state get significantly bigger. The election of a first ever Labour majority government in 1945 gave the British government the mandate to make widespread changes which would define the role of the government in society until the present day. Labour's commitment to greater equality was to be achieved through revolutionary social policy, defined in the 1942 Beveridge report, which acted as the blueprint for a new "cradle to grave" welfare state. Free education for all children up to secondary level was introduced for the first time under the 1944 Education Act[3]. Benefits which

3) Passed during the Conservative led coalition government during the Second World War.

had been available only to the poor were extended to the whole of the population. Britain's economy transitioned to a "national" economy, with major infrastructure such as rail, communications and energy production becoming state owned (Edgerton, 2021). Perhaps the most famous and revolutionary social policy of the post-war era was the establishment of the National Health Service (NHS) in 1948. By creating a publicly funded health service, where all citizens made the same contribution through taxation and treatment incurred no extra cost to the user, the Labour government aimed to create a system of economic redistribution through public services (Hicks, 2013). In the next 30 years, successive British governments would adopt a Keynesian economic policy, where the central government would become responsible for the economic and social development of the country. While suspicious of these reforms at first, the Conservative party recognized that the bigger role of the state was popular with voters and commitment to the welfare state became a part of Conservative manifestos from 1955 onwards (Edgerton, 2021). What Labour called social democracy, the Conservatives called "The Middle Way", which could combine capitalist enterprise with a "big" state designed to protect the economy from price fluctuations (Blackburn, 2018). In short, both major parties were committed to the enlargement of the state and maintaining the post-war welfare state which had been developed under the Labour government.

The post-war consensus was shattered, in many ways, by the election of Margret Thatcher in 1979. While Keynesian economics had been good for Britain's economy during post-war growth, a combination of lower economic growth throughout the 1970's and a corporatist model giving a great deal of power to trade unions, stopped the government making much needed reforms and seriously affected living standards. At first, Thatcher's reforms, such as privatization of industries and severe cuts to the top rate of income tax (from 83% in 1979 to 40% in 1988) seemed like a breaking of the post-war consensus. However, while Thatcher's reforms were bitterly opposed by many, her policies did not affect the size of the state. In fact, welfare spending increased significantly in the 1980's due to the increase in unemployment caused by Thatcher's privatization reforms (Figure 1) and there was never an attempt to reverse the welfare reforms of the post-war era (Edgerton, 2021). It can be argued that under the next Labour government, led by Tony Blair, a new consensus was established, one which saw both Conservative and Labour parties committed to a British economy focused on the globalized market rather than domestic production, but still with a highly centralized, and relatively generous welfare state. Even during the Brexit referendum, one of the most talked about policy issues was funding

for the NHS, with the official Leave campaign claiming that leaving the European Union would result in an extra £350 million of funding *per week* for the NHS. Both David Cameron and Boris Johnson have, at times, identified themselves as "One Nation Conservatives", an idea which originated in the Conservative party in the 1950's as a way to connect Conservative policy with the kind of social equality which had been associated with Labour since its foundation. In summary, while both the Conservative and Labour parties have changed their position on many issues, there continues to be a consensus on the role of the state in British politics. The government is seen as being responsible for education, healthcare and maintaining a welfare state, and is held responsible when the economy underperforms. Therefore, when we try to assess whether COVID-19 has resulted in the British state getting "bigger", we must remember that the role of the British state has been concretely defined since the post-war era and that the state was increasing in size, both in terms of government spending on social policy (welfare) and public sector employment, even before 2020 (see Figures 1&2). Public sector spending and employment had initially declined in the wake of the global financial crisis, and the coalition policy of austerity. However modest recovery until 2015, followed by the Brexit referendum and the expansion of central government to both prepare for withdrawal and replace existing areas of EU governance, saw a return to increasing central government employment, to higher and higher peak figures. This trend has been exacerbated in response to the COVID-19 pandemic has only increased the roles and responsibilities of the central government.

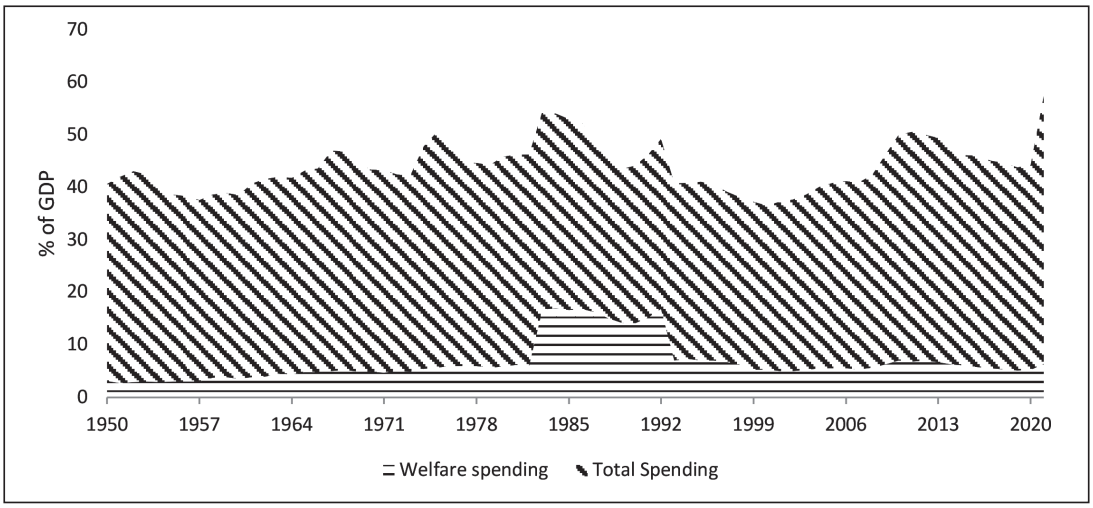

Figure 1: Total UK government spending & Welfare spending as a percentage of GDP since 1950. Source: (UK Public Spending, 2022)

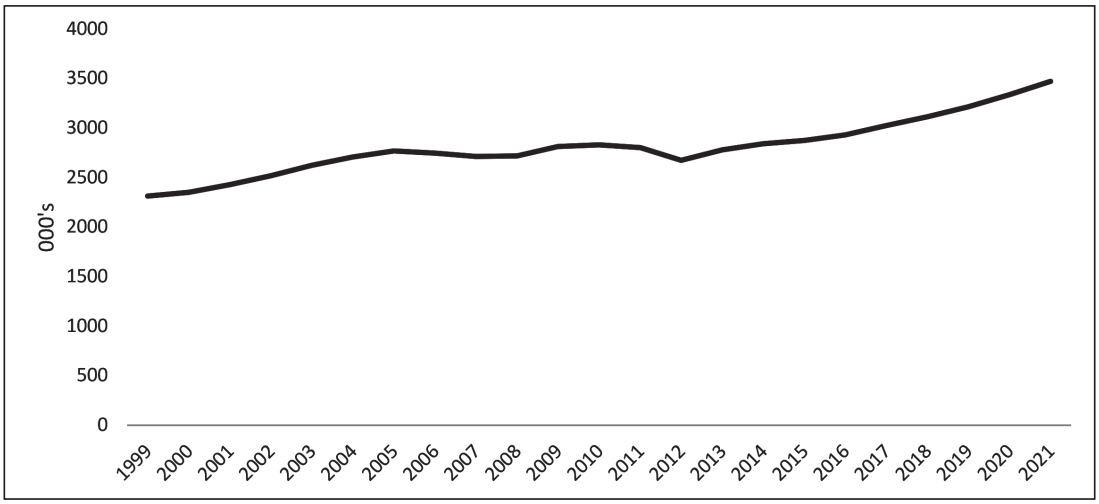

Figure 2: Number of people employed by central government 1999-2021. Source: (ONS, 2022)

COVID-19 and Devolution

While it can be argued that the central government has never been more powerful, over the last 25 years there has been a dual development in government in the UK, that of continuing *devolution* of powers from the UK government to its member nations, in particular Scotland and Wales. The Scotland Act, the Government of Wales Act and the Northern Ireland Act of 1998 were passed by the UK government to give greater autonomy to the member nations. This has given devolved governments powers similar to those in federal systems. As of 2021, elected regional governments in Scotland. Wales and Northern Ireland had power over Health and Education services, Housing, Transport, Economic development and Transport services, as well as limited local tax raising powers. At the same time, the Westminster government retains control over Foreign Affairs, Defence, Immigration, International Trade Agreements and the National Minimum wage (UK Civil Service, 2021). Since devolution in 1998, the general trend of British politics has been power moving away from the central government to the devolved regions, although prior to Brexit, there were two challenges to this. The first, was Brexit itself, which saw a majority of people in England and Wales voting to leave the European Union and a majority in Scotland and Northern Ireland choosing to remain. Britain's withdrawal was especially opposed in Scotland, where the Scottish National Party sits as a majority government in the devolved parliament and has argued that the split in opinion between the Scottish people and the UK government over the Brexit issue is justification for another referendum on Scottish independence (Vincent, 2021). Secondly, the devolved regions continue to

rely on funding, through national taxation, from the Westminster government through the Barnett formula. The Barnett formula calculates how much money is given from the central government to devolved administrations for the purposes of *devolved services* e.g., healthcare, education etc. When spending in public services is increased in England, the same increase is provided for by the central government to the devolved regions. This has resulted in government spending per person being higher in the devolved regions than in England. For example, in 2019, public spending per person in Northern Ireland was £11,590 compared to £9,296 in England. (BBC, 2020). Prior to the COVID-19 pandemic, around two-thirds of the Scottish budget came from central government funding (Learmouth, 2021). The result of this is that while certain powers have been devolved to regions within the UK, regional parliaments are forced to rely on the central government to balance their budgets.

The COVID-19 pandemic has put considerable pressure on both central and devolved budgets. Devolved regions have needed greater central government funding in order to deal with the financial costs. By the end of 2021, the UK government had provided an additional £12.6 billion to devolved regions for COVID-19 related spending through Barnett funding (UK Government, 2021). Responsibility for negotiating the amount and spending the additional funding is solely in the hands of the devolved administrations, which implies that the devolved regions have been given more *financial* power during the pandemic and the flexibility to decide how to spend the money (Bell, Eiser, & Phillips, 2021). However, Covid-19 related funding has been cut in the 2022/2023 budgets for devolved regions. For example, the Scottish budget will have a total of £5.2 billion Covid-19 funding removed for the 2022/2023 fiscal year. Even with the amount of money Scotland receives from the Barnett formula increasing, this will still leave the Scottish government with a £3.5 billion shortfall compared to 2021/2022 (Scottish Government, 2021). Additional funding to devolved regions has been temporary and entirely reliant on policy making in Westminster. In the short-term, devolved governments, despite still dealing with the pandemic, will have to manage a sudden decrease in their budget. In the long-term, it shows how the devolved governments, despite having the power to decide how money is spent, remain reliant on the UK-wide economic situation and decisions made by the UK government.

In addition to economic matters, the Covid-19 pandemic also demonstrated the powers and weaknesses of devolved administrations in regards to legal matters. Prior to the pandemic, there had been a clear division in

the evolution of social policy between the UK and the devolved regions. In areas where power had been devolved, such as those mentioned earlier, the Westminster government had pursued broadly market-based policies, starting with greater privatization of the NHS and the introduction of "Academy"[4] schools under the Blair and Brown governments and continued by subsequent Conservative governments. The Scottish and Welsh governments pursued universalist policies in health and education. Free market competition was removed from the NHS in Scotland and Wales, initiatives such as free eyes tests for all people were initiated and in Scotland, university tuition was made free for all students, including foreign students, while tuition fees have risen from £4,000 in 2000 to up to £9,250 in the rest of the UK. This has led to standards of healthcare being relatively similar across the UK, but educational achievement in Scotland dropping behind the rest of the UK in recent years (Atkins, et al, 2021, p.6-7). These are examples of some of the powers devolved administrations had prior to the pandemic and how devolved governments were able to pursue different social policies under their devolved mandate. One important question is, how has COVID-19 affected the balance of power between the central and devolved governments?

The authority of the UK government was in some ways limited by the fact that key areas of social policy relating to the pandemic – public health, education, social care and policing and justice, fall under the authority of the devolved governments, and as such had an effect on the ability of the central government to enact policy. For example, the Coronavirus Act 2020, which finally expired in March 2022, gave devolved regions the power to close schools on the grounds of public safety and the power to place restrictions on movement of people and close businesses. In addition, the Coronavirus (Scotland) Act gave house and apartment renters more protection from eviction and powers to release non-violent prisoners from jail early in order to lessen the strain on the prison and health service (Wilkes, 2020). At the outbreak of the pandemic, the four nations had a united policy towards the pandemic and all three leaders of Scotland, Wales and Northern Ireland were invited to COBRA meetings held by the UK government and security services and there was broad agreement on the need for a national

4) Academy schools are listed as non-profit charities and are often sponsored by corporations or charitable trusts and do not have to follow the National Curriculum that state schools teach.

"lockdown" in March 2020.[5] By May of that year, differences in policy implementation were beginning to take place in the different regions. Some of these were down to regional necessity, for example, the Scottish government giving greater financial support to its fishing and agricultural sector. But around this time, communication between Westminster and the governments in Scotland and Wales began to break down, leading to Scottish First Minister Nicola Sturgeon learning of changes in the UK government's Covid-19 messaging from the UK press.[6] As Evans (2021) points out, this raised constitutional issues and demonstrated that no official line of communication between governments existed during times of national crisis. In effect, the UK government did not feel the need to consult the devolved governments on policy changes. This resulted in confusion, especially for those living in border areas, where at some points during the pandemic, people living in England were banned from entering Wales, but people living in Wales were able to cross the border into England. This also created problems for businesses, which are part of a UK based economy but faced different mandates on when they could open to the public. Differences in education policy were also exposed as coordination between Westminster and the devolved regions broke down, at times creating a two-tier education system where students from England returned to school in June 2020, but students from Scotland, Wales and Northern Ireland returned more than six weeks later (Sargent, 2020). Mixed messages being sent from the central and devolved governments often left people unsure of which governmental advice to follow and was an obstacle to implementation of policies designed to limit the spread of the virus. While the pandemic, especially through the Coronavirus Act, gave the devolved regions clear and additional powers in regards to policy making, which we could expect to be repeated during any future national emergency, it is clear that the UK government puts its decision making above that of devolved regions and does not feel the need to consult and plan with regional leaders on a long-term basis.

While legislation gave greater power to devolved regions in terms of social policy making, the UK government retained control over the most important area during the pandemic – the economy. The Coronavirus Job Retention Scheme (CJRS) was introduced in March 2020 and ran, at various

5) Cabinet Office Briefing Rooms – where committees meet to discuss issues of national security for both domestic and foreign policy. Usually, only Cabinet ministers and high-level staff in the security/police service would attend these meetings.

6) From a motto of "Stay at home" to "Stay alert", effectively giving people permission to go back out into public places.

levels of benefits, until September 2021. In terms of government spending, it was by far the most significant intervention in labour policy by any UK government since the welfare state was established in the 1940's. Initially, the scheme allowed employers to claim up to £2,500 from the government per month in order to pay employees who could not work for businesses which had been shut down. Added to this were employee benefits for National Insurance and pension contributions. It was estimated by the Office of National Statistics that the scheme cost £69 billion over an 18-month period and while economic growth dropped by nearly 10% in 2020, the scheme was successful in keeping the unemployment rate low, peaking at 5.2% in December 2020 (Narwan, 2021). Undoubtedly, the furlough scheme was a necessary and, in the short term, successful intervention by the state which helped to prevent further damage being done to the UK economy. There were seven significant changes in the CJRS scheme during 18 months which included changes in the level of government wage contributions from 80% to 60% in October 2020, returning to 80% between the end of 2020 and the summer of 2021 (Brightpay, 2021). There were two main consequences for the devolved governments. The first was that support for the workforce through the CJRS, the biggest area of COVID-19 related government spending, was entirely in the hands of the central government. With many of the highest salary jobs located in London and the South East of England, payouts of CJRS money were much higher in these areas, where more people qualified for the maximum payout of up to 80% of £2,500 (less people in Scotland, Wales and Northern Ireland were earning this amount of money). Secondly, as noted above, the devolved governments had legal power over lockdowns and business closures, but these periods did not always coincide with central government CJRS adjustments. Before October 31st 2020, it was not certain that the CJRS scheme would be extended into November and beyond. The maximum payout of 80% of salary was paid during times when the UK government ordered total lockdown, as it did, for the second time, on October 31st, 2020. However, Wales, Scotland and some cities in the north of England, most notably Manchester, had already entered lockdown one week before, at a time when the CJRS payments had been reduced to 60% of salary. This caused a great deal of uncertainty for workers in devolved regions and many employers were uncertain whether they could keep workers past the original October 31st deadline (Ferguson, 2020). The CJRS scheme was a further example of the power of central government within the UK.

The devolved regions have very different social policy challenges compared to England. The devolved regions, and the North East of England,

have higher rates of spending on healthcare, higher numbers of hospital beds and higher rates of hospital staff, per person, compared to the UK average. Much of this is because of geography, where there are more people living in rural areas in the devolved regions, who need local NHS services. Despite having the highest spending on education (per student) and the highest teacher to student ratio of all the UK regions, Scotland has seen attainment rates in science and mathematics drop significantly since the mid-2000's (Atkins, et al, 2021). The COVID-19 pandemic, in terms of government spending, has demonstrated the continued reliance of the devolved regions on central government to deal with social policy challenges. The devolved regions do not have enough tax-raising powers under the law, and very limited borrowing power, to deal with large scale national emergencies like COVID-19 and the unique social policy challenges mentioned above. In the short-term, when countries around the world are recovering from the pandemic and facing the challenges of inflation and other cost of living related economic impacts, devolved regions in the UK will not have the economic power of legal flexibility to meet social challenges without relying on UK government policy. As shall be explored in the next section, the focus of the UK government will not be strengthening the devolved governments but will be on the enlargement of the state through ambitious spending plans on social policy as a result of Britain's decision to leave the European Union in the referendum of 2016.

COVID, Brexit and the Levelling-up agenda

While most governments around the world have been dealing with the single issue of pandemic response and recovery, at the same time the UK government has been navigating the waters of the most significant political change since the end of the Cold War – its withdrawal from the European Union. The referendum of 2016 was followed by years of political and trade negotiations between the EU and Britain before its final withdrawal in January 2020. As such, the British government was already in the process of massive state intervention in social policy to amend and replace laws which had previously been introduced to Britain under EU law. The 2018 European Withdrawal Act copied many existing EU laws into British law, including those needed to comply with EU trade rules. It has been estimated that the Act covered approximately 150,000 laws which were classed as "retained law" – those that would be copied from EU to UK law (Thorneloe, 2021). Much of this was done to easily facilitate a trade deal during the withdrawal period. However, it was recognized that such arrangements would be fluid, with changes to law taking place over time. And this has

become especially true during the pandemic and looking towards future recovery. By the end of 2021, the UK government had already made changes to retained law in areas of immigration, agricultural subsidies and food production. Prime Minister Boris Johnson has stated the need to diverge further from retained EU law as the UK recovers from the pandemic and makes significant economic shifts in policy. Legal changes will focus on areas where Britain is "strong", such as technology and financial services and amending sales tax rules in the future (BBC News, 2022). Boris Johnson became leader of the Conservative party and convincingly won a general election in 2019 largely because of his optimistic message about the post-Brexit economy and his pledge to increase government spending in areas of the UK, especially the north of England, which had not seen the economic benefits of EU membership, and globalization. This "leveling-up" agenda now forms the central part of Britain's post pandemic economic and social policy. With such significant changes happening in Britain's legal and political landscape, we must look at the UK government's pandemic recovery policies as being tied to the Brexit process. The government has already enacted legislation which will see levels of government intervention and spending reach levels not seen since the post-war era. Three significant pieces of legislation/policy will be particularly important in post-pandemic Britain. The Internal Market Act, the Leveling-up agenda and the Shared Prosperity Fund.

The Internal Market Act (IMA) has been perhaps the most significant single piece of legislation which has given the British state more power than at any time over the past 30 years, although this must be seen as a strengthening of the state in relation to the EU, rather than in relation to private business or individuals domestically. Prior to the withdrawal of the UK from the EU, trading standards and the movement of goods and services were governed by EU regulation. All devolved regions, and regions within England, had clear and transparent rules regarding trade with the rest of the EU member states. Exports from the UK to the EU accounted for 42% of all UK exports in 2020, while EU imports accounted for 50% of all imports to the UK (Ward, 2021). As a result, the UK economy, at the national and regional level, was highly dependent on laws made by the EU. The IMA was the legislation used by the UK government to establish trading laws within the UK which had been originally governed by EU laws. The IMA was a controversial part of UK-EU relations during the withdrawal period, as it remains to this day. Throughout 2020, when the UK had officially already left the EU, retained laws kept trade rules the same in the UK. The most difficult part of post-Brexit negotiations has been over Northern Ire-

land. There was a possibility of a "hard border" being established between Northern Ireland and Ireland caused by the need for customs checks on imported and exported goods if a final trade agreement could not be made between the UK and EU. With Northern Ireland's long history of sectarian divide and violence, it was believed that a hard border would lead to a breakdown of the 1998 Good Friday Agreement and a return to violence by republican forces. The eventual compromise, known as the Northern Ireland Protocol, put special measures in place in Northern Ireland which makes it unique, it is the only region of the UK which essentially still operates under EU law. It is unlikely this arrangement will last. During the trade agreements, the UK government threatened more than once to change drafts of the IMA to allow UK ministers to abandon the Protocol in the future. This was viewed as potentially breaking international law and in the end, the IMA came into law with the protocol intact. However, it should be recognized that the protocol is a temporary measure, made for diplomatic rather than practical reasons. Arguments over the protocol are likely to happen again in the future. Northern Ireland is an unusual example of the UK government not reasserting its authority over the rest of the UK. In general, the IMA is viewed as weakening the devolved regions in relation to the central government. It is true that under the IMA, some powers from the EU will be transferred to the devolved governments, such as subsidies for farmers, food standards and energy efficiency. However, under the IMA, devolved regions will be forced to accept goods and services from other parts of the UK, even if they do not meet internal standards the devolved regions are able to set themselves. As a result, the devolved regions of the UK could develop a variety of different rules on trade standards which are not actually enforceable. This is especially concerning for the devolved regions as the UK government retains control over international trade agreements and could allow goods and services which do not meet the new standards made by the devolved governments to enter the UK marketplace. The devolved leaders, especially Nicola Sturgeon, have argued that all powers which used to be under EU mandate, none of which relate to foreign affairs or national security, should become the responsibility of the devolved governments (Sim, 2020). A report by the Center for Constitutional Change highlights that this situation will reduce the ability for devolved governments to make targeted social and economic policy (Dougan *et al*, 2020). As the English market is the driving force behind the UK economy, and laws regulating trading standards in England are made by the UK government, this will lead to English standards becoming *de facto* across the UK and putting the power of social and economic policy making in the hands of the UK government. In 2021, the Scottish parliament passed legislation to ban the

use of 8 different types of single use plastics. Scotland is the only region in the UK to ban this many different products. In England, only plastic straws and stirrers are banned under law. Under the IMA, the Scottish legislation is essentially useless, as single use plastic products produced in other parts of the UK *must* be legal to sell in Scotland (Scottish Parliament, 2022). The overall impact of the IMA has been to reduce the level of trust between the central and devolved governments. The report by the Center for Constitutional Change describes the making of the IMA a top-down process, with the devolved regions having no input into the process. Extensive powers are given to the Secretary of State for Business to amend the rules without consultation with the devolved governments and there is no sign that the central government is willing to collaborate with devolved governments on future trade standards.. The report summarizes by stating:

”We have never known relations between the Welsh and Scottish Governments on the one hand, and the UK Government on the other, to be as poor as they are today. (p.11)”

The phrase “Leveling up” was first used in the Conservative party’s 2019 election manifesto. In addition to “Getting Brexit done”, the Johnson government promised to increase government spending in areas which had been economically less developed during the period the UK was a member of the EU. Many of these areas were in the north of England, known politically as the Red Wall – constituencies which had voted Labour for generations but where votes for Conservative candidates had been growing in previous elections and were seen as becoming politically distant from the increasingly metropolitan focused Labour party. This manifesto pledge was very successful in breaking the Red Wall. The Conservatives were able to make a net gain of 48 seats in England, while Labour made a net loss of 47, giving the Conservatives their biggest majority since Margret Thatcher and a clear mandate for Brexit and their manifesto policies. The promises of 2019 have been put into practice via the Leveling-up White Paper published in February 2022. In total, the government plans to make £4.8 billion available for local authorities with the goal of decreasing economic disparity between regions in the UK. The North East of England and Wales had areas where unemployment was up to 10% higher than the rest of the UK during 2020. Life expectancy in Scotland (81) is lower than in London and the South East of England (84.5). The UK’s core cities[7], outside of London,

7) The UK’s Core cities, outside of London, are defined as Birmingham, Bristol, Cardiff, Glasgow, Leeds, Liverpool, Manchester, Newcastle, Nottingham, and Sheffield. None of these cities are in the South East of England which is the richest area of the country

are less productive than non-capital cities across much of Europe and East Asia, implying that years of underinvestment in these areas has wasted the potential for economic growth in the UK (UK Government, 2022, p.31-33). A pilot scheme for the Leveling-up agenda – the Community Renewal Fund (CRF) gives some indication of which areas the government is planning to target with future spending. The CRF was a £220 million fund designed to bridge the gap between the end of EU funding and the start of the new UK government funded Shared Prosperity Fund. Local authorities were able to bid for funding and receive money for local projects aimed at improving job skills, business enterprise and employment (UK Treasury, 2021).

As a member of the EU, the United Kingdom received financial grants for areas of economic, social and cultural development. In reality, these grants were paid for by the UK taxpayer; paid to the EU by the UK government through taxes and then redistributed by the EU to UK regions as a part of EU Structural Funds. One of the arguments of the Leave campaign was that the money sent to the EU could now be directly invested by the UK government, essentially cutting out the middleman. To put this into practice, the government has established the Shared Prosperity Fund (SPF). The SPF will essentially replace the CRF, which was designed as a temporary measure during the UK's transition away from the EU. The SPF has been established with 3 key areas of focus:

1. Building local community pride and improving safety; for example, through community infrastructure projects such as local "green" spaces.
2. Supporting local businesses; for example, through more private sector investment in the leisure and hospitality sector.
3. Investing in "People and Skills"; for example, through education and reducing the number of people who are "economically inactive" (unemployed).

The SPF has a total value of £2.6 billion and is a direct replacement for EU Structural Funds given in the past. Under the plan, regions in the UK have been split into a mix of large, middle and local sized authorities, each of which has been allocated a set budget for a 3-year period between 2022 and 2025, ranging from approx. £280 million for the Cardiff area, to £1 million for local areas in wealthy parts of England such as Windsor and Oxford in England. In fact, the highest regional allocations have been made mostly in areas where economic growth has been much slower over the last 30

years, with major regions in Wales being allocated approx. £485 million[8] and regions such as Greater Manchester, the Midlands and West Yorkshire receiving significantly more funding than wealthier parts of England (UK Government, 2022). The SPF shows a clear attempt at increasing spending in economically underdeveloped regions within the UK. The government argues that a layer of bureaucracy has been removed from the process of applying for and distributing funds. One advantage of leaving the EU, is that the UK does not need to contribute to the EU budget, estimated at approx. £9.4 billion (net) in 2019. Where financial allocations for regional development were made in Brussels, they can now be made closer to home, in Westminster. This would imply that the organisation now responsible for structural funds, in the case of the SPF – the newly formed Department for Leveling Up, Housing and Communities (DLHC) will have a better understanding of the needs of the UK's different regions and be able allocate funds in a more efficient way. However, questions can be asked about how this control of the SPF strengthens the authority of the UK government in relation to the devolved regions and whether the regions will in fact be better off than under the EU Structural fund model.

Prior to Brexit, the UK government entered into a "Partnership agreement" with the EU in relation to EU structural funding. The UK would be responsible for negotiating Britain's budget contributions and how much would be given by the EU in structural funds. However, the decision making on how to award funds at the local level was the responsibility of the devolved governments; with the UK government only being responsible for England. That has now changed with the UK's withdrawal from the EU and the establishment of the SPF. Now, all funding decisions i.e., what projects are awarded funding, are made by the central government, not the devolved administrations. This has taken a significant degree of financial power away from the devolved administrations and into the hands of the central government – in particular the DLCH. The DLCH has existed since 2001, when it was known as the Deputy Prime Ministers Office and had evolved since then to take over the responsibilities of housing and local government prior to its latest renaming in September 2021, when it was also given responsibility for the Conservative's Leveling-up agenda and Michael Gove, one of the most senior members of the Conservative cabinet was made Secretary of State. As mentioned before, the UK government argues that Westminster control over structural funding will be more effi-

8) Not including further local authority funding

cient, more quickly delivered and better aligned with national development priorities – such as recovery from the economic impact of COVID-19, than that of the EU. However, the end result is that billions of pounds of spending power has been taken away from the devolved governments and given to the central government. Concerns have been raised that the SPF is being used as a political ploy to strengthen the Union by improving the image of the UK government in the minds of Scottish and Northern Irish voters. The Scottish National Party continue to hold a majority in the Scottish parliament and are pushing for another independence referendum. Sinn Fein, the Irish Republican party, were the biggest party coming out of the May 2022 Northern Ireland Assembly elections with 27 seats. In addition, it is possible that the SPF will not be as efficient in reality as the government hopes. Local authorities could receive funding both from the DLCH and devolved administrations, creating an overlap in funding and creating confusion as to who is accountable for individual projects (Nice, *et al*, 2021). Differences in levels of funding could also create an unbalanced system. Under current plans, Wales is going to receive more funding per person than Scotland or Northern Ireland, which could have the opposite effect of creating more divided feelings amongst members of the devolved nations and tensions between the Westminster and devolved national governments. Regardless of results, it is clear that the SPF has given the UK government, specifically ministers within the DLCH who are responsible for awarding funding, greater power at the expense of the EU-devolved government partnership under the old model. This has also added to the idea that the UK government is moving further towards a "big government" model.

Region	Estimated UKSPF totals for 2022-2025 (£ millions)	Hypothetical EURDF & ESF totals for 2022-2025 (£ millions)
Scotland	212	372
Wales	585	1,029
Northern Ireland	127	222
England	1,566	2,988
Total	2,490	4,611

Table 1: Comparison of SPF and EU (*hypothetical*) funding models for UK regions from 2022-2025. Source (DLHC, 2022).

It may also be of value to briefly analyse the potential overall effect of the SPF and how spending by the DLCH will compare to that of EU structural funding. Table 1 compares spending over a 3-year period based on

SPF and *hypothetical*[9] EU Structural Fund and EU Regional Development funding, which the SPF is intended to replace. While the SPF is guaranteed to match EU investment levels by the 2024-2025 fiscal year, in the 2022-2023 & 2023-2024 fiscal years SPF funding will be considerably lower, which explains the difference between the 3-year totals in Table 1. What this means is that not only has the power for funding decisions been taken away from the devolved regions, but the amount of money they will receive for structural investment projects is going to be considerably less over a short-term period.

What effect will COVID-19 have on the government's Leveling-up scheme? While the Levelling-up agenda was part of the government's plans before the pandemic, it is possible that Covid-19 will have a positive effect on the scheme in some ways. One aim of the scheme was to encourage greater economic growth *outside* of London and the South East. It has been wealthier regions in the UK, in the metropolitan areas and in areas which benefit from tourism i.e., very often regions in the south of the country, which have been the most affected by Covid-19. Lockdowns and a shift to more online working mean that many people have moved away from the cities. Younger workers, who before 2020 could not afford to live in London and the other big cities now have the option of living in more low-cost areas – Core cities and rural areas which the Levelling-up agenda aims to revitalize. More than half of British workers have said they would like to continue to work, at least part of the week, from home (Kirk, 2022). While the government has encouraged people to return to their workplaces and there is a concern that working from home may decrease company productivity in the long-term, there is likely to be a fundamental shift in the way people work in the future. This has the potential to contribute to the economic revitalization of Britain's less developed regions.

However, Covid-19 is also likely to have a negative effect on the UK government's post Brexit social policy. In 2020 alone the GDP of the UK declined by nearly 10% and the government was forced to spend billions to keep the economy running during the lockdown periods. This will have had a significant effect on how much money is available for future social policy spending. This can already be seen in the short-term decline of SPF spending compared to EU spending of the past. Put simply, the Conserva-

9) The *hypothetical* funding model is based on DLHC calculations of what EU funding to the UK would have been for the period 2022-2025 if it had not left the EU. Source: (DLHC, 2022)

tive government planned to make public spending in the post-Brexit era the biggest since the end of World War 2 and focus on investing in areas which had been neglected by public funding for decades. There is no doubt that the economic impact of Covid-19 has affected its ability to do that. As explained above, tensions with the devolved governments have already been increased due to the increased *legislative* power COVID-19 rules have given the central government. These tensions are replicated in the IMA and the SPF, which gives the central government greater *legislative* and *economic* power. This is also true when considering *government accountability*. During the height of the pandemic, the British public were receiving mixed messages about social distancing, travel and lockdown rules from the devolved and central governments. Individuals were often confused about which rules they should follow. There was also the creation of a two-tier system, where policy made by the central government could supersede that of the regional administrations. Again, this can also be seen in the central government's post-Brexit infrastructure plans, particularly the IMA. Not only do devolved regions have less spending power, but accountability for local projects may become unclear and administration and funding may become duplicated through the SPF. Again, this adds to the possibility of disagreements between central and devolved governments. Finally, it can be argued that the implementation of the IMA, the SPF and the Leveling-up agenda have added to division within the UK at a time when its governments need to act together. During the early days of the pandemic, the country rallied around national institutions such as the NHS and the experience was compared to living through the "Blitz" [10]. However, this soon ended as old arguments about Brexit and differences in the post-Brexit direction of the country started to be talked about again.

The UK as a "Big" state

This article has attempted to answer 2 questions related public policy which have come to the forefront of British politics in recent years. The first question to consider is the effect of the Covid-19 pandemic on the size of the UK state. Can it be concluded that the policies of the UK government have led to an increase in the size of the state? This is a difficult question to answer. Firstly, from the historical perspective, it can be argued that the UK state has been increasing steadily since the end of WW2, when the UK entered the period known as the post-war consensus. Even considering the

10) The nightly bombing of British cities by German forces during World War 2.

privatization reforms introduced by Margaret Thatcher in the 1980's and continued by the Blair government, spending and centralized government employment have continued to increase. The Covid-19 pandemic caused the government to make unprecedented policy intervention to protect the economy, such as the job retention scheme, and public health i.e., national lockdowns. But as has been shown, the most significant policy making during the pandemic era has not been related to the pandemic but has in fact been in response to Brexit. Even before the pandemic in 2020, the Conservative government had made plans to create the "Leveling-up" agenda and significantly increase spending on social policy through direct central government funding. It is impossible to separate the long-term effects of Covid-19 on social policy without considering Brexit-related legislation such as the Internal Market Act and the Shared Prosperity Fund.

At the same time, the new consensus which had been built through the devolution of powers to the national governments in Scotland, Wales and Northern Ireland has also been challenged. While political parties themselves still have broad agreements on the role of national institutions, such as the NHS, there is clearly a divide between both policy making and the interpretation of powers afforded to the devolved governments. These have only been increased through natural ideological division between the Conservative run central government, which took direct control over policy making during the pandemic, and SNP run Scottish government. There is clear evidence to suggest that the central UK government has increased its power at the expense of the devolved governments during the pandemic. One way this has been done is through the post-Brexit legislation mentioned above. Spending power that used to be distributed to the devolved governments by the EU will now be spent by the central government. The pandemic also highlighted the limitations of devolved governments' power during times of both national emergency and great political change. Despite early attempts at creating a consensus on public health response, the central government quickly took sole control of social policy in the summer of 2020, meaning devolved governments were forced to *react* to policy decisions in Westminster rather than be a part of them. In addition, as the driver of the UK economy, legislation such as the Internal Market Act demonstrated that regardless of what standards and practices devolved governments planned to put in place in the post-Brexit era, policy making in Westminster will always supersede devolved legislation. This is true in both economic and health policy. The strength of the UK, as a political union, was put to the test during the dual events of the Covid-19 pandemic and the creation of the post-Brexit order. The UK government responded to

both events by strengthening its own policy making powers at the expense of the devolved administrations. While Covid-19 briefly took discussion about independence off the table, the recent electoral successes of Sinn Fein in Northern Ireland and the continued dominance of the SNP in Scotland mean the Union is likely to be under pressure again very soon. Now the UK government has taken direct responsibility for economic recovery and social policy making post-pandemic/Brexit, it will need to deliver results. If it does not, the new "consensus" of the devolved UK political system may be broken.

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A Research on Punitive Damages for Intellectual Property Infringement in China

Binbin Liu and Xuxia Ma***

Introduction

In order to strengthen intellectual property protection, in recent years, China has continuously strengthened the revision and improvement of intellectual property laws and regulations, and intensified the punishment of intellectual property infringement. Since June 1, 2021, the relevant laws on punitive damages in the field of intellectual property rights in China have all been formally implemented. However, how to reasonably apply the punitive damages system in judicial practice, that is, the elements and factors that should be considered in the application of punitive damages, is the main core issue discussed by Chinese academic and practical circles, and also one of the focus of foreign enterprises involved in China. On the basis of investigating the background of punitive damages for intellectual property infringement in China and the process of its introduction, this paper analyzes and interprets the elements of punitive damages for intellectual property infringement litigation in China, hoping to give some reference to the academia and business circles concerned about this issue.

Chapter 1: The background, process and basis of the introduction of punitive damages in the field of intellectual property in China

1. Background

China's modern intellectual property system was initially established in the late 1970s, and the promulgation of the Outline of the National Intellectual Property Strategy in 2008 marked that China's intellectual property system entered a stage of strategic improvement. According to WIPO's World Intellectual Property Index Report from 2013 to 2020, China has ranked first in the world in terms of patent filings for four types of intellectual property (invention patents, utility models, designs and trademarks),

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both originating in and originating in China, every year since 2012. China has developed into an intellectual property power and is on its way to becoming one. It is necessary to further improve the protection level of intellectual property rights to build a strong intellectual property right country, and the construction of punitive damages system becomes an important choice to build a strong intellectual property right country, which is also an important background for China to introduce punitive damages in the field of intellectual property rights. In addition, the development of Sino-US economic and trade frictions since March 2018 has further strengthened China's understanding of the importance of intellectual property development. The Economic and Trade Agreement signed by China and the US in January 2020 requires China to strengthen the application of penalties in the field of intellectual property, which has also accelerated the development of punitive damages system in China.

In 2019, China revised the Trademark Law to raise the standard of punitive damages. The Civil Code[1], which was formally implemented in January 2021, provided relevant provisions on the application of punitive damages to intellectual property rights, providing a superior legal basis for the application of punitive damages to intellectual property rights; In June 2021, the Copyright Law and the Patent Law[2], which were amended and formally implemented, added provisions on punitive damages. Since then, China has completed the system construction of punitive damages for intellectual property rights at the legislative level. In 2021, China issued the Outline of Building a strong Country with Intellectual Property Rights[3], marking that China's intellectual property system has entered a new stage of development. In addition, China has also proposed that "protecting intellectual property rights is protecting innovation" and "innovation is the primary productive force", giving higher priority to the development of intellectual property rights. It can be seen that the construction of China's intellectual

1) The Civil Code of the People's Republic of China was promulgated in May 2002 (Order of the President of the People's Republic of China No. 45) and officially implemented on January 1, 2021.
2) The Patent Law of the People's Republic of China was promulgated in March 1984 and has been amended four times, including 1992, 2000, 2008 and 2020. The punitive compensation system was amended in 2020 and officially implemented in June 2021.
3) The CPC Central Committee and The State Council of China issued the Outline of Building a Strong Country with Intellectual Property Rights (2021-2035) on September 22, 2021, and issued a notice, requiring all regions and departments to earnestly implement it in light of the actual situation. The main purpose is to make an overall plan to promote China's development as a strong IPR country, comprehensively improve the level of IPR creation, utilization, protection, management and service, and give full play to the important role of the IPR system in socialist modernization, and formulate a program to build China into a strong IPR country. See the website: https://www.cnipa.gov.cn/art/2021/9/23/art_2742_170305.html.

property punitive compensation system is consistent with its development goal of building a strong country in intellectual property, which is also an institutional response to international intellectual property competition.

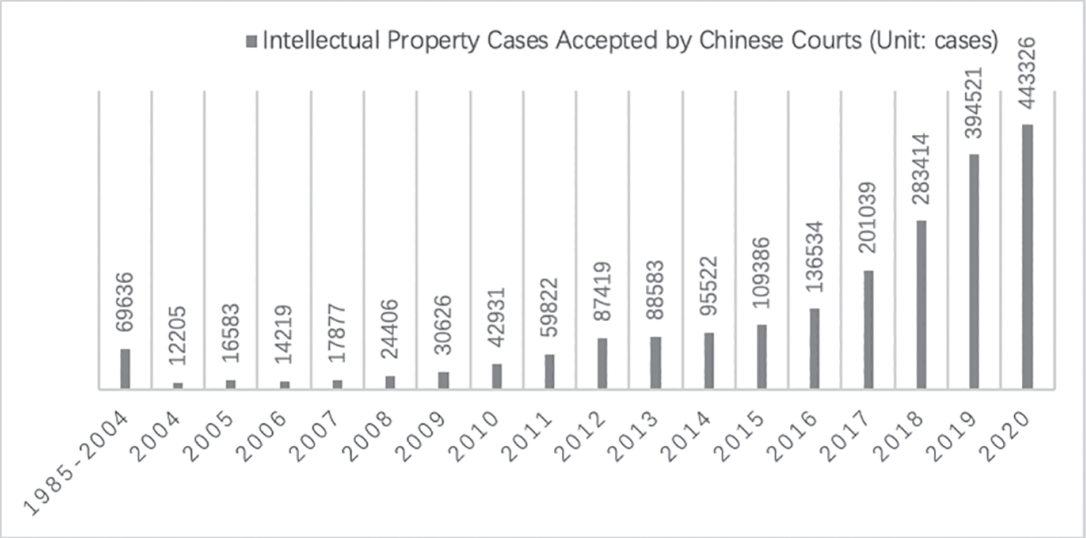
Based on the situation of intellectual property development in China itself, according to the white paper "Status of Intellectual Property Protection in China" issued by the State Intellectual Property Office of China over the years,[4] the number of civil cases of intellectual property accepted by the courts shows a growing trend (as shown in the figure below), most of which are IPR infringement cases. On the one hand, the increase of IPR infringement cases in China is due to the increase of IPR rights, on the other hand, the development of China's social and economic development, and the increasing awareness of IPR protection. Despite the increasing number of IPR infringement cases in China, according to a research report by the Intellectual Property Research Center of Zhongnan University of Economics and Law in 2012, the cost of infringement was low and the cost of safeguarding rights was high in the IPR field at that time.[5] In 2019, Zhan Ying, a professor at the research Center, published research results showing that the average amount of compensation awarded for intellectual property infringement in China was still low, with "legal compensation" accounting for the majority of cases. [6] Therefore, new compensation calculation rules are needed to solve the problems in China's judicial practice, and the punitive compensation system is referable and meets the needs of China's social

4) The State Intellectual Property Office of China issues a white paper on the status of intellectual property protection in China every year. It aims to provide the international community with a comprehensive understanding of the basic status of intellectual property protection in China, the principles and positions China has pursued, the international obligations it has undertaken and the important measures it has taken. Since 1998, China has compiled and published a White paper on IPR protection for more than 20 consecutive years to introduce China's IPR protection to all sectors at home and abroad. See the website: https://www.cnipa.gov.cn/col/col91/index.html.

5) For example, an empirical study was conducted on 4768 judicial cases of intellectual property infringement in China from 2008 to 2011. The results show that the widely criticized problem of "low compensation" for intellectual property infringement does exist in China, and courts tend to over-apply the "statutory compensation" standard in the judgment of compensation. See Zhan Ying, Zhang Hong, An Empirical Study on the Judicial precedents of Intellectual Property Infringement in China -- Focusing on the Cost of rights Protection and Infringement Cost, Science Research Management, No.7, 2015, pp. 145-153.

6) The research team conducted another empirical study on 11,984 IPR infringement cases in China, and found that the average amount of compensation awarded for IPR infringement was still low, and the situation that "legal compensation" accounted for the absolute majority was still unchanged. Although punitive damages had appeared in judicial practice, the application rate was very low. Zhan Ying, "Investigation and Reconsideration of the Judicial Status of Intellectual Property Infringement Damages in China -- Based on the In-depth Analysis of 11984 Judicial Cases of Intellectual Property Infringement in China", Legal Science (Journal of Northwest University of Political Science and Law), No. 1, 2020, pp. 191-200.

and economic development. This is also consistent with China's development goal of building a strong intellectual property power. China should take the initiative to improve intellectual property protection standards and safeguard intellectual property development achievements, so as to achieve the goal of promoting intellectual property development.



The academic research on whether China needs to introduce punitive damages in the field of intellectual property can be traced back to 2002, when scholar Zhuang Xiufeng proposed that punitive damages should be added to protect intellectual property rights.[7] Later, Chinese scholars had a wide discussion on whether China should introduce punitive damages in the field of intellectual property rights until 2013, when punitive damages were introduced into the Trademark Law. Chinese scholars have affirmed the positive significance of introducing punitive damages in the field of intellectual property from the aspects of intellectual property protection and innovation promotion, but at the same time there are some doubts. It can be divided into three aspects:

First, based on the analysis of China's economic development level, it is believed that punitive damages do not adapt to China's economic development level at that time, because the introduction of punitive damages means

7) Zhuang Xiufeng believes that according to the relevant provisions of the intellectual property law, natural persons and legal persons who infringe on the intellectual property rights of others and cause damage should be compensated. However, because the existing law adopts the actual loss principle, there is still no way to deal with especially serious infringement of intellectual property rights. Therefore, punitive damages should be applied to the infringement of intellectual property rights. See Zhuang Xiufeng, "Punitive Damages Should be Added to Protect Intellectual Property", Journal of Law, No.5, 2002, pp. 58-59.

that China needs to adopt strong protection policies in the field of intellectual property, which is unfavorable to the development of intellectual property in China at that time.[8] In addition, some people think that China, as a developing country, does not need to give strong protection of intellectual property rights above the minimum protection standard stipulated in TRIPS Agreement, because it will break through the "filling principle" of civil remedies, and the responsibility of punitive damages is obviously too heavy.[9]

The second is the analysis of the concept of private law in civil law, which holds that punitive damages are in conflict with the concept of private law in civil law.[10] Punitive damages are fines for tort doers, which are incompatible with the compensatory nature of private law.[11] In addition, some people believe that the confusion of the boundary between public and private law will confuse the different standards of proof established in the two fields, resulting in unfair evidence system for the infringer.[12]

8) Skeptics believe that the introduction of punitive damages means that we adopt a strong policy to protect intellectual property rights, which is not suitable for our economic development level. See He Yudong, Shi Hongyan, Lin Shengye, "Debate on Introducing Punitive Damages for Intellectual Property Infringement", Intellectual Property Rights, No.3, 2013, pp. 54-59.

9) According to the author; As a developing country, China has no obligation nor need to provide protection to intellectual property rights higher than the standard of protection stipulated in TRIPs. Because TRIPs does not stipulate punitive compensation liability for infringement of intellectual property rights, it is not necessary for our country to "exceed Britain and catch the United States" on the issue of intellectual property damage compensation. See Liu Ping, Tan Jia-ying, "Questions on the Introduction of Punitive Damages in Intellectual Property Law in China", Science, Technology and Economics, No. 4, 2013, pp. 41-45.

10) Yin Zhiqiang believes that punitive damages, as a basic system, is widely applied in common law countries, especially the United States, while civil law countries generally stipulate punitive damages for specific matters in the form of a separate law. In our country, punitive compensation has characteristics of administrative law, which is a system of encouraging individuals to make up for lack of administrative law enforcement, rather than the basic content of civil law, which should not be provided in the future civil law code. See Yin Zhiqiang, "Need to Introduce Punitive Damage System in Chinese Civil Law", Journal of Law, No.3, 2006, pp.76-79.

In addition, Sun Xiaomin et al. believe that the introduction of punitive damages can not theoretically demonstrate its scope of application, and how to determine the amount of punitive damages scientifically and reasonably, but also destroy the internal harmony of civil and commercial law, violate the filling principle of civil and commercial law, and has theoretical obstacles that are difficult to overcome in theory. Sun Xiaomin, Zhang Bing, Question on Punitive Damages System -- A Comment on Article 47 of Tort Liability Law, Law Forum, No.2, 2015, pp. 70-83.

11) In his own thesis, Cao Xinming proposes that some Chinese scholars believe that the adoption of punitive liability of intellectual property law violates the spirit of civil law and does not conform to the fair principle. See Cao Xinming, "Punitive Damages for Intellectual Property Infringement Liability Analysis -- and the Revision of the Three Laws in the Field of Intellectual Property", Intellectual Property Rights, No. 4, 2013, pp. 3-9.

12) Yi Jianxiong et al. believed that punitive damages broke this boundary and replaced the case that should have applied the standard of proof of "beyond reasonable doubt" with the standard of proof of "high probability", which resulted in the unfairness of the evidence system of the right holder. See Yi Jianxiong, Deng Hongguang, Punitive Damages Should Be Introduced in the Field of Intellectual Property Rights, Application of Law, 4, 2009, pp. 92-95.

Third, from the perspective of empirical analysis, it is believed that China's existing intellectual property system is sufficient to complete the function of punitive damages, and the reason for the low level of intellectual property protection is law enforcement.[13] Some scholars believe that the improper application of punitive damages will easily lead to the arbitrariness of the determination of the amount of compensation, leading to excessive litigation by the infringed to seek high compensation.[14]

Of course, when some of the above scholars raised doubts, they also supported China's introduction of punitive damages system in the field of intellectual property rights, and at the same time, they believed that China should apply more strict standards in the system design of introducing punitive damages in intellectual property rights.[15] Feng Xiaoqing, a Chinese academic, responds to these doubts in his research, and the dominant view in Chinese academia remains in favour of the introduction of punitive dam-

13) He Yudong et al. put forward that the second reason for opposing the introduction of punitive damages in the civil liability for intellectual property infringement is that the existing compensation system for intellectual property infringement is very complete, and the reason for the low level of intellectual property protection is not the lack of legislation, the current problem is law enforcement rather than legislation. See He Yudong, Shi Hongyan, Lin Shengye, "Debate on Introducing Punitive Damages for Intellectual Property Infringement", Intellectual Property Rights, No.3, 2013, pp. 54-59.

14) Even this function also implies a possibility: the infringed party carries on excessive litigation in order to obtain high compensation, even regards the litigation as a means of making profits. See Wen Shiyang, Qiu Yongqing, Punitive Damages and Intellectual Property Protection, Application of Law, No.12, 2004, pp. 50-51.

15) Wen Shiyang et al. pointed out that the preventive function of civil liability is mainly accomplished through punitive civil liability, so punitive compensation system should be introduced in the compensation for intellectual property infringement. See WEN Shiyang, QIU Yongqing, Punitive Damages and Intellectual Property Protection, Application of Law, No.12, 2004, pp. 50-51.

Cao Xinming believes that from the perspective of cultivating the general public's awareness of intellectual property rights, the state, enterprises or society need to pay a considerable amount of publicity or education costs, and the application of punitive liability can greatly improve people's awareness of intellectual property rights and respect for intellectual property rights. See Cao Xinming, "Punitive Damages for Intellectual Property Infringement Liability Analysis -- and the Revision of the Three Laws in the Field of Intellectual Property", Intellectual Property Rights, No. 4, 2013, pp. 3-9.

Yi Jianxiong et al. pointed out: Intellectual property infringement cases compared with general civil tort case has certain particularity, simply apply the principle of compensatory damages is not conducive to curb the occurrence of infringement of intellectual property rights, even if with criminal responsibility and administrative responsibility, and also there are a lot of limitations, and introduce the punitive compensation system can solve the problem to a great extent, The new problems caused by the introduction of punitive damages system can either be overcome or accepted. Therefore, we should introduce punitive compensation system in intellectual property infringement cases. See Yi Jianxiong, Deng Hongguang, Punitive Damages Should Be Introduced in the Field of Intellectual Property Rights, Application of Law, 4, 2009, pp. 92-95.

ages in the intellectual property sector.[16] With the development of China's social economy and intellectual property rights, doubts about the introduction of punitive damages in the field of intellectual property rights in China have been decreasing. Especially after the introduction of punitive damages in the Trademark Law in 2013, mainstream studies have turned to the system design and application of punitive damages in the field of intellectual property rights.[17] With the deepening of the academic discussion, the possibility and feasibility of punitive damages in the field of intellectual property rights in China are constantly being promoted.

In addition, Zhao Peng, associate professor of China University of Political Science and Law, summed up the reasons for China's introduction of punitive damages system as "making up for the shortage of public resources, giving play to individual efficiency advantages, and remediing the slack of administrative organs"[18], consider the reasons for the introduction of punitive damages in the field of intellectual property rights in China

16) Professor xiao-qing feng pointed out: the field of intellectual property infringement damages into the justification of the system of punitive damages, from the system of punitive damages contains the humanities spirit and rational two angles, by investigating the system "to strengthen the fault liability", "show tolerance, the restorative justice idea", and with the tools of deterrence theory, corrective justice classical theory to understand them. Feng Xiaoqing, Luo Jiao. Research on Punitive Damages for Intellectual Property Infringement: Humanistic Spirit, Institutional Rationality and Normative Design, Journal of China University of Political Science and Law, No.6, 2015, pp.24-46.

17) Yuan Xiuting analysis: With the formal establishment of relevant rules in the revised Trademark Law, the specific application of punitive compensation for intellectual property infringement and its impact on judicial practice have attracted more and more attention. See Yuan Xiuting, "Judicial Application of Punitive Damages System for Intellectual Property Rights", Intellectual Property Rights, No.7, 2015, pp. 21-28.

Feng Shujie et al. pointed out that the determination of the amount of compensation for intellectual property infringement should be based on the principle of filling up, and punitive damages should be applied only to malicious infringements. Under the policy background of strengthening the protection of intellectual property rights, the application of punitive damages is not broad. See Shujie Feng, Ye Xia, "Vigilant Use of Punitive Damages in the Field of Intellectual Property Law: A Case Study of Trademark Law and Its Practice", Intellectual Property Rights, No.1, 2018, pp. 42-48.

18) Zhao Peng pointed out that the causes of introducing punitive damages can be summarized as follows: first, to make up for the shortage of public resources. The public expects the government to eliminate all ills in social life, but there is always a limit to how much support the public finances can provide. Second, give play to individual efficiency advantage. Efficient law enforcement requires the detection of illegal acts at a low cost. However, in the field of product quality, food safety and other areas involving consumer rights and interests protection, the regulatory departments cannot appear at the scene of illegal acts in the first time, while consumers are direct users of products and services. Third, remedy the slack of administrative organs. In all countries that rely on public law enforcement, there is insufficient law enforcement power, and the system construction of performance management and administrative accountability lags behind, which further magnifies the problem. See Zhao Peng, Reflections on Punitive Damages in Administrative Law, Journal of Legal Studies, No. 1, 2019, pp. 41-55.

from the perspective of pragmatism.

2. Process

For a long time, China has implemented the compensatory compensation system for tort acts, that is, to make up the actual loss of the right holder. In 1993, China set up punitive damages for the first time in the Law on the Protection of the Rights and Interests of Consumers, which is the "one-for-two" punishment for fraud by operators. In 2009, in the Food Safety Law, the provision of "one to ten". In the Tort Liability Law passed in the same year, the specific phrase "punitive damages" appeared in Chinese law for the first time. In 2013, the revised Trademark Law stipulated that those who maliciously violated the exclusive right to use a trademark in serious circumstances should be compensated "one to three times", which was the first time that a punitive compensation system was introduced in the field of intellectual property law.

In 2012, the Copyright Law, the Trademark Law and the Patent Law of China went through the revision process, and provisions on punitive compensation for infringement damage were added to the draft amendments.[19] However, as mentioned above, only after the final deliberation of the Trademark Law in 2013, the Copyright Law and the Patent Law were not amended at last. After that, the construction of punitive damages system in the field of intellectual property rights in China starts from the Trademark Law and develops constantly in the disputes of various parties.[20]

19) Article 72 (3) of the Copyright Law (revised draft submitted for review) issued in March 2012 stipulates that "for more than two intentional infringements of copyright or related rights, the amount of compensation shall be determined according to one to three times of the amount of compensation in the first two paragraphs". Released in August 2012 of the patent law (modify the draft proposal) to modify the existing "patent law" the 65th increase paragraph 3: "for deliberately patent infringement behavior, the administrative authority for patent affairs or the people's court may, according to the circumstances of the infringement of factors such as scale, the harmful consequences, will according to the preceding two paragraphs shall determine the amount of compensation by the highest up to three times". Article 37 of the Trademark Law (revised draft) issued in December 2012 stipulates that "in case of malicious infringement of trademark rights and serious circumstances, the amount of compensation may be determined in accordance with the above methods not less than one time but not more than three times the amount".

20) In November 2019, China issued the Opinions on Strengthening Intellectual Property Protection, reaffirming the establishment of a punitive compensation system for intellectual property infringement. The Economic and Trade Agreement signed by China and the United States in January 2020 requires China to strengthen the application of penalties in the area of intellectual property rights. Since 2018, China has accelerated the development of punitive damages in the field of intellectual property, and completed the basic construction of punitive damages system in the field of intellectual property.

i. The Civil Code

During the formulation of China's Civil Code, there was controversy about whether intellectual property rights should be included in the code[21], With the development and improvement of China's intellectual property rights and the depth of academic discussion, for intellectual property rights "into the Code", lawmakers and most scholars have no objection to that, the controversy is how to intellectual property rights in the civil code of the system design of the controversy, scholars have put forward the intellectual property rights" into the "first, in the design of" codification".[22] Some scholars also put forward that due to the differences in the structure of rights between civil law and intellectual property law, the most scientific legislative choice is to make a good connection between civil code and intellectual property law.[23] This is also the legislative choice made by China's Civil Code later, to maintain the independence of intellectual property law and make the two systems better connected. There is no dispute about whether punitive damages for intellectual property should be set up in the Civil Code, and then intellectual property should be set up in the civil Code, and punitive damages for intellectual property should be included in the civil Code. In December 2019, the Civil Code (Draft for public Com-

21) According to Feng Xiaoqing et al., based on the reflection on the attribute of intellectual property rights, we can see that the intellectual property law has a great deviation and treason from the traditional civil law, which is not completely consistent with the traditional civil law's concept of the sanctity of private rights and the autonomy of private law. Therefore, intellectual property law should not be included in the draft of Civil Code, intellectual property law should still maintain its relative independence. See Feng Xiaoqing, Liu Shuhua, On the Private Property of intellectual Property and Its Tendency to Public Ownership, Chinese Law Science, No.1, 2004, 63-70.

22) According to Feng Xiaoqing et al., based on the reflection on the attribute of intellectual property rights, we can see that the intellectual property law has a great deviation and treason from the traditional civil law, which is not completely consistent with the traditional civil law's concept of the sanctity of private rights and the autonomy of private law. Therefore, intellectual property law should not be included in the draft of Civil Code, intellectual property law should still maintain its relative independence. See Feng Xiaoqing, Liu Shuhua, On the Private Property of intellectual Property and Its Tendency to Public Ownership, Chinese Law Science, No.1, 2004, 63-70.

Professor Wu Handong believes that:the codification of intellectual property law in China should take two steps: the first step is to set up intellectual property rights in the Civil Code to realize the rational return of intellectual property rights as private rights. The second step is to formulate a special code of intellectual property law to realize an integrated, systematic and rational arrangement of intellectual property. See Wu Handong, "Intellectual Property Law in the Codification of Civil Law", Chinese Law Science, No. 4, 2016, 24-39.

23) Xiong Qi pointed out that the most scientific legislative choice is to maintain the independence of copyright law, patent law and trademark law, and pay attention to the connection with civil law in terms of institutional arrangement and legal interpretation, in view of the differences in the evolution path and right structure between intellectual property law and civil law. Xiong Qi, "The Systematic Orientation of Intellectual Property Law and Civil Law", Journal of Wuhan University (Philosophy and Social Sciences), No.2, 2019, pp. 128-138.

ment) was issued, which introduced intellectual property rights into the Civil Code and added that punitive damages could be applied to intellectual property rights. The Civil Code, promulgated in May 2020, provides for an umbrella punitive compensation system for intellectual property rights (implemented on January 1, 2021).

ii. Trademark Law

Under the debate of various parties, China introduced punitive damages into intellectual property rights for the first time in the revision of Trademark Law in 2013, and then started the development of punitive damages in the field of intellectual property rights in China. In December 2012, the Draft Amendment to the Trademark Law of the People's Republic of China was published. In August 2013, the Trademark Law was amended to add punitive damages clauses that are more than doubled and less than tripled (implemented on May 1, 2014). The Trademark Law was the first to make a breakthrough in the introduction of punitive damages system. In April 2019, the Trademark Law was again amended to modify the scope of punitive damages for trademark infringement to be between one and five times (implemented on November 1, 2019). In the legislative investigation of the introduction of punitive damages in the field of intellectual property rights in China, the introduction of punitive damages in the Trademark Law is the least controversial, and the legislative departments and academic circles generally believe that the introduction of punitive damages in the field of trademarks should be introduced.

iii. Copyright Law

In March 2012, China issued the first draft of the Revision of the Copyright Law, followed by the second draft of the Copyright Law in July, and the third draft of the Copyright Law in October. After continuous revision, the National Copyright Administration of China submitted the Copyright Law of the People's Republic of China (Revised Draft) to The State Council for review in December 2012. The punitive compensation system was introduced in the first draft and continued until the draft was submitted for review. The Chinese legislative department has shown a firm attitude towards the introduction of punitive compensation system in the copyright law.[24] Upon receipt of the document, the former Office of Legislative Affairs of The State Council immediately sent it to relevant central government organs, some local governments, enterprises and institutions, experts and scholars for comments, and publicly solicited comments from the pub-

24) See Chen Jingyi, On the Introduction of Punitive Damages System in the Field of Copyright -- Based on the Third Amendment of Copyright Law, Science and Technology and Law, 2015, 5, pp. 910-947.

lic through the Internet. In December 2017, the National Copyright Administration revised the submitted manuscript and submitted it for review again due to disputes over many contents of the manuscript. The former Legislative Affairs Office of The State Council and the National Copyright Administration made revisions to the revised manuscript. The Ministry of Justice, together with the Publicity Department of the CPC Central Committee, made further amendments to the Copyright Law of the People's Republic of China (Draft Amendment). A draft amendment in April 2020, agreed by The State Council, added provisions on punitive damages. In November 2020, the Copyright Law was amended to increase the punitive damages clause by more than doubling and less than five times (implemented on June 1, 2021).

iv. Patent Law

In July 2012, the State Intellectual Property Office (SIPO) published the Draft amendment to the Patent Law of the People's Republic of China, adding punitive damages. The punitive damages provision added to the proposed revision draft of the patent Law has been widely endorsed by both academics and businessmen.[25] The opposing opinion points out that the introduction of punitive compensation system may block the ethical return of tort relief and reduce the function of compensatory compensation,[26] or think patent punitive damages do not conform to China's national conditions of the system design.[27] In July 2015, SIPO submitted the Draft amendment to the Patent Law of the People's Republic of China for review to The State Council. The former Office of Legislative Affairs of The State Council, after receiving the case, conducted in-depth investigation and study, solicited opinions from relevant departments, local governments and organizations twice, and publicly solicited opinions from the public, and repeatedly studied, revised and improved the disputes among all parties. In 2018, the Ministry of Justice, together with the State Intellectual Property

25) See Zhan Ying, "Focus and Controversy of the Fourth Amendment of China's Patent Law", China Science and Technology Forum, No.11, 2015, pp. 125-130.

26) Li Xiaoqiu points out that the introduction of punitive compensation system for patent infringement may block the ethical return of tort relief, reduce the function of compensatory compensation, rigidly draw on the existing legislative practice of punitive compensation system, promote the increase of the functions of patent administrative organs, and lead to the lack of operability of patent legislation. See Li Xiaoqiu, "Punitive Compensation System for Patent Infringement: Introduction or Rejection", Studies of Law and Business, No. 4, 2013, pp. 136-144.

27) Xiao Hai and others pointed out that this proposal also has many inadequacies that cannot be effectively applied in theory and practice, and ignores the fact that China is a big manufacturing country and a technology catch-up country. See Xiao Hai, Chang Zhewei, "Punitive Damages Should Not Be Introduced in Patent Infringement Damages", Journal of Beihua University (Social Science Edition), No.3, 2018, pp. 67-72.

Office and other departments, repeatedly studied, coordinated and revised the draft Amendment to the Patent Law of the People's Republic of China in light of the new situation and requirements. In January 2019, it was released for comment and then discussed and approved by the 33rd executive meeting of The State Council. In October 2020, the Patent Law was amended to increase the punitive damages clause by more than doubling and less than five times (implemented on June 1, 2021).

v. Seed Law and Anti-Unfair Competition Law

In May 2015, the Seed Law (Revised Draft) was published. In November 2015, the revised Seed Law was deliberated and passed, stipulating punitive damages for more than one time and less than three times (implemented on January 1, 2016). In December 2021, the Seed Law was amended to modify the punitive compensation scope of seed infringement to more than one time and less than five times (implemented on March 1, 2022).

In April 2019, the Law on Unfair Competition was amended to increase the punitive damages clause from more than doubling to less than five times (implemented on April 23, 2019).

3. Foundation

According to the World Intellectual Property Index Report 2020 released by WIPO, China ranks first in the number of patent and trademark applications in the world. According to WIPO's Global Innovation Index 2020 report, China ranks 14th. In addition, according to the 2020 Evaluation Report on China's Intellectual Property Development issued by the Intellectual Property Development Research Center of the State Intellectual Property Office of China in October 2021, the indexes of China's comprehensive development, creation, application, protection and environment of intellectual property showed a year-on-year growth trend from 2010 to 2020. From the perspective of international comparison, the overall situation of intellectual property development in China rose from the 17th place in 2015 to the 8th place in 2019. In terms of intellectual property protection, according to the report "The Status of Intellectual Property Protection in China 2020", China's intellectual property protection effectiveness has been widely recognized by the innovation bodies of various countries and the international community, with a social satisfaction score of 80.05. Reports from various aspects show that China has built an efficient and modern intellectual property system over the past several decades, which has contributed to China's economic and social development. In addition, punitive damages have been introduced in the Trademark Law in 2013, which is practical and operable. It is on the basis of certain success in China's economic and social development and intellectual property development that the social, economic

and legal basis for the introduction of the punitive compensation system for intellectual property rights has been established. Externally, China is constantly opening up to the outside world and opening its market to other countries. It needs to continuously improve the level of intellectual property protection and create a world-class business environment, which also reflects the practical need for China to introduce the punitive compensation system for intellectual property.[28)]

Chapter 2: The legislative status of punitive compensation system for intellectual property infringement in China

The punitive compensation system in modern Chinese law can be traced back to the "double refund" stipulated in Article 49 of the Consumer Rights and Interests Protection Law in 1994[29)], and then provisions on the punitive compensation system appeared in the Food Safety Law and Tort Liability Law promulgated in 2009.[30)] The development of punitive damages system in the field of intellectual property rights in China is marked by the introduction of Trademark Law in 2013. At present, the specific legal provisions of punitive damages in the field of intellectual property in China are shown in Table 2-1, among which the Trademark Law and Seed Law have been amended, and the Civil Code, Copyright Law, Patent Law and Anti-Unfair Competition Law are the first to introduce punitive damages. Table 2-2 is a judicial interpretation of the rules on the application of punitive damages in the field of intellectual property formulated and issued by the Supreme People's Court of China on the basis of the relevant laws and regulations on punitive damages for intellectual property rights, stipulating the conditions for the application of punitive damages in more detail. In the following, this article will explain the provisions related to the application of punitive damages in detail.

28) See Chapter 4 of China's Outline for Building a Strong Country with Intellectual Property Rights (2021-2035).

29) China's Tort Liability Law was issued in December 2009 and formally implemented in July 2010. It will expire after the official implementation of the Civil Code in 2021. The Consumer Rights and Interests Protection Law and the Food Safety Law are still in effect until now.

30) See Huang Yaqin, Research on the Judicial Application of Punitive Damages System in China, Law Forum, No. 4, 2016, pp. 104-114.

Table 2-1 Punitive damages related to intellectual property rights in China

Law	Amended provisions	In force provisions
The Civil Code		(Officially implemented on January 1, 2021) **Article 179** Where punitive damages are provided for in paragraph 2 of the law, such provisions shall apply. **Article 1,185** Where the intellectual property rights of another person are intentionally infringed and the circumstances are serious, the infringed shall have the right to claim corresponding punitive damages.
Copyright Law		(Officially implemented on June 1, 2021) **Article 54** Where copyright or copyright-related rights are infringed upon, the infringer shall pay compensation according to the actual losses suffered by the right holder or the illegal gains of the infringer. Where it is difficult to calculate the actual losses of the right holder or the illegal gains of the infringer, compensation may be made by reference to the use fee of the said right. In case of intentional infringement of copyright or copyright-related rights, where the circumstances are serious, compensation may be made not less than one time but not more than five times the amount determined in accordance with the above methods.
Patent Law		(Officially implemented on June 1, 2021) **Article 71** The amount of compensation for the infringement of a patent right shall be determined on the basis of the actual loss suffered by the right holder as a result of the infringement or the profits gained by the infringer as a result of the infringement. Where it is difficult to determine the loss of the right holder or the benefit obtained by the infringer, it shall be reasonably determined by reference to the multiple of the royalty of the patent license. In case of intentional infringement of the patent right, where the circumstances are serious, the amount of compensation may be determined not less than one time but not more than five times the amount determined according to the above methods.

Trademark Law	(2013) **Article 63** The amount of compensation for infringement of the exclusive right to use a trademark shall be determined on the basis of the actual losses suffered by the right holder as a result of the infringement; Where the actual loss is difficult to determine, it may be determined on the basis of the profits obtained by the infringer as a result of the infringement; Where it is difficult to determine the loss of the right holder or the benefit obtained by the infringer, it shall be reasonably determined by reference to the multiple of the licensing fee of the trademark. Where a malicious infringement of the exclusive right to use a trademark is serious, the amount of compensation may be determined not less than one time but not more than three times the amount determined in accordance with the above methods. The amount of compensation shall include reasonable expenses paid by the right to stop the infringing act.	(Officially implemented on November 1, 2019) **Article 63** The amount of compensation for infringement of the exclusive right to use a trademark shall be determined on the basis of the actual losses suffered by the right holder as a result of the infringement; Where the actual loss is difficult to determine, it may be determined on the basis of the profits obtained by the infringer as a result of the infringement; Where it is difficult to determine the loss of the right holder or the benefit obtained by the infringer, it shall be reasonably determined by reference to the multiple of the licensing fee of the trademark. Where a malicious infringement of the exclusive right to use a trademark is serious, the amount of compensation may be determined not less than one time but not more than five times the amount determined in accordance with the above methods. The amount of compensation shall include reasonable expenses paid by the right to stop the infringing act.
Anti-unfair Competition Law		(Officially implemented on April 23, 2019) **Article 17** The amount of compensation for a business operator injured by an act of unfair competition shall be determined on the basis of the actual loss suffered by the business operator as a result of the infringement. If the actual loss is difficult to calculate, it shall be determined on the basis of the profits obtained by the infringer for the infringement. Where a business operator maliciously commits an act of infringing on trade secrets and the circumstances are serious, the amount of compensation may be determined not less than one time but not more than five times the amount determined according to the above methods. The amount of compensation shall also include reasonable expenses paid by the operator to stop the infringing act.

Seed Law	**(2015) Article 73 Paragraph 3** The amount of compensation for the infringement of the right to new plant varieties shall be determined according to the actual losses suffered by the right holder as a result of the infringement. Where the actual loss is difficult to determine, it may be determined on the basis of the profits obtained by the infringer as a result of the infringement. Where it is difficult to determine the loss of the right holder or the benefit obtained by the infringer, it may be reasonably determined by reference to the multiple of the licensing fee of the new plant variety right. The amount of compensation shall include reasonable expenses paid by the right to stop the infringing act. Where the infringement of the right to new plant varieties is serious, the amount of compensation may be determined not less than one time but not more than three times the amount determined according to the above methods.	(Officially implemented on March 1, 2022) **Article 72 Paragraph 3** The amount of compensation for the infringement of the right of new plant varieties shall be determined according to the actual losses suffered by the right holder as a result of the infringement. Where the actual loss is difficult to determine, it may be determined on the basis of the profits obtained by the infringer as a result of the infringement. Where it is difficult to determine the loss of the right holder or the benefit obtained by the infringer, it may be reasonably determined by reference to the multiple of the licensing fee of the new plant variety right. If a person intentionally infringes upon the right of new plant varieties and the circumstances are serious, the amount of compensation may be determined not less than one time but not more than five times the amount determined according to the above methods.

Table 2-2 Relevant judicial interpretations

Judicial interpretation	**Post No.**	**The implementation date**
Interpretation on the Application of Punitive Damages in the Trial of Civil Cases Concerning Intellectual Property Infringement	Interpretation of Law [2021] No.4	March 3, 2021
Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes over Copyright (Revised in 2020)	Interpretation of Law [2020] No. 19	January 1, 2021
Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Trademark Civil Dispute Cases (Revised in 2020)	Interpretation of Law [2020] No. 19	January 1, 2021
Provisions of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Patent Dispute Cases (Revised in 2020)	Interpretation of Law [2020] No. 19	January 1, 2021
Some Provisions of the Supreme People's Court on the Specific Application of Law in the Trial of Disputes Concerning Infringement of New Plant Variety Rights (II)	Interpretation of Law [2021] No. 14	July 7, 2021

Chapter 3 The application of punitive damages in intellectual property rights infringement in China

1. Interpretation of the application of punitive damages for intellectual property rights in China

Punitive damages are a special right to claim compensation in the field of intellectual property in China. According to Article 2 of the Interpretation of the Supreme People's Court on the Application of Punitive Damages in the Trial of Civil Cases Concerning Intellectual Property Infringement issued by the Supreme People's Court of China in March 2021 (hereinafter referred to as the Interpretation), The plaintiff requesting punitive damages shall specify the share, calculation method and basis of the compensation when suing. At the same time, if the second paragraph provides that the plaintiff increases his claim for punitive damages before the end of the debate in the court of first instance, the court shall allow it; If it is added in the second instance, mediation shall be conducted according to the voluntary principle, and if the mediation fails, it shall be notified to Sue separately at that time. Therefore, it can be seen that the precondition for the application of punitive damages is that the parties make a clear request for the application of punitive damages, and the court will conduct the review, which is also in line with the principle of "don't Sue and ignore" in the field of civil litigation in Chinese courts. The court needs to consider the two elements of "intent/malice + serious circumstances" when reviewing whether punitive damages should be applied, and will further consider the compensation base and how to determine the multiple of application.

i. Determination of intent

The applicable conditions of punitive damages for intellectual property rights in China are "intentional+serious circumstances" and "malicious+serious circumstances". The Civil Code, Patent Law, Copyright Law and Seed Law limit the application conditions to "intentional+serious circumstances", while the Trademark Law and Anti-Unfair Competition Law limit the application conditions to "malicious+serious circumstances". The second paragraph of Article 1 of the Interpretation specifies that in the application of punitive damages for intellectual property rights, "intentional" includes "malicious", and the two belong to the inclusion relationship. As for the interpretation of intentional in the application of punitive damages in the field of intellectual property rights, Judge Su Zhifu of Beijing High Court held that "intentional" should be interpreted by "willism",

which is direct intentional and indirect intentional,[31] In the judicial practice of trademark law, the requirement of "bad faith" in trademark punitive damages is usually interpreted as direct intent.[32] Therefore, in the application of judicial practice in China, the elements of "intent" and "malice" are coordinated and unified.

In Chinese judicial practice, the identification of intent involves the definition of the "fault" of the party concerned. "Knowing" and "should have known" are usually used to distinguish the subjective degree of fault of the party concerned. In the process of applying punitive damages, China's judicial practice will be deliberately limited to subjective faults of "knowing". As pointed out in Article 6 of the Guiding Opinions on the Application of Punitive Damages in Civil Infringement Disputes of Intellectual Property Rights (hereinafter referred to as the Guiding Opinions) issued by Shenzhen Intermediate People's Court of China in November 2020, "Willful" means that the infringer subjectively knows that his actions will lead to the occurrence of the tort, but wants or allows such a result to occur. If the infringer causes an infringement through negligence, it generally does not constitute "intentional".[33]

The specific circumstances for the determination of intent are also listed in the ***Interpretation***:(1) The defendant continues to commit the infringing act after being notified or warned by the plaintiff or an interested party; (2) The defendant or its legal representative or manager is the legal representative, manager or actual controller of the plaintiff or an interested party; (3) There is a labor, service, cooperation, licensing, distribution, agency or rep-

31) Su Zhifu pointed out: To intellectual property rights in the ZhuanMenFa interpreted as deliberately "malicious", in the civil code of penal provisions of the intellectual property right fails to make a special limited "intentionally" cases, as usually be the understanding of "intentionally", namely "intentionally" on the context of punitive damages shall adopt "meaning", will be interpreted as including direct intent and indirect intent two kinds of situations, This understanding is more consistent in legal interpretation. See Su Zhifu, "On the Objective, Positioning and Judicial Application of Punitive Damages System for Intellectual Property Rights in China", China Applied Law, No. 1, 2021, pp. 132-145.

32) Beijing High People's Court:Article 1.13 of the Guiding Opinions on Determining Damages in Cases of Infringement of Intellectual Property Rights and Unfair Competition: The application of punitive damages shall be in accordance with the provisions of the law. Punitive damages shall be applied to acts that infringe upon trademark rights or trade secrets in bad faith, and the circumstances are serious. "Malicious" generally means direct intent. "Serious circumstances" generally refers to the action of the accused caused serious damage consequences.

33) Article 6 of the Guiding Opinions on the Application of Punitive Damages to Civil Infringement Disputes of Intellectual Property Rights issued by Shenzhen Intermediate People's Court: "Intentional" in this Opinion means that the infringer subjectively knows that his or her behavior will lead to the occurrence of the infringement result, but wishes or allows such result to occur. If the infringer causes an infringement through negligence, it generally does not constitute "intentional".

resentative relationship between the defendant and the plaintiff or an interested party, and the defendant has had contact with the intellectual property rights infringed; (4) The defendant has business dealings with the plaintiff or an interested party or has conducted consultations for the conclusion of a contract, and has had access to the intellectual property rights infringed; (5) the defendant commits acts of piracy or counterfeiting of a registered trademark; (6) other circumstances that can be regarded as intentional.[34] If the above circumstances exist, the court may preliminarily determine that the defendant has the intent to infringe intellectual property rights.

For the determination of "intentional" in judicial practice, judge su zhifu of Beijing high court summed up five situations that can be identified as "intentional" :(1) the defendant knows that the trademark it uses belongs to the same or similar trademark of the trademark registered by the plaintiff, but still uses it in a wide range; (2) After being warned by the right holder or punished by the administrative organ, the defendant continues to commit acts of infringement or unfair competition; (3) counterfeiting the mark of the plaintiff's rights; (4) There is a labor or service relationship between the plaintiff and the defendant, or there is an agency, licensing, distribution or cooperation relationship, or there has been consultation between the plaintiff and the defendant, and the defendant is aware of the existence of the intellectual property rights of others; (5) The defendant refuses to perform the order of act preservation.[35]

In addition to the above, the guideline issued by the Intermediate People's Court of Shenzhen, China also lists eight situations in which the defendant can be found to have "intentional" behavior :(1) the infringer, its controlling shareholder or legal representative repeatedly or in a disguised way commits the same tort after the effective judgment is made; (2) The infringer or

34) The Supreme People's Court on the infringement of intellectual property rights civil cases for the interpretation of the punitive damages "([2021] no. 4) article 3: for the cognizance of intentional violation of intellectual property rights, the people's court shall consider is the infringement of intellectual property rights object type, the right to state and related product awareness, the defendant and the plaintiff or the relationship between the interested parties and other factors. (1) The defendant continues to commit the infringing act after being notified or warned by the plaintiff or an interested party; (2) The defendant or its legal representative or manager is the legal representative, manager or actual controller of the plaintiff or an interested party; (3) There is a labor, service, cooperation, licensing, distribution, agency or representative relationship between the defendant and the plaintiff or an interested party, and the defendant has had contact with the intellectual property rights infringed; (4) The defendant has business dealings with the plaintiff or an interested party or has conducted consultations for the conclusion of a contract, and has had access to the intellectual property rights infringed; (5) the defendant commits acts of piracy or counterfeiting of a registered trademark; (6) other circumstances that can be regarded as intentional.

35) See Su Zhifu, "On the Objective, Positioning and Judicial Application of Punitive Damages System for Intellectual Property Rights in China", China Applied Law, No. 1, 2021, pp. 132-145.

its controlling shareholder or legal representative continues to commit the infringing act after being repeatedly warned by the right holder or punished by the administrative organ; (3) There is a labor or service relationship between the right holder and the infringer, or there is an agency, licensing, distribution or cooperation relationship, or there has been consultation, and the infringer is aware of the existence of the intellectual property of the other person; (4) the infringer continues to carry out the relevant act without justifiable reasons after receiving the warning letter from the obligee; (5) the infringer uses the well-known trademark of the right holder on the same or similar goods; (6) if the infringer registers a well-known trademark of the right holder, or if the trademark registration application is deemed to be similar to the prior trademark, the application continues to be used after rejection; (7) The infringer takes measures to cover up the infringement, falsifies or destroys the evidence of infringement, etc.; (8) Other circumstances.[36)]

Through analysis of the above content, It can be concluded that when the court determines that the defendant has "intentional" subjective fault, the main reason is that there is an antecedent act, which makes the defendant in the state of "knowing", and then the tort occurs. The specific circumstances listed above can play an auxiliary reference role in judicial practice, and do not have a restrictive role in the trial of individual cases. Although is given a variety of judicial explanation and practice can be identified as "intentionally" situation, some scholars think that the subjective evaluation is bigger, difficult to quantify and specific, it is hard to judge, and the punitive damages shall be applicable to the specific case or not depends on the discretion of the judge, will lead to instability and unpredictability of justice[37)].

ii. Determination of the seriousness of the circumstances

In addition to the determination of "intentional", "serious circumstances" is also an important condition for the application of punitive damages in intellectual property rights, which together constitute the scope of application of punitive damages. Article 4 of the Interpretation stipulates: "In determining the seriousness of intellectual property infringement, the people's court shall comprehensively consider the means of infringement,

36) See Article 8 of the Guiding Opinions on the Application of Punitive Damages in Intellectual Property Rights Civil Infringement Disputes issued by Shenzhen Intermediate People's Court.

37) Ding Guofeng et al. pointed out that both "malicious" and "intentional" belong to subjective judgment, and the biggest characteristic of subjectivity is that it is difficult to quantify and concretization, and it is difficult to make a judgment standard on what is "intentional". See Guofeng Ding, Qing Zhang, "Reflection and Improvement: An Applicable Approach to the Creation of Punitive Damages Liability in the Field of Intellectual Property in China", Electronic Intellectual Property Rights, No.8, 2021, pp. 50-62.

the number of times, the duration of the infringement, the geographical scope, the scale, the consequences, and the infringer's behavior in the litigation." (1) Repeat the same or similar infringing act after being punished by the administration or judged by the court to be liable for infringement; (2) engaging in infringement of intellectual property rights; (3) forging, destroying or concealing evidence of infringement; (4) refusal to perform an order of preservation; (5) the infringement has made a profit or caused great damage to the right holder; (6) The infringing act may endanger state security, public interests or personal health; (7) other circumstances that can be deemed as serious. This is also according to the typical cases listed in judicial practice.[38)]

In addition, China's Supreme People's Court released in 2021 on the trial of violations of the law of plant variety rights disputes specific application problem of certain rules relating to the (2) of article 17 listed the assault position paper. on the clue is serious situation: (a) was administrative penalty or the court's responsibility for infringement, after again commit the same or similar tort; (2) to infringe upon the right to variety; (3) forging the certificate of variety right; (4) Selling authorized varieties in packages without signs or labels; (5) violation of the provisions of subparagraphs 1, 2 and 4 of paragraph 1 of Article 77 of the Seed Law; (6) refusing to provide the place of production, reproduction, sale or storage of the infringing property sued.[39)] At the same time, it is emphasized that in the case of the first to the fifth, the amount of compensation can be determined according to more than two times of the base when applying punitive damages. Paragraph (5) also includes: article 77 of the Seed Law:(1) promoting and selling crop varieties that should be examined and approved and have not been examined and approved; (2) forest tree varieties that should be examined and approved for promotion and sale as improved varieties without examination and approval; ... (4) promoting crop varieties that should be registered and have not been registered, or selling them in the name of registered varieties, etc.

Some scholars summarize the judicial practice of intellectual property trials in China and believe that the circumstances constituting "serious circumstances" usually include the following five elements:(1) long infringement time; (2) Wide infringement area; (3)Tort has great social impact; (4)

38) Article 4 of the Interpretation of the Supreme People's Court on the Application of Punitive Damages in the Trial of Civil Cases Concerning Intellectual Property Infringement (Interpretation of Law (2021) No. 4).

39) Article 17 of the Provisions on the Specific Application of Law in the Trial of Disputes Concerning Infringement of New Plant Variety Rights (II).

The number of infringements; (5) Serious consequences of infringement damage. At the same time, we should pay attention to the general application of punitive damages in the field of intellectual property law and consider that the conditions should be strictly applied.[40] In addition, in the case of infringement of trade secrets, if the infringement causes the trade secrets to become known to the public, it will usually be considered as "serious". The above factors inevitably make judges have more discretionary power, but judges often take into account the factors of litigation risk and turn to apply other provisions of law.[41]

iii. Determination of the compensation base

According to China's intellectual property rights apply punitive damages in the law, the trademark law, the anti-unfair competition law of the seed law from the expression on the analysis of law, the base of punitive damages in the first place to the holder of the actual loss, unable to determine the actual loss to the profit ascertained base, such as the former two are unable to determine the base of licence fee is used to determine the compensation. In Copyright Law and Patent Law, the actual loss of the right holder or the profit of the infringer is taken as the compensation base, which is a parallel relationship rather than a sequence relationship. When the two cannot be determined, the license fee is applied to determine the compensation base, and there is a sequence of application in this case. The licensing fee shall be calculated according to the duration of the infringement. It should be noted that punitive damages can be applied only when the above three bases can be determined. Therefore, in judicial practice, it is necessary for the right holder to make clear the base of the claim for compensation, and it is also

40) Feng Shujie believes that: combined with the common situations in practice, the "serious circumstances" include: the infringement time is long, the infringer is in the state of infringing others' trademark rights for a long time; The infringement area is wide, such as the manufacturing place and the sales place of the infringing product cover many relevant areas; Where the infringer is subject to administrative punishment for the same kind of infringement or is adjudicated by the judicial organ and commits the same kind of infringement; Where the infringing products or services involve industries or industries that affect public safety, such as food and drugs; Where the damage has serious consequences and the infringement has caused huge economic losses or other serious consequences to the right holder. See Shujie Feng, Ye Xia, "Vigilant Use of Punitive Damages in the Field of Intellectual Property Law: A Case Study of Trademark Law and Its Practice", Intellectual Property Rights, No.2, 2018, pp. 42-48.

41) Ding Guofeng et al. pointed out that under what circumstances can the element of "serious circumstances" be identified, the judge will inevitably have the choice space of excessively free ruling. However, the judge will always take into account the consideration of litigation risk and choose to apply the provisions of other laws. See Guofeng Ding, Qing Zhang, "Reflection and Improvement: An Applicable Approach to the Creation of Punitive Damages Liability in the Field of Intellectual Property in China", Electronic Intellectual Property Rights, No.8, 2021, pp. 50-62.

necessary to bear the corresponding provisions of proof. Based on the provisions of the above-mentioned law on the compensation base, Article 5 (3) of the Interpretation also takes the amount of compensation determined by the plaintiff's claims and evidence as a kind of base.

In December 2020, the Supreme People's Court of China issued a number of provisions on the application of law in the trial of civil disputes involving patents, trademarks and Copyrights.

On how to calculate the compensation base of patent punitive damages, there are the following provisions: "The actual loss of the right holder = the total number of sales reduction caused by the infringement of the patent product × the reasonable profit of each patent product", if the total number of sales of the right holder is difficult to determine, then "the actual loss of the right holder = the total number of sales of the infringing product in the market × the reasonable profit of each patent product"; In addition, "the profit of the infringer = the total number of the infringing products sold in the market × the reasonable profit of each patented product", the profit of the infringer due to infringement is generally calculated in accordance with the operating profit of the infringer, and for the infringer whose business is entirely based on infringement, it can be calculated in accordance with the sales profit. It is difficult to determine the loss of the right holder and the profit of the infringer, so the compensation base can be determined by referring to the patent licensing fee. If there is no or the licensing fee is unreasonable, punitive damages shall not be applied.[42)]

42) Interpretation of the Provisions of the Supreme People's Court on the Application of Law in the Trial of Patent Dispute Cases (Revised in 2020) No. 19. Article 14:the actual loss suffered by the right holder as a result of infringement as provided for in Article 65 of the Patent Law may be calculated on the basis of the sum of the decrease in sales of the patented product caused by the infringement multiplied by the reasonable profit of each patented product. If it is difficult to determine the total amount of the decrease in the sales volume of the right holder, the product of the total number of the infringing products sold on the market multiplied by the reasonable profit of each patented product can be regarded as the actual loss suffered by the right holder because of the infringement. As provided in Article 65 of the Patent Law, the benefit to the infringer from the infringement may be calculated by multiplying the total number of the infringing products sold on the market by the reasonable profit of each infringing product. The profits obtained by the infringer due to the infringement are generally calculated according to the operating profits of the infringer. For the infringer whose business is solely based on the infringement, they may be calculated according to the sales profits. Article 15: the interests of the obligee's loss or the gain is difficult to determine, a patent license fee can consult, the people's court may, depending on the type of patent infringement and the nature of the plot, the nature and scope of the patent license, factors such as time, refer to the patent license fee multiples of reasonable compensation; Where there is no reference for the royalty of the patent license or the royalty of the patent license is obviously unreasonable, the people's court may determine the amount of compensation in accordance with Paragraph 2 of Article 65 of the Patent Law on the basis of the type of patent right, the nature and circumstances of the infringement and other factors.

On how to calculate the compensation base of trademark punitive damages, it stipulates: "the interests obtained by infringement = the sales volume of the infringing goods × the unit profit of the goods". If the unit profit cannot be ascertained, it shall be calculated according to the profit of the registered trademark goods. "Loss due to infringement = decrease in sales of goods due to infringement/sales of the infringing trademark × unit profit of the registered trademark".[43)]

On how to calculate the compensation base of punitive damages for copyright, it stipulates: "The actual loss of the right holder = the decrease in the distribution of the copy caused by the right holder's infringement/ the sales volume of the infringing copy × the profit of the unit of the right holder's issuance of the copy", if the decrease in the distribution is difficult to determine, it shall be determined according to the market sales volume of the infringing copy. The provisions do not specify the calculation method of the infringer's illegal income.[44)]

From the above calculation of the base of punitive damages, it can be seen that when applying punitive damages in China's intellectual property field, the calculation of the base revolves around three aspects, namely, the loss of the right holder, the profit of the infringer and the royalty of the right license, and the court adjusts the base according to the specific evidence in specific cases. If the above compensation base cannot be ascertained, statutory damages will be applied, thus making punitive damages impossible to apply.

iii. Determination of the penalty multiple

Based on the calculated compensation base, considering the multiple of the application of punitive damages becomes the key factor of the applica-

43) Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Trademark Civil Dispute Cases (Revised in 2020) (2020) No. 19. Article 14: the benefits derived from infringement as provided for in the first paragraph of Article 63 of the Trademark Law may be calculated on the basis of the product of the sales volume of the infringing commodity and the unit profit of the commodity; Where the unit profit of the commodity cannot be ascertained, it shall be calculated as the unit profit of the commodity with a registered trademark. Article 15 :the losses incurred by infringement as provided for in the first paragraph of Article 63 of the Trademark Law may be calculated on the basis of the product of the decrease in sales of the goods caused by the infringement or of the sales volume of the infringing goods multiplied by the unit profit of the goods with the registered trademark.

44) Interpretation of the Supreme People's Court on Some Issues Concerning the Application of Law in the Trial of Civil Disputes over Copyright (2020 Amendment), No. 19. Article 24:the actual loss of the right holder may be calculated on the basis of the product of the decrease in the distribution of copies caused by the right holder's infringement or the sales volume of the infringing copies and the profit per unit of the right Holder's distribution of such copies. Where the reduction in distribution is difficult to determine, it shall be determined according to the market sales of infringing copies.

tion of punitive damages. "Interpretation" of article 6 of the regulation, the court in determining the multiples of punitive damages should be comprehensive consideration of the defendant's subjective fault, tort factors such as serious degree, and at the same time also can consider the defendant on the same tort has been related to factors such as administrative punishment and criminal penalties has been completed, the final decision for punishment. Therefore, when applying punitive damages in China, the multiple of punishment is determined by the judge according to the actual situation of the case, and the legal provisions are relatively broad.

For the application of punitive damages for intellectual property rights, some scholars believe that the application conditions of punitive damages for intellectual property rights in China are vague and the compensation base is difficult to determine.[45] However, scholar Liu Yinliang pointed out that the uncertainty of intellectual property rights determines the fundamental conflict between intellectual property rights and punitive damages, and it is difficult to apply them comprehensively. Therefore, it can be applied to intellectual property punitive damages in a typed way, which is conducive to reducing or avoiding the institutional risks of intellectual property punitive damages.[46] From the perspective of pragmatism, the typed application is a feasible method to solve the problem of the application of intellectual property punitive damages, and the type is clear to avoid the ambiguity and instability of the application. In this article, through investigation found that the field of intellectual property in China apply punitive damages in suitable conditions "intentionally + if the circumstances are serious, the

45) Sun Yurong et al. pointed out that the judicial application dilemma of the punitive compensation system for intellectual property rights in China is mainly reflected in the ambiguity of the applicable conditions of the punitive compensation clause and the difficulty in determining the calculation base of the amount of punitive compensation. See Sun Yurong, Li Xian, "Legal Application and Improvement of Punitive Compensation System for Intellectual Property Rights in China", Journal of Beijing Union University (Humanities and Social Sciences), No. 1, 2021, pp. 101-109.

46) Liu Yinliang believes that the purpose of punitive damages system is to deter future infringements by punishing past infringements, which presupposes the certainty of rights, feasible judgment of infringements and small negative impact of excessive deterrence. The uncertainty of intellectual property rights determines that it is in fundamental conflict with punitive damages and it is difficult to apply punitive damages system comprehensively. Based on the premise of the punitive damages system and the moral accountability of the tort, the punitive damages for intellectual property can be applied in a typed manner. The punitive damages may be applied to the malicious infringement of intellectual property, but it is difficult to apply to the general infringement of intellectual property. The typed application is beneficial to reduce or avoid the institutional risk of punitive damages for intellectual property rights. See Liu Yinliang, "The Categorical Application and Risk Avoidance of Intellectual Property Punitive Damages: From the Perspective of International Intellectual Property Rules", Legal Research, No. 1, 2022, pp. 171-187.

situation through judicial interpretation clear can constitute, gave the court more reference conditions, cannot constitute the difficulty of China's intellectual property rights shall be applicable to the punitive damages applies the difficulty lies more with the determination of base of compensation and punishment a multiple choice.

In the determination of the compensation base, the actual loss or infringement profit as the compensation base can be calculated accurately, but also can be determined in a discretionary manner. However, as punitive compensation has its particularity, it should be based on the principle of prudence, and only under the premise that the proof satisfies the high probability standard, the discretionary method should be applied to summarize the compensation base.[47] And the difficulty lies in the difficult problem of proof, the uncertainty of the intellectual property rights to achieve any proof to prove standard with more uncertain factors, such as his losses uncertainty, evidence of infringement profit is in of the uncertainty of the party and the licence fee are the important factors that affect compensation base, the need to adjust the evidence rules.[48]

In addition, the difficulty also lies in the lack of detailed evaluation criteria for the selection of penalty multiple. Although a multiple of one to five times of penalty compensation is prescribed, there is no specific stipulation on the conditions for the application of the multiple of one to five times of compensation. The ambiguity of selection leads judges to often choose to apply other provisions. Some scholars pointed out that because

47) Su Zhifu pointed out that in the application of punitive damages, when the actual loss or tort profit is taken as the compensation base, it can be accurately calculated, but also can be determined by discretion. However, considering the particularity of punitive damages, the final amount of compensation is 1 to 5 times of the compensation base. Therefore, when determining the actual loss or tort profit by the discretionary method, the principle of prudence should be followed, and on the premise that the evidence provided by the parties on the basis of the calculation of compensation meets the high probability proof standard, In order to apply the discretionary method to summarize the calculation of the actual loss of the right holder or the profit of the infringer. See Su Zhifu, "On the Objective, Positioning and Judicial Application of Punitive Damages System for Intellectual Property Rights in China", China Applied Law, No. 1, 2021, pp. 132-145.

48) Zhan Ying believes that: in view of the "low compensation" and "legal compensation" in general use are related to "difficult to provide evidence", to improve the system of evidence is the key to improve our intellectual property rights trial work. At the same time, we also need to further clarify the evidence rules and calculation methods of the compensation amount, especially the determination method of the contribution rate of the intellectual property involved in the illegal profits, as well as the identification rules and reference methods of the evidence of the intellectual property license fee. See Zhan Ying, "Investigation and Reconsideration of the Judicial Status of Intellectual Property Infringement Damages in China -- Based on the In-depth Analysis of 11984 Judicial Cases of Intellectual Property Infringement in China", Legal Science (Journal of Northwest University of Political Science and Law), No. 1, 2020, pp. 191-200.

the range of one to five times is large, it is difficult for judicial decisions to be refined, so it seems necessary to establish the index system of weight coefficient and the classification calculation rules of compensation amount. At the same time, we should also see that multiple determination can not be generalized, should be based on the case reference weight coefficient to judge differently.[49)]

2. Investigation on typical cases of punitive damages for intellectual property rights

Table 3-1 Typical cases of punitive damages in the field of intellectual property in China

NO.	Type	Case name	"Intent/malice" requirement	"Serious circumstances" requirement	Compensation for the base	Compensation for multiple
1	trade secret	Guangzhou Tianci Company and Anhui Newman Company infringement of technical secrets dispute case[50)]	After the trial of the related criminal case and the verdict of guilty, the defendant never stopped the infringement	The defendant's self-confessed sales have exceeded 37 million yuan, including domestic and foreign sales, export to more than 20 countries and regions	Infringement profit	2.5 times
2	new varieties of plants	Dispute case of Infringement of new plant variety right between Jiangsu Pro-Tilling Agriculture Company and Jiangsu Jindi Company[51)]	Selling propagation materials of authorized varieties without permission; There is no information to conceal the infringement	Not obtain the seed production and operation license, and sold the seed packaging without logo	Infringement profit	2 times

49) Professor Wu Handong pointed out that China's intellectual property law stipulates punitive damages to be one to five times the amount of the established compensation. This clear proportion norm makes it convenient for judges to operate and increases the stability of the law. However, due to the large range of one to five times ratio, it is difficult for judicial adjudication to be refined. It seems necessary to establish the index system of weight coefficient and the classification calculation rules of compensation amount. At the same time, we should also see that multiple determination can not be generalized, should be based on the case reference weight coefficient to judge differently. See Wu Handong, "The Private Law Foundation and Judicial Application of Intellectual Property Punitive Damages", Law Review, No.3, 2021, pp. 21-33.

50) Civil Judgment No. 562 of the Supreme People's Court (2019). 最高人民法院（2019）最高法知民終562号民事判決書。

51) Civil Judgment No. 816 of the Supreme Law Zhimin End of the Supreme People's Court (2021). 最高人民法院（2021）最高法知民終816号民事判決書。

3	trademark	Erdos Company and Miqi Company trademark infringement dispute case[52]	As an operator of goods closely related to clothing, the defendant should know the popularity of the trademark involved	The infringement lasts a long time	Infringement profit	2 times
4	trademark	Zhejiang Cosco Shoes Co., Ltd. and Fila company trademark right dispute case[53]	As a similar operator should know that the trademark involved has high visibility; In 2010, the approximate trademark application was rejected	The sale amount of goods with infringing trademark is huge	Infringement profit	3 times
5	trademark	Disputes over trademark infringement between Xiaomi Technology Co., LTD and Zhongshan Pentium Co., LTD[54]	The trademark involved is a well-known trademark	Sales of more than 60 million, infringement of serious consequences	Infringement profit	3 times
6	trademark	Dispute case of trademark infringement between Baroque Wood (Zhongshan) Co., LTD and Zhejiang Life Home Baroque Flooring Co., LTD[55]	There is a contractual relationship; The defendant receives an infringement warning; Being subjected to administrative punishment; Refusal to enforce a valid ruling	That cost the plaintiffs more than 12 million	Loss of right holder	2 times

52) Beijing Intellectual Property Court (2015) Jingzhimin Chuzi Civil Judgment No. 1677. 北京知識産権法院（2015）京知民初字第1677号民事判決書。

53) Beijing Intellectual Property Court (2017) Civil Judgment No. 1991 of Jing73 Minjun. 北京知識産権法院（2017）京73民終1991号民事判決書。

54) Civil Judgment No. 1316 of Jiangsu High People's Court (2019). 江蘇省高級人民法院（2019）蘇民終1316号民事判決書。

55) Civil Judgment of Jiangsu High People's Court (2017) No. 1297 Su Min Zhong. 江蘇省高級人民法院（2017）蘇民終1297号民事判決書。

7	trademark	Opu Company and Huasheng Company trademark infringement dispute case[56]	The trademark involved is a well-known trademark	Continued infringement during the four-year period from February 2016 to January 2020; There are many kinds of infringing products and huge sales volume	Trademark Licensing Fee	3 times
8	trademark	Dispute case of trademark infringement between Chery Automobile Co., LTD and Anhui Chery Automobile Sales Co., LTD[57]	The defendant received a letter from the plaintiff's lawyer, asking it to stop the infringement, still continued to infringe	The defendant held activities in many cities and promoted them on the Internet throughout the country, with a large influence and wide scope	Trademark Licensing Fee	2 times
9	trademark	Dispute case of trademark infringement between Guangzhou Hongri Fuel Appliance Co., LTD and Guangdong Zhimei Electric Appliance Co., LTD[58]	The trademark involved in the case used to be a well-known trademark, with high visibility; The defendant is a similar operator	The amount of loss of the right holder is huge	Loss of right holder	3 times
10	trademark	Wyeth Company and the original Guangzhou Wyeth Baby Baby Products Company and other trademark infringement disputes[59]	As a similar operator should know that the trademark involved has high visibility; The infringement continued after the first instance judgment	he original Guangzhou Wyeth company authorized more than 900 dealers in more than 100 prefectural cities across the country to use, the infringement lasted for a long time, the infringement profit is great	Infringement profit	3 times

56) Guangdong High People's Court (2019) YueMinzai No. 147 Civil Judgment. 広東省高級人民法院（2019）粤民再147号民事判決書。

57) Civil Judgment No. 2347 of Guangdong Provincial High People's Court (2017). 広東省高級人民法院（2017）粤民終2347号民事判決書。

58) Civil Judgment No. 477 of Guangdong High People's Court (2019). 広東省高級人民法院（2019）粤民終477号民事判決書。

59) Civil Judgment No. 294 of Zhejiang High People's Court (2021). 浙江省高級人民法院（2021）浙民終294号民事判決書。

11	trademark	Dispute case of trademark infringement between Wuliangye Company and Xu Zhonghua[60]	The trademark involved is a well-known trademark; The defendant was repeatedly punished by administration and continued infringement	To infringe on intellectual property rights as a business, the consequences of infringement are relatively serious	Infringement profit	2 times
12	trademark	Adidas Company and Ruan Guoqiang and other trademark infringement disputes[61]	The defendant received multiple administrative punishments	Long duration of infringement (continuous administrative punishment from 2015 to 2017)	Loss of right holder	3 times
13	trademark	Dispute case of trademark infringement between Balanced Body Inc. and Yongkang Yixian Sports Equipment Co[62]	The infringement mark used by the defendant is identical with the trademark involved in the case and is used on the same goods; The defendant was warned by the plaintiff and signed a settlement agreement with the plaintiff	Product sales channels; Covering a wide area; Tort has great impact and serious consequences	Infringement profit	3 times

It can be found from the sorting of the above cases that punitive damages are mainly applied in the field of trademark infringement in China. At present, there are two typical cases of infringement of new plant varieties and infringement of technical secrets. This is related to the construction of China's intellectual property punitive damages system. Punitive damages were introduced in the Trademark Law in 2013 and implemented in 2014, so there are relatively many typical cases. The Patent Law and the Copyright Law just came into effect in June 2021. In judicial practice, up to now, the Supreme People's Court of China has not issued a typical case of punitive damages applicable to the Patent Law and the Copyright Law with guiding significance. China apply punitive damages in the judicial practice

60) Civil Judgment of Zhejiang 01 Minzhong 5872, Hangzhou Intermediate People's Court (2020). 浙江省杭州市中級人民法院（2020）浙01民終5872号民事判決書。

61) Civil Judgment of Zhejiang 03 Minzhong 161, Wenzhou Intermediate People's Court of Zhejiang Province (2020). 浙江省温州市中級人民法院（2020）浙03民終161号民事判決書。

62) Civil Judgment of Shanghai Pudong New Area People's Court No. 53351, Shanghai (2018). 上海市浦東新区人民法院（2018）0115民初53351号民事判決書。

in the field of intellectual property cases increased year by year with China intellectual property infringement disputes appear larger proportion, relative to the growing intellectual property disputes, apply punitive damages cases accounted for only a few relatively, the court also cautious attitude to apply punitive damages, with the strict applicability of punitive damages is associated. In addition, whether punitive damages should be applied is more directly related to whether the parties claim punitive damages and whether they can provide enough evidence to meet the conditions of punitive damages.

In the application of punitive damages in the multiple determination, the court usually did not carry out detailed reasoning, but according to the actual situation of the case to make a direct choice. In the typical cases investigated, the compensation multiple applicable to punitive damages is generally three times or less, and there is no case of more than three times. Some of these cases occurred before China's Trademark Law (amended in 2019), when the maximum compensation multiple was three times, which belongs to the maximum compensation multiple applicable. Since China changed its intellectual property law, there has not been a case with punitive damages as high as five times.

Conclusion

By examining China's intellectual property rights of punitive damages system and its applicable elements can be found in the intellectual property field in China apply punitive damages to the more stringent conditions, from each year China court and conclude the total amount of intellectual property cases, so far, apply punitive damages cases related to intellectual property rights is still relatively small. However, with the full implementation of the revised laws related to intellectual property rights, there have been some high-profile cases of sky-high punitive damages, which have also shocked the business community. Believe that the future will continue to produce more of the infringement of copyright, patent right infringement cases involving the application of the punitive damages, the most of the people's court, too, will be released in the near future with guiding significance for the typical cases of punitive damages and compensation cases for those who can produce high applicable elements and considerations, is bound to become more complicated and detailed, This is the key issue that this research will continue to focus on. Further studies will be conducted on the application and changes of punitive damages in the field of intellectual property rights in China in the future, and the impact of the application of punitive damages on promoting the development of foreign enterprises in China.

Material

Constitutional Cases of the Supreme Court of Japan: What the Court Stated and How We Can Obtain Each Text

*Noboru Yanase**

1. Significance of the List of Constitutional Cases of the Supreme Court of Japan

This paper is a list of summaries of all the constitutional cases ever held by the Supreme Court of Japan, as well as their English translations. This list will help foreign scholars who are not fluent in Japanese to more easily obtain legal information on Japanese constitutional cases, as well as being useful for Japanese scholars who intend to communicate internationally about Japanese constitutional studies.

Language is a significant barrier to scholars who, though not Japanese native speakers, want to study Japanese constitutional law, because most of the literature here—as well as in other fields of Japanese law—is written in Japanese, with there being little literature on this topic written in other languages. Colin P. A. Jones and Frank S. Ravitch, in their casebook on Japanese law, specifically identify language as the first of several barriers to understanding the Japanese legal system.[1)]

In April 2009, the Ministry of Justice of Japan released English translations of Japanese laws and regulations to the public, free of charge, on its website (https://www.japaneselawtranslation.go.jp/en/). The Japanese Law Translation (JLT) database was initiated in response to requests from

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1) "Many primary and secondary sources on Japanese law are thus inaccessible to people who cannot read Japanese." Colin P. A. Jones and Frank S. Ravitch, *The Japanese Legal System* (West Academic Publishing, 2018), p.2.

various financial circles[2] as part of the judicial system reforms that were made around 2000. With the cooperation of each governmental ministry and agency the content of the JLT database is gradually improving, and as of March 2022 contained 838 English translations of laws and regulations released, with a daily average of 138,000 accesses to the JLT website from 86 countries.[3] Because Japan is a country whose primary source of law is statutory law, it is crucial that translations of both its laws and regulations are widely available.[4] Thanks to the JLT database non-Japanese native speakers now have easier access to reliable information about Japanese law in English, without having to learn the Japanese language.

However, solely perusing statute law is not sufficient in order to obtain an understanding of Japanese law and Japan's legal systems. This is because laws and regulations are generally stipulated in abstract terms and, in particular, the Constitution itself is written in quite an abstract manner. Therefore, court precedents have an important role to play in the interpretation of the provisions of laws and regulations. The Constitution is stipulated in general and abstract language and its content should therefore be supplemented not only by statutory law, but also case laws. Through understanding the court's judgments and decisions in concrete cases, whether a certain provision of a certain statute is contrary to a certain article of the Constitution can be determined, and through such judgments and decisions the meaning of the text of the Constitution can then be clarified.

Here we are reminded again, however, of the language barrier faced by

2) The following five demands have been identified as social and economic needs requiring the promotion of the translation of laws and regulations into foreign languages: facilitating international transactions, facilitating investments in Japan, promoting legal support, promoting international understanding of Japan, and improving the convenience of life for foreign residents in Japan. Shihou Housei-ka (Judicial System Division, Ministry of Justice), "Hourei Gaikokugo-yaku ni kansuru Torikumi ni tsuite (On Efforts Regarding Translation of Japanese Laws and Regulations into Foreign Languages)," 120 *Shihou Housei-bu Kihou (Judicial System Department Journal)*, p.86.

3) The most frequently accessed laws are often private laws, such as the Financial Instruments and Exchange Act, Insurance Business Act, Banking Act, Civil Code, and Companies Act. Shihou Housei-ka, Hourei Gaikokugo-yaku Kakari (Japanese Law Translation Section, Judicial System Division, Ministry of Justice), "Hourei Gaikokugo-yaku: Hourei Gaikokugo-yaku Sen'yo Homupeji no Shisutemu Ripureisumento oyobi Akusesu Jokyo (Translation of Laws and Regulations into Foreign Languages: System Replacement and Access Status of the Website for the Translation of Laws and Regulations into Foreign Languages)," 160 *Shihou Housei-bu Kihou (Judicial System Department Journal)*, p. 29.

4) However, not all translations of Japanese laws are provided because each ministry's resources for translations are limited, therefore they translate laws and regulations under their own jurisdictions, little-by-little, within a limited budget. Even for certain important laws, translations are unfortunately not provided. For example, translations of the Public Offices Election Act and the Local Autonomy Act, which are quite important for constitutional scholars, are not available on the JLT website as of October 2022.

non-Japanese speakers. As a matter of course, the original Japanese court judgments and decisions are written in Japanese. As such the most accurate way in which to understand Japanese constitutional cases is to read the original Japanese documents that are provided by the court. Hideo Tanaka has introduced an authentic way in which to find Japanese legal materials for foreign scholars and students. He illustrates how to read the court's judgments or decisions compiled in the official Supreme Court Reporters, which are written entirely in Japanese, with this being the same way in which Japanese students learn about them.[5] However, this technique is often difficult—or almost impossible—for non-Japanese native speakers. Yoshiyuki Noda, in his introductory textbook on Japanese law in English, emphasizes the difficulty of the Japanese language as well as that in the study of Japanese law.[6]

Fortunately for non-Japanese native speakers, the Supreme Court of Japan has recently released English translations of its major judgments and decisions to the public, free of charge, on its website (https://www.courts.go.jp/app/hanrei_en/). However, this does not mean that it enables access to all Japanese cases without having to use the Japanese language. The translations available on the Supreme Court's website are solely of its own judgments and decisions (i.e., translations of judgments and decisions by lower courts are not available on the website), as well as being limited to significant cases that would be compiled in the official Supreme Court Reporters. Moreover, due to the specifications of the search function of the website, it is not possible to search for cases prior to 1969 by "Date of the Judgment" or "Case Number."[7] In addition, by 1999 the General Secretariat of the Supreme Court had translated a selected 30 constitutional cases held by the Supreme Court as internal documents titled "The Series of Prominent Judgments of the Supreme Court upon Questions of Constitutionality." However, although the Supreme Court has recognized the importance of the translation of its documents since 1954, little has been known about

5) Hideo Tanaka, *The Japanese Legal System: Introductory Cases and Materials* (University of Tokyo Press, 1976), pp. 842-849.

6) Noda's book contains four pages on the difficulty of the Japanese language. Yoshiyuki Noda, *Introduction to Japanese Law* (University of Tokyo Press, 1976), pp. 9-13.

7) Although, in fact, some of the pre-1969 cases are included in the Supreme Court database (for example, English translations of the National Police Reserve Case (Sup. Ct., G.B., J., Oct. 8, 1952, 6(9) Minshu 783), which denied judicial review in the abstract case, as well as the Sunagawa Case (Sup. Ct., G.B., J., Oct. 8, 1952, 13(13) Keishu 3225), which held that a court does not have the power to review the Japan-U.S. Security Treaty and in which the meaning of Article 9 of the Constitution was elaborated upon, are both on the website), they are not searchable (therefore undiscoverable) when using the "Date of the Judgment" or "Case Number" features.

these documents because they are not publicly available.[8)]

Nonetheless, it is possible to obtain translations of Japanese constitutional cases that were held before 1969 or that are not searchable on the Supreme Court of Japan's website.

John M. Maki provides English translations of the major constitutional cases of the Supreme Court of Japan up until 1960 (John M. Maki, ed., *Court and Constitution in Japan: Selected Supreme Court Decisions, 1948-1960* (University of Washington Press, 1964), followed by Hiroshi Itoh and Lawrence W. Beer, who covered the period up until 1990 (Hiroshi Itoh and Lawrence Ward Beer eds., *The Constitutional Case Law of Japan: Selected Supreme Court Decisions, 1961-1970* (University of Washington Press, 1978), and Lawrence W. Beer and Hiroshi Itoh eds., *The Constitutional Case Law of Japan: 1970 through 1990* (University of Washington Press, 1996)). In addition, some books and journals also provide English translations of Japanese constitutional cases.[9)] For instance, the Japanese Annual of International Law (since 2007, the Japanese Yearbook of International Law) has been published by the Japan Branch of the International Law Association (later, the International Law Association of Japan) and contains cases held by Japanese courts (not only the Supreme Court of Japan but also lower courts as well) on public international law and private international law, some of which are also important from the perspective of constitutional studies. Through these sources, it is possible to partly (or with regard to important cases, mostly) supplement the translations of the court precedents that are not available on the Supreme Court's website.[10)]

However, although it is possible to find translations of Japanese cases in this manner for those who are familiar with the information in Japanese legal documents, it is extremely difficult for those who are not.

This material is thus a list of the kinds of judgments and decisions held

8) They are now included, in a revised version, in the database on the Supreme Court's website.

9) Several universities in Japan publish foreign language editions of law reviews, with some of them including brief introductions of court judgments and decisions in their reviews (for example, *Ritsumeikan Law Review, International edition*; *Waseda Bulletin of Comparative Law*). They are not the full text of these judgments and, therefore, are not contained in the following list. However, they are worthy of reference because they have editorial notes or reviewers' comments.

10) In fact, not all English translations of Japanese constitutional cases are available through these sources. For example, English translations of the Kathleen Morikawa Case (Sup. Ct., 1st P.B., J., Nov. 16, 1992, 166 *Saiko Saibansho Saiban-shu Minji 575* (not to be confused with Minshu (*Saiko Saibansho Minji Hanreishu*)), in which the Supreme Court denied the constitutional guarantee of freedom of re-entry of foreigners, as well as the so-called Tomabechi Case (Sup. Ct., G.B., J., Jun. 8, 1960, 14(7) MINSHU 1206), in which the Supreme Court applied the political question doctrine, could not be found at the time of this study.

by the Supreme Court of Japan regarding the Constitution of Japan and wherein English translations of these judgments and decisions can be found.

2. Scope and Features of the List of Constitutional Cases of the Supreme Court of Japan

Collected on this list are the constitutional cases held by the Supreme Court of Japan from its establishment until the end of 2020, of which English translations are available to the public, in chronological order. Below are the four main features of this list.

First, the collections in the list are judgments and decisions made by the Supreme Court of Japan. Although the judgments and decisions made by lower courts are sometimes important for constitutional studies, the author intentionally collected only those held by the Supreme Court.[11] This is because no organ but the Supreme Court can officially determine the meaning of the Constitution, as Article 81 of the Constitution of Japan stipulates that "[t]he Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act."

Second, the collections in this list are court precedents on constitutional affairs. Among many judgments and decisions made by the Supreme Court, it is not easy to distinguish which of them are constitutional precedents and which are not. For instance, if the term "constitution" is found in the text of a judgment, this does not necessarily mean such a judgment is a constitutional case. Furthermore, some constitutional precedents do not include the word "constitution" in their text.[12] The list is compiled by the author, who has majored in Japanese constitutional law, with reference to major casebooks and textbooks.

Third, the citation of Japanese cases needs to be explained. The American style of citation, which lists party names (such as "Kurokawa v. Chiba

11) For example, for the Naganuma Nike Missile Site Case, the first instance judgment (Sapporo Dist. Ct., J., Sep. 7, 1973, 712 Hanji 24), which declared that the Self-Defense Forces are in violation of Article 9 of the Constitution, rather than the Supreme Court's judgment, has attracted more public attention and is one which is referred to in university classes. The author is also aware that there are several English translations of judgments and decisions made by lower courts (for example, the first instance of the Naganuma Nike Case can be found in Beer and Itoh eds., *The Constitutional Case Law of Japan: 1970 through 1990*, pp. 83-112).

12) For example, the word "constitution" does not appear in the text of the Case Regarding the List of Participants in Jiang Zemin's Lecture at Waseda University (Sup. Ct., 2nd P.B., J., Sep. 12, 2003, 57(8) Minshu 973). However, this case is understood to be a constitutional case about students' right to privacy. The same applies to the Case Regarding a Member of the Jehovah's Witnesses Who Had Refused to Receive a Blood Transfusion but Was Forced to Receive It Without Her Consent (Sup. Ct., 3rd P.B., J., Feb. 29, 2000, 54(2) Minshu 582) on the constitutional right of self-determination.

Prefectural Election Administration Commission") has not been adopted in Japan. This is because the real name of the party is sometimes omitted, not only in case materials by private publishers, but also in the official reporters.[13] Instead of using the names of the parties, cases are usually described in Japan by citing the court name, the date of the judgment or decision, and the volume and page number of the reporter (e.g. "Sup. Ct., G.B., J., Apr. 14, 1976, 30(3) Minshu 223"). Therefore, this list uses the Japanese style of citation. Further, a popular name for the case is provided (in this case, "The Malapportionment Case"), if that particular example has one.

Fourth, the meaning and significance of each case from the perspective of constitutional studies are briefly prepared from the "Summary of the Judgment/Decision" published in the official Supreme Court Reporters and are both provided in this list. The "Summary of the Judgment/Decision" published in the official reporters should be referred to for the introduction of each case as it is provided by the Supreme Court Case Committee (whose members are Supreme Court Justices) and states the meaning and significance of each case as a court precedent, which the Supreme Court itself recognizes.[14] For the description of each case in the list, a literal translation of the "Summary of the Judgment/Decision" from Japanese into English is not adopted. Some of the original "Summary" simply states that the provision of a certain statute is in violation of a certain provision of the Constitution, but without an explanation of the content of the provision of the statute regarding which constitutionality was reviewed, meaning that the "Summary" itself cannot be understood. Therefore, in the list, the content of each provision of each statute is added for the user's understanding. In addition, the list includes the background or the meaning and significance of each case from the viewpoint of constitutional studies, if there is a large gap between the "Summary of the Judgment/Decision" provided by the Supreme Court and the perceived purpose of the case (such as the Asahi Case (Sup. Ct., G.B., J., May 24, 1967, 21(5) Minshu 1043) and the Foreign Resident's Local Voting Rights Case (Sup. Ct., 3rd P.B., J., Feb. 28, 1995, 49(2) Minshu 639)).

13) Recently, the names of the parties are often anonymized, in both criminal and civil cases, for the protection of personal information.

14) In the English translations of cases posted on the Supreme Court's website, the "Summary of the Judgment/Decision" is not provided for old cases, although it is usually provided for more recent ones. Even though the translation of the "Summary" is provided by the Supreme Court itself, the author thoroughly reviewed it and independently provided another one that differs from that of the Supreme Court in order to promote comprehensibility for readers who are non-Japanese native speakers. For the sake of accuracy, most of the translations of the "Summary of the Judgment/Decision" on the Supreme Court's website are literal translations of the original Japanese text, with many of the translations containing extraordinarily long sentences and minute details, therefore rendering them extremely difficult to understand.

Abbreviations

Sup. Ct.	Supreme Court of Japan
G.B.	Grand Bench
1st/2nd/3rd P.B.	1st/2nd/3rd Petty Bench
J.	Judgment (a ruling by a court based on oral argument through a full trial procedure)
D.	Decision (a ruling by a court without oral proceedings and under a processual regime that may not constitute a trial)
Minshu	*Saiko Saibansho Minji Hanreishu* [Supreme Court Reporter, Civil Cases]
Keishu	*Saiko Saibansho Keiji Hanreishu* [Supreme Court Reporter, Criminal Cases]
Shogetsu	*Shomu Geppo* [Monthly Materials edited by the Litigation Section of the Ministry of Justice]
Hanji	*Hanrei Jiho* (one of the case materials by private publishers)
Maki (1964)	John M. Maki ed., *Court and Constitution in Japan: Selected Supreme Court Decisions, 1948–1960* (University of Washington Press, 1964)
Itoh/Beer (1978)	Hiroshi Itoh and Lawrence Ward Beer eds., *The Constitutional Case Law of Japan: Selected Supreme Court Decisions, 1961–1970* (University of Washington Press, 1978)
Beer/Itoh (1996)	Lawrence W. Beer and Hiroshi Itoh eds., *The Constitutional Case Law of Japan: 1970 through 1990* (University of Washington Press, 1996)
Milhaupt et al. (2001)	Curtis J. Milhaupt et al. eds., *Japanese Law in Context: Readings in Society, the Economy, and Politics* (Harvard University Asia Center, 2001)
Bälz et al. (2012)	Moritz Bälz et al. eds., *Business Law in Japan - Cases and Comments: Intellectual Property, Civil, Commercial and International Private Law* (Kluwer Law International, 2012)
Port et al. (2015)	Kenneth L. Port et al. eds., *Comparative Law: Law and the Process of Law in Japan*, 3rd. ed., (Carolina Academic Press, 2015)
JAIL	The Japan Branch of the International Law Association ed., *The Japanese Annual of International Law*, No. 1 (1957) - 50 (2007)
JYIL	The International Law Association of Japan ed., *Japanese Yearbook of International Law*, Vol. 51 (2008) - present
PJSCQC	*Series of Prominent Judgments of the Supreme Court upon Questions of Constitutionality* [unpublished internal documents]
Sup. Ct. WEB	"Judgments of the Supreme Court" on the website of the Supreme Court of Japan (https://www.courts.go.jp/app/hanrei_en/detail?id=[ID#])

The List of Constitutional Cases of the Supreme Court of Japan

Sup. Ct., G.B., J., Mar. 12, 1948, 2(3) Keishu 191

The Death Penalty Case

The death penalty is not unconstitutional. (It is not in violation of Article 36 of the Constitution but is consistent with the meaning of Articles 13 and 31 of the Constitution.)

Maki (1964), pp. 156-64

Sup. Ct., G.B., J., Sep. 29, 1948, 2(10) Keishu 1235

The Staple Food Control Act Case

[1] Article 25, paragraph (1) of the Constitution means that the State, as its duty, is generally obligated to provide the people the minimum standards of wholesome and cultured living, but this provision does not directly guarantee individual citizens such rights in concrete and actual terms. [2] The Staple Food Control Act stabilizes living conditions as much as possible for the general welfare of the people, and its purpose does not violate the spirit of Article 25 of the Constitution.

Maki (1964), pp. 253-72

Sup. Ct., G.B., J., Dec. 22, 1948, 2(14) Keishu 1853

If it does not affect the judgment, the lack of a speedy trial and violation of Article 37, paragraph (1) of the Constitution are not grounds for quashing the original judgment.

Maki (1964), pp. 207-09

Sup. Ct., G.B., J., Jun. 21, 1950, 4(6) Keishu 1049

The Case on Constitutionality of Restriction of Fee-Charging Employment Agency Businesses

Article 32 of the Employment Security Act, which generally prohibits or restricts fee-charging employment agency businesses is not in violation of Articles 13 and 22 of the Constitution.

Maki (1964), pp. 289-92

Sup. Ct., G.B., J., Sep. 27, 1950, 4(9) Keishu 1805

The Case Regarding non bis in idem *and Double Jeopardy*

An appeal by the prosecutor against a judgment of the lower court, seeking a conviction or a more severe sentence, does not violate Article 39 of the Constitution.

Maki (1964), pp. 219-27

Sup. Ct., G.B., J., Oct. 11, 1950, 4(10) Keishu 2037

The Case on Constitutionality of the More Severe Punishment for Causing Injury Resulting to Death of Lineal Ascendant

Article 205, paragraph (2) of the Penal Code (prior to the 1995 revision), which provides that a person who causes one of his/her own or his/her spouse's lineal ascendants to suffer injury resulting in death shall be punished more severely, is not in violation of Article 14 of the Constitution.

Maki (1964), pp. 129-55;
PJSCQC, No. 3; Sup. Ct. WEB #2

Sup. Ct., G.B., J., Nov. 15, 1950, 4(11) Keishu 2257

The Yamada Steel (Production Control) Case

Article 28 of the Constitution guarantees workers the right to collective action; however, Article 29 guarantees employers' property rights. Therefore, "production control" as a form of strike, in which the workers suppress the free will of their employers to run the business, is not allowed as it infringes on the private property system.

Maki (1964), pp. 273-81

Sup. Ct., G.B., J., Apr. 4, 1951, 5(5) Minshu 214

The Tokyu Railways Communist Workers Case

The freedom of expression guaranteed by Article 21 of the Constitution is limited by special public law-related or private law-related obligations based on their free will.

Maki (1964), pp. 285-88

Sup. Ct., G.B., J., Aug. 1, 1951, 5(9) Keishu 1684

It is illegal to use a confession of the accused as evidence when his freedom was suppressed by police officers.

Maki (1964), pp. 191-206

Sup. Ct., G.B., J., Feb. 20, 1952, 6(2) Minshu 122

The Case on Constitutionality of the Popular Vote for Dismissal of Justices of the Supreme Court

[1] The purpose of the people's review system for the Supreme Court Justices is for the people to decide whether a Justice should be removed from office, not to examine whether the appointment of a Justice should be completed. [2] The Act of Establishment of the Popular Vote for Dismissal of the Justices of the Supreme Court is not in violation of Articles 19, 21, and 79 of the Constitution.

Sup. Ct. WEB #3

Sup. Ct., c, J., Feb. 22, 1952, 6(2) Minshu 258

The Tokachi Girls Commercial School Case

If a person is hired by a school as a teacher on the condition that she will not engage in political activities in the school, the contract is not invalid.

Maki (1964), pp. 282-84

Sup. Ct., G.B., J., Aug. 6, 1952, 6(8) Keishu 974

The Ishii Case (Reporter's Right to Protect the News Source)

[1] A newspaper reporter does not have the privilege, under the Code of Criminal Procedure, to refuse to testify on the grounds that his/her testimony relates to the news source. [2] The privilege to refuse to testify on the news source is not guaranteed to a newspaper reporter by Article 21 of the Constitution. [3] Although Article 146 of the Code, which permits any person refusing to give testimony when there is the fear that such testimony may result in his/her criminal prosecution or conviction, is a provision for the guarantee under Article 38, paragraph (1) of the Constitution, Article 147 of the Code, which permits any person refusing to give testimony for preventing his/her family's criminal prosecution or conviction, is not for such constitutional guarantee.

Maki (1964), pp. 38-46

Sup. Ct., 2nd P.B., J., Aug. 29, 1952, 6(8) Keishu 1053

A person who instigates police officers to engage in the slowdown is guilty of an offense under Articles 37, paragraph (1), and 61, item (iv) of the Local Public Service Act, in case there exists a risk of the occurrence of slowdown. (Such provisions are not in violation of Article 21 of the Constitution.)

Maki (1964), pp.123-28

Sup. Ct., G.B., J., Oct. 8, 1952, 6(9) Minshu 783

The National Police Reserve Case (Denial of Judicial Review in Abstract Case)

In the absence of a concrete case, the Supreme Court does not have the power to determine whether laws, orders, and the like are constitutional in the abstract.

Maki (1964), pp. 362-65;
Sup. Ct. WEB #4

Sup. Ct., G.B., J., Jan. 16, 1953, 7(1) Minshu 12

The Aomori Prefectural Assembly Case (The Case on Constitutionality of the Objection by the Prime Minister)

The objection by the Prime Minister set forth in the proviso to paragraph (2) of Article 10 of the Act on Special Provisions for Administrative Case Litigation (abolished) must be made prior to the court's decision to stay the execution pursuant to the main clause of the paragraph; any objection made thereafter shall be invalid.

Maki (1964), pp. 384-409

Sup. Ct., G.B., J., Apr. 15, 1953, 7(4) Minshu 305

The Tomabechi Case of 1953

Article 81 of the Constitution does not stipulate that the Supreme Court shall also have the role of a constitutional court of the first instance and final instance with the inherent power to review constitutionality.

Maki (1964), pp. 366-83

* This is different from the so-called Tomabechi Case (Sup. Ct., G.B., J., Jun. 8, 1960 14(7) Minshu 1206), in which the Supreme Court upheld the political question doctrine. The English translation of *the Tomabechi Case of 1960* is not found.

Sup. Ct., G.B., J., Jul. 22, 1953, 7(7) Keishu 1562

The Cabinet Order No. 325 Case

Violators of the Cabinet Order No. 325 of 1950 (abolished), which prohibits acts that interfere with the purposes of occupation by the Allied Powers, shall no longer be punishable after the Treaty of Peace with Japan comes into effect.

PJSCQC, No. 1; Sup. Ct. WEB #5

Sup. Ct., G.B., J., Dec. 23, 1953, 7(13) Minshu 1523

The Land Reform Case

The price for acquisition under Article 6, paragraph (iii) of the Act on Special Measures for the Establishment of Land-own Farmers (abolished) is "just compensation" as prescribed in Article 29, paragraph (3) of the Constitution. ("[J]ust compensation" for property taken for public use is a proper sum reasonably calculated based on a value that can be considered as having been determined by economic conditions existing at the time, and a sum that necessarily and always must conform completely to a value so determined.)

Maki (1964), pp. 228-52

Sup. Ct., G.B., J., Nov. 24, 1954, 8(11) Keishu 1866

The Case Regarding the Niigata Prefectural Ordinance on Public Safety

The provisions of the Niigata Prefectural Ordinance on Public Safety, which restrict demonstration marches, are not in violation of Articles 12, 21, 28, 98 of the Constitution. (Demonstrations may be conducted with permission from the police under reasonable and clear criteria, and demonstrations can be prohibited if they are predicted to cause a clear danger to public safety.)

Maki (1964), pp. 70-83

Sup. Ct., G.B., J., Jan. 26, 1955, 9(1) Keishu 89

The Public Bath Houses Act Case of 1955

Article 2, paragraph (2) of the Public Bath Houses Act, which grants a prefectural governor the power to refuse permission to run a public bath house if its location is deemed improper, and the Fukuoka Prefectural Ordinance for Enforcement of the Public Bath Houses Act, which prescribes standards for the location of a public bath house—necessity of maintaining a certain distance from existing public bath houses—are not in violation of Article 22 of the Constitution.

Maki (1964), pp. 293-97

Sup. Ct., G.B., J., Feb. 9, 1955, 9(2) Keishu 217

Article 252 of the Public Offices Election Act, which suspends the right to vote and be elected, for a specified period, of those who commit an election-related crime, is not in violation of Articles 14 and 44 of the Constitution; thus, does not unduly deprive citizens of suffrage.

Maki (1964), pp. 182-90

Sup. Ct., G.B., J., Apr. 27, 1955, 9(5) Keishu 924

Article 3, paragraph (1) of the National Tax Violations Control Act, which allows tax officers to conduct investigations for urgent needs without a warrant issued by a judge, is not in violation of Article 35 of the Constitution.

Maki (1964), pp. 165-81

Sup. Ct., G.B., J., Sep. 28, 1955, 9(10) Minshu 1453

The Habeas Corpus Act Case

The Habeas Corpus Act allows a person whose physical freedom is restrained without due process of law to request a remedy, only when the restraint or the judicial decision or disposition concerning it is conducted without authority or in obvious violation of the legal procedures.

Maki (1964), pp. 210-18

Sup. Ct., 3rd P.B., J., Nov. 29, 1955, 9(12) Keishu 2524

Article 321, paragraph (1), item (ii) of the Code of Criminal Procedure, which allows, in certain cases, a signed or sealed written record of a statement made by a person other than the criminal defendant to be admitted as evidence at trial, is not in violation of Article 37, paragraph (2) of the Constitution.

Sup. Ct. WEB #7

Sup. Ct., G.B., J., Dec. 14, 1955, 9(13) Keishu 2760

The Case on Constitutionality of Emergency Arrest

The arrest of a suspect in specific serious crimes and only under urgent unavoidable circumstances, on condition that an examination by a judge and the issuance of a warrant of arrest is sought immediately after the arrest, does not violate the purport of Article 33 of the Constitution.

Sup. Ct. WEB #8

Sup. Ct., G.B., J., Jul. 4, 1956, 10(7) Minshu 785

The Case on Constitutionality of Court Order for Publication of an Apology

A court order for an offender of defamation to publish an apology to the victim in a newspaper does not violate Article 19 of the Constitution.

Maki (1964), pp. 47-69

Sup. Ct., G.B., J., Feb. 20, 1957, 11(2) Keishu 802

[1] Article 38, paragraph (1) of the Constitution guarantees the right not to be compelled to testify regarding particulars that are likely to incriminate themselves. [2] In principle, the criminal defendant's name is not considered disadvantageous particulars, and the right to silence does not cover the same.

Sup. Ct. WEB #10

Sup. Ct., G.B., J., Mar. 13, 1957, 11(3) Keishu 997

The Lady Chatterley's Lover Case

[1] An "obscene document" prescribed in Article 175 of the Penal Code is defined as one which unnecessarily arouses or stimulates sexual desire and harms the normal sexual sense of shame of ordinary people and therefore goes against their good sexual morals. [2] The determination of whether a document is an "obscene document" is not a matter of factual determination

to be made with regard to the document, but a matter of legal interpretation. [3] When determining whether the document is an "obscene document," it should be done in accordance with the general public's common sense or socially accepted ideas. [4] Socially accepted ideas are not a set of individual perceptions or their average, but rather a collective consciousness beyond this, which is not denied by the fact that an individual has a contrary perception. [5] Even artistic works can be obscene. [6] The obscenity of a document should be judged objectively based on the work itself, and is not dependent on the subjective intent of the author. [7] The freedom of expression guaranteed by Article 21 of the Constitution is not absolutely unlimited, and it should not interfere with the public welfare. [8] Article 21, paragraph (2) of the Constitution, which prohibits prior censorship, does not prohibit the distribution and sale of obscene documents. [9] Article 76, paragraph (3) of the Constitution provides that a judge follows his/her conscience, and this means that the judge follows his/her own internal sense of conscience and morality without yielding to any external pressures or temptations, tangible or intangible.

Maki (1964), pp. 3-37;
PJSCQC, No. 2; Sup. Ct. WEB #11

Sup. Ct., G.B., J., Jun. 19, 1957, 11(6) Keishu 1663

[1] Article 22 of the Constitution provides no provisions for foreigners to enter the country of Japan. [2] Article 3 of the Cabinet Order on Alien Registration (abolished), which prohibits foreigners, other than those approved by the Supreme Commander of the Allied Forces, from entering the territory of Japan until otherwise provided for by law; Article 12 of the Order, which imposes penalties on those who violate the provisions, are not in violation of Article 22 of the Constitution.

JAIL, No. 3, pp. 138-39 [Excerpt]

Sup. Ct., G.B., J., Dec. 25, 1957, 11(14) Keishu 3377

Article 25 of the Cabinet Order on Immigration Control (later the Immigration Control and Refugee Recognition Act), which requests a foreign national departing from Japan to receive confirmation of the departure from an immigration inspector, is not in violation of Article 22, paragraph (2) of the Constitution.

JAIL, No. 3, pp. 137-38 [Excerpt]

Sup. Ct., G.B., J., May 28, 1958, 12(8) Keishu 1718

[1] Article 38, paragraph (2) of the Constitution denies the admissibility as evidence of a confession made under compulsion, torture or threat, or after a prolonged arrest or detention. [2] Article 38, paragraph (3) of the Constitution does not intend to deny or restrict the admissibility as evidence of the defendant's own confession as such, but it requires other evidence that complements or reinforces its probative value.

Sup. Ct. WEB #12

Sup. Ct., G.B., J., Sep. 10, 1958, 12(13) Minshu 1969

The Kei Hoashi Case

Article 13, paragraph (1), item (v) of the Passport Act, which allows the Minister of Foreign Affairs to refuse to issue a passport to persons who may act in a manner harmful to the interests or security of the country of Japan. This provision is not in violation of Article 22, paragraph (2) of the Constitution because it establishes reasonable restrictions, for the sake of public welfare, on the freedom to travel abroad.

Maki (1964), pp. 117-22

Sup. Ct., G.B., J., Dec. 16, 1959, 13(13) Keishu 3225

The Sunagawa Case

[1] Article 9 of the Constitution does not at all deny Japan the right of self-defense, which is a sovereign power inherent in a nation. [2] Japan may take whatever measures necessary for its defense to maintain peace and security and preserve its existence. Such measures are an exercise of powers inherent in a nation, and they are not at all prohibited under the Constitution. [3] The Constitution does not limit the measures necessary for self-defense against military security measures undertaken by an organ of the United Nations, such as the Security Council. It does not at all prohibit the State of Japan from seeking security measures from another country, as long as its methods or means are appropriate to maintain the peace and security of the country, and are deemed appropriate in light of the actual international situation. [4] Foreign Armed Forces over which the State of Japan cannot exercise the right of command and supervision, even if they are to be stationed in Japan, do not include the "war potential" prohibited by Article 9, paragraph (2) of the Constitution. [5] Any legal determination as to the constitutionality of a matter that has bearing upon the very existence of the State of Japan as a sovereign power—like the Security Treaty between the United States and Japan (the former Security Treaty)—cannot be adequately made by a judicial court, which has as its mission the exercise of a purely judicial function. Unless it is quite obviously unconstitutional and void, it falls outside the purview of the power of judicial review granted to a court. [6] Even when, as in this case, whether the Security Treaty (or government's acts based on it) is unconstitutional is a prerequisite problem—whether Article 2 of the Special Criminal Act Attendant upon Administrative Agreement under Article III of the Security Treaty between the United States and Japan is unconstitutional—it falls outside the purview of the power of judicial review granted to a court. [7] It cannot be said that the Security Treaty (and the stationing of the United States Armed Forces) is quite obviously unconstitutional and void, contravening the meaning of Article 9, paragraph (2), Article 98, and the Preamble of the Constitution. [8] Although the Administrative Agreement, which provides for conditions of disposition of the United States Armed Forces, has not been approved by the Diet, it is not unconstitutional and void.

Maki (1964), pp. 298-361;
Milhaupt et al. (2001), pp. 161-63;
JAIL, No. 4, pp. 103-58;
PJSCQC, No. 4; Sup. Ct. WEB #13

Sup. Ct., G.B., J., Jul. 20, 1960, 14(9) Keishu 1243

The Case Regarding the Tokyo Metropolitan Ordinance on Public Safety

The provisions of the Tokyo Metropolitan Ordinance on Public Safety, which regulates a meeting or mass parade on the road or other public places, or mass demonstration irrespective of places by requesting prior permission from the Tokyo Metropolitan Public Safety Commission—based on the interpretation denying the Commission's discretion, are not in violation of Article 21, paragraph (1) of the Constitution.

Maki (1964), pp. 84-116;
PJSCQC, No. 5; Sup. Ct. WEB #15

Sup. Ct., G.B., J., Oct. 10, 1960, 14(12) Minshu 2441

It is not permissible to claim compensation from the State directly on the grounds of Article 29, paragraph (3) of the Constitution for the loss of property rights caused by the order of the Minister of Finance under Article 2 of

the Imperial Ordinance on the Losses Arose Incidental to Return of Properties of Allied Power.

JAIL, No. 7, pp. 92-103

Sup. Ct., G.B., J., Feb. 15, 1961, 15(2) Keishu 347

The Case Regarding the Act on Massage Practitioners, Acupuncturists, Moxibustion Practitioners, and Judo Healing Practitioners

Article 7 of the Act on Massage Practitioners, Acupuncturists, Moxibustion Practitioners, and Judo Healing Practitioner, which restricts advertisements is not in violation of Articles 11, 13, 19, and 21 of the Constitution.

Itoh/Beer (1978), pp. 217-23

Sup. Ct., G.B., J., Apr. 5, 1961, 15(4) Minshu 657

A female Japanese citizen, who had legal status as a Korean under Japanese domestic law by marrying a male Korean while Japan ruled Korea, loses her Japanese nationality when the Treaty of Peace with Japan comes into effect—Japan therein recognizes the independence of the country of Korea.

JAIL, No. 8, pp. 153-74

Sup. Ct., G.B., J., Jun. 7, 1961, 15(6) Keishu 915

Searches and seizures conducted by narcotics agents prior to the emergency arrest of a suspect do not violate Article 35 of the Constitution if these actions are temporally coincidental and take place at the same location.

Itoh/Beer (1978), pp. 157-61

Sup. Ct., G.B., J., Jul. 19, 1961, 15(7) Keishu 1106

The Case on Constitutionality of the Execution Method of the Death Penalty (Validity of the Act Established Before Enforcement of the Meiji Constitution)

[1] The Decree of the Dajo-kan (Grand Council of State, which was the highest organ of Japan's premodern imperial government) No. 65 of 1873, which stipulates the death penalty execution method, has been in effect as a law with equal force and effect. [2] A sentence ordering the execution by hanging does not violate Article 31 of the Constitution.

Itoh/Beer (1978), pp. 161-64

Sup. Ct., G.B., J., Sep. 6, 1961, 15(8) Minshu 2047

[1] Article 762, paragraph (1) of the Civil Code, which stipulates that property owned by one party before the marriage and property obtained in the name of that party during the marriage shall be separate property, is not in violation of Article 24 of the Constitution. [2] The Income Tax Act, which does not provide for the computation of the husband's and wife's income on an aggregate fifty-fifty basis, is not in violation of Article 24 of the Constitution.

Itoh/Beer (1978), pp. 50-52

Sup. Ct., G.B., J., Dec. 20, 1961, 15(11) Keishu 1940

The Case on Constitutionality of the Cabinet Order on the Organization Control

A person was requested to appear by the Attorney General pursuant to the provision of Article 10, paragraph (3) of the Cabinet Order on the Organization Control (abolished), which was established in response to the request of the General Headquarters, the Supreme Commander for the Allied Powers, for the purpose of regulating violent and anti-democratic organizations in occupied Japan. Since he did not obey the Order, he was charged with violation of Article 13, item (iii) of the Ordinance, before the date on which the Treaty of Peace with Japan took effect. After the Treaty went into effect, the court should release him from trial by judgment because the penal provision was

deemed to abolished by law after the offense was committed.

Itoh/Beer (1978), pp. 22-36;
PJSCQC, No. 6; Sup. Ct. WEB #18

Sup. Ct., G.B., J., Mar. 7, 1962, 16(3) Minshu 445

The Case Regarding the Revision of the Police Act

[1] The court cannot review the constitutionality of the law-making proceedings in the two Houses of the Diet. [2] The Police Act, which abolished the municipal police system and transferred police power and duties to the prefecture, is not in violation of Article 92 of the Constitution.

Itoh/Beer (1978), pp. 41-44

Sup. Ct., G.B., J., Mar. 14, 1962, 16(3) Minshu 537

The Case on Constitutionality of the Joint Responsibility System with the Campaign Manager's Crime

Articles 251-2 and 211 of the Public Offices Election Act, which prescribe the joint responsibility system with the campaign manager's crime, are not in violation of Articles 13, 15, and 31 of the Constitution.

Itoh/Beer (1978), pp. 151-53

Sup. Ct., G.B., J., May 2, 1962, 16(5) Keishu 495

The Case on Constitutionality of the Car Driver's Obligation of Reporting His Own Traffic Accident to the Police

The provisions of the Enforcement Order of the Road Traffic Control Act (abolished), which requires a car driver who causes a traffic accident to report it to police officers, are not in violation of Article 38, paragraph (1) of the Constitution.

Itoh/Beer (1978), pp. 164-66

Sup. Ct., G.B., J., May 30, 1962, 16(5) Keishu 577

The Osaka City Prostitution Ordinance Case

Both Article 14, paragraph (5) of the Local Autonomy Act, which grants local governments the power to establish ordinances with criminal penalties, and the provisions of the Osaka City Ordinance for Prohibition of Prostitution, which is established pursuant to the Act, are not in violation of Article 31 of the Constitution.

Itoh/Beer (1978), pp.36-40

Sup. Ct., G.B., J., Nov. 28, 1962, 16(11) Keishu 1593

The Case on Constitutionality of Forfeiture of the Third Party's Property

[1] The forfeiture of the property of a non-defendant under Article 118, paragraph (1) of the Customs Act violates Articles 29 and 31 of the Constitution. [2] A defendant against whom a forfeiture has been declared, with respect to the goods owned by others, is eligible to appeal the forfeiture on the ground that the judgment of forfeiture is unconstitutional.

Itoh/Beer (1978), pp. 58-73;
JAIL, No. 7, pp. 101-24;
PJSCQC, No. 7; Sup. Ct. WEB #19

Sup. Ct., G.B., J., Mar. 27, 1963, 17(2) Keishu 121

The Case on Constitutionality of the Abolishment of the Public Election System of Mayors of the Special Wards of Tokyo

The revised provision of Article 281-2, paragraph (1) of the Local Autonomy Act, which abolished the system of public election of mayors of the special wards of Tokyo, is not in violation of Article 93, paragraph (2) of the Constitution. A "local public entity" within the meaning of Article 93, paragraph (2) of the Constitution is a communal body, in which a social foundation exists that its residents actually enjoy a close economic and cultural community life as well as have a sense of com-

munity, and both historically and in actual administration, vested with such basic powers of local self-government as a considerable degree of autonomous power to legislate, administer, and finance.

Itoh/Beer (1978), pp. 45-49

Sup. Ct., G.B., J., May 15, 1963, 17(4) Keishu 302

The Faith Healing Cult Case

A faith healing with violence that caused the death of a person is beyond the limits of freedom of religion guaranteed by Article 20, paragraph (1) of the Constitution, and it is not unconstitutional to punish this ritual according to Article 205 of the Penal Code.

Itoh/Beer (1978), pp. 223-26

Sup. Ct., G.B., J., May 22, 1963, 17(4) Keishu 370

The Case of the Popolo Theatrical Group at the University of Tokyo

[1] Academic freedom guaranteed by Article 23 of the Constitution includes the freedom of academic study and expression of the results of the study. This provision intends to guarantee such freedom widely to the people at large on the one hand, and, on the other hand, particularly to the university, in view of its essential nature as a center of arts and sciences where the search for truth is carried out. [2] A students' gathering, which is not for truly academic study or expression of the results of such study, but for activities corresponding to political and social activities in actual society, cannot enjoy the special academic freedom and autonomy given to the university.

Itoh/Beer (1978), pp. 226-42; PJSCQC, No. 8; Sup. Ct. WEB #20

Sup. Ct., G.B., J., Jun. 26, 1963, 17(5) Keishu 521

The Case Regarding the Nara Prefectural Ordinance on Reservoirs

The provisions of the Nara Prefectural Reservoir Ordinance, which punish the act of planting crops on the banks of reservoirs, are not in violation of paragraphs (2) and (3) of Article 29 of the Constitution.

Itoh/Beer (1978), pp. 73-78

Sup. Ct., G.B., J., Dec. 4, 1963, 17(12) Keishu 2434

The White (Unlicensed) Taxi Case

Article 101, paragraph (1) of the Road Transportation Act, which prohibits paid transportation services in private vehicles, is not in violation of Article 22, paragraph (1) of the Constitution.

Itoh/Beer (1978), pp. 80-81

Sup. Ct., G.B., J., Feb. 5, 1964, 18(2) Minshu 270

The Malapportionment Case (1962 House of Councillors Election)

Despite an imbalance and inequality because Appended Table 1(2) of the Public Offices Election Act had not been proportionately revised to the number of the electoral population, the present degree does not violate Article 14, paragraph (1) of the Constitution.

Itoh/Beer (1978), pp. 53-57

Sup. Ct., G.B., J., Feb. 26, 1964, 18(2) Minshu 343

The Case Demanding No Charge for Textbooks

Charging pupils' parents for the cost of textbooks in public elementary schools does not violate the second sentence of Article 26, paragraph (2) of the Constitution. (The provision of free compulsory education means no charge for the tuition, but it does not mean no charge for all the expenses necessary for study, including textbooks and school supplies.)

Itoh/Beer (1978), pp. 147-48

Sup. Ct., 2nd P.B., D., Dec. 21, 1964, 396 Hanji 19

The court's restrictive interpretation of Article 38, paragraph (2), item (ii) of the Subversive Activities Prevention Act as not applying to cases in which the purpose of committing the crime of insurrection is not recognized, with respect to freedom of speech, is an erroneous interpretation of Articles 21 and 12 of the Constitution.

Itoh/Beer (1978), pp. 242-44

Sup. Ct., G.B., J., Apr. 28, 1965, 19(3) Keishu 203

Ordering the forfeiture of the bribe proceeds of a non-defendant under Article 129-4 of the Penal Code (prior to the 1958 revision) is in violation of Articles 31 and 29 of the Constitution.

Itoh/Beer (1978), pp. 78-79

Sup. Ct., G.B., J., Apr. 28, 1965, 19(3) Keishu 240

A decision not to proceed to hearing under Article 19, paragraph (1) of the Juveniles Act does not have the effect of *non bis in idem*.

Sup. Ct. WEB #22

Sup. Ct., G.B., D., Jun. 30, 1965, 19(4) Minshu 1089

The Domestic Relations Adjustment Act Case

The ruling for cohabitation of husband and wife and other matters concerning cooperation and support between them under Article 9, paragraph (1) (B) of the Domestic Relations Adjustment Act is naturally a non-litigious trial, and therefore not in violation of Articles 32 and 82 of the Constitution, even if the trial is not conducted nor the judgment declared publicly.

Itoh/Beer (1978), pp. 169-74

Sup. Ct., G.B., J., Sep. 8, 1965, 19(6) Minshu 1454

[1] The Imperial Ordinance authorizing the imposition of penalties if necessary for requests by the Supreme Commander of the Allied Forces attendant upon the acceptance of the Potsdam Declaration, the Cabinet Order on the Organization Control, and the Cabinet Order Concerning the Management and Disposition of Property of Dissolved Organizations, as well as the designation, dissolution, and confiscation of property of organizations based on these Orders, shall remain valid, regardless of whether the substance of these dispositions violate the Constitution. [2] The confiscation of property under the Cabinet Order on the Organization Control and the Cabinet Order Concerning the Management and Disposition of Property of Dissolved Organizations is not a public expropriation (prescribed in Article 29, paragraph (3) of the Constitution).

JAIL, No. 10, pp. 150-73

Sup. Ct., 2nd P.B., J., Jul. 1, 1966, 20(6) Keishu 537

When a suspect believed the prosecutor's statement that the prosecution would be suspended if he confessed, and relying on that belief, made a confession, the voluntariness of the confession should be deemed doubtful.

Itoh/Beer (1978), pp. 167-68

Sup. Ct., G.B., J., Jul. 13, 1966, 20(6) Keishu 609

[1] It violates Article 31, Article 38, paragraph (3), and Article 39 of the Constitution to recognize a criminal charge that has not been brought and to take it into consideration as a reference for sentencing substantially for the purpose of punishing the other offense. [2] It does not violate Articles 31 and 39 of the Constitution to take it into consideration as a reference regarding the defendant's character and background, as well as the motivation, objective, method, and other circumstances con-

cerning the offense charged.

Itoh/Beer (1978), pp. 154-57;
Sup. Ct. WEB #25

Sup. Ct., G.B., J., Oct. 26, 1966, 20(8) Keishu 901

The Case of the Zentei (Japan Postal Workers' Union) in the Tokyo Central Post Office

[1] Article 17, paragraph (1) of the Public-Sector Corporation and National Enterprise Labor Relations Act, which prohibits employees or their union from striking or engaging in slowdown or other acts of dispute, and prohibits employees or members of the union from attempting, or conspiring to effect, instigating, or inciting such prohibited acts, is not in violation of Articles 11, 14, 18, 25, 28, 31, and 98 of the Constitution. [2] Article 1, paragraph (2) of the Labor Union Act, which decriminalizes justifiable acts of dispute, is also applicable to acts of dispute conducted in violation of Article 17, paragraph (1) of the Public-Sector Corporation and National Enterprise Labor Relations Act.

Itoh/Beer (1978), pp. 85-103;
PJSCQC, No. 9; Sup. Ct. WEB #26

Sup. Ct., G.B., J., May 24, 1967, 21(5) Minshu 1043

The Asahi Case

The suit for the revocation of an administrative determination regarding public assistance made by the Minister of Health and Welfare should be naturally terminated upon the death of a public assistance recipient, because the right to receive public assistance is secured personally to the individual recipient and therefore not inheritable. (The significance of this judgment is commonly understood to be that the welfare right guaranteed by Article 25 of the Constitution should be given effect by law like the Public Assistance Act, where the implementation of a healthy, cultural and minimum standard of living is vested in the discretionary power of the Minister of Health and Welfare, and, therefore, only when the decision of the Minister is made in excess of, and with abuse of, the power bestowed by the law, against the objects of the Constitution and the Act, by ignoring the real condition of life and establishing an extremely low standard, would such decision be subject to judicial review as an illegal action.)

Itoh/Beer (1978), pp. 130-47;
PJSCQC, No. 10; Sup. Ct. WEB #28

Sup. Ct., 3rd P.B., J., Nov. 21, 1967, 21(9) Keishu 1245

The Door-to-Door Canvassing Case of 1967

Article 138, paragraph (1) of the Public Offices Election Act comprehensively prohibits door-to-door canvassing in the elections, even if it does not involve a substantial violation of the fairness of elections, such as bribing, intimidating, or inducing benefits to the electorate, or a clear and present danger of causing such harm.

Itoh/Beer (1978), pp. 149-51

Sup. Ct., G.B., J., Nov. 27, 1968, 22(12) Minshu 2808

As a result of the signing of the Treaty of Peace with Japan, it is impossible for those who have forfeited their overseas assets pursuant to Article 14, paragraph (a), (2) (1) of the Treaty to claim compensation from the Japanese Government for the damage caused by the loss of their overseas assets.

JAIL, No. 13, pp. 121-24

Sup. Ct., G.B., J., Apr. 2, 1969, 23(5) Keishu 685

The Case of the Zen-Shihou (All Japan Court Workers' Union), Sendai Division

[1] Article 98, paragraph (5) of the National Public Service Act (prior to the 1965 revision), which prohibits public

officials from striking or engaging in slowdown or other acts of dispute, and prohibits any person from attempting, conspiring to effect, instigating, or inciting such illegal acts, and Article 110, paragraph (1), item (xvii) of the Act, which provides criminal charges for any person who does illegal acts prohibited by the aforementioned provision, are not in violation of Articles 28, 11, 97, and 18, and the Preamble of the Constitution. [2] Article 110, paragraph (1), item (xvii) of the Act is not in violation of Articles 21 and 31 of the Constitution.

Itoh/Beer (1978), pp. 103-30

Sup. Ct., G.B., J., Jun. 25, 1969, 23(7) Keishu 975

The Wakayama Jiji Evening Post Case

Although Article 230-2, paragraph (1) of the Penal Code, which decriminalizes defamation relating to matters of public interest and have been conducted solely for the benefit of the public, and the alleged facts are proven to be true, even in the case of no proof of the truth of the alleged facts, it is not criminalized when the offender mistakenly believed in the existence of the facts or there were sufficient grounds for his mistaken belief. (The provision of the Code reconciles the honor of an individual as the dignity of the person and the freedom of speech guaranteed by Article 21 of the Constitution.)

Itoh/Beer (1978), pp. 175-78; PJSCQC, No. 11; Sup. Ct. WEB #32

Sup. Ct., 2nd P.B., J., Jul. 4, 1969, 23(8) Minshu 1321

As a result of the signing of the Treaty of Peace with Japan, it is impossible for those who have forfeited their right to claim damages pursuant to Article 19, paragraph (a) of the Treaty to claim compensation from the Japanese Government for damages resulting from such forfeiture.

JAIL, No. 14, pp. 83-88

Sup. Ct., G.B., J., Oct. 15, 1969, 23(10) Keishu 1239

Marquis de Sade's In Praise of Vice (les Prospérités du vice) Case

[1] Even if a document has artistic or ideological value, it may be considered obscene. [2] The obscenity of the passages of a document must be assessed in relation to the document as a whole. [3] Neither the freedom of expression guaranteed by Article 21 of the Constitution nor academic freedom guaranteed by Article 23 of the Constitution are absolutely unlimited; both are subject to the limitations of public welfare.

Itoh/Beer (1978), pp. 183-217

Sup. Ct., G.B., D., Nov. 26, 1969, 23(11) Keishu 1490

The Case Regarding the Court Order Demanding Submission of the News Films on Incidents in the Hakata Station

Whether a court's order demanding news media to submit the news films is affirmed should be determined by considering the character, mode, and gravity of the crime that is the object of the trial, the evidentiary value of the data, and the necessity for the realization of a fair criminal trial. Further, the degree of curtailment of the freedom of news-gathering that would occur when news media are obliged to submit their collected data as evidence should be balanced against the extent of its consequential influence upon the freedom of news reporting and other relevant considerations. Even when the use of the data as evidence in a criminal trial is considered inevitable, due regard should be made lest the disadvantage suffered by news media should exceed the indispensable degree. (Restriction to the freedom of news-gathering is admitted for the purpose of the realiza-

tion of a fair criminal trial, because a fair criminal trial is one of the State's fundamental requests and revealing the true facts is demanded in criminal trials.)

Itoh/Beer (1978), pp. 246-50;
PJSCQC, No. 12; Sup. Ct. WEB #33

Sup. Ct., G.B., J., Dec. 24, 1969, 23(12) Keishu 1625

The Kyoto-fu Gakuren (Federation of Leftist Students' Self-Governing Associations) Case

[1] The provisions of the Kyoto City Ordinance on Public Safety, which entitles the chief of police to regulate citizen's assembly, marching, and demonstration, are not in violation of Article 21 of the Constitution. [2] Every person has the right not to have his/her face or appearance photographed without consent or a legitimate reason, and if a police officer, without a legitimate reason, photographed a citizen's face or appearance, this violates the purport of Article 13 of the Constitution. (The Supreme Court accepted that, *ipso facto*, portrait rights are guaranteed by Article 13 of the Constitution.) [3] If a police officer photographed the face or appearance of a citizen under circumstances in which a crime is being committed or immediately following the commission of a crime, when there is an urgent need to preserve the evidence, and the photographs were taken using an appropriate method within generally allowable limits, the police officer's act does not violate Articles 13 and 35 of the Constitution, even if the photographs have been taken without the citizen's consent or a warrant issued by a judge.

Itoh/Beer (1978), pp. 178-82;
Sup. Ct. WEB #34

Sup. Ct., G.B., J., Jun. 17, 1970, 24(6) Keishu 280

Article 1, item (xxxiii) of the Misdemeanor Act, which punishes placing a bill or poster on the house of another person or another's property without due cause, is not in violation of Article 21, paragraph (1) of the Constitution.

Itoh/Beer (1978), pp. 244-46

Sup. Ct., G.B., J., Jun. 24, 1970, 24(6) Minshu 625

The Yawata Iron & Steel Case

People's rights guaranteed by Chapter III of the Constitution apply to domestic corporations, insofar as it is possible by its nature. A corporation can freely contribute political funds to political parties as part of its freedom of political action, so long as such contributions are not contrary to the public welfare.

Beer/Itoh (1996), pp. 406-21;
Bälz et al. (2012), pp. 332-38

Sup. Ct., 2nd P.B., J., Oct. 16, 1970, 24(11) Minshu 1512

A legal action for revocation of the denial of an application for a re-entry permit for the purpose of participating in an event in North Korea loses the benefits of the legal action, when approximately one month has lapsed from the occurrence of the event.

Itoh/Beer (1978), pp. 81-84;
JAIL, No. 16, pp. 77-79

Sup. Ct., G.B., J., Nov. 25, 1970, 24(12) Keishu 1670

[1] If a defendant was subjected to mental pressure through fraudulent means and was likely to make a false confession as a result, the evidentiary capacity of the confession should be denied based on doubts as to its voluntariness. [2] Admitting such confession as evidence violates not only Article 319, paragraph (1) of the Code of Criminal Procedure but also Article 38, paragraph (2) of the Constitution.

Sup. Ct. WEB #36

Sup. Ct., G.B., J., Nov. 22, 1972, 26(9) Keishu 554

The Kawasaki Minsho (Communist Commercial and Industrial Association) Case

[1] Although Article 35, paragraph (1) of the Constitution purports to guarantee that compulsory procedures in pursuit of criminal responsibilities be primarily placed under the prior constraint of judicial power, coercions in administrative procedure not in pursuit of criminal responsibilities is also a matter within the purview of Article 35 paragraph (1) of the Constitution. [2] An inspection under Article 63 and Article 77, item (xi) of the Income Tax Act (prior to the 1969 revision), even without a warrant issued by a judge, are not in violation of Article 35, paragraph (1) of the Constitution. [3] The guarantee of Article 38, paragraph (1) of the Constitution extends equally to proceedings that are not solely criminal procedures, but substantively have the effect of directly resulting in data collection in pursuit of criminal responsibility. [4] The questions and inspections under Article 63, Article 77, items (xi) and (xii) of the Income Tax Act (prior to the 1969 revision) do not constitute compulsion to testify against oneself prohibited by Article 38, paragraph (1) of the Constitution.

Beer/Itoh (1996), pp. 423-27

Sup. Ct., G.B., J., Nov. 22, 1972, 26(9) Keishu 586

The Case Regarding the Act on Special Measures for the Adjustment of Retail Business

[1] For the State to positively promote the sound development of the national economy and stability of people's lives, and achieve a balanced and harmonious development of the entire social economy, it is not prohibited by the Constitution to take certain regulatory measures through legislation against individual economic activities as a means of implementing its social and economic policies, as long as such measures are necessary and within reasonable limits to achieve the objectives of the law. [2] A court may declare unconstitutional a legal regulatory measure against the economic activity of an individual only when it is clear that the legislature has abused its discretion and the legal regulatory measure is extremely unreasonable. [3] The regulation of retail market licenses as prescribed in Article 3, paragraph (1) of the Act on Special Measures for the Adjustment of Retail Business, which authorizes a prefectural governor to permit the opening and operation of a retail market (unless its location is deemed improper), and Articles 1 and 2 of the Enforcement Order of the Act on Special Measures for the Adjustment of Retail Business are not in violation of Article 22, paragraph (1), and Article 14 of the Constitution.

Beer/Itoh (1996), pp. 183-88

Sup. Ct., G.B., J., Dec. 20, 1972, 26(10) Keishu 631

The Takada Case

[1] Article 37, paragraph (1) of the Constitution not only requires that legislative and judicial administration measures be taken to generally guarantee a speedy trial, but also allows the emergency relief of discontinuing the proceedings if, in individual criminal cases, an extraordinary situation exists in violation of the guaranteed right to a speedy trial, where the defendant's right appears to have been violated due to a significant delay in the proceedings. [2] Whether a delay in the proceedings of a criminal case constitutes a violation of the speedy trial guarantee should not be simply determined by the length of the delay, but also by considering the cause of the delay and other factors from a comprehensive perspective, such as whether

the delay can be regarded as unavoidable, and to what extent the interests to be protected under the guarantee have actually been violated by the delay. For instance, even if the proceedings took a long time, when such delay was due to the complexity of the case, or was mainly caused by the defendant—e.g., the defendant's abscondence, refusal to appear in court, and dilatory tactics—it cannot be said that the defendant's right to speedy trial has been violated. [3] During the pendency in court of a criminal case, when a situation exists in violation of the guarantee of a speedy trial, it is reasonable to release the defendant from trial by judgment.

Beer/Itoh (1996), pp. 434-43; Sup. Ct. WEB #37

Sup. Ct., G.B., J., Apr. 4, 1973, 27(3) Keishu 265

The Tochigi Yaita Parenticide Case (The Case on Constitutionality of the More Severe Punishment of the Murder of a Lineal Ascendant)

Article 200 of the Penal Code, which provides that a person who kills his/her own or his/her spouse's lineal ascendants shall be punished by death or life imprisonment, is in violation of Article 14, paragraph (1) of the Constitution.

Beer/Itoh (1996), pp. 143-70; PJSCQC, No. 13; Sup. Ct. WEB #38

Sup. Ct., G.B., J., Apr. 25, 1973, 27(4) Keishu 547

The Case Regarding the Political Strike against Amendment of the Police Duties Execution Act by the Zen-Nourin (All Japan Union of Workers of the Ministry of Agriculture and Forestry)

[1] Article 98, paragraph (5) of the National Public Service Act (prior to the 1965 revision), which prohibits public employees from striking or engaging in slowdown or other acts of dispute, and prohibits any person from attempting, or conspiring to effect, instigating, or inciting such illegal acts; and Article 110, paragraph (1), item (xvii) of the Act, which provides criminal charges for any person who performs illegal acts prohibited by the aforementioned provision, are not in violation of Article 28 of the Constitution. [2] Article 110, paragraph (1), item (xvii) of the Act is not in violation of Articles 18, 21, and 31 of the Constitution.

Beer/Itoh (1996), pp. 244-86; PJSCQC, No. 14; Sup. Ct. WEB #39

Sup. Ct., G.B., J., Dec. 12, 1973, 27(11) Minshu 1536

The Mitsubishi Plastics Case

[1] Although the provisions of Articles 19 and 14 of the Constitution are not directly applicable to relations between private parties, between relations of de facto private domination resulting from differences in social power relations, a specific infringement or threat on the freedom or equality guaranteed by these provisions, in case the manner and degree of such infringement exceed socially acceptable limits, can be recovered through remedial measures taken by the legislature, or a proper adjustment between the principle of private autonomy, and the benefits of fundamental freedom and equality can be given by the proper application of Articles 1 and 90 of the Civil Code (which provide a general limitation on private autonomy) and other provisions relating to illegal acts. (The provisions of the Constitution are aimed at the protection of the fundamental freedom and equality of individuals from actions of the State or public entities and are not expected to directly regulate the mutual relations between private parties.) [2] An employer enjoys the freedom to enter into contracts (Article 22, paragraph (1) and Article 29, paragraph (1) of the Constitution guarantee an employer the right to broad economic activities, including freedom of em-

ployment), consequently it is not illegal for an employer to refuse to employ a worker who possesses certain thoughts and creeds. [3] It is not illegal for an employer, when deciding whether to employ a worker, to investigate the thoughts and creeds of a candidate.

Beer/Itoh (1996), pp. 170-79;
Bälz et al. (2012), pp. 151-58;
PJSCQC, No. 15; Sup. Ct. WEB #41

Sup. Ct., 3rd P.B., J., Jul. 19, 1974, 28(5) Minshu 790

The Showa Women's University Case

If a private university prescribes in its school rules that the school authorities should be notified in advance of a signature campaign by a student and that a student should obtain permission from the school authorities prior to joining any external organization this is because it is undesirable from an educational perspective to allow students to participate in signature campaigns for political purposes or join external organizations intended for political activities, in light of the school characteristics and educational policies based on its philosophy. This cannot be immediately considered an unreasonable regulation on the freedom of political activities of the students. (Since Articles 19, 21, and 23 of the Constitution are exclusively applicable to the relationship between a private person and the State, and not applicable to the relationship between private parties, the school rules of a private university do not raise a constitutional problem.)

Beer/Itoh (1996), pp. 569-75;
Sup. Ct. WEB #1885

Sup. Ct., G.B., J., Nov. 6, 1974, 28(9) Keishu 393

The Sarufutsu Case

[1] The prohibition on the posting or distribution of a document with the political purpose of supporting a specific political party, under Article 102, paragraph (1) of the National Public Service Act and paragraph (5), item (iii) and paragraph (6), item (xiii) of the Rules of the National Personnel Authority 14-7, does not violate Article 21 of the Constitution. [2] The penal provision for the violation of the restrictions on political acts provided by the aforementioned Article, prescribed in Article 110, paragraph (1), item (xix) of the Act, is not in violation of Articles 31 and 21 of the Constitution. [3] The delegation of authority in accordance with the Rules of the National Personnel Authority under Article 102, paragraph (1) of the Act cannot be considered as an unconstitutional delegation of legislation. [4] The application of the penal provisions of Article 110, paragraph (1), item (xix) of the Act to the posting or distribution of a document in this case that violates the prohibition under Article 102, paragraph (1) of the Act and paragraph (5), item (iii) and paragraph (6), item (xiii) of the Rules, does not violate Articles 21 and 31 of the Constitution, even when the posting or distribution was conducted by a non-managerial public employee of a government enterprise whose duty is just to provide routine labor outside working hours, without utilizing the State's facility and without exploiting their official capacities, or without the intention to harm the fairness of the exercise thereof, and the posting or distribution was conducted as part of labor union activities.

Beer/Itoh (1996), pp. 522-43;
Sup. Ct. WEB #1886

Sup. Ct., G.B., J., Apr. 30, 1975, 29(4) Minshu 572

The Pharmaceutical Affairs Act Case

Paragraphs (2) and (4) of Article 6 of the Pharmaceutical Affairs Act stipulate that the prefectural governor may refuse permission to establish a pharmacy if its location is deemed improper—as well as Article 26, paragraph (2)

of the Act, which applies mutatis mutandis to the general sales business of pharmaceutical products—are in violation of Article 22, paragraph (1) of the Constitution.

Beer/Itoh (1996), pp. 188-99;
PJSCQC, No. 16; Sup. Ct. WEB #42

Sup. Ct., G.B., J., Sep. 10, 1975, 29(8) Keishu 489

The Case Regarding the Tokushima City Ordinance on Public Safety

[1] Although Article 3, paragraph (3), item (iii) of the Tokushima City Ordinance on Public Safety and Article 77, paragraph (1), item (iv) of the Road Traffic Act partially overlap, the provision of the Ordinance is not in violation of the provision of the Act. (In order to decide whether an ordinance contravene an act, the coverage and language of the provisions should be compared, as well as their purpose, object, content, and effect, and determine whether there are contradictions.) [2] Whether the penal regulations violate the Constitution due to their ambiguity should be decided based on whether ordinary people can understand the criteria by which they can make a decision on the applicability of the Act in a specific case. [3] Article 3, paragraph (3) of the Tokushima City Ordinance stipulates the matter of "to maintain traffic order" to be observed for a demonstration march. This phrase is for preventing an act which causes a particular hindrance of traffic order that exceeds the level of the hindrance of traffic order accompanying a normal march. Under this understanding, this provision does not contain an ambiguity that would lead to a violation of the Constitution because it is regarded as a crime-constituting condition as provided in Article 5 of the Ordinance.

Beer/Itoh (1996), pp. 547-67;
Sup. Ct. WEB #44

Sup. Ct., G.B., J., Apr. 14, 1976, 30(3) Minshu 223

The Malapportionment Case (1972 House of Representatives Election)

[1] Article 14, paragraph (1), Article 15, paragraphs (1) and (3), and the proviso to Article 44 of the Constitution require that in the election of members of both Houses of the Diet, the value of each vote by each voter be equal, and it is in violation of these provisions if there exists in the value of voters that which cannot be reasonably accepted as the result of political purposes and factors properly taken into consideration by the Diet. [2] The provisions on the election districts and the apportionment of the seats prescribed in Article 13 of the Public Offices Election Act, Appended Table 1, and Supplementary Provisions (7) through (9) of the Act (prior to the 1975 revision) are, as a whole, in violation of Article 14, paragraph (1), Article 15, paragraphs (1) and (3), and the proviso to Article 44 of the Constitution, at the time of the election for members of the House of Representatives in 1972. [3] If the election was conducted under the unconstitutional apportionment provision and was illegal, a ruling to nullify its validity for this reason not only has not an immediate effect of rectifying the unconstitutional state of affairs but also might bring about a result that the Constitution does not necessarily intend. In this situation, the court should dismiss the demand for the nullification of the validity of the election but declare in the main text that the election at issue is illegal, in accordance with the basic principle of law contained in the intent of Article 31, paragraph (1) of the Administrative Case Litigation Act.

Beer/Itoh (1996), pp. 355-75;
PJSCQC, No. 17; Sup. Ct. WEB #48

Sup. Ct., G.B., J., May 21, 1976, 30(5) Keishu 615

The Asahikawa Proficiency Test Case

[1] Although the Minister of Education, Science, Sports and Culture cannot request local boards of education to conduct surveys, such as the 1961 National Achievement Survey for Junior High School, based on the provisions of Article 54, paragraph (2) of the Act on the Organization and Operation of Local Educational Administration, a survey voluntarily conducted by the local boards in response to the Minister's request does not, therefore, constitute a procedural violation (because local boards have their own authority to conduct such surveys under Article 23, item (xvii) of the Act. [2] Under the Constitution, parents have a certain amount of freedom regarding their children's education, and the freedom of private education as well as the teacher's freedom of instruction to a limited extent. However, outside of these areas, the State has the power to determine the content of a child's education to the extent that it is deemed necessary and proper to respond to the public interest and concern for children's growth and development, as well as provide for the wellbeing of children themselves. (Both views that the State can exclusively determine the content of education and that school teachers can exclusively determine the content of education are extreme and one-sided, and neither can be adopted.) [3] The regulation by an educational administrative organ of the content and methods of education that is deemed necessary and reasonable for permissible purposes in accordance with laws does not constitute "undue control" over education that is prohibited by Article 10, paragraph (1) of the Basic Act on Education (prior to the 2006 revision). [4] The 1961 National Achievement Survey for Junior High School does not constitute "undue control" over education as prohibited by Article 10, paragraph (1) of the Basic Act on Education (prior to the 2006 revision). [5] Although the Minister's request to local boards of education to conduct the 1961 National Achievement Survey for Junior High School based on the provisions of Article 54, paragraph (2) of the Act on the Organization and Operation of Local Educational Administration violates the principle of local autonomy in education, the survey itself conducted by the local boards in response to the Minister's request does not become illegal.

Beer/Itoh (1996), pp. 230-43

Sup. Ct., G.B., J., May 21, 1976, 30(5) Keishu 1178

The Iwate Teachers' Union Proficiency Test Case

[1] Article 37 paragraph (1) of the Local Public Service Act, which prohibits local government employees from striking or engaging in slowdown or other acts of dispute, and prohibits any person from attempting, conspiring to effect, instigating, or inciting such illegal acts, is not in violation of Article 28 of the Constitution. Article 61, item (iv), which provides criminal charges for any person who does any of the illegal acts prohibited by the aforementioned provision, is not in violation of Articles 18 and 28 of the Constitution. [2] Article 61, item (iv) of the Act does not distinguish between acts that are highly illegal and those that are weakly illegal. It also provides for the punishment of attempting, conspiring to effect, instigating, or inciting the illegal acts, without exception.

Beer/Itoh (1996), pp.313-23

Sup. Ct., G.B., J., May 4, 1977, 31(3) Keishu 182

The Case of the Zentei (Japan Postal Workers' Union) in the Nagoya Central Post Office

Article 17, paragraph (1) of the Public-Sector Corporation and National Enterprise Labor Relations Act, which prohibits employees or their union from striking or engaging in slowdown or other acts of dispute, and prohibits employees or members of the union from attempting, conspiring to effect, instigating, or inciting such prohibited acts, is not in violation of Article 28 of the Constitution.

Beer/Itoh (1996), pp. 287-314

Sup. Ct., G.B., J., Jul. 13, 1977, 31(4) Minshu 533

The Tsu City Shinto Groundbreaking Ceremony Case

[1] The constitutional principle of separation of religion and State (prescribed in the second sentence of Article 20, paragraphs (1) and (3), and Article 89 of the Constitution) requires that the State be religiously neutral, but it does not prohibit all State connection with religion. It prohibits State connection with religion that is deemed—when Japanese social and cultural conditions and the purpose and effects of the State activity are taken into consideration—to exceed a reasonable standard in consonance with the fundamental objective of the system, namely the guarantee of religious freedom. [2] "Religious activity" prohibited by Article 20, paragraph (3) of the Constitution does not mean all conduct of the State and its organs related to religion, but conduct whose purpose has a religious significance and whose effect is to subsidize, promote, or, conversely, suppress or interfere with religion. [3] Although a city-sponsored groundbreaking ceremony for a municipal gymnasium held under Shinto rites is undeniably connected to religion, it is deemed to have the wholly secular purpose of marking the start of construction by a rite performed in accordance with the general social custom of praying for a stable building foundation and accident-free construction work, and its effects are not deemed to subsidize or promote Shinto, or, conversely, to suppress or interfere with any other religion; thus, it does not constitute "religious activity" prohibited by Article 20, paragraph (3) of the Constitution.

Beer/Itoh (1996), pp.478-91;
Sup. Ct. WEB #51

Sup. Ct., 1st P.B., D., May 31, 1978, 32(3) Keishu 457

The Nishiyama Case (Forced Leak of a Secret of the State)

[1] A "secret" (an object of a public official's obligation to preserve secrecy) as referred to in Article 109, item (xii) and Article 100, paragraph (1) of the National Public Service Act means a fact that is not publicly known and is substantially worthy of protection as a secret. A determination on whether a fact falls under the secret is subject to a judicial decision. [2] A secret agreement about financial resources of the rights claimable against the United States caused in association with the Okinawa Reversion Agreement is not an agreement based on which the Japanese Government took an action that can be considered to conflict with the constitutional order; thus, it is not an illegal secret. [3] Instigating to divulge a secret (prescribed in Article 111 of the Act) means to commit a soliciting act that is sufficient to have public officials newly make a decision to perform the act of divulging a secret prescribed in Article 109, item (xii) and Article 100, paragraph (1) of the Act for the purpose of having the public officials perform that act. [4] Even if a journalist instigates a public official to divulge a secret, the illegality of such an act is not immediately presumed. As long as the act is committed truly for the purpose of news reporting and the means and method thereof can be approved in

terms of social common sense as being reasonable in light of the spirit of the whole legal order, the act substantially lacks illegality and is considered to be an act done in pursuit of a lawful business. [5] The accused's act of news-gathering in this case that extremely abused the dignity of the person targeted for news-gathering, including the act of having sexual relations with the female public official solely with the intention from the beginning of using her as a means for obtaining secret documents and having her bring out secret documents, by taking advantage of the situation where she had fallen into a mental state where it was difficult to refuse the accused's requests due to their sexual relations, deviates from the scope of justifiable news-gathering activities.

Beer/Itoh (1996), pp. 543-47;
Sup. Ct. WEB #1846

Sup. Ct., G.B., J., Jul. 12, 1978, 32(5) Minshu 946

The Case Regarding the Act on Special Measures Concerning Sale of National Cropland

Article 2 of the Act on Special Measures Concerning Sale of National Cropland, Article 2 of the Supplementary Provisions of the Act, and Article 1 of the Enforcement Order Concerning the Act, which only allow the former landowner to buy back the land from the government at a price equivalent to 70% of its market value, are not in violation of Article 29 of the Constitution. (In this case, the former landowner, who attempted to buy back his farmland, which was taken over by the government under the land reform, at a price equivalent to the price of the takeover, in accordance with Article 80, paragraph (2) of the Cropland Act prior to the revision. Subsequently, however, the Act on the Special Measures only allows him to buy the land at a price equivalent to 70% of its market value. Since the price of land skyrocketed after the land reform, he needed to pay more money to buy back his land. He argued that the Act, which was later established, violates his right to buy back the land at a price equal to the price upon takeover, and the Act on the Special Measures is in violation of Article 29 of the Constitution. The Supreme Court, however, refused his claim because Article 29, paragraph (2) provides that "Property rights shall be defined by law, in conformity with the public welfare.")

Sup. Ct. WEB #58

Sup. Ct., 1st P.B., J., Sep. 7, 1978, 32(6) Keishu 1672

The admissibility of evidence should be denied if the process by which it was obtained or seized was seriously illegal to such extent that would annul the purport of the principle of warrant as provided in Article 35 of the Constitution and contemplated in Article 218, paragraph (1) of the Code of Criminal Procedure, and it appeared to be unreasonable from the perspective of preventing illegal investigation in the future to admit such real evidence.

Beer/Itoh (1996), pp. 427-34;
Sup. Ct. WEB #55

Sup. Ct., G.B., J., Oct. 4, 1978, 32(7) Minshu 1223

The McLean Case

[1] Foreign nationals are not guaranteed the right to sojourn or to demand its continuation. [2] The determination of the existence of a reasonable ground for finding the renewal of the term of the sojourn to be appropriate on the basis of Article 21 paragraph (3) of the Cabinet Order on Immigration Control (later, the Immigration Control and Refugee Recognition Act) is left to the discretion of the Minister of Justice, and unless there are grounds

for refusal of disembarkation or similar to those for compulsory deportation, it is permissible to refuse the renewal. [3] The constitutional guarantee of the freedom of political activities extends to foreign nationals staying in Japan, except activities that are considered to be inappropriate, taking into account the status as a foreign national, such as activities which have an influence on political decision-making and its implementation in Japan. [4] The constitutional guarantee of fundamental human rights for foreign nationals does not extend as far as to bind the exercise of the discretionary power of the State. It does not include the guarantee that acts guaranteed as fundamental human rights under the Constitution during the sojourn shall not be considered as negative circumstances in renewing the term of the sojourn. [5] The activities of the appellant in this case cannot be instantly regarded as being outside the scope of the constitutional guarantee as political activities of a foreign national during the sojourn, but it cannot be denied that these activities constituted criticizing the immigration policy of Japan or criticizing the basic foreign policy of Japan and may affect the friendly relationship between Japan and the United States. Even if the Minister of Justice, after taking into account those activities, decided that there was no reasonable ground to find it appropriate to renew the term of sojourn, it cannot be considered an excess of the scope of discretionary power or abuse of discretionary power.

Beer/Itoh (1996), pp. 471-78;
JAIL, No. 23, pp. 177-84;
Sup. Ct. WEB #56

Sup. Ct., 2nd P.B., D., Jun. 13, 1979, 33(4) Keishu 348

The Participative Assistant Judgeship Case

The Rules of the Supreme Court allow an assistant judge (with less than 10 years' experience) to sit in trials, attend hearings, and express their opinions on a case, while it is handled by a judge pursuant to Article 26, paragraph (1) of the Court Act, and the judge handling the case is a judge with more 10 years of experience. The purpose of this participation in the trial is to instruct and train assistant judges to become good judges in the future; it does not mean a two-judge panel trial system. This participative assistant judgeship is not in violation of Articles 32, 37, 76, 77, and 31 of the Constitution.

Beer/Itoh (1996), pp. 67-69

Sup. Ct., 3rd P.B., J., Jul. 24, 1979, 33(5) Keishu 416

[1] If the accused had indicated no intention of mounting a valid defense through the state-assigned defense counsel, the court can accept the state-assigned defense counsel's intention to resign and order his/her dismissal. [2] In this situation, even if the defendant petitioned for the assignment of another state-assigned counsel, the rejection by the court of the petition is reasonable and is not in violation of Article 37, paragraph (3) of the Constitution.

Beer/Itoh (1996), pp. 443-48;
Sup. Ct. WEB #59

Sup. Ct., 1st P.B., J., Dec. 20, 1979, 33(7) Keishu 1074

[1] The "reporting or commentary" on elections prohibited by Article 235-2, item (ii) of the Public Offices Election Act with penalties for impairing the fairness of elections does not cover all reporting or commentary on the elections but rather, reporting or commentary that may favor or disfavor a particular candidate. [2] Even if a newspaper or magazine, on its face, meets the requirements of Article 235-2, item (ii) of the Act, it would not be criminalized

when it is truly fair in its reporting and commentary. [3] According to Article 148, paragraph (3), item (i) (a) of the Act, newspapers which are published "at least three times a month" may be published during the election campaign period. This condition for the publication of newspapers does not violate Articles 21 and 14 of the Constitution.

Beer/Itoh (1996), pp. 604-06

Sup. Ct., 3rd P.B., D., Mar. 6, 1980, 956 Hanji 32

The Shimada Case (Reporter's Right to Protect the News Source)

Sapporo High Court ruled that a newspaper reporter as a witness in a civil suit may refuse to testify because the reporter's news source constitutes a "professional secret" under Article 281, paragraph (1), item (iii) of the Code of Civil Procedure (prior to the 1996 revision). The special appeal to the Supreme Court against this decision should be denied because such appeal is not permitted by the Code.

Beer/Itoh (1996), pp. 567-68

Sup. Ct., G.B., D., Nov. 5, 1980, 34(6) Minshu 765

The provisions of Chapter II of the Act on Limitation of Shipowner Liability, which limits the liability of shipowners for certain claims arising from navigation, are not in violation of Article 29, paragraphs (1) and (2), of the Constitution.

JAIL, No. 26, pp. 118-24;
Sup. Ct. WEB #62

Sup. Ct., 2nd P.B., J., Nov. 28, 1980, 34(6) Keishu 433

The Yojohan Fusuma-no Shitabari Case

When determining the obscenity of a document, it is necessary to consider various points, such as the degree and method of vivid and detailed sexual descriptions and depictions in the document, importance of the aforementioned descriptions and depictions in the entire document, association between thoughts expressed in the document and the aforementioned descriptions and depictions, structure and development of the document, degree to which sexual stimulus is moderated by the artistry and thoughts of the document, and whether the document is found to appeal mainly to the readers' amorous interest when observing it as a whole. It is necessary to determine whether the document can be considered as "one that unnecessarily arouses or stimulates sexual desire and harms the normal sexual sense of shame of ordinary people and therefore goes against their good sexual morals" in light of the common sense of the time in a comprehensive consideration of these circumstances.

Beer/Itoh (1996), pp. 468-71;
Sup. Ct. WEB #1847

Sup. Ct., 1st P.B., D., Dec. 17, 1980, 34(7) Keishu 721

The L'Empire des sens (Ai no Corrida) Case

Even if a district court has ruled that a publication does not constitute an "obscene document" under Article 175 of the Penal Code, if the judgment has not become final and binding, the investigating authority may search and seize the publication.

Beer/Itoh (1996), pp. 449-53

Sup. Ct., 3rd P.B., J., Dec. 23, 1980, 34(7) Minshu 959

The Zentei (Japan Postal Workers' Union) Placard Case

It does not violate Article 21 of the Constitution to take disciplinary action against violations of the provisions prohibiting public officials from engaging in any political acts, found in Article 102, paragraph (1) of the National Public Service Act and paragraph (5),

item (iv) and paragraph (6), item (xiii) of the Rules of the National Personnel Authority 14-7.

Sup. Ct. WEB #1848

Sup. Ct., 3rd P.B., J., Mar. 24, 1981, 35(2) Minshu 300

The Nissan Motor Case

If in its rules of employment a company sets the mandatory retirement age for men and women at 60 and 55, respectively, if there is no rational reason found for discriminating women in terms of the mandatory retirement age from the perspective of the company's business management, the part setting a lower mandatory retirement age for women than for men in the rules of employment is invalid, pursuant to the provisions of Article 90 of the Civil Code on unreasonable discrimination based only on sex. Duties handled by women cover a considerably wide range, and there is thus no ground for considering all female employees as employees whose contribution to the company would not increase. There is no imbalance wherein the real wages of female employees are increased although the quality and quantity of labor are not improved. Neither men nor women lack the ability to perform their ordinary duties at the company at least up to the age of around 60, and there is thus no reason for uniformly considering female employees as being unqualified as employees and removing them from the company.

Beer/Itoh (1996), pp. 179-81;
Sup. Ct. WEB #1849

Sup. Ct., 3rd P.B., J., Apr. 7, 1981, 35(3) Minshu 443

The Wooden Mandala Case

Even if a suit takes the form of a dispute over concrete rights and duties or legal relations, if it is necessary to determine religious doctrine or the value of an object of faith as an a priori issue for deciding the claim, and such determination is the core of the dispute, such suits are not a "legal disputes" which Article 3 of the Court Act allows courts to deal with.

Sup. Ct. WEB #67

Sup. Ct., 3rd P.B., J., Apr. 14, 1981, 35(3) Minshu 620

The Criminal Record Inquiry Case

When the mayor responds to an inquiry regarding a person's previous convictions and criminal records by an attorney pursuant to Article 23-2 of the Attorneys Act, negligently and carelessly responds to the inquiry, and reports all of the person's previous convictions and criminal records, this constitutes an illegal negligent exercise of the public authority of the State.

Sup. Ct. WEB #1850

Sup. Ct., 1st P.B., J., Apr. 16, 1981, 35(3) Keishu 84

The Gekkan Pen Monthly Case

[1] Even the behavior of a private person in private life possibly falls under the "matters of public interest," for which Article 230-2, paragraph (1) of the Penal Code discharges defamation of the actor as material for criticizing or evaluating the social activities of the private person, depending on the social activities and degree of influence on the society he exerts. [2] Whether the revealed fact falls under the "matters of public interest" in Article 230-2, paragraph (1) of the Penal Code should be objectively determined in light of the content and nature of the revealed fact. The method of expression when revealing a fact and degree of investigation of the fact should be used when considering whether the revealing was conducted for the benefit of the public, and they are not relevant in determining whether the revealed fact falls under the "matters of public interest."

Sup. Ct. WEB #1812

Sup. Ct., 3rd P.B., J., Jul. 21, 1981, 35(5) Keishu 568

The Door-to-Door Canvassing Case of 1981

The provisions of Article 138 and Article 239, item (iii) of the Public Offices Election Act, which prohibit making a door-to-door canvassing for the purpose of getting a vote for an election, are not in violation of the Preamble and Articles 15, 21, and 14 of the Constitution.

Beer/Itoh (1996), pp. 598-604;
Sup. Ct. WEB #1813

Sup. Ct., G.B., J., Dec. 16, 1981, 35(10) Minshu 1369

The Osaka International Airport Case

Civil litigation concerning public environmental pollution to demand an injunction against the use of a national airport for aircraft takeoffs and landings during nighttime is not permissible (because the Minister of Transportation has the right to control an airport and administrative authority over aviation). Claims for damages of residents around the airport for past noise are granted, but not for potential future damages.

PJSCQC, No. 18; Sup. Ct. WEB #66

Sup. Ct., 1st P.B., J., Apr. 8, 1982, 36(4) Minshu 594

The Iyenaga Textbook Case, II

When the new Courses of Study are entirely implemented as a result of its revision, in principle, an action for the revocation of failure to pass the school textbook authorization under Articles 10 and 11 of the former Textbook Authorization Ordinance established under the former Courses of Study must fail because of lack of standing to sue.

Beer/Itoh (1996), pp. 516-22

Sup. Ct., G.B., J., Jul. 7, 1982, 36(7) Minshu 1235

The Horiki Case

[1] Article 4(3)(iii) of the Child Rearing Allowance Act (prior to the 1973 revision), which does not pay allowance for mothers eligible to receive a public pension (in this case, disability pension), is not in violation of Article 25 of the Constitution. [2] Article 4(3)(iii) of the Act is not in violation of Articles 14 and 13 of the Constitution. (The discretion of the administrative branch on the implementation of social security rights is broad.)

Beer/Itoh (1996), pp. 323-27;
Sup. Ct. WEB #68

Sup. Ct., 1st P.B., J., Sep. 9, 1982, 36(9) Minshu 1679

The Naganuma Nike Missile Site Case

[1] A "person who has a direct interest" in the designation of a forest reserve as stipulated in Article 27, paragraph (1) of the Forest Act has the standing to sue for cancellation of the forest reserve designation. [2] When alternative facilities for the designated forest reserve were established, the risk of floods or droughts eliminated, and therefore the necessity for the designated forest reserve ceased, those who had been granted standing to sue for cancellation of the forest reserve designation lose their standing to sue. [3] Any future risk arising from the use of land after the cancellation of the designation of a forest reserve does not entitle local residents standing to sue for cancellation of the designation of a forest reserve. (Although the district court ruled that the Preamble of the Constitution legally guarantees "the right to live in peace," and if the base of the Self-Defense Forces is constructed after the cancellation of the designation of the forest reserve, the right to live in peace of the residents around the area will be violated, and they will have the standing to sue for the cancellation of the designation, and thereafter declared that the Self-Defense Forces constituted "war potential," which Article 9, para-

graph (2) of the Constitution prohibits the State from maintaining, these judgments should be entirely invalid.)

Beer/Itoh (1996), pp. 122-30

Sup. Ct., 3rd P.B., J., Nov. 16, 1982, 36(11) Keishu 908

The Case Regarding a Demonstration March to Protest the Visiting of USS Enterprise at the United States Fleet Activities Sasebo

[1] The chief of a police station may refuse to grant permission under the provisions of Article 77, paragraph (1) of the Road Traffic Act with regard to a mass march on a road only in the case where the staging of the mass march causes extreme harm to the function of a road to be used for public traffic in light of the expected scale, mode, course, and time of the mass march, and it is also predicted that the occurrence of such situation cannot be prevented even by setting conditions under the provisions of paragraph (3) of the Article. [2] Although Article 77, paragraph (1), item (iv) of the Act and the provision of the former Nagasaki Prefectural Detailed Regulations for Enforcement of the Road Traffic Act require a person, who intends to use a road for a mass march, to obtain permission from the chief of a police station in advance, such regulation is not in violation of Article 21 because the cases where permission is not granted is strictly limited by setting forth clear and reasonable standards for granting permission and therefore the regulation is constitutionally accepted as necessary and reasonable restrictions on the freedom of expression based on public welfare. [3] Article 2 of the Special Criminal Act Attendant upon the Enforcement of the "Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, regarding Facilities and Areas and the Status of the United States Armed Forces in Japan" is not in violation of Article 31 of the Constitution.

Sup. Ct. WEB #1814

Sup. Ct., G.B., J., Apr. 27, 1983, 37(3) Minshu 345

The Malapportionment Case (1977 House of Councillors Election)

The provisions on the election districts and the apportionment of the seats prescribed in Article 14 of the Public Offices Election Act (prior to the 1982 revision) and Appended Table 2 of the Act are not in violation of Article 14, paragraph (1), Article 15, paragraphs (1) through (3) of Article 15, paragraph (1) of Article 43, and the proviso to Article 44 of the Constitution, at the time of the election for members of the House of Councillors election in 1977.

Beer/Itoh (1996), pp. 375-94; PJSCQC, No. 19; Sup. Ct. WEB #69

Sup. Ct., G.B., J., Jun. 22, 1983, 37(5) Minshu 793

The Case on Constitutionality of Deletion of the Newspaper Article on Yodogo (Japan Airlines Flight 351) Hijacking Incident

[1] Article 3, paragraph (2) of the Prison Act (abolished) and Article 86, paragraph (1) of the Enforcement Order for the Prison Act (abolished) which restrict pre-judgment detainees' freedom to read newspapers or books, are for the purpose of maintaining prison discipline and order, and are not in violation of Articles 13, 19 and 21 of the Constitution. These provisions are intended to permit restriction on freedom of reading only when there is a high likelihood that problems would occur to the extent that should not be left unsolved for the purpose of maintaining discipline and order of the detention center if reading were permitted under specific circumstances, and only within the limit that is necessary and reasonable to prevent the

occurrence of such problems. [2] Under the circumstances in which the detainees involved in public safety cases very frequently committed violent actions against the discipline and order in the detention center, the decision made by the head of the detention center to delete all articles in the newspaper available in the detention center that addressed the hijacking case that was committed by the students belonging to the Red Army (left-wing terrorist faction) cannot be deemed illegal.

Sup. Ct. WEB #71

Sup. Ct., 2nd P.B., J., Nov. 25, 1983, 30(5) Shogetsu 826

It should be understood that a person who had legal status as a Taiwanese under Japanese domestic law lost Japanese nationality when the Treaty of Peace between the Republic of China and Japan came into effect on August 5, 1952, and such an interpretation should not be changed by the Joint Communique of the Government of Japan and the Government of the People's Republic of China.

JAIL, No. 28, pp. 181-89

Sup. Ct., 3rd P.B., J., Mar. 27, 1984, 38(5) Keishu 2037

[1] The guarantee of the right to refuse to testify against himself under the provisions of Article 38, paragraph (1) of the Constitution extends to questioning and examination procedures for a person suspected of having committed a violation under the National Tax Violations Control Act. [2] Questioning and examination procedures under the National Tax Violations Control Act are not in violation of Article 38, paragraph (1) of the Constitution, even if the Act has no provision on the notification of the right to refuse to testify and the notification has not been given to a person suspected of having committed a violation.

Sup. Ct. WEB #1815

Sup. Ct., 1st P.B., J., May 17, 1984, 38(7) Minshu 721

The Malapportionment Case (1981 Tokyo Metropolitan Assembly Election)

The provisions on the apportionment of seats of the Tokyo Metropolitan Ordinance for the Number of Seats, Electoral Districts, and the Number of Members in Each Electoral District for Members of the Tokyo Metropolitan Assembly were in violation of Article 15, paragraph (7) of the Public Offices Election Act at the time of the election for members of the Tokyo Metropolitan Assembly in 1981, because the maximum disparity between constituencies in terms of the number of voters per member reached 7.45 to 1 with respect to all electoral districts, and a reverse phenomenon in which the number of seats in an electoral district with a large population is smaller than the number of seats in an electoral district with a small population was also seen among some electoral districts.

Sup. Ct. WEB #1816

Sup. Ct., G.B., J., Dec. 12, 1984, 38(12) Minshu 1308

The Customs Inspection Case

[1] The former part of paragraph (2) of Article 21 of the Constitution absolutely prohibits the State from any censorship. This prohibition makes no exception from the perspective of the public welfare. [2] The meaning of "censorship" as provided in Article 21, paragraph (2) of the Constitution is, as a special quality, the prohibition by the administrative authorities of publication of what is judged inappropriate for the purpose of the prohibition of publication as a whole or a part, covering the matters of expression of substance of thought, conduct the comprehensive and general examination of the specific

matters of expression prior to its publication. [3] The customs official's inspection conducted in the procedure of the importation of both foreign goods and postal matters under the provisions of Article 21, paragraph (1), item (iii) of the Customs Tariff Act is not censorship prohibited by Article 21, paragraph (2) of the Constitution. [4] Restrictions on the importation of obscene expression from abroad under the provision of Article 21, paragraph (1), item (iii) of the Customs Tariff Act are not in violation of Article 21, paragraph (1) of the Constitution. [5] When a restrictive interpretation of the provisions of the law regulating the freedom of expression is to be permitted by its interpretation, matters must be clearly segregated as to whether it is, or it is not, the object of the regulation, and furthermore, only when it can clearly be the object of regulation that may be constitutionally regulated. Additionally it should be one that enables the general public to understand the criteria from the provision by which they can judge whether the matters in question come under the object of regulation in a concrete case. [6] "Books and drawings to injure public morals" regulated in Article 21, paragraph (1), item (iii) of the Customs Tariff Act should be construed to mean obscene books and drawings. This provision is not broad and vague, and therefore is not in violation of Article 21, paragraph (1) of the Constitution.

Beer/Itoh (1996), pp. 453-68; PJSCQC, No. 20; Sup. Ct. WEB #77

Sup. Ct., 3rd P.B., J., Dec. 18, 1984, 38(12) Keishu 3026

The Kichijoji Station (Speech and Flyers) Case

The accused repeatedly made speeches to passengers at the station's premises while distributing flyers without the permission of the station's staff and stayed within the station's premises for about 20 minutes, ignoring the demand to leave made by the station's manager. It does not violate Article 21, paragraph (1) of the Constitution to punish these acts of the accused by applying the provisions of Article 35 of the Railway Operation Act and the second sentence of Article 130 of the Penal Code.

Sup. Ct. WEB #1798

Sup. Ct., G.B., J., Mar. 27, 1985, 39(2) Minshu 247

The Salaried Employee Tax Case

[1] Treating taxpayers distinctively for the reason of differences in the nature of income as categorized in the field of tax law does not constitute a violation of Article 14, paragraph (1) of the Constitution, as far as the purpose of the legislation is reasonable and unless the actual way of distinction is proven extremely unreasonable in relation to the purpose. [2] Article 9, paragraph (1), item (v) of the Income Tax Act (prior to the 1965 revision), which does not allow a deduction for necessary expenses on actual terms in calculating the amount of salary income, is not in violation of Article 14, paragraph (1) of the Constitution

Sup. Ct. WEB #81

Sup. Ct., G.B., J., Jul. 17, 1985, 39(5) Minshu 1100

The Malapportionment Case (1983 House of Representatives Election)

[1] Article 13, paragraph (1) of the Public Offices Election Act, Appended Table 1 of the Act, and paragraphs (7) through (9) of the Supplementary Provisions of the Act were in violation of Article 14, paragraph (1) of the Constitution as a whole at the time of the election for members of the House of Representatives in 1983, because the maximum disparity between constituencies in terms of the number of voters per member reached 4.40 to 1, and it had reached a degree that violated

the requirement of equality of voting rights, and the rectification has not been made within a reasonable period of time as required by the Constitution. [2] Even in cases where an election for the House of Representatives is illegal because it was conducted in accordance with the provisions on the apportionment of the number of members in violation of Article 14, paragraph (1) of the Constitution, and if it is reasonable to avoid the inconvenience that would be caused by invalidating the election, the court should dismiss the demand for the nullification of the validity of the election and declare in the main text that the election at issue is illegal, in accordance with the basic principle of law contained in the purport of Article 31, paragraph (1) of the Administrative Case Litigation Act.

Beer/Itoh (1996), pp. 394-405; PJSCQC, No. 21; Sup. Ct. WEB #79

Sup. Ct., G.B., J., Oct. 23, 1985, 39(6) Keishu 413

The Case Regarding the Fukuoka Prefectural Ordinance for the Protection and Development of Youths

[1] Article 10, paragraph (1) and Article 16, paragraph (1) of the Fukuoka Prefectural Ordinance for the Protection and Development of Youths, which prohibit and punish "obscene acts" against youths under 18 years of age, are not in violation of Article 31 of the Constitution. [2] An "obscene act" prohibited by Article 10, paragraph (1) of the Ordinance should be interpreted as referring to sexual intercourse or an act similar thereto in which the person is only recognized as treating a youth merely as an object for satisfying his/her own sexual desire, in addition to sexual intercourse or an act similar thereto that is committed by unjust means that take advantage of the mental and physical immaturity of youth, such as seducing, intimidating, deceiving, or confusing the youth.

Sup. Ct. WEB #1799

Sup. Ct., 1st P.B., J., Nov. 21, 1985, 39(7) Minshu 1512

The At-Home Voting System Abolishment Case

[1] Legislative acts (as well as legislative omissions) of the Diet, except for the enactment of laws clearly contravening the text of the Constitution, are not assessed illegal when applying Article 1, paragraph (1) of the State Redress Act. [2] The legislative act of abolishing and subsequently failing to reinstate an at-home voting system does not constitute an illegal act under Article 1, paragraph (1) of the State Redress Act.

Sup. Ct. WEB #80

Sup. Ct., G.B., J., Jun. 11, 1986, 40(4) Minshu 872

The Hoppo Journal Case

[1] Court injunction against printing, bookbinding, selling, and distribution of a magazine or any other publication is not censorship prohibited by the first sentence of paragraph (2) of Article 21 of the Constitution. [2] A victim, based on his/her reputation right as a right of human dignity, can request the defamer to take suitable measures for the restoration of the injured reputation, or has a claim for injunction for the purpose of removing existing defamatory act or preventing defamation that should occur in the future. [3] A preliminary injunction against court injunction against printing, bookbinding, selling, and distribution of a publication based on the reputation right as a right of human dignity is not allowed in principle, when the publication is related to evaluation or criticism of a public official or a candidate for election to public office. However, it is exceptionally permissible only when it is clear that the content of the expression is untrue or not solely for the purpose of public interest,

and the victim is likely to suffer serious and extremely difficult-to-recover damages. [4] It is, in principle, necessary to conduct oral proceedings or examinations of the debtor, when a court orders a preliminary injunction against expression relating to matters of public interest. However, when it is obviously found by materials presented by the debtor that the contents of the expression are not true, that the objective of the expression is not to promote solely the public interest, and when fear exists that the debtor may suffer serious and irreparable damage, the issuance of injunction without conducting oral proceedings or examinations of the debtor is not contrary to the purport of Article 21 of the Constitution.

Beer/Itoh (1996), pp. 606-27;
Sup. Ct. WEB #82

Sup. Ct., 3rd P.B., J., Mar. 3, 1987, 41(2) Keishu 15

The Case Regarding the Oita Prefectural Ordinance on Outdoor Advertisement

The accused tied placard-type posters, which contained the announcement and advertisement of the holding of a speech meeting of a political party, onto the supporting pillars of two boulevard trees (one poster on each pillar) with wire on which the display of an advertisement is prohibited under the Oita Prefectural Ordinance on Outdoor Advertisement. It does not violate Article 21, paragraph (1) of the Constitution to punish this act by applying the provisions of Article 33, item (i) and Article 4, paragraph (1), item (iii) of the Ordinance.

Sup. Ct. WEB #1800

Sup. Ct., G.B., J., Apr. 22, 1987, 41(3) Minshu 408

The Forest Act Case

The main clause of Article 186 of the Forest Act, which stipulates that a co-owner of a forest may not demand the partition of the forest in co-ownership, is in violation of Article 29, paragraph (2) of the Constitution.

Beer/Itoh (1996), pp. 327-45;
Sup. Ct. WEB #1801

Sup. Ct., 2nd P.B., J., Apr. 24, 1987, 41(3) Minshu 490

The Sankei Shimbun Case

[1] A person who has been featured in a newspaper article cannot request the publisher of the newspaper to publish the person's reply to that article, without correction and free of charge, based on a right of human dignity or rule of reason, irrespective of whether the publication of that article constitutes a tort of defamation. [2] While a political party's opinion advertisement published on a newspaper by a newspaper publisher aimed to downgrade another political party's social evaluation, even if the contents of the article were a criticism or review of the political party, and some parts of the article, including the summary of the political party's platform, were not necessarily reasonable or accurate, the wording of the platform cited for that summary was the original text verbatim, and the contents were not totally off the point, the publication of that article does not constitute a tort of defamation, as the article relates to facts of public interest and has been made solely for the benefit of the public and the truth of the major points can be deemed to have been proved.

Sup. Ct. WEB #1802

Sup. Ct., G.B., J., Jun. 1, 1988, 42(5) Minshu 277

The Dead Self-Defense Force (SDF) Member Enshrinement Case

[1] The Federation of Yamaguchi Prefecture Branches of the SDF Veterans Association applied to the Gokoku Shrine of Yamaguchi Prefecture for the enshrinement of an SDF member

who died in public service, against the widow's religious faith. To improve the social status and raise the motivation of the SDF members by enshrining the dead member, officers of the SDF Regional Liaison Office, cooperating with the Federation, inquired about the enshrinement status of other dead members at other Regional Liaison Offices and showed the answer to the president of the Federation. The officers' act is not a "religious activity" prohibited by Article 20, paragraph (3) of the Constitution because they had little religious feelings and it was not the activity that would be considered by the general public as having the effect of drawing attention to a specific religion or of promoting, accelerating, encouraging a specific religion or oppressing or intervening with other religions. [2] Even if the religious peacefulness of the widow of the dead SDF officer is disturbed by the religious activity of others, it does not constitute an infringement of religious freedom, unless the manner and degree of the infringement exceed socially acceptable limits. In this case, her legal interest has not been infringed.

Beer/Itoh (1996), pp. 496-516; PJSCQC, No. 25; Sup. Ct. WEB #88

Sup. Ct., 2nd P.B., J., Jan. 20, 1989, 43(1) Keishu 1

The Public Bath Houses Act Case of January of 1989

Article 2, paragraph (2) of the Public Bath Houses Act, which prescribes that the prefectural governor may refuse permission to run a public bath house if its location is deemed to be improper, and the Fukuoka Prefectural Ordinance, which prescribes standards for the location of the public bath house (necessity of maintaining a certain distance from existing public bath houses), are not in violation of Article 22, paragraph (2) of the Constitution.

Sup. Ct. WEB #1778

Sup. Ct., 2nd P.B., D., Jan. 30, 1989, 43(1) Keishu 19

The NTV (Nippon Television Network) Videotape Seizure Case

The seizure made by the investigating authorities of a news organization's videotapes that contain news reports is not in violation of Article 21 of the Constitution if the videotapes are almost indisputable for revealing a serious criminal case and the seizure does not interfere with the broadcasting by the news organization of the contents of the videotapes.

Sup. Ct. WEB #89

Sup. Ct., G.B., J., Mar. 8, 1989, 43(2) Minshu 89

The Lawrence Repeta Case (The Note-Taking in the Courtroom Case)

[1] Article 82, paragraph (1) of the Constitution does not guarantee the right of spectators to take notes in a courtroom. [2] Note-taking by spectators in a courtroom is worthy of respect in light of the purport of Article 21, paragraph (1) of the Constitution, and should not be hindered without due reason as long as it is done in order to understand and remember the trial being seen and heard. [3] The exercise of the authority of maintaining court order should be left to the broad discretion of the presiding judge, and decisions by the presiding judge as to whether to exercise his authority and as to what measures to be taken must be respected to the maximum extent. [4] The measure taken by the presiding judge to permit only the journalists belonging to the Judicial Reporters' Club to take notes in the courtroom and prohibit the general public from doing so does not violate Article 14, paragraph (1) of the Constitution. [5] The exercise of the authority of maintaining court order by the presiding judge cannot be assessed as an illegal exercise of the public authority of the State under Article 1, paragraph (1)

of the State Redress Act, unless there are special circumstances, such as the measure taken deviates markedly from the purpose and scope of the authority or the manner of taking the measure is utterly inappropriate.

Beer/Itoh (1996), pp. 627-37; PJSCQC, No. 24; Sup. Ct. WEB #90

Sup. Ct., 3rd P.B., J., Jun. 20, 1989, 43(6) Minshu 385

The Hyakuri Air Base Case

[1] An act in private law, which the State performs at the same level as a private person, does not constitute an "other act of government" (scope of judicial review) prescribed in Article 98, paragraph (1) of the Constitution. [2] Article 9 of the Constitution is not directly applicable to acts in private law. [3] The norms of the State governance proclaimed by Article 9 of the Constitution do not, by themselves, form the substance of "public order" in the meaning of Article 90 of the Civil Code, nor do they have the legal effect of categorically invalidating private law acts that are contrary thereto. Instead, those norms form one part of the substance of "public order," and are not absolute but relative to private law norms established under the value order of private law, such as the principles of private self-governance, good faith in contracts, and the security of transactions.

Beer/Itoh (1996), pp. 130-41; Sup. Ct. WEB #94

Sup. Ct., 3rd P.B., J., Sep. 19, 1989, 43(8) Keishu 785

The Case Regarding the Gifu Prefectural Ordinance for the Protection and Development of Youths

Article 6, paragraph (2), the main clause of Article 6-6, paragraph (1), and Article 21, item (v) of the Gifu Prefectural Ordinance for the Protection and Development of Youths, which prohibit and punish the storage of harmful books (inappropriate books for youths because they are extremely obscene or violent) in a vending machine, are not in violation of Article 21, paragraph (1) of the Constitution.

Sup. Ct. WEB #1763

Sup. Ct., 2nd P.B., J., Nov. 20, 1989, 43(10) Minshu 1160

The civil jurisdiction does not extend to the Emperor.

Sup. Ct. WEB #1711

Sup. Ct., 1st P.B., J., Dec. 14, 1989, 43(13) Keishu 841

The Doburoku (Bootleg) Case

Article 7, paragraph (1) of the Liquor Tax Act, which requests a person intending to manufacture alcoholic beverages to obtain a license from the district director of the competent tax office of the location, and Article 54, paragraph (1), which punishes the violator of the provision, are not in violation of Articles 31 and 13 of the Constitution of Japan, even in the case of punishing the manufacture of alcoholic beverages for self-consumption purposes.

Sup. Ct. WEB #1765

Sup. Ct., 1st P.B., J., Dec. 21, 1989, 43(12) Minshu 2252

The Fair Comment Doctrine Case

A person distributed numerous flyers in downtown areas, listing the names, addresses, and telephone numbers of public elementary school teachers and using expressions such as "harmful and incompetent teachers." These flyers were criticisms and commentary on the confusion regarding report cards for students, which was a matter of great concern to the general public. The distribution of the flyers does not constitute defamation because he intended these solely for the public interest, the main objective facts on which they based are proven to be true, and he does

not deviate from the scope of editorial comment.

Sup. Ct. WEB #1703

Sup. Ct., 1st P.B., J., Jan. 18, 1990, 44(1) Minshu 1

The Denshukan High School Case

The prefectural board of education took disciplinary actions against teachers at a public high school on such grounds as giving lessons in violation of the obligation to use a textbook as prescribed in Articles 51 and 21 of the School Education Act (prior to the revision), and giving lessons and examinations deviating from the Courses of Study for High Schools. The teachers engaged in these acts in connection with giving lessons and examinations on their respective regular subjects. Their acts in violation of the obligation to use a textbook continued throughout the year. The lessons given by them deviated to an extreme degree from the goals and contents of the subjects as specified in the Courses of Study for High Schools. At that time, the high school was in a state of extreme disorder. Immediately before the disciplinary actions, the teachers had been subjected to other disciplinary actions for participating in acts of dispute. Under these situations, therefore, the disciplinary actions against the teachers are neither extremely unreasonable according to social common sense nor are beyond the discretion of the board. (The Courses of Study for High Schools, which is Public Notice of the Ministry of Education, Science, Sports and Culture has the nature of law.)

Sup. Ct. WEB #1664

Sup. Ct., 3rd P.B., J., Apr. 17, 1990, 44(3) Minshu 547

The Case Regarding Deletion of the Political Campaign Broadcast

If the political campaign broadcast includes derogatory terms to refer to physically disabled persons and therefore infringes Article 150-2 of the Public Offices Election Act, which prohibits derogatory words and actions in a political campaign broadcast, a broadcaster can delete the sound of a part of the campaign and refuse to broadcast the original and full campaign, and such a deletion does not constitute an infringement of legally protected interests under tort law.

Sup. Ct. WEB #98

Sup. Ct., 2nd P.B., D., Jul. 9, 1990, 44(5) Keishu 421

The TBS (Tokyo Broadcasting System) Videotape Seizure Case

The videotapes, which were created through news-gathering activities by the news organization have significant probative value in giving a full picture of the case charged for malicious crimes. They were created by shooting and recording the scene of the crimes with the cooperation of the suspect, and the edited videotapes were already broadcasted with the consent of the suspect. Under these situations, the seizure of the videotapes enforced by the investigation authority does not violate Article 21 of the Constitution.

Sup. Ct. WEB #1666

Sup. Ct., 2nd P.B., J., Sep. 28, 1990, 44(6) Keishu 463

The Shibuya Riot Case

Articles 39 and 40 of the Subversive Activities Prevention Act, which punish incitement, are not in violation of Article 21, paragraph (1) of the Constitution.

Sup. Ct. WEB #1667

Sup. Ct., 3rd P.B., D., Mar. 29, 1991, 45(3) Keishu 158

A ruling of dismissal after a hearing under Article 23, paragraph (2) of the Juveniles Act does not constitute an "acquittal" as referred to in Article 1, paragraph (1) of the Criminal Compen-

sation Act, even if such ruling is made on the grounds that no facts constituting the alleged delinquent acts are found.

Sup. Ct. WEB #1615

Sup. Ct., 2nd P.B., J., Apr. 19, 1991, 45(4) Minshu 518

A litigation in which persons residing within the jurisdiction of the Amagi Branch of the Fukuoka District Court and Amagi Branch of the Fukuoka Family Court seek nullification of the Supreme Court Rules abolishing these branches by abstractly claiming constitutional violations by the rules apart from specific disputes, does not constitute a legal dispute as referred to in Article 3, paragraph (1) of the Court Act.

Sup. Ct. WEB #1589

Sup. Ct., 3rd P.B., J., Apr. 28, 1992, 1422 Hanji 91

Both paragraph (2) of the Supplementary Provisions of the Act on Relief of War Victims and Survivors, which excludes those to whom the Family Register Act does not apply (Taiwanese soldiers and civilian component) from the application of this act until otherwise provided for by law, and Article 9, paragraph (1), item (iii) of the Public Officers Pension Act, which prescribes that the right to receive pension benefits shall cease upon the loss of Japanese nationality, are not in violation of Article 14, paragraph (1) of the Constitution.

JAIL, No. 36, pp. 182-87

Sup. Ct., G.B., J., Jul. 1, 1992, 46(5) Minshu 437

The Narita Airport New Act Case

[1] Article 3, paragraph (1), item (i) of the Act on Emergency Measures concerning Security Control of the New Tokyo International Airport (prior to the 1984 revision), which allows the Minister of Transport to issue an order prohibiting the owner, manager, or possessor of the structure built in the restricted area from using the structure for the gathering of many terroristic subversive activists for a prescribed period of time, is not in violation of Article 21, paragraph (1) and Article 22, paragraph (1) of the Constitution. [2] Item (i) of Article 3, paragraph (1) of the Act and item (ii) of the same provision, which extends to the purpose of the manufacturing or storage of explosives and petrol bombs that are used or are likely to be used for terroristic subversive activities, are not in violation of Article 29, paragraphs (1) and (2) of the Constitution, nor the meaning of Article 31 of the Constitution. [3] Paragraph (1) of Article 3 of the Act and paragraph (3) of the same provision, which allows the Minister of Transport to have his officials enter the structure or ask questions to persons concerned to the extent necessary for ensuring the execution of the order when he issued the order, are not in violation of the purport of Article 35 of the Constitution.

PJSCQC, No. 26; Sup. Ct. WEB #1464

Sup. Ct., 3rd P.B., J., Dec. 15, 1992, 46(9) Minshu 2829

The Liquor Sales License Case of 1992

Article 9 of the Liquor Tax Act, which requires a person intending to conduct the business of selling liquor to obtain a license from the district director of the tax office, and Article 10, item (x) of the Act, which prescribes the terms which the district director of the tax office may refuse to grant the license, are not in violation of Article 22, paragraph (1) of the Constitution.

Sup. Ct. WEB #1402

Sup. Ct., G.B., J., Jan. 20, 1993, 47(1) Minshu 67

The Malapportionment Case (1992 House of Representatives Election)

The provisions on the apportionment of seats for members of the House of

Representatives prescribed in Article 13, paragraph (1) and Appended Table 1 of the Public Offices Election Act, and paragraphs (7) through (10) of the Supplementary Provisions of the Act (prior to the 1992 revision), are not in violation of Article 14, paragraph (1) of the Constitution at the time of the election for members of the House of Representatives in 1990 because it cannot be declared that the rectification of the malapportionment has not been made within a reasonable period of time as required by the Constitution.

PJSCQC, No. 27; Sup. Ct. WEB #1481

Sup. Ct., 3rd P.B., J., Feb. 16, 1993, 47(3) Minshu 1687

The Case Regarding the Minoh Monument for the War Dead

Minoh City purchased substitute land for the public land where a monument for the war dead existed, relocated and rebuilt the monument, and leased the purchased substitute land as the site of the monument, without compensation to the local war-bereaved families association that took charge of maintaining and managing the monument. The monument is a memorial for those who died in the war, and the connection between the monument and any specific religion has been weak, at least in the post-war period. The local war-bereaved families association is not an association whose primary purpose is to carry out religious activities. The relocation and rebuilding of the monument by the City were primarily intended to use the public land where the monument existed as part of the site for a school; thus, the purpose of these acts is secular in its entirety. Under these circumstances, the City's acts do not fall within the scope of religious activities prohibited by Article 20, paragraph (3) of the Constitution.

Sup. Ct. WEB #1390

Sup. Ct., 1st P.B., J., Feb. 25, 1993, 47(2) Minshu 643

The Atugi Air Base Case

[1] Claims for a civil injunction against aircraft takeoffs and landings by the Self-Defence Forces and for control of the noise caused by such aircraft are not permissible. [2] A claim against the State of Japan for an injunction against aircraft takeoffs and landings by the United States Armed Forces is not acceptable, where the State of Japan provides the United States of America with an aerodrome as part of the facilities and areas to be used by the United States Armed Forces under the Treaty of Mutual Cooperation and Security between the United States and Japan. [3] In a case wherein the residents living in the vicinity of the aerodrome managed by the State of Japan and the United States Armed Forces claim against the State of Japan the payment of solatium, alleging that they have suffered damage due to the noise caused by the aircraft that take off from and land on that aerodrome, the court of prior instance determined that the damage remains within the extent of tolerable limits simply because the use and offering of the aerodrome are highly public. Such determination is illegal and contains errors in the interpretation and application of the legal doctrine concerning the illegality of an act of violation that constitutes a tort.

JAIL, No. 37, pp. 123-27;
Sup. Ct. WEB #1433

Sup. Ct., 1st P.B., J., Feb. 25, 1993, 1456 Minshu 53

The Yokota Air Base Case of 1993

Claims, against the State of Japan, for an injunction against aircraft takeoffs and landings by the United States Armed Forces are not permissible, where the State provides the United States of America with an aerodrome as part of the facilities and areas to be

used by the United States Armed Forces under the Treaty of Mutual Cooperation and Security between the United States and Japan.

JAIL, No. 37, pp. 127-29

Sup. Ct., 3rd P.B., J., Mar. 16, 1993, 47(5) Minshu 3483

The Iyenaga Textbook Case, I (The Case on Constitutionality of the School Textbook Authorization System)

[1] The authorization for high school textbook under Article 21, paragraph (1) of the School Education Act (prior to the 1970 revision), Article 51 of the School Education Act (prior to the 1974 revision), the former Textbook Authorization Ordinance (Ordinance of the Ministry of Education, Science, Sports and Culture No. 4 of 1948), and the Former Textbook Authorization Standards (Public Notice of the Ministry of Education No. 86 of 1958) is not in violation of Articles 26 and 10 of the Basic Act on Education (prior to the 2006 revision). [2] (During the process of the school textbook authorization, the Japanese history textbook for high school students authored by Saburo Iyenaga was once failed and passed on the condition that the defects pointed out by the Minister be corrected.) Such authorization does not violate the first sentence of Article 21, paragraph (2), Article 21, paragraph (1), and Article 23 of the Constitution. [3] Although the Minister possesses discretionary power to decide whether to accept or reject an authorized textbook under the system of authorization of textbooks for high schools, the decision is deemed illegal under the State Redress Act as an abuse of the discretionary power in cases where the Textbook Authorization Research Council as a consultative body of the Minister has, in the course of deciding whether to affirm or disaffirm it, made an error that cannot be ignored, and the decision of the Minister was made based on the Council's erroneous report.

Sup. Ct. WEB #1434

Sup. Ct., 3rd P.B., J., Jul. 20, 1993, 47(7) Minshu 4627

[1] It is permissible for the plaintiff to claim for damages under Article 1, paragraph (1) of the State Redress Act, to file additionally as an alternative claim for compensation for the loss under Article 29, paragraph (3) of the Constitution, for the purpose of joining with the principal claim prescribed under the Act, in case that the principal claim and the alternative claim are closely related to each other, both claims are filed against the same defendant, both claims seek payment of money, allege the same economic detriment, and demand a commensurate amount of money, and both claims have substantially the same cause having arisen from the Act. The plaintiff may file the alternative claim in addition to the principal claim in a manner equivalent to an amendment of a claim through addition under Article 232 of the Code of Civil Procedure (prior to the 1996 revision) by regarding these claims as having the same basis. [2] When the plaintiff additionally files a claim for compensation for the loss under Article 29, paragraph (3) of the Constitution and seeks to join it with the principal claim for damages under Article 1, paragraph (1) of the State Redress Act in the second instance, it is necessary to obtain the defendant's consent for such joinder of claims.

Sup. Ct. WEB #1358

Sup. Ct., 3rd P.B., J., Sep. 7, 1993, 47(7) Minshu 4667

The Nichiren Shoshu Chief Administrator (Kancho) Case

The action for a declaratory judgment on a person's status as the representative director of a religious corporation does not fall within the scope of "legal

disputes" referred to in Article 3 of the Court Act, in a case wherein the issue in dispute is whether a particular person may be held to have the status of the representative director of the religious organization for the reason that the person holds a position in terms of the religious activities of that religious organization, if it is essentially necessary to go into the content of the religious teachings or faith of the religious organization to examine and determine whether the person holds a position in terms of religious activities. (A case is beyond the jurisdiction of a court if a court is unavoidably required to judge the content of the religious faith.)

Sup. Ct. WEB #1323

Sup. Ct., 2nd P.B., J., Oct. 22, 1993, 47(8) Minshu 5147

The Malapportionment Case (1991 Aichi Prefectural Assembly Election)

[1] Although Article 15, paragraph (2) of the Public Offices Election Act provides that the population of one constituency for an election of members of a prefectural assembly should not be less than half of the number calculated by dividing the population of the prefecture by the number of seats for members of the prefectural assembly, and a small constituency should be merged with another adjacent constituency, and Article 15, paragraph (7) requests that the constituency of a prefectural assembly should be specified by a prefectural ordinance in proportion to population, the proviso to Article 15, paragraph (7) accept an exception in case of special circumstances, and Article 271, paragraph (2) accepts a special constituency which becomes less than half of the number until otherwise provided for by law. Although the prefectural assembly has the discretion to determine whether to establish such a special constituency, in case the number of populations of a special constituency becomes extremely less than half of the number, the decision by the prefectural assembly exceeds the limit of reasonable discretion. [2] The provisions on the apportionment of seats of the Aichi Prefectural Ordinance for the Numbers of Seats, Electoral Districts, and the Number of Members in Each Electoral District for Members of the Aichi Prefectural Assembly, which establishes a special constituency whose population is 0.3116 times the number, are not in violation of Article 15, paragraph (7) of the Public Offices Election Act (as well as they are not in violation of the purport of Article 14, paragraph (1), and Articles 92 and 93 of the Constitution) at the time of the election for members of the Aichi Prefectural Assembly in 1991.

Sup. Ct. WEB #1336

Sup. Ct., 1st P.B., J., Jan. 27, 1994, 48(1) Minshu 53

The Case Regarding the Osaka Prefectural Ordinance on Information Disclosure

[1] Among the bills and receipts issued by creditors, expenditure cashbook, and disbursement certificates, all of which are documents related to social expenses for the governor of Osaka Prefecture, those from which the other party to the social activity can be identified are regarded as documents that may be kept undisclosed pursuant to Article 8, item (iv) or item (v) of the Osaka Prefectural Ordinance on Information Disclosure, which sets forth the grounds for nondisclosure of official documents, except where the name and other details of the other party are supposed to be disclosed or revealed from the outset. [2] Such documents are regarded as documents that must not be disclosed pursuant to Article 9, item (i) of the Ordinance, which sets forth the grounds for nondisclosure of official documents, except where the

content and other details of the social activity are supposed to be disclosed or revealed to the public from the outset.

Sup. Ct. WEB #1306

Sup. Ct., 3rd P.B., J., Feb. 8, 1994, 48(2) Minshu 149

The Non-Fiction Gyakuten Case

Where the facts concerning a person's previous conviction were disclosed in a work of literature in which his real name is used, such person may claim damages for the emotional distress that he suffered due to such disclosure if his legal interest to keep the facts concerning his previous conviction undisclosed is judged to outweigh the reason for disclosing the facts, by taking into consideration the state of his later life, the historical or social meaning of the criminal case in which he was involved, the importance of him being a party to the case, and his social activities and influence thereof, in combination with the meaning and necessity of using his real name, as seen in light of the purpose and nature of the work. (The right of a person not to have his/her criminal record publicized is guaranteed by private law.)

Sup. Ct. WEB #1300

Sup. Ct., 2nd P.B., J., Jul. 18, 1994, 48(5) Keishu 50

[1] Article 253-2 of the Public Offices Election Act (after the 1992 revision), which requests a court to endeavor to render a judgment of a criminal suit concerning to election within 100 days from the day on which it received the case, is not in violation of Article 14 and Article 37, paragraph (2) of the Constitution. [2] The term "personal history" prescribed in Article 235, paragraph (1) of the Act (prior to the 1994 revision) means the past experiences of a candidate for a public office or a person who intends to be a candidate for a public office, which are likely to influence voters in making a fair judgment. [3] A candidate for a public office was accused of a false campaign speech, in which he stated that he had been selected as a publicly-sponsored student to study abroad in his junior high school days and studied volunteering activities for half a year in Switzerland. His act can be regarded as an act of publicizing false matters concerning the "personal history" prescribed in Article 235, paragraph (1) of the Act (prior to the 1994 revision).

Sup. Ct. WEB #165

Sup. Ct., G.B., J., Feb. 22, 1995, 49(2) Keishu 1

The Lockheed Case, the Marubeni Route

[1] The depositions taken by a United States court at the request of a judge of a Japanese court in exchange for the promise not to indict deponents are not admissible, because the Code of Criminal Procedure of Japan does not have a criminal immunity system. [2] The Prime Minister's encouragement to the Minister of Transportation to select and purchase a specific aircraft model by a commercial airline carrier constitutes an official act of bribery as an instruction by the Prime Minister to the Minister of Transportation. (This instruction of the Prime Minister to the Minister of Transportation is within the authority of the Prime Minister because the Prime Minister has the individual power to advise or instruct administrative branches without a cabinet decision.)

PJSCQC, No. 28; Sup. Ct. WEB #194

Sup. Ct., 3rd P.B., J., Feb. 28, 1995, 49(2) Minshu 639

The Case Regarding the Foreign Resident's Local Voting Right

Articles 11 and 18 of the Local Autonomy Act and Article 9, paragraph (2) of the Public Offices Election Act, which provide that only those inhabit-

ants with Japanese nationality have the right to vote for the members of the local assemblies and the chief executive officers of the local public entities are not in violation of Article 15, paragraph (1) and Article 93, paragraph (2) of the Constitution. (The significance of this judgment is commonly understood that the Constitution does not prohibit the Diet to establish a law granting voting rights in local elections to foreign nationals on a permanent sojourn in Japan who have an especially close relationship with the local government.)

Sup. Ct. WEB #201

Sup. Ct., 3rd P.B., J., Mar. 7, 1995, 49(3) Minshu 687

The Izumisano City Civic Hall Case

[1] The case "where the use of the hall is likely to disturb public order" prescribed in Article 7, item (i) of the City Ordinance on the Izumisano City Civic Hall cited as the grounds for which the use of the city community hall, which is a public facility, shall not be permitted, should be construed in a limited way to represent a case where the importance of guaranteeing freedom of holding an assembly at the hall is surpassed by the necessity of avoiding and preventing the risk that the life, body, or property of citizens would be infringed and public safety would be undermined if the assembly were held at the hall. As for the degree of such risk, the mere probability of the occurrence of a dangerous situation is insufficient; the occurrence of a clear and present danger must be specifically foreseen. Based on this interpretation, the restriction under Article 7, item (i) of the Ordinance does not violate Article 21 of the Constitution and Article 244 of the Local Autonomy Act. [2] The city mayor did not grant permission in response to the application filed by the "All Kansai Executive Committee" for the use of the civic hall for the purpose of holding the assembly entitled "National Rally Against the New Kansai Airport," on the grounds that the use fell under the case "where the use of the hall is likely to disturb public order" prescribed in Article 7, item (i) of the Ordinance. Until that time, the substantial organizer of the rally had repeatedly used illegal force to oppose the construction of the New Kansai Airport and had been in violent conflict with other rival factions. It was foreseen specifically and clearly, in light of objective facts, that if the rally were held at the hall, conflicts involving the use of violence would occur between the factions inside and outside of the hall, and as a result, the staff of the hall, passers-by, and residents would suffer infringement to their life, body, or property. Under these situations, the city mayor's refusal to the application for the use of the civic hall does not violate Article 21 of the Constitution and Article 244 of the Local Autonomy Act.

Sup. Ct. WEB #202

Sup. Ct., 1st P.B., J., Apr. 13, 1995, 49(4) Keishu 619

Article 109 of the Customs Act (prior to the 1994 revision) is not in violation of Articles 13 and 31 of the Constitution, even in the case of punishing the importing of obscene videotapes for the purpose of mere possession thereof.

Sup. Ct. WEB #210

Sup. Ct., 1st P.B., J., May 25, 1995, 49(5) Minshu 1279

The Japan New Party Case

A political party, which submitted a proportional representation list for an election of members of the House of Councillors, made a notification to the chief electoral officer of the expulsion of a person, who has failed to become a successful candidate in the election and has become the runner-up, on the list after the election. Then a vacancy occurred, and another person on the

list, who is subordinated to the foresaid candidate in the ranking on the list, has been chosen as a successful candidate to fill the vacancy as the runner-up. In this case, whether or not the fact that the expulsion of the foresaid candidate does not exist or is invalid cannot be the grounds for invalidation of the victory of the chosen person as long as the notification of expulsion was made lawfully. (Internal autonomy of a political party should be respected to the greatest possible extent, and internal decision-making by a political party is beyond the jurisdiction of a court.)

Sup. Ct. WEB #215

Sup. Ct., 1st P.B., J., Jun. 8, 1995, 49(6) Minshu 1443

The Malapportionment Case (1993 House of Representatives Election)

The provisions on the election districts and the apportionment of the seats prescribed in Article 13, paragraph (1) and Appended Table 1 of the Public Offices Election Act (prior to the 1994 revision), and paragraphs (7) through (11) of the Supplementary Provisions of the Act are not in violation of Article 14, paragraph (1) of the Constitution, at the time of the election for members of the House of Representatives in 1993.

Sup. Ct. WEB #218

Sup. Ct., G.B., J., Jul. 5, 1995, 49(7) Minshu 1789

The Discrimination Case in the Statutory Share in the Inheritance of a Child Born out of Wedlock of 1995

The first part of the proviso to Article 900, item (iv) of the Civil Code, which sets the statutory share in the inheritance of a child born out of wedlock as one-half of that of a child born in wedlock, is not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #222

Sup. Ct., 3rd P.B., J., Dec. 15, 1995, 49(10) Keishu 842

The Foreigner Fingerprints System Case

[1] The freedom of not being compelled to be fingerprinted without due cause is guaranteed as one of the freedoms in private life. Compelling any individual, by the State organ, to be fingerprinted without due cause is contrary to the purport of Article 13 of the Constitution and therefore impermissible. [2] Article 14, paragraph (1) and Article 18, paragraph (1), item (viii) of the Alien Registration Act (prior to the 1982 revision), which provide for the system of taking fingerprints of aliens residing in Japan, are not in violation of Article 13 of the Constitution.

Sup. Ct. WEB #236

Sup. Ct., 1st P.B., D., Jan. 30, 1996, 50(1) Minshu 199

The Case Regarding the Dissolution Order of the Religious Corporation "Aum Shinrikyo"

A religious organization, which produced sarin gas systematically premeditatedly and in an organized manner for mass murder, was ordered dissolved on the grounds prescribed in item (i) and the first half of item (ii) of paragraph (1) of Article 81 of the Religious Corporations Act. This dissolution order solely addresses the secular aspect of the religious organization and does not intend to interfere with the spiritual and religious aspects of the religious organization or its believers. The dissolution order is a necessary and unavoidable legal regulation and does not violate Article 20, paragraph (1) of the Constitution, even if there would unavoidably be some disruption to the religious acts by the religious organization and its believers, such a disruption remains indirect and a de facto outcome of the order.

Sup. Ct. WEB #252

Sup. Ct., 2nd P.B., D., Feb. 26, 1996, 50(2) Minshu 274

It is not permissible to apply mutatis mutandis the provisions concerning assisting intervention under the Code of Civil Procedure to a lawsuit over an order of performance of duties issued in accordance with Article 151-2, paragraph (3) of the Local Autonomy Act (prior to the 1999 revision). This non-application does not violate Article 32 of the Constitution.

Sup. Ct. WEB #256

Sup. Ct., 2nd P.B., J., Mar. 8, 1996, 50(3) Minshu 469

The Case Regarding a Member of the Jehovah's Witnesses Who Refused to Take Kendo Practice

The student refused to take the kendo practice for serious reasons closely related to the core of his religious faith. He did not refuse to take other items of physical education and had excellent records in other subjects. The principal's dispositions to him inflicted a grave disadvantage on him, compelling him to act in a manner against the doctrine underlying his religious faith to avoid such disadvantage. He requested the college to take alternative measures, including writing reports, however, the college denied his request, although alternative measures were not impossible. These dispositions made, without giving any consideration to such possibility should be judged as lacking in appropriateness compared with the socially accepted view, and illegal beyond the scope of discretionary authority. (Freedom of religion was guaranteed to Jehovah's Witnesses refusing to join a martial sport in a public school.)

Sup. Ct. WEB #294

Sup. Ct., 3rd P.B., J., Mar. 19, 1996, 50(3) Minshu 615

The Minami-Kyushu Certified Public Tax Accountants' Associations Case

[1] It is an act beyond the scope of the purpose of a certified public tax accountants' association to donate money to a political organization defined under the Political Funds Control Act. [2] The resolution passed at a general assembly of a certified public tax accountants' association to the effect that special dues are collected as donations to a political organization is invalid.

Sup. Ct. WEB #288

Sup. Ct., G.B., J., Aug. 28, 1996, 50(7) Minshu 1952

The Okinawa Proxy Signing Case (The Case on Constitutionality of the Forced Leasing of Land for United States Bases in Okinawa)

[1] The proxy signing prescribed in Article 36, paragraph (5) of the Land Expropriation Act is a duty assigned to a prefectural governor as an organ of the State. [2] The competent Minister for proxy signing under Article 36, paragraph (5) of the Land Expropriation Act that is applied to the expropriation and utilization of land according to Article 3 of the Act on Special Measures Concerning Land for the United States Armed Forces is the Prime Minister. [3] In mandamus proceedings prescribed in Article 151-2, paragraph (3) of the Local Autonomy Act (prior to the 1999 revision), a court should judge objectively whether the mandate issued by the competent Minister meets the conditions or not. [4] The Act on Special Measures Concerning Land for the United States Armed Forces is not in violation of the Preamble, Articles 9 and 13, and Article 29, paragraph (3) of the Constitution. [5] The application of the Act on Special Measures Concerning Land for the United States Armed Forces to land within Okinawa Prefecture under the illegal discretionary decision of the Prime Minister is not always prohibited. The application of the Act within the prefecture does not

violate the Preamble, Articles 9, 13, 14, and 92, and Article 29, paragraph (3) of the Constitution. [6] If the approval of utilization is invalid, it is illegal to order proxy signing prescribed in Article 14 of the Special Measures Concerning Land for the United States Armed Forces and Article 36, paragraph (5) of the Land Expropriation Act. [7] Even if the approval of utilization has a dischargeable defect, it is legal to order proxy signing prescribed in Article 14 of the Special Measures Concerning Land for the United States Armed Forces and Article 36, paragraph (5) of the Land Expropriation Act. [8] The land in Okinawa Prefecture was subject to the approval of utilization for use by the United States Armed Forces stationed there, which was agreed upon between the United States and Japan at the time of the return of Okinawa to Japan. The land has not returned to the owner after the negotiations for the reduction and reorganization of the facilities and areas used by the United States Armed Forces stationed there, but has functioned organically with many other lands as the site of various facilities of the Forces. Measures have been taken to reduce the problems from the bases of the Forces. With these facts, the approval of utilization of the land does not naturally have a dischargeable defect, even though the Governor of Okinawa Prefecture insists on the various circumstances, including the present situation of the concentration of military bases in the prefecture. [9] Under the procedure prescribed in Article 3 of the Special Measures Concerning Land for the United States Armed Forces, leaving the governor's neglect of proxy signing, which Article 14 of the aforementioned Act and Article 36, paragraph (5) of the Land Expropriation Act, obviously undermines the public interest noticeably.

PJSCQC, No. 29; Sup. Ct. WEB #268

Sup. Ct., G.B., J., Sep. 11, 1996, 50(8) Minshu 2283

The Malapportionment Case (1992 House of Councillors Election)

Under the provisions on the election districts and apportionment of the seats prescribed in Article 14 of the Public Offices Election Act (prior to the 1994 revision) and Appended Table 2 of the Act, at the time of the election for members of the House of Councillors in 1992, the maximum disparity between constituencies in terms of the number of voters per member reached 6.59 to 1, therefore, there existed unconstitutional inequality in the value of votes. However, it cannot be declared that the Diet's failure to take any measures for the rectification of the malapportionment is beyond the limit of its legislative discretion. Therefore, the provisions of the Act are not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #269

Sup. Ct., 2nd P.B., J., Nov. 18, 1996, 50(10) Keishu 745

It does not violate Article 39 of the Constitution to punish a person for an act for which he should have been acquitted according to the legal interpretation in a judgment of the Supreme Court that existed as a judicial precedent at the time of the commission of the act.

Sup. Ct. WEB #281

Sup. Ct., 1st P.B., J., Jan. 30, 1997, 51(1) Keishu 335

Article 120, paragraph (1), item (i) of the Road Traffic Act, which punishes a person who refuses the breath test conducted by a police officer under Article 67, paragraph (2) of the Act, is not in violation of Article 38, paragraph (1) of the Constitution.

Sup. Ct. WEB #302

Sup. Ct., 1st P.B., J., Mar. 13, 1997, 51(3) Minshu 1233

The Compensation Claim Case by the Japanese Detainees in Siberia

[1] It is not permissible for the former Japanese detainees in Siberia (the Japanese who were forcibly detained in Siberia after World War II), to claim compensation from Japan under Article 29, paragraph (3) of the Constitution for the damage that they suffered, because the waiver of claims set forth in the second sentence of paragraph (6) of the Joint Declaration by the Union of Soviet Socialist Republics and Japan has made it practically impossible for them to claim compensation from the Union of Soviet Socialist Republics. [2] It is not permissible for the former Japanese detainees in Siberia to claim compensation from Japan under Articles 11, 13, 14, 17, 18, and 40, and Article 29, paragraph (3) of the Constitution for the damage that they suffered due to the long-term detention and forced labor. [3] It is not permissible for the former Japanese detainees in Siberia to claim payment from Japan under Article 14, paragraph (1) of the Constitution for the labor wages that they earned while in detention, despite Japan, in accordance with the memorandum issued by the General Headquarters of the Supreme Commander for the Allied Powers, having taken measures to settle labor wages earned by Japanese detainees who returned from the southern regions, such as Australia, New Zealand, and Southeast Asia, and showed certificates of income earned as detainees.

Sup. Ct. WEB #309

Sup. Ct., 1st P.B., J., Mar. 13, 1997, 51(3) Minshu 1453

The Case on Constitutionality of the Joint Responsibility System with the Crime by General Manager of Organization-Led Election Campaign

Article 251-3 of the Public Offices Election Act, which prescribes the joint responsibility for the crime by the general manager of an organization-led election campaign, is not in violation of the Preamble and Articles 1, 15, 21, and 31 of the Constitution.

Sup. Ct. WEB #340

Sup. Ct., G.B., J., Apr. 2, 1997, 51(4) Minshu 1673

The Ehime Prefecture Yasukuni Shrine Tamagushiryo Case

The Ehime Prefecture contributed 5,000 yen on each of nine occasions (a total of 45,000 yen) from public funds as *tamagushiryo* (offerings) to Religious Corporation "Yasukuni Shrine" when it held its Spring and Autumn Ceremony. The Prefecture also contributed 7,000 yen or 8,000 yen on each of four occasions (total 31,000 yen) from public funds as *kentoryo* (fees for candle) to Yasukuni Shrine when it held the Mitamasai Ceremony (celebration of the spirits of the ancestors) in mid-July. The Prefecture contributed 10,000 yen on each of nine occasions (a total of 90,000 yen) from public funds as *kumotsuryo* (fees for altarage) to Religious Corporation "Gokoku Shrine of Ehime Prefecture" when Gokoku Shrine held its Spring and Autumn Memorial Ceremony. The general public did not regard these contributions by a local government to shrines as just a social courtesy but they inevitably thought these contributions had religious significance for the governor. Through these contributions, it could not be denied that the Prefecture intentionally had a special relationship with a specific religion. The general public was impressed that the Prefecture especially supports this specific religious group and that this religious group is special and different from others. Because of these impressions, interest in the specific religion will be stimulated. Therefore, these contributions constitute religious ac-

tivities prohibited by Article 20, paragraph (3) of the Constitution.

PJSCQC, No. 30; Sup. Ct. WEB #312

Sup. Ct., 2nd P.B., J., Aug. 29, 1997, 51(7) Minshu 2921

The Iyenaga Textbook Case, III

[1] An opinion for improvement by the Minister of Education, Science, Sports, and Culture, which indicates that the book would be better as a textbook for students if corrections, deletions, or additions were made to the original text, is not a requirement for passing the school textbook authorization, but just a suggestion or guidance from the Minister. Therefore, such opinion, regardless of whether it is appropriate, is, in principle, not illegal under the State Redress Act, unless there are special circumstances in which the author or publisher of the book is forced to follow the opinion against their will. [2] In 1983, the Minister conducted the authorization for the Japanese history textbook for high school students, and he issued an opinion for revision, that it was necessary to delete all descriptions of Unit 731 (Japan's warfare unit that conducted inhuman activities during World War II) to pass the authorization, because no credible academic studies, papers, or books for this topic had been published to date and it was premature to include such descriptions in the textbook for high school students. At the time of the authorization, a number of documents and materials on Unit 731 were published, and there were no academic theories denying the existence of the Unit, or at least such theories were not generally known to the public. Under these circumstances, the Minister's opinion is illegal because he made an unacceptable error in the process of his judgment regarding his recognition of the state of academic theories at the time. He wrongly evaluated that the book was inconsistent with the standard for the authorization, and thereby exceeding the scope of his discretion.

Port et al. (2015), pp. 234-40

Sup. Ct., 3rd P.B., J., Sep. 9, 1997, 51(8) Minshu 3850

The State Redress Case for Suicide of Hospital Director (Exclusion Privilege of Liability of a Diet Member)

Even where a Diet member has, while making questions, speeches, and debates within the Diet, made a statement that harms the fame or reputation of an individual citizen, special circumstances showing that the Diet member has exercised his/her authority contrary to the purpose thereof, including cases where the Diet member has alleged the facts for an illegal or inappropriate purpose irrespective of his/her duties, or has knowingly alleged false facts, are required to affirm the State's responsibility to compensate for damages by reason of the illegality of such act by the Diet member under Article 1, paragraph (1) of the State Redress Act.

Sup. Ct. WEB #368

Sup. Ct., 1st P.B., J., Nov. 17, 1997, 51(10) Keishu 855

Article 18, paragraph (1), item (i) of the Alien Registration Act (prior to the 1992 revision) and Article 11, paragraph (1) of the Act (prior to the 1987 revision), which provide for the system for requiring confirmation of matters registered on alien registration cards, are not in violation of Articles 13 and 14 of the Constitution.

Sup. Ct. WEB #333

Sup. Ct., 3rd P.B., J., Mar. 24, 1998, 52(2) Keishu 150

The Liquor Sales License Case of 1998

Article 9, paragraph (1) of the Liquor Tax Act, which requires a person intending to conduct the business of selling liquor to obtain a license from the district director of the tax office, and

Article 56, paragraph (1), item (i) of the Act, which punishes the violator of the provision, are not in violation of Article 22, paragraph (1) of the Constitution.

Sup. Ct. WEB #381

Sup. Ct., G.B., J., Sep. 2, 1998, 52(6) Minshu 1373

The Malapportionment Case (1995 House of Councillors Election)

As a result of the revision of the provisions on the election districts and the apportionment of the seats, even if disparities remained among constituencies at the largest gap of 4.99 to 1 by the measure of the population size per member based on the population, it cannot be declared that this revision is beyond the limit of the Diet's legislative discretion. Since such disparity had diminished at the time of the election for members of the House of Councillors in 1995 to a further extent, the provisions on the election districts and the apportionment of the seats prescribed in Article 14 and Appended Table 3 of the Public Offices Election Act are not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #422

Sup. Ct., G.B., D., Dec. 1, 1998, 52(9) Minshu 1761

The Judge Teranishi Disciplinary Case

[1] To "actively engage in political movements" as prescribed in Article 52, item (i) of the Court Act means an act of positively taking part in organized, planned, or continuous political activities that are likely to undermine the independence as well as neutrality and fairness of judges. When determining whether a particular act falls within the scope of such act, it is appropriate to comprehensively consider not only objective circumstances, such as the details, background, and place of the act undertaken, but also subjective circumstances, such as the intention of the judge who conducted the act. [2] Article 52, item (i) of the Court Act, which prohibits judges from actively engaging in political movements is not in violation of Article 21, paragraph (1) of the Constitution. [3] A judge who, in the assembly held as part of the factional campaign aimed to scrap bills (Act on Punishment of Organized Crimes and Control of Proceeds of Crime) of which the treatment was a political issue, made a speech from the audience seat—while identifying his status as a judge—as follows: "Initially, I was supposed to participate as a panelist in the symposium under the theme of 'the Wiretapping Bill and the principle of a warrant,' but I decided not to participate as a panelist because the chief judge of the court warned me that I might be subject to disciplinary action for participating in the assembly. I personally don't think that it would be active engagement in political movements prescribed in the Court Act even if I spoke against the bills, but I will decline to speak as a panelist." The judge's act should be deemed as conveying his opinion to the participants in the assembly that the bills had problems in light of the principle of a warrant, from the viewpoint of a judge, and, therefore, it was justifiable to call for their abandonment. It should also be deemed to be an act for enhancing and evolving an organized, planned, and continuous campaign undertaken by the groups that jointly decided to hold the assembly, and with the aim to scrap the bills, thereby actively assisting and promoting the achievement of the aim. Therefore, it falls within the scope of "to actively engage in political movements" prohibited by Article 52, item (i) of the Court Act. [4] The judge's active engagement in political movements constitutes a breach of official duties, a ground for disciplinary action prescribed in Article 49 of the

Court Act. In light of the details of the act, the judge's subsequent attitude, and all other relevant circumstances, it is appropriate to issue an admonition on the judge. [5] Article 82, paragraph (1) of the Constitution shall not apply to cases on disciplinary action of judges. [6] The court in charge of civil or non-contentious proceedings may, with the authority to manage cases vested in it to ensure the smooth operation of the proceedings, restrict the number of counsels attending a hearing to a reasonable number if such restriction is necessary and appropriate in light of various factors concerned, such as the capacity of the place where the hearing is to be held, contents of the procedure scheduled on the date of hearing, and difficulty for the court to exercise its police power or authority to manage cases.

Sup. Ct. WEB #402

Sup. Ct., G.B., J., Mar. 24, 1999, 53(3) Minshu 514

The main text of Article 39, paragraph (3) of the Code of Criminal Procedure, which allows the imposition of restrictions by a public prosecutor, a public prosecutor's assistant officer, or a judicial police official on the interview between a suspect in custody and the defense counsel or a person who is to be defense counsel upon the request of a person who is empowered to appoint a counsel for the suspect, is not in violation of the first sentence of Article 34, Article 37, paragraph (3), and Article 38, paragraph (1) of the Constitution.

Sup. Ct. WEB #433

Sup. Ct., G.B., J., Nov. 10, 1999, 53(8) Minshu 1441

The Malapportionment Case (1996 House of Representatives Election)

[1] Article 3 of the Act on the Establishment of the Council on the Demarcation of the Constituency Boundary for the Election of the Members of the House of Representatives, which establishes the standards for the demarcation of the electoral districts for the members of the House of Representatives for the single-member district elections, is not in violation of Article 14, paragraph (1) and Article 43, paragraph (1) of the Constitution. [2] Article 13, paragraph (1) of the Public Offices Election Act and Appended Table 1, which are established in accordance with these standards, are not in violation of Article 14, paragraph (1) and Article 43, paragraph (1) of the Constitution at the time of the election for members of House of Representatives in 1996.

Sup. Ct. WEB #456

Sup. Ct., G.B., J., Nov. 10, 1999, 53(8) Minshu 1577

The Case Regarding the House of Representatives Dual Candidacy Election System (1996 House of Representatives Election)

[1] The Public Offices Election Act allows only candidates belonging to political parties and other organizations that fulfill certain requirements to run for the House of Representatives in both the single-member district and proportional representation elections. If a candidate who runs for both single-member district and proportional representation elections fails to win a seat in the single-member district election, this person can win a seat in the proportional representation election in accordance with the priority in the list. Such provisions of the Act are not in violation of Article 14, paragraph (1), Article 15, paragraphs (1) and (3), Article 43, paragraph (1), and Article 44 of the Constitution. [2] The proportional representation system in the House of Representatives election prescribed in the Act is not in violation of Article 15, paragraphs (1) and (3), and Article 43, paragraph (1) of the Constitution.

Sup. Ct. WEB #457

Sup. Ct., G.B., J., Nov. 10, 1999, 53(8) Minshu 1704

The Case Regarding the House of Representatives Single-member Constituency Election System (1996 House of Representatives Election)

[1] The single-member district election system for the House of Representatives adopted by the Public Offices Election Act is not contrary to the principle of people's representation as provided by the Constitution. [2] The provisions of the Act allowing election campaigns that include the broadcasting of political views by political parties that have presented candidates to the election for members of the House of Representatives in single-member districts result in election campaign differences between candidates who belong to a political party and those who do not. However, the difference is not unreasonable and is therefore not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #458

Sup. Ct., 3rd P.B., D., Dec. 16, 1999, 53(9) Keishu 1327

The Telephone Wiretapping Case

Prior to the 1999 addition of Code of Criminal Procedure Article 222-2, telephone wiretapping by an investigation authority for listening in on conversations without the prior consent of the parties to a telephone call was permitted, if with an investigation warrant with a proper description of the particular target of the investigation, when there was sufficient reason to suspect that a crime has been committed and it was probable that the particular telephone would be used for calls relating to suspected facts, and when it would be difficult to obtain important and necessary evidence relating to the crime by other methods, and when such means were unavoidable in a crime investigation wherein the suspect may be involved in a serious crime.

Sup. Ct. WEB #467

Sup. Ct., 3rd P.B., J., Feb. 8, 2000, 54(2) Keishu 1

The Judicial Scriveners Act Case

[1] Article 19, paragraph (1) and Article 25, paragraph (1) of the Judicial Scriveners Act that prohibit a person other than a *shiho-shoshi* (judicial scrivener) and the Shiho-Shoshi Lawyers' Associations (Associations of Judicial Scriveners) from engaging in business at the request of another to follow the procedures for applying for registration by proxy, and punish the offender against the prohibition are not in violation of Article 22, paragraph (1) of the Constitution. [2] It conflicts with Article 19, paragraph (1) of the Judicial Scriveners Act for a notary to follow the procedures for applying for registration by profession.

Sup. Ct. WEB #510

Sup. Ct., 3rd P.B., J., Feb. 29, 2000, 54(2) Minshu 582

The Case Regarding a Member of the Jehovah's Witnesses Who Had Refused to Receive a Blood Transfusion but Was Forced to Receive It Without Her Consent

A patient who has a firm intention of refusing to receive a blood transfusion in any case because of her religious beliefs came to stay at the hospital with hopes of receiving a surgery to remove a liver tumor without receiving a blood transfusion. A doctor, knowing such patient's intention and being aware of the possibility that an event requiring a blood transfusion might occur during the surgery, performed the surgery on the patient without explaining to her that the hospital adopts a policy of providing blood transfusions. In the event that there is no alternative means to save the patient's life, and the patient is actually provided with a blood transfu-

sion, the doctor shall be liable for damages under tort law to compensate for the emotional distress suffered by the patient from having been deprived of the right to decide whether to receive the surgery. (The right of self-determination regarding one's life was accepted not as a constitutional right but as a right under private law.)

Sup. Ct. WEB #478

Sup. Ct., G.B., J., Sep. 6, 2000, 54(7) Minshu 1997

The Malapportionment Case (1998 House of Councillors Election)

Although the Diet revised the provisions on the election districts and the apportionment of the seats prescribed in Article 14 of the Public Offices Election Act (after the 1994 revision) and Appended Table 2 of the Act, a disparity between constituencies in terms of the number of voters per member still remained. The maximum disparity of 4.99 to 1 in 1994 was not beyond the limit of the Diet's legislative discretion. Although the maximum disparity was 4.98 to 1 at the time of the election for members of the House of Councillors in 1998, the provisions of the Act are not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #522

Sup. Ct., 2nd P.B., D., Dec. 7, 2001, 55(7) Keishu 823

It is not permissible to lodge an appeal against the decision rendered under Article 5, paragraph (1) of the Compensation Act for Juvenile Cases, and this interpretation does not violate Articles 14 and 32 of the Constitution.

Sup. Ct. WEB #570

Sup. Ct., 3rd P.B., J., Dec. 18, 2001, 55(7) Minshu 1603

The Case Regarding Request for Disclosure of One's Own Medical Fee Receipt

A person and her spouse jointly requested disclosure of an official document recording her personal information (certificates of medical remuneration on her childbirth delivery) pursuant to the provisions of the Hyogo Prefectural Ordinance on Information Disclosure. This request for disclosure was obviously made by the person herself judging from the request itself. Although the Ordinance does not contain provisions stipulating that a person may not request disclosure of his/her own personal information, and Hyogo Prefecture had not introduced the personal information protection system at that time, the request was refused because the prefectural governor deemed that it was information that under the causes for nondisclosure of personal information set forth in Article 8, item (i) of the Ordinance. In such a case, the decision for nondisclosure should be illegal.

Sup. Ct. WEB #566

Sup. Ct., 3rd P.B., J., Dec. 18, 2001, 55(7) Minshu 1647

The Malapportionment Case (2000 House of Representatives Election)

[1] Article 3 of the Act on the Establishment of the Council on the Demarcation of the Constituency Boundary for the Election of the Members of the House of Representatives, which establishes the standards for the demarcation of the electoral districts for the members of the House of Representatives for the single-member district election, is not in violation of Article 14, paragraph (1) and Article 43, paragraph (1) of the Constitution. Article 13, paragraph (1) of the Public Offices Election Act and Appended Table 1 of the same Act, which are established in accordance with these standards, are not in violation of Article 14, paragraph (1) and Article 43, paragraph (1) of the Constitution at the time of the 2000 House of Representatives election. [2] Since the

provisions of the Public Offices Election Act allow election campaigns that include the broadcasting of political views by political parties that have presented candidates to the election for the members of the House of Representatives in single-member districts, it results in election campaign differences between candidates who belong to a political party and those who do not. However, this difference is not unreasonable and is therefore not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #568

Sup. Ct., 3rd P.B., J., Dec. 18, 2001, 55(7) Minshu 1712

The Case Regarding the House of Representatives Dual Candidacy Election System (2000 House of Representatives Election)

[1] Article 3 of the Act on the Establishment of the Council on the Demarcation of the Constituency Boundary for the Election of the Members of the House of Representatives, which establishes the standards for the demarcation of the electoral districts for the members of the House of Representatives for the single-member district elections, is not in violation of Article 14, paragraph (1) and Article 43, paragraph (1) of the Constitution. Article 13, paragraph (1) of the Public Offices Election Act and Appended Table 1, which are established in accordance with these standards, are not in violation of Article 14, paragraph (1) and Article 43, paragraph (1) of the Constitution at the time of the 2000 House of Representatives election. [2] Since the provisions of the Public Offices Election Act allow election campaigns that include the broadcasting of political views by political parties that have presented candidates to the election for the members of the House of Representatives in single-member districts, it results in election campaign differences between candidates who belong to a political party and those who do not. However, this difference is not unreasonable and is therefore not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #569

Sup. Ct., 1st P.B., J., Jan. 31, 2002, 56(1) Minshu 246

Article 4, paragraph (1), item (v) of the Child Rearing Allowance Act and Article 1-2, paragraph (3) of the Enforcement Order of the Child Rearing Allowance Act (prior to the 1998 revision) provide for the children who are eligible for a child rearing allowance. The provision excludes "a child recognized by the father" from "a child conceived by the mother without marriage (including instances where the marriage is not registered but the parties are in a de facto marriage)" is contrary to the law for exceeding the scope of delegation and is therefore null and void.

Sup. Ct. WEB #593

Sup. Ct., G.B., J., Feb. 13, 2002, 56(2) Minshu 331

The Securities and Exchange Act (Regulation of Insider Trade) Case

[1] Article 164, paragraph (1) of the Securities and Exchange Act (abolished) is a provision by which the listed company is entitled to demand the director or major shareholder to surrender the profit in cases where a director or major shareholder of a listed company makes a profit from short swing trade of the securities as provided in this provision. It applies regardless of whether the person involved unjustly made use of a secret in the transaction, or whether the interest of the investors in general was actually harmed, except in cases where it falls within the situation as provided in the Cabinet Order and as referred to in paragraph (8), or where, in light of the type of transaction, it cannot be de-

termined from the manner of the transaction itself whether the director or major shareholder unjustly made use of the secret that he obtained in the course of discharging his duties or through his status. [2] Article 164, paragraph (1) of the Act is not in violation of Article 29 of the Constitution.

Sup. Ct. WEB #1245

Sup. Ct., 2nd P.B., J., Apr. 5, 2002, 56(4) Keishu 95

The Cropland Act Case

Article of 4, paragraph (1) of the Cropland Act (prior to the 1998 revision), which provides that the permission of the prefectural governor must be obtained to turn agricultural land into non-agricultural land; Article of 5, paragraph (1) of the Act, which provides that the permission of the prefectural governor must be obtained to establish or transfer certain rights with respect to agricultural land for the purpose of converting it into non-agricultural land; and Article 92 of the Act, which provides for punishment for persons who violate these articles, are not in violation of Article 29 of the Constitution.

Sup. Ct. WEB #580

Sup. Ct., 2nd P.B., J., Apr. 12, 2002, 56(4) Minshu 729

The Yokota Air Base Case of 2002

Sovereign acts of a foreign state are made exempt from the civil jurisdiction of the court by customary international law.

JAIL, No. 46, pp. 161-63;
Sup. Ct. WEB #1248

Sup. Ct., 3rd P.B., J., Jun. 11, 2002, 56(5) Minshu 958

The Land Expropriation Act Case

Article 71 of the Land Expropriation Act, which prescribes the amount of compensation payable for land to be expropriated, is not in violation of Article 29, paragraph (3) of the Constitution.

Sup. Ct. WEB #1492

Sup. Ct., 1st P.B., J., Jul. 11, 2002, 56(6) Minshu 1204

The Daijo-Sai (Ceremony for the Enthronement of the Emperor) Case

The participation of the prefectural governor in the Daijo-Sai Ceremony (a special religious ceremony for the enthronement of the Emperor) does not violate Article 20, paragraph (3) of the Constitution, because Daijo-Sai is a traditional ceremony normally conducted at the time of the succession of the throne. The governor merely participated together with others and vowed, and the participation was intended to congratulate the Emperor on his enthronement, as part of the conventional courtesy of a person who holds a public office.

Sup. Ct. WEB #613

Sup. Ct., G.B., J., Sep. 11, 2002, 56(7) Minshu 1439

The Postal Act Case (The Case on Constitutionality of Limitation of the Tort Liability of the State)

[1] The parts of Articles 68 and 73 of the Postal Act, which exempt or limit the tort liability of the State for registered mail in cases where the loss occurred as a result of the intention or gross negligence of the postal worker, is in violation of Article 17 of the Constitution. [2] The parts of Articles 68 and 73 of the Postal Act, which exempt or limit the liability of the State based on the State Redress Act for special delivery mail in cases where the loss occurred as a result of the intention or negligence of the postal worker, is in violation of Article 17 of the Constitution.

Sup. Ct. WEB #585

Sup. Ct., 2nd P.B., J., Nov. 22, 2002, 1808 Hanji 55

Article 2, item (i) of the Nationality

Act, which prescribes that a child is a Japanese citizen if his/her father or mother is a Japanese citizen at the time of birth, is not in violation of Article 14, paragraph (1) of the Constitution. (A child born to a father who is a Japanese citizen without legal marital status and a mother who is a foreign citizen cannot acquire Japanese nationality even if he/she is acknowledged by his/her father after birth.)

JAIL, No. 46, pp. 180-82

Sup. Ct., 2nd P.B., J., Mar. 14, 2003, 57(3) Minshu 229

The Case Regarding the Nagaragawa River Juvenile Lynching News Coverage

[1] Whether a report can be regarded as an inferable report prohibited by Article 61 of the Juveniles Act should be decided by a standard whereby an unspecified large number of ordinary people can infer that a person is the offender in the case. [2] The High Court ruled that the publication of an article in a weekly magazine describing the method of a crime and personal history of the criminal who was a juvenile at the time of the crime, using an assumed name similar to the real name, violated Article 61 of the Juveniles Act. Further, there were no particular grounds for giving priority to the protection of social interests over the protection of the juvenile's rights guaranteed by the Article, whereby liability for damages caused by violation of reputation and privacy was immediately approved. This judgment is illegal because the court did not individually and concretely examine and render a decision upon the existence of justifiable causes per violated interest.

Sup. Ct. WEB #628

Sup. Ct., 2nd P.B., J., Sep. 12, 2003, 57(8) Minshu 973

The Case Regarding the List of Participants in Jiang Zemin's Lecture at Waseda University

[1] Information on the student ID numbers, names, addresses, and telephone numbers of applicants for participation that had been collected by a university when, as a host, it invited student participants to a lecture meeting is legally protected as information on privacy of the applicants for participation. [2] The act of the university of disclosing to the police, without prior consent of the applicants, information on the student ID numbers, names, addresses, and telephone numbers of the applicants for participation, which had been collected by the university when, as a host, it invited participants to a lecture meeting, shall constitute a tort because it infringed on the privacy of the applicants, given the fact that there were no special circumstances that made it difficult to ask the applicants for prior consent.

Sup. Ct. WEB #650

Sup. Ct., 1st P.B., J., Nov. 27, 2003, 57(10) Minshu 1665

Article 15 of the Act on Special Provisions of the Act on Use of Land Attendant upon the Enforcement of the "Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America Regarding Facilities and Areas and the Status of the United States Armed Forces in Japan" provides for the provisional use of land to be provided for the United States Armed Forces stationed in Japan. Paragraph (2) of the Supplementary Provisions for the Act for Partial Amendment to the Act on Special Provisions of the Act on Use of Land Attendant upon the Enforcement of the "Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, Regarding Facilities and Areas and the Status of the United States Armed Forces in Ja-

pan" provides for transitional measures for revising the provision. These provisions are not in violation of Article 29 of the Constitution.

Sup. Ct. WEB #663

Sup. Ct., 1st P.B., J., Dec. 11, 2003, 57(11) Keishu 1147

The Case Regarding the Act on Regulations Against Stalking

Article 2 of the Act on Regulations Against Stalking, which defines the concept of illegal stalking behavior, and Article 13, paragraph (1) of the Act which provides for punishment for persons who commit illegal stalking behavior, are not in violation of Article 13 and Article 21, paragraph (1) of the Constitution.

Sup. Ct. WEB #668

Sup. Ct., G.B., J., Jan. 14, 2004, 58(1) Minshu 1

The Case Regarding the House of Councillors Open-List Proportional Representation Election System (2001 House of Councillors Election)

The open-list proportional representation election system for the House of Councillors adopted by the Public Officer Election Act is not in violation of Article 15 and Article 43, paragraph (1) of the Constitution.

Sup. Ct. WEB #675

Sup. Ct., G.B., J., Jan. 14, 2004, 58(1) Minshu 56

The Malapportionment Case (2001 House of Councillors Election)

The provisions on the election districts and apportionment of the seats prescribed in Article 14 of the Public Offices Election Act and Appended Table 3 of the Act are not in violation of Article 14, paragraph (1) of the Constitution, at the time of the election for members of the House of Councillors in 2001.

Sup. Ct. WEB #676

Sup. Ct., 1st P.B., J., Jul. 8, 2004, 58(5) Minshu 1328

A child who was born out of wedlock to a Japanese mother and a Korean father, and was acknowledged by the father after the enforcement of the Nationality Act, does not lose Japanese nationality despite the effectuation of the Treaty of Peace with Japan.

JAIL, No. 48, pp. 168-71;
Sup. Ct. WEB #702

Sup. Ct., G.B., J., Jan. 26, 2005, 59(1) Minshu 128

The Case Regarding the Examinations for Management Selection in the Tokyo Metropolitan Government

[1] It does not violate Article 3 of the Labor Standards Act and Article 14, paragraph (1) of the Constitution for the local public entity to establish an integrated management appointment system consisting of the posts of local government employees in charge of conducting acts by exercising public authority and posts to be assumed for the purpose of acquiring the necessary job experience for promotion to the former posts, and then taking measures to allow only Japanese employees to be promoted to managerial posts. [2] The Tokyo Metropolitan Government established a management appointment system under which it is taken for granted that employees, once promoted to managerial posts, would eventually take office as local government employees in charge of conducting acts by exercising public authority. Under these circumstances, it does not violate Article 3 of the Labor Standards Act or Article 14, paragraph (1) of the Constitution when the Tokyo Metropolitan Government requires having Japanese nationality as a qualification for promotion of its employees to managerial posts.

Sup. Ct. WEB #732

Sup. Ct., 1st P.B., J., Apr. 14, 2005, 59(3) Keishu 259

The Case on Constitutionality of Shielding Measures and a Video-Link System in Criminal Trials

Article 157-3 of the Code of Criminal Procedure, which allows a court to take measures to prevent a witness to be seen by a defendant or audience in a courtroom, and Article 157-4 of the Code, which allows a court to examine a victim of a sex-related crime, located in another place, by audiovisual communication through the transmission of images and sounds, are not in violation of Article 82, and paragraph (1), and paragraph (1) and the first sentence of paragraph (2) of Article 37 of the Constitution.

Sup. Ct. WEB #744

Sup. Ct., 1st P.B., J., Jul. 14, 2005, 59(6) Minshu 1569

The Case Regarding Biased Book-Discarding in the Funabashi City South Library

A public official working at a public library unfairly treated certain books based on her dogmatic evaluation or personal preference regarding the books or authors when she discarded some books from the books that are available to the public in the library. Such unfair treatment is illegal under the State Redress Act as a violation of personal interests held by the authors of the discarded books.

Sup. Ct. WEB #759

Sup. Ct., G.B., J., Sep. 14, 2005, 59(7) Minshu 2087

The Case Regarding the Voting Right of Japanese Citizens Residing Abroad

[1] The Public Offices Election Act (prior to the 1998 revision), for completely precluding Japanese citizens who were residing abroad and had no address in any area of a municipality in Japan from voting in national elections at the time of the general election of members of the House of Representatives in 1996, was in violation of Article 15, paragraphs (1) and (3), Article 43, paragraph (1), and the proviso to Article 44 of the Constitution. [2] The part of the provision of paragraph (8) of the Supplementary Provisions of the Public Offices Election Act (after the 1998 revision) that limits, until otherwise provided for by law, the applicability of the system allowing Japanese citizens who were residing abroad and had no address in any area of a municipality in Japan to vote in the national elections of Diet members under the proportional representation system, at least at the time of the first general election of members of the House of Representatives or first regular election of members of the House of Councillors to be held after this judgment is handed down, would be in violation of Article 15, paragraphs (1) and (3), Article 43, paragraph (1), and the proviso to Article 44 of the Constitution. [3] A suit to seek a declaration that Japanese citizens who are residing abroad and have no address in any area of a municipality in Japan are eligible to vote in an election of members under the single-member district election system in the next general election of members of the House of Representatives and in an election of members under the constituency system in the next regular election of members of the House of Councillors, on the grounds that they are listed in the overseas electoral register, is a legal suit to seek a declaration on the legal relationship under public law. [4] Japanese citizens who are residing abroad and have no address in any area of a municipality in Japan should be eligible to vote in an election of members under the single-member district election system in the next general election of members of the House of Representatives and in an election of members

under the constituency system in the next regular election of members of the House of Councillors, on the grounds that they are listed in the overseas electoral register. [5] In cases where it is obvious that the contents of legislation or legislative omission illegally violate the citizens' constitutional rights, or where it is absolutely necessary to take legislative measures to assure the citizens the opportunity to exercise their constitutional rights, and such necessity is obvious but the Diet has failed to take such measures for a long time without justifiable reasons, the legislative act or legislative omission by the Diet members should exceptionally be deemed to be illegal for the purposes of Article 1, paragraph (1) of the State Redress Act. [6] Despite the absolute necessity to take legislative measures to establish a system for allowing Japanese citizens who were residing abroad and had no address in any area of a municipality in Japan to exercise the right to vote in national elections to assure the opportunity for such Japanese citizens to exercise the right to vote, for more than ten years from when the bill to enable such Japanese citizens to vote in national elections was abandoned until the general election for members of the House of Representatives was held in 1996, no legislative measures were taken to enable such voting. Such legislative omission should be deemed to be illegal for purposes of Article 1, paragraph (1) of the State Redress Act. Therefore, the State should pay such Japanese citizens 5,000 yen each as compensation by way of non-pecuniary damage for the mental distress suffered by them from being unable to exercise their right to vote in the election.

Sup. Ct. WEB #1264

Sup. Ct., G.B., J., Mar. 1, 2006, 60(2) Minshu 587

The Case Regarding the Asahikawa City Ordinance on the National Health Insurance

[1] Article 84 of the Constitution extends to the premiums for National Health Insurance administered by the local government. The extent to which the terms of the imposition of the insurance premiums should be clearly provided by a local ordinance, delegated by Article 81 of the National Health Insurance Act, should be determined by taking into consideration in a comprehensive manner the purpose and special nature of the National Health Insurance as social insurance, in addition to the level of coercion of its collection. [2] The delegation by the Asahikawa City Ordinance on the National Health Insurance to the Mayor, allowing him to determine the criteria for calculating the total amount to be imposed, which will serve as the basis for calculating the insurance premium rate, and allowing him to publicize it by public notice, violates neither Article 81 of the National Health Insurance Act nor Article 84 of the Constitution. [3] The fact that the Mayor of Asahikawa City publicized the insurance premium rate after the date of imposition of the premium of each accounting year from 1994 to 1998 does not violate Article 84 of the Constitution. [4] The fact that the provisions of the Asahikawa City Ordinance on the National Health Insurance, which do not exempt those who are constantly in an impoverished state from the premium payment or do not reduce the premium, does not exceed the scope of delegation of Article 77 of the Act of National Health Insurance, and it does not violate Articles 25 and 14 of the Constitution.

Sup. Ct. WEB #825

Sup. Ct., 2nd P.B., J., Jul. 21, 2006, 60(6) Minshu 2542

A foreign state shall not be immune from the civil jurisdiction of Japanese

courts for its acts other than acts of sovereignty, such as acts under private law or for business administration, unless there are special circumstances where the exercise of civil jurisdiction by Japanese courts is likely to infringe the state's sovereignty.

JAIL, No. 49, pp. 144-49;
Sup. Ct. WEB #848

Sup. Ct., 3rd P.B., D., Oct. 3, 2006, 60(8) Minshu 2647

The NHK (Japan Broadcasting Corporation) Reporter Case (Right to Protect the News Source)

[1] Whether a news reporter who is summoned as a witness in a civil case may refuse to testify about the news source of a report under Article 197, paragraph (1), item (iii) of the Code of Civil Procedure should be determined by balancing various factors related to the report. Such balancing should be made between, on one hand, the content of the report, its nature and significance and/or value in society, the manner in which the news was gathered, what disadvantages might occur if hindrance to similar news-gathering activities is generated in the future by compelling this testimony, and the extent of such disadvantage, and on the other hand, the content of the civil case, its nature and significance and/or value in society, the extent to which the witness's testimony is needed in the case, and availability of alternative evidence. [2] A news reporter, who is summoned as a witness in a civil case, may, in principle, refuse to testify about the news source of a report under Article 197, paragraph (1), item (iii) of the Code in instances where the report relates to public interest, there are no special circumstances where the means or method employed for gathering the news conflicts with any provision of general criminal law or the person who provided the relevant information as a news source of the report has given consent to the disclosure of the secret of the news source, nor are there any circumstances where it is still significantly necessary to realize a fair trial, even when the social value of the secret of the news source is taken into consideration, because the civil case concerned is a serious one that has social significance and impact and therefore the witness's testimony on the news source is indispensable.

Sup. Ct. WEB #855

Sup. Ct., G.B., J., Oct. 4, 2006, 60(8) Minshu 2696

The Malapportionment Case (2004 House of Councillors Election)

The provisions on the election districts and apportionment of the seats prescribed in Article 14 of the Public Offices Election Act (prior to the 2006 revision) and Appended Table 3 of the Act are not in violation of Article 14, paragraph (1) of the Constitution at the time of the election for members of the House of Councillors in 2004.

Sup. Ct. WEB #856

Sup. Ct., 3rd P.B., J., Feb. 27, 2007, 61(1) Minshu 291

The Case Regarding the Music Teacher Who Refused to Play a Piano Accompaniment for Kimigayo (the National Anthem)

The principal of a municipal elementary school issued an official order requiring a music teacher to play a piano accompaniment for the national anthem ("Kimigayo") to be sung in the school's enrollment ceremony. The official order cannot be immediately construed as denying the teacher's view of history or view of the world pertaining to the role of "Kimigayo" in Japan in the past. Since the act of playing an accompaniment on the piano for "Kimigayo" sung as the national anthem in an enrollment ceremony is a duty that a music teacher is generally supposed and expected to

perform, it is difficult to regard it as an act by which the teacher is seen to externally manifest that she has a particular thought, and the official order is not intended to force the teacher to have a particular thought or prohibit her from having a particular thought. The teacher, as a local public official, is in the position to obey laws and regulations as well as orders of her superiors, and the official order is in conformity with the purport of the provisions of the relevant laws, regulations, and administrative notices, which set the goals of elementary school education and specify the significance and desired practice of enrollment ceremonies. Under these circumstances, the official order cannot be deemed as violating Article 19 of the Constitution because it does not infringe on the teacher's freedom of thought and conscience.

Sup. Ct. WEB #876

Sup. Ct., G.B., J., Jun. 13, 2007, 61(4) Minshu 1617

The Malapportionment Case (2005 House of Representatives Election)

[1] Article 3 of the Act on the Establishment of the Council on the Demarcation of the Constituency Boundary for the Election of the Members of the House of Representatives, which establishes the standards for the demarcation of the electoral districts, including the system of one-reserve seat for the members of the House of Representatives for the single-member district election, is not in violation of Article 14, paragraph (1) and Article 43, paragraph (1) of the Constitution. Article 13, paragraph (1) of the Public Offices Election Act (after the 2002 revision) and Appended Table 1 of the same Act, which are established in accordance with these standards, are not in violation of Article 14, paragraph (1) of the Constitution at the time of the election for members of House of Representatives in 2005. [2] The provisions of the Public Offices Election Act that allow election campaigns that include the broadcasting of political views by political parties that have presented candidates to the election for the members of the House of Representatives in single-member districts, result in election campaign differences between candidates who belong to a political party and those who do not. However, this difference is not unreasonable and is therefore not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #895

Sup. Ct., 3rd P.B., J., Sep. 18, 2007, 61(6) Keishu 601

The Case Regarding the Hiroshima City Ordinance on Elimination of Motorcycle Gangs

The scope of "assembly" prescribed in Article 16, paragraph (1), item (i) of the Hiroshima City Ordinance on Elimination of Motorcycle Gangs can be construed to only include, besides those held by motorcycle gangs, in its original meaning, those that are organized for the purpose of conducting reckless driving, assemblies held by groups that are similar to motorcycle gangs and can be regarded as being identical thereto according to the generally accepted ideas because of their clothes, flags or behavior. Based on such restrictive interpretation, the provisions of Article 16, paragraph (1), item (i), Article 17, and Article 19 of the Ordinance are not in violation of Article 21, paragraph (1) and Article 31 of the Constitution.

Sup. Ct. WEB #911

Sup. Ct., 2nd P.B., J., Sep. 28, 2007, 61(6) Minshu 2345

The Case Regarding Disabled Students Without Pension Benefits

[1] Although the National Pension Act (prior to the 1989 revision) excluded students as defined in Article 7, paragraph (1), item (i) (a) of the Act (Ar-

ticle 7, paragraph (2), item (viii) of the Act, prior to the 1985 revision) from the scope of compulsorily participating insured persons for the national pension, and allowed students to only voluntarily participate in the national pension system, thereby applying different treatment between students and compulsorily participating insured persons with regard to participation in the national pension system and the application of the exemption from pension premiums, it does not violate Article 25 and Article 14, paragraph (1) of the Constitution. Although the legislature, before the 1989 revision of the Act, failed to take measures such as compulsorily requiring students to participate in the national pension system, it does not violate Article 25 and Article 14, paragraph (1) of the Constitution. [2] Although the legislature, before the 1989 revision of the Act, failed to take measures such as adopting a legal provision that non-contributory pension benefits shall be paid to persons with disabilities who fell within the scope of students as defined in Article 7, paragraph (1), item (i) (a) of the Act (Article 7, paragraph (2), item (viii) of the Act, prior to the 1985 revision) as of the date of first medical examination, it does not violate Article 25 and Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #913

Sup. Ct., 3rd P.B., J., Feb. 19, 2008, 62(2) Minshu 445

The Robert Maplethorpe Case

[1] The enforcement of import control under Article 21, paragraph (1), item (iv) of the Customs Tariff Act (prior to the 2005 revision) upon articles of obscene expressions that have already been distributed or sold in Japan does not violate Article 21, paragraph (1) of the Constitution. [2] The photograph collection that a person intends to import contains such photographs that should inevitably be regarded as emphasizing male genitals themselves and the depiction of them. It can be deemed to have been edited and composed from an artistic viewpoint—i.e., compiling in one book major works of a photographic artist who had established a high reputation among art critics, and reviewing the entirety of his photographic art, expecting that it would be bought and enjoyed by people who were very interested in photographic art or modern art—and the photographs in dispute can also be deemed to be regarded as his major works from such a viewpoint and therefore chosen for the photograph collection. It covers a variety of works, such as photographs of portraits, flowers, still lifes, and male and female nudes, and the relative importance of the photographs in dispute in the photograph collection as a whole is significantly small, and these photographs are black-and-white photographs and do not directly depict scenes of sexual intercourse. Therefore, when seeing it as a whole, it is difficult to find it to be appealing primarily to the sexual interest of people who see it. Under these circumstances, it is difficult to recognize the photograph collection within the category of "books, pictures, etc. that are prejudicial to good morals" as prescribed in Article 21, paragraph (1), item (iv) of the Customs Tariff Act (prior to the 2005 revision), according to the socially accepted standards of the time when the notification was given, to the effect that the photograph collection falls under the category of prohibited goods.

Sup. Ct. WEB #1274

Sup. Ct., 1st P.B., J., Mar. 6, 2008, 62(3) Minshu 665

The Juki Network System (Basic Resident Register Network System) Case

The act of an administrative agency to collect, manage, or use the identifica-

tion information of inhabitants, even in the absence of the consent of the individuals, does not infringe on their liberty of protecting their own personal information from being disclosed to a third party or made public without good reason, which is guaranteed by Article 13 of the Constitution.

Sup. Ct. WEB #1276

Sup. Ct., 2nd P.B., J., Apr. 11, 2008, 62(5) Keishu 1217

The Trespass Case Regarding the Posting of Anti-War Flyers in the Tachikawa Housing Complex of the Self-Defense Forces Personnel

[1] Some areas within the housing complex consisting of buildings used as the housing where public officers (the members of the Self-Defense Forces) and their families reside and is under the management of the managers, covering from the gateway on the first floor of each building to the front of the entrance of each residential unit, and the part of the site of the housing complex that borders on and surrounds each building and for which the managers, by placing fences and other enclosing equipment on the borders to the outside, clearly indicate that the part of the site is as the building's annexed land, can be regarded as the "premises guarded by another person" prescribed in Article 130 of the Penal Code and the enclosed land surrounding such premises as the object of the crime of breaking into the premises. [2] The accused entered the common area of the housing complex used as the housing for public officers and their families and the site of the housing complex against the will of the managers of the housing complex, for the purpose of posting flyers on which their political opinions are stated, into the mail slots of the individual residential units. It does not violate Article 21, paragraph (1) of the Constitution to punish their act of entry by applying the provisions of the first sentence of Article 130 of the Penal Code (trespass).

Sup. Ct. WEB #945

Sup. Ct., G.B., J., Jun. 4, 2008, 62(6) Minshu 1367

The Case on Constitutionality of Article 3, Paragraph (1) of the Nationality Act

[1] Article 3, paragraph (1) of the Nationality Act provides that a child born out of wedlock to a Japanese father and a non-Japanese mother and acknowledged by the father after birth may acquire Japanese nationality only if the child has acquired the status of a child born in wedlock as a result of the marriage of the parents (although a child whose parents do not get married may not acquire Japanese nationality), thereby causing a distinction in granting Japanese nationality. In 2003, at the latest, this distinction was in violation of Article 14, paragraph (1) of the Constitution. [2] A child born out of wedlock to a Japanese father and a non-Japanese mother and acknowledged by the father after birth shall acquire Japanese nationality if the child satisfies the requirements for acquisition of Japanese nationality as prescribed in Article 3, paragraph (1) of the Nationality Act, except for the requirement of acquiring the status of a child born in wedlock as a result of the marriage of the parents.

JYIL, No. 52, pp. 648-57;
Sup. Ct. WEB #955

Sup. Ct., 2nd P.B., J., Mar. 9, 2009, 63(3) Keishu 27

The Case Regarding the Fukushima Prefectural Ordinance for Sound Development of Youths

[1] A vending machine of harmful books and other media, although it has functions such as transmitting customers' pictures taken by surveillance cameras to the surveillance center so

that monitoring staff can monitor these pictures, can be regarded as a "machine with equipment, which enables the person engaging in the sales business to sell items to customers not in a face-to-face manner," and falls within the category of a "vending machine" a prescribed in Article 16, paragraph (1) of the Fukushima Prefectural Ordinance for Sound Development of Youths. [2] Article 21, paragraph (1) and Article 35 of the Ordinance and Article 34, paragraph (2) of the Ordinance (prior to the 2007 revision), which prohibit stocking harmful books and other media in a vending machine (a machine with equipment that enables the person engaging in the sales business to sell items to customers not in a face-to-face manner) and impose punishment for violating this prohibition, are not in violation of Article 21, paragraph (1), Article 22, paragraph (1), and Article 31 of the Constitution.

Sup. Ct. WEB #986

Sup. Ct., 3rd P.B., J., Jul. 14, 2009, 63(6) Keishu 623

The Case on Constitutionality of the Expedited Trial Procedure System

[1] Article 403-2, paragraph (1) of the Code of Criminal Procedure, which prohibits filing an appeal against a judgment made in the expedited trial procedure by asserting an error in the findings of facts, is not in violation of Article 32 of the Constitution. [2] It cannot be said that the system of the expedited trial procedure itself tends to cause the accused to make a false confession.

Sup. Ct. WEB #1012

Sup. Ct., G.B., J., Sep. 30, 2009, 63(7) Minshu 1520

The Malapportionment Case (2007 House of Councillors Election)

The provisions on the election districts and apportionment of the seats prescribed in Article 14 of the Public Offices Election Act and Appended Table 3 of the Act are not in violation of Article 14, paragraph (1) of the Constitution at the time of the election for members of the House of Councillors in 2007.

Sup. Ct. WEB #1024

Sup. Ct., 2nd P.B., J., Nov. 30, 2009, 63(9) Keishu 1765

The Trespass Case Regarding Posting Communist Party Flyers in a Condominium Building in Katsushika

[1] The accused opened the door installed at the end of the entrance hall where there were a notice board and collective mailboxes, and entered the common areas of the condominium, such as the corridors on the seventh to third floors, for the purpose of posting flyers into the mail slots of individual residential units of a condominium building. A poster prohibiting entry into the condominium for such purpose was affixed on the notice board in the entrance hall. In these circumstances, such an act by the accused is against the will of the management association of the condominium, and constitutes the crime prescribed in the first sentence of Article 130 of the Penal Code. [2] It does not violate Article 21, paragraph (1) of the Constitution to punish their acts, for the purpose of posting flyers that contain reports on the activities of a political party, by applying the provisions of the first sentence of Article 130 of the Penal Code (trespass).

Sup. Ct. WEB #1035

Sup. Ct., G.B., J., Jan. 20, 2010, 64(1) Minshu 1

The Sorachibuto Shrine Case

The city offered city-owned land without compensation to a joint neighborhood association for its use as the site of a building (which is used as a local meeting hall but has a *hokora* [a small Shinto shrine] installed therein and has a *jinja* [Shinto shrine] sign posted on its

exterior wall), a *torii* [a gate to a Shinto shrine] and a *ji-jingu* [a stone monument signifying the deity to protect the local area]. The property, including the *torii*, *ji-jingu*, and hall entrance with a "*jinja*" sign, collectively constitutes a Shinto shrine facility, and the events held there are conducted in line with such nature of the facility as religious rites. The *ujiko* group (a group of parishioners) that manages the property and performs festivals—without paying any consideration that should have usually been required for installing the property, except that it pays the joint neighborhood association a consideration for the use of the building on the occasion of festivals—has continuously benefited from the installation of the property for a long time. The city, by offering the use the city-owned land, makes it easy for the *ujiko* group, which is a religious organization, to carry out religious activities using the Shinto shrine. Under these circumstances, it is inevitable that the city's act is evaluated, from the public's point of view, as giving a special benefit to a specific religion and assisting it, regardless of the city's offer having started from a purpose that is secularized or oriented to the public interest—i.e., to reward the local inhabitants who cooperated with the expansion of the site of an elementary school. Therefore, the city's act violates Article 89 and the second sentence of Article 20, paragraph (1) of the Constitution.

Sup. Ct. WEB #1048

Sup. Ct., G.B., J., Jan. 20, 2010, 64(1) Minshu 128

The Tomihira Shrine Case

The city granted city-owned land to a neighborhood association, which had been offered to them without compensation for use as the site of a Shinto shrine facility. The Shinto shrine facility is apparently categorized as a shrine facility of Shintoism and religious events are held there in accordance with the formality of Shintoism. If the city continued the act of offering the city-owned land without taking any measures, it could be evaluated from the public's point of view as offering a special benefit to a specific religion and assisting it. The city effected the grant of land in consideration of the opinion given by the audit commissioners, to correct and rectify the condition described above which might be in conflict with the intent of the Constitution. The city-owned land had originally been donated before the war by the organization that was the predecessor of the neighborhood association, as the site of the apartment building for elementary school teachers. Its use was discontinued when the teachers' apartment building was taken down after the war. Under these circumstances, the city's act of granting the city-owned land does not violate Article 20, paragraph (3), and Article 89 of the Constitution.

Sup. Ct. WEB #1049

Sup. Ct., G.B., J., Mar. 23, 2011, 65(2) Minshu 755

The Malapportionment Case (2009 House of Representatives Election)

[1] The one-reserve seat system in the demarcation of the electoral districts standards for the members of the House of Representatives for the single-member district election, which was established by Article 3 of the Act on the Establishment of the Council on the Demarcation of the Constituency Boundary for the Election of the Members of the House of Representatives, become contrary to the constitutional requirement of equality in the value of votes by the time of the 2009 House of Representatives election. Therefore, Article 13, paragraph (1) of the Public Offices Election Act (after the 2002

revision) and Appended Table 1 of the same Act, which were established in accordance with these standards, become contrary to the constitutional requirement of equality in the value of votes. However, these provisions are not in violation of Article 14, paragraph (1) nor other provisions of the Constitution because it cannot be declared that the rectification of the malapportionment has not been made within a reasonable period of time as required by the Constitution. [2] Although the provisions of the Public Offices Election Act allowing election campaigns that include the broadcasting of political views by political parties that have presented candidates for members of the House of Representatives in single-member districts result in election campaign differences between candidates belonging to a political party and those who do not, they are not in violation of Article 14, paragraph (1) nor other provisions of the Constitution

Sup. Ct. WEB #1097

Sup. Ct., 2nd P.B., J., May 30, 2011, 65(4) Keishu 1780

The Case Regarding the Retiring Teacher Who Refused to Stand during Kimigayo (the National Anthem)

The principal of a public high school issued an official order requiring a teacher of the school to stand facing the national flag (so-called "Hinomaru") and sing the national anthem ("Kimigayo") during the school's graduation ceremony. This act of standing and singing has a nature of a customary and formal behavior practiced in ceremonial events of schools, and it cannot be deemed inseparable to the denial of the teacher's view of history or view of the world that "Hinomaru" and "Kimigayo" played a certain role in relation to the prewar militarism. Neither can the official order be deemed to deny such view of history or the world itself. This act of standing and singing is also recognized from the outside as a customary and formal behavior practiced in ceremonial events of schools, and it is difficult to evaluate that this act could be recognized from the outside as an expression of a particular thought or objection thereto. The official order does not force the teacher to have a particular thought or prohibit him from having an objection thereto, nor does it compel the teacher to confess whether he has or does not have a particular thought. This act of standing and singing is regarded as an act that has an aspect as expression of respect for the national flag and the national anthem, and if an individual who has the view of history or view of the world as explained above is required to perform it, he would eventually be required to perform an external act that conflicts with behavior deriving from that view of history or view of the world. On the other hand, the official order was issued for the purpose of holding the ceremony in a well-ordered manner as appropriate for an educational event and proceeding smoothly while giving due consideration to students, in line with the purports of the provisions of the relevant laws and regulations specifying the objectives of high school education and significance and ideal of a graduation ceremony and other ceremonial events. It was also in consideration of the nature of the status of local public officials and public aspect of their duties. Under these circumstances, the official order cannot be deemed to violate Article 19 of the Constitution because it does not infringe on the teacher's freedom of thought and conscience.

Sup. Ct. WEB #1106

Sup. Ct., 1st P.B., J., Sep. 22, 2011, 65(6) Minshu 2756

The provision of Article 31 of the Act on Special Measures Concerning Taxa-

tion, which provides that the aggregation of profit and loss to deduct any amount of loss generated in the calculation of the amount of long-term capital gains subject to income taxation from the amount of other classified income shall not be allowed was revised in 2004, and it is applied to the transfer of land made by an individual on or after January 1, 2004, by Article 27, paragraph (1) of the Act. This revised provision is not in violation of the purport of Article 84 of the Constitution. (Since the tax law is established based on the discretionary decisions made by the legislative body while taking into account both comprehensive policy-oriented decisions made from all of the national policy aspects, including fiscal, economic, and social policy measures, and decisions made from extremely specialized and technical perspectives, revised provisions of the tax law may be applied retroactively in some cases, and that is constitutional.)

Sup. Ct. WEB #1119

Sup. Ct., G.B., J., Nov. 16, 2011, 65(8) Keishu 1285

The Case on Constitutionality of the Saiban-in (Lay Judge) System

[1] 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, provided the constitutional principles for realizing due criminal trials are secured. [2] (The *saiban-in* (lay judge) system constitutes citizens' participation in criminal judicial proceedings, which has been implemented in Japan since 2009. It allows citizens to participate in criminal trials, deliberate and make decisions with professional judges regarding the defendant's guilt or innocence, as well as in sentencing. Under this system, most serious crimes are handled by a panel composed of three professional judges and six randomly chosen citizens (*saiban-in*s).) The *saiban-in* system is not in violation of Articles 31, 32, Article 37, paragraph (1), Article 76, paragraph (1), and Article 80, paragraph (1) of the Constitution. [3] The *saiban-in* system is not in violation of Article 76, paragraph (3) of the Constitution. [4] The *saiban-in* system is not in violation of Article 76, paragraph (2) of the Constitution. The duties of *saiban-in*s cannot be regarded as "servitude," which is prohibited by the second sentence of Article 18 of the Constitution.

Sup. Ct. WEB #1126

Sup. Ct., 2nd P.B., J., Jan. 13, 2012, 66(1) Keishu 1

The *saiban-in* system is not in violation of Articles 32 and 37 of the Constitution simply because it does not grant the accused the right to choose whether to be subject to a trial and decision under it.

Sup. Ct. WEB #1135

Sup. Ct., 1st P.B., J., Feb. 16, 2012, 66(2) Minshu 673

The Sorachibuto Shrine Case, the Sequel

The city had offered city-owned land without compensation to a joint neighborhood association for use as the site of Shinto shrine facilities, and the Supreme Court ruled on January 20, 2010 that the city's act of offering violates Article 89 and the second sentence of Article 20, paragraph (1) of the Constitution. The city did not demand the removal of the Shinto shrine facilities and evacuation from the city-owned land; rather, it has leased a part of the land to the general representative of a *ujiko* group for a reasonable rent at the time of the group's partial relocation and removal of the shrine facilities. The city's lease significantly reduces the size of the city-owned land used by the *ujiko* group. Furthermore, since the

section to be leased is clearly indicated to the public, it has the practical effect of preventing the group from using a larger section of the land. As a result of the partial removal and relocation of the Shinto shrine facilities, the objects and signs related to the Shinto shrine facilities were removed from the city-owned land, except in the leased section. After the removal and relocation, when holding Shinto shrine festivals in the leased section of the land, which faces a national route, the *ujiko* group does not need to use the other part of the city-owned land. The predecessor facilities of the Shinto shrine facilities had existed on the land since before the land became owned by the city. The land became publicly owned to show gratitude to the person who provided the land for the extension of elementary school premises. The prompt removal of the entire Shinto shrine facilities would make it extremely difficult for the *ujiko* group to continue performing ceremonies that they have been peacefully performing at the facilities. The lease allows them to continue their custom of ceremonies on the leased section of the land. The lease can be made without a resolution of the city assembly. The policy of leasing the land was devised after listening to the opinions and obtaining consent from both the *ujiko* group and joint neighborhood association. Since the rate of the rent is 30,000 yen per year, the rent payment will not become delinquent. Under these circumstances, even if the *ujiko* group maintains a part of the Shinto shrine facilities on the leased land and continues performing ceremonies several times a year, the city's act of leasing does not violate Article 89 and the second sentence of Article 20, paragraph (1) of the Constitution, since the renting is a rational and realistic means of rectifying the unconstitutionality.

Sup. Ct. WEB #1144

Sup. Ct., 3rd P.B., J., Feb. 28, 2012, 66(3) Minshu 1240

The Case on Constitutionality of Abolishment of the Old-Age Additional Grants

The Standards for Public Assistance Provided under the Public Assistance Act were revised in phases; thus, the Old-Age Additional Grants given as a part of livelihood assistance were finally abolished in 2006. Five years prior to the commencement of the revision, the demand among those aged 70 and above who were entitled to the Old-Age Additional Grants was smaller than the demand among those aged 60 to 69, regardless of income level. The amount of livelihood assistance (excluding the Old-Age Additional Grants) given to those who were single and aged 70 and above was higher than the livelihood assistance-supported consumption expenditures of low-income unemployed individuals who were single and aged 70 and above. Since the time 20 years prior to the commencement of the revision up to the time two years prior to the commencement of the revision, the rate of increase in the livelihood assistance standard has been higher than the growth rates of the Consumer Price Index and wages. Since the time 21 years prior to the commencement of the revision, the amount of consumption expenditures of the households of working public assistance recipients has been equivalent to about 70% of the consumption expenditures of working non-recipient households. Regarding the working public assistance recipient households, the average ratio of food expenses to the total consumption expenditures as of 4 years prior to the commencement of the revision was lower than the average ratio 24 years prior to the commencement of the revision. The abolishment of the Old-Age Additional Grants was carried out not all at once but in phases over a period

of three years. Five years prior to the commencement of the revision, the amount of net increase in the savings of the public assistance recipient households receiving the Old-Age Additional Grants was almost equivalent to the amount of the Old-Age Additional Grants. The amount of the net increase was larger than the amount of net increase in the savings of the public assistance recipient households who were not receiving the Old-Age Additional Grants. The discrepancy between the two types of households exceeded 5,000 yen per month. The revision was made in accordance with the recommendations made by the expert committee, based on expert knowledge, statistics, and other numerical data. Under these circumstances, the revision of the Standard does not violate Article 3 and Article 8, paragraph (2) of the Public Assistance Act because the Minister of Health, Labor, and Welfare did not overstep the scope of his discretionary power or abused it in making the judgments that provided the basis for the revision.

Sup. Ct. WEB #1150

Sup. Ct., G.B., J., Oct. 17, 2012, 66(10) Minshu 3357

The Malapportionment Case (2010 House of Councillors Election)

Under the provisions on the election districts and apportionment of the seats prescribed in Article 14 of the Public Offices Election Act and Appended Table 3 of the Act, at the time of the election for members of the House of Councillors in 2010, the maximum disparity between constituencies in terms of the number of voters per member reached extreme inequality (the largest gap of 5.00 to 1 by the measure of the population size per member based on the population) in the value of votes to such an extent that it raised the question of unconstitutionality. However, the provisions of the Act are not in violation of Article 14, paragraph (1) nor other provisions of the Constitution because it cannot be declared that the Diet's failure to take any measures for the rectification of the malapportionment by the election day is beyond the limit of the Diet's legislative discretion.

Sup. Ct. WEB #1176

Sup. Ct., 2nd P.B., J., Dec. 7, 2012, 66(12) Keishu 1337

The Horikoshi Case

[1] The term "political acts" prohibited by Article 102, paragraph (1) of the National Public Service Act refers to acts that not only involve a conceptual risk of undermining the political neutrality of public officials in the performance of their duties but also pose a substantial risk that the undermining of their political neutrality could occur in reality. [2] The political acts set forth in paragraph (6), items (vii) and (xiii) of the Rules of the National Personnel Authority 14-7, which are "political acts" prohibited by Article 102, paragraph (1) of the Act, refer to such acts that literally correspond to the types of acts prescribed in the respective items and pose a substantial risk of undermining the political neutrality of public officials in the performance of their duties. [3] The prohibition of a public official's engagement in distributing political party-issued newspapers or documents that carry political purposes, which is prescribed in Article 110, paragraph (1), item (xix) of the Act (prior to the 2007 revision), Article 102, paragraph (1) of the Act, and paragraph (6), items (vii) and (xiii) of the Rules, is not in violation of Article 21, paragraph (1) and Article 31 of the Constitution. [4] A public official in regular service, who is not in a managerial position or vested with any discretion in performing duties or exercising power, distributed political party-issued newspapers and docu-

ments that carried a political purpose, totally independent of his duties and without the nature of the activity of a group consisting of public officials, and he did not perform the act in a manner that could be recognized as an act of a public official. Such act of distributing newspapers and documents does not pose a substantial risk of undermining the political neutrality of the public official in his performance of duties; therefore, it does not correspond to any of the acts prohibited by Article 102, paragraph (1) of the Act and paragraph (6), items (vii) and (xiii) of the Rules.

Sup. Ct. WEB #1179

Sup. Ct., 2nd P.B., J., Dec. 7, 2012, 66(12) Keishu 1722

The Ujibashi Case

[1] The prohibition of a public official's engagement in distributing political party-issued newspapers, which is prescribed in Article 110, paragraph (1), item (xix) of the National Public Service Act (prior to the 2007 revision), Article 102, paragraph (1) of the Act, and paragraph (6), item (vii) of the Rules of the National Personnel Authority 14-7, does not violate Article 21, paragraph (1), Articles 15, 19, 31, 41, and Article 73, item (vi) of the Constitution. [2] A public official in regular service, who is in a managerial position and vested with discretion in performing duties or exercising power, distributed political party-issued newspapers. Even if he performed such act outside of duty hours, without using any national facility or facility at the workplace or taking advantage of his status as a public official, and without the nature of the activity of a group consisting of public officials, and he did not perform such act in a manner that could be recognized as an act of a public official, this act poses a substantial risk of undermining the political neutrality of the public official and the government organ to which he belongs in their performance of duties; therefore, it corresponds to the act prohibited by Article 102, paragraph (1) of the Act and paragraph (6), item (vii) of the Rules.

Sup. Ct. WEB #1180

Sup. Ct., 2nd P.B., J., Jan. 11, 2013, 67(1) Minshu 1

The Case on Constitutionality of the Regulation of Internet Sales of Pharmaceutical Products

Article 15-4, paragraph (1), item (i) (as applied mutatis mutandis pursuant to Article 142), Article 159-14, paragraph (1) and main clause of paragraph (2), Article 159-15, paragraph (1), item (i), and Article 159-17, items (i) and (ii) of the Ordinance for Enforcement of the Pharmaceutical Affairs Act, are illegal and void as going beyond the scope of delegation by the Pharmaceutical Affairs Act, to the extent that they would result in uniformly prohibiting the sale or offering of Class I and Class II drugs out of nonprescription drugs by a store retailer to a person who is not in the store, by mail or any other means.

Sup. Ct. WEB #1182

Sup. Ct., 1st P.B., J., Mar. 21, 2013, 67(3) Minshu 438

The Case Regarding the Kanagawa Prefectural Ordinance on Temporary Special Corporate Tax

The Kanagawa Prefectural Ordinance on Temporary Special Corporate Tax stipulates that temporary special corporate tax shall be levied for business activities conducted by corporations whose stated capital exceeds a certain threshold, and specifies the tax base of temporary special corporate tax as an amount equivalent to the amount of loss for the past business year that is to be carried over and deducted as part of the amount of deductible expenses in the course of calculating the amount of income, which serves as the tax base

of the income levy of enterprise tax on a corporation, thereby substantially precluding carryover and deduction of such loss. These provisions are inconsistent or in conflict with the main clause of Article 72-23, paragraph (1) of the Local Tax Act, which prescribes, as a mandatory measure, the carryover and deduction of an amount equivalent to the amount of loss as provided in Article 57, paragraphs (1) and (9) of the Corporation Tax Act (prior to the 2011 revision) and are therefore illegal and void.

Sup. Ct. WEB #1190

Sup. Ct., G.B., D., Sep. 4, 2013, 67(6) Minshu 1320

The Discrimination Case in the Statutory Share in the Inheritance of a Child Born out of Wedlock of 2013

[1] The first part of the proviso to Article 900, item (iv) of the Civil Code, which sets the statutory share in the inheritance of a child born out of wedlock as one-half of that of a child born in wedlock, was in violation of Article 14, paragraph (1) of the Constitution as of July 2001 at the latest. [2] The judgment made by the Supreme Court to the effect that the provision of the first sentence of the proviso to Article 900, item (iv) of the Civil Code was in violation of Article 14, paragraph (1) of the Constitution as of July 2001 at the latest has no effect on any legal relationships that have already been fixed by rulings or other judicial decisions on the division of an estate, agreements on the division of an estate, or other agreements made on the assumption of the provision with regard to other cases of inheritance that have commenced during the period after July 2001 until the judgment was made.

JYIL, No. 57, pp. 480-86;
Sup. Ct. WEB #1203

Sup. Ct., 1st P.B., J., Sep. 26, 2013, 67(6) Minshu 1384

The part of the provisions of Article 49, paragraph (2), item (i) of the Family Register Act, which requires that a statement as to whether the child was born in or out of wedlock be made in a written notification to be submitted upon filing a notification of birth, is not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #1205

Sup. Ct., G.B., J., Nov. 20, 2013, 67(8) Minshu 1503

The Malapportionment Case (2012 House of Representatives Election)

The provisions on the election districts prescribed in Article 13, paragraph (1) of the Public Offices Election Act (prior to the 2012 revision) and Appended Table 1 of the Act reaches inequality in the value of votes to such an extent that it has raised the question of unconstitutionality, at the time of the election for members of the House of Representatives in 2012, as well as at the time of the previous election in 2009. However, the provisions of the Act are not in violation of Article 14, paragraph (1) nor other provisions of the Constitution because it cannot be declared that the rectification of the malapportionment was not made within a reasonable period as required by the Constitution.

Sup. Ct. WEB #1287

Sup. Ct., 1st P.B., J., Jan. 16, 2014, 68(1) Keishu 1

The notification system accompanied by penalties as prescribed in Article 7, paragraph (1) and Article 32, item (i) of the Act on Regulation on Soliciting Children by Using Opposite Sex Introducing Service on Internet is not in violation of Article 21, paragraph (1) of the Constitution.

Sup. Ct. WEB #1216

Sup. Ct., G.B., J., Nov. 26, 2014, 68(9) Minshu 1363

The Malapportionment Case (2013 House of Councillors Election)

Under the provisions on the election districts and the apportionment of the seats prescribed in Article 14 of the Public Offices Election Act (after the 2012 revision) and Appended Table 3 of the Act, at the time of the election for members of the House of Councillors in 2013, the maximum disparity between constituencies in terms of the number of voters per member reached extreme inequality (the largest gap of 4.77 to 1 by the measure of the population size per member based on the population in the value of votes to such an extent) that it has raised the question of unconstitutionality. However, the provisions of the Act are not in violation of Article 14, paragraph (1) nor other provisions of the Constitution because it cannot be declared that the Diet's failure to revise the provisions by the election day is beyond the limit of the Diet's legislative discretion.

Sup. Ct. WEB #1311

Sup. Ct., 3rd P.B., J., Mar. 10, 2015, 69(2) Minshu 265

Article 12 of the Nationality Act, which stipulates that a Japanese citizen who acquired the nationality of a foreign country through birth and who was born abroad shall lose Japanese nationality retroactive to the time of birth unless he/she indicates an intention to reserve Japanese nationality pursuant to the provision of the Family Register Act, is not in violation of Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #1348

Sup. Ct., 3rd P.B., J., Mar. 10, 2015, 69(2) Keishu 219

The system of divisional proceedings, which is a special arrangement for proceedings and decisions in trials under the *saiban-in* system, is not in violation of Article 37, paragraph (1) of the Constitution.

Sup. Ct. WEB #1351

Sup. Ct., 2nd P.B., J., Mar. 27, 2015, 69(2) Minshu 419

The Case on Constitutionality of Surrender Request to an Organized Crime Group Member (Yakuza) of Public Housing Unit

The provision of the principal sentence and item (vi) of Article 46, paragraph (1) of the Nishinomiya City Ordinance on Municipally Managed Housing Units to the effect that the city mayor may demand the surrender of a municipally managed housing unit if the resident thereof is proven to be an organized crime group member (Yakuza), is not in violation of Article 14, paragraph (1) and Article 22, paragraph (1) of the Constitution.

Sup. Ct. WEB #1350

Sup. Ct., 3rd P.B., D., May 18, 2015, 69(4) Keishu 573

The imposition of a civil fine on counsel who disobeys the court's order to appear for the trial preparation or trial date, be present during these proceedings, and in court, which is provided in Article 278-2, paragraph (3) of the Code of Criminal Procedure, does not violate Article 31 and Article 37, paragraph (3) of the Constitution.

Sup. Ct. WEB #1362

Sup. Ct., 1st P.B., D., Aug. 25, 2015, 69(5) Keishu 667

The issue of how the period during which the trial records are required to be completed should be specifically set, in light of matters such as the primary purposes of preparing the trial records, is not directly relevant to the guarantee of due process in a criminal procedure under Article 31 of the Constitution. (Article 48, paragraph (3) of the Code

of Criminal Procedure, which specifies the period during which trial records are required to be completed, is not in violation of Article 31 of the Constitution.)

Sup. Ct. WEB #1393

Sup. Ct., G.B., J., Nov. 25, 2015, 69(7) Minshu 2035

The Malapportionment Case (2014 House of Representatives Election)

The provisions on the election districts prescribed in Article 13, paragraph (1) of the Public Offices Election Act and Appended Table 1 of the Act became contrary to the constitutional requirement of equality in the value of votes at the time of the election for members of the House of Representatives in 2014 as well as at the time of the previous election in 2012. However, the provisions of the Act are not in violation of Article 14, paragraph (1) nor other provisions of the Constitution, because it cannot be declared that the rectification of the malapportionment was not been made within a reasonable period as required by the Constitution.

Sup. Ct. WEB #1424

Sup. Ct., 1st P.B., J., Dec. 3, 2015, 69(8) Keishu 815

The Penal Code and the Code of Criminal Procedure were revised in 2010, resulting in the statute of limitations being abolished. Article 3, paragraph (2) of the Supplementary Provisions of the 2010 Revision Act also abolished, as a transitional measure, the statute of limitations for any crime for which the statute of limitations has not lapsed by the time the revision comes into effect. Such a transitional measure is not in violation of Articles 39 and 31 of the Constitution, nor can it be deemed to be in violation of the purports of these clauses. (Retrospective application of the abolition of the statute of limitations does not violate Articles 39 and 31 of the Constitution.)

Sup. Ct. WEB #1436

Sup. Ct., 1st P.B., J., Dec. 14, 2015, 69(8) Minshu 2348

Article 12-12, paragraph (4) of the Supplementary Provisions of the National Public Officers Mutual Aid Association Act (prior to the 2012 revision), which delegates the Cabinet Order to provide for the particulars of the interest to be returned with a retirement lump sum payment, and Article 30, paragraph (1) of the Supplementary Provisions of the Act for Partial Amendment to the Employee Pension Insurance Act, which provides for transitional measures concerning Article 12-12, paragraph (4) of the Supplementary Provisions of the National Public Officers Mutual Aid Association Act, are not in violation of Article 41 and Article 73, item (vi) of the Constitution.

Sup. Ct. WEB #1440

Sup. Ct., G.B., J., Dec. 16, 2015, 69(8) Minshu 2427

The Case on Constitutionality of the 6-Month Period of Prohibition of Remarriage for Women

[1] The part of the provision of Article 733, paragraph (1) of the Civil Code, which prescribes a 100-day period of prohibition of remarriage, is not in violation of Article 14, paragraph (1) and Article 24, paragraph (2) of the Constitution. [2] The part of the provision of Article 733, paragraph (1) of the Civil Code, which prohibits women from remarrying for a period exceeding 100 days, had come to be in violation of Article 14, paragraph (1) and Article 24, paragraph (2) of the Constitution by 2008. [3] If the provisions of a law restrict, without reasonable grounds, any rights or interests that are constitutionally guaranteed or protected and thus obviously are in violation of provisions of the Constitution, and yet the

Diet fails to take legislative measures such as revising or abolishing these provisions of the law for a long period of time without justifiable grounds, the Diet members' acts during the legislative process should be held to be in violation of the legal obligation they assume in the course of their duties regarding each individual among the people. Further, their legislative inaction should exceptionally be assessed as illegal in the context of the application of Article 1, paragraph (1) of the State Redress Act. [4] The part of the provision of Article 733, paragraph (1) of the Civil Code, which prohibits women from remarrying for a period exceeding 100 days became unreasonable due to the advancement in medical techniques and scientific technology, and changes in the social situation after the revision to the Civil Code in 1947. However, in 1995, the Third Petty Bench of the Supreme Court ruled that it was obvious that the case in dispute cannot be regarded as an exceptional case in which the Diet's legislative inaction in revising or abolishing the Article should immediately be deemed illegal, and even after that, no judicial ruling was issued to point out the question of unconstitutionality arising with regard to the provision. Under these circumstances, it is difficult to say that the unconstitutionality of the provision was obvious to the Diet as of 2008; hence, the Diet's legislative inaction should not be assessed as illegal in the context of the application of Article 1, paragraph (1) of the State Redress Act.

Sup. Ct. WEB #1418

Sup. Ct., G.B., J., Dec. 16, 2015, 69(8) Minshu 2586

The Case on Constitutionality of Forcing a Common Surname for Married Couples

Article 750 of the Civil Code, which stipulates that a husband and wife shall adopt the surname of the husband or wife in accordance with what was decided at the time of marriage, is not in violation of Articles 13, 14, and 24 of the Constitution.

Sup. Ct. WEB #1435

Sup. Ct., 3rd P.B., J., Dec. 9, 2016, 70(8) Keishu 806

As inspection of mail, a customs officer opened the mail to confirm whether it contained any banned items to be imported, as part of the simplified procedure for exporting and importing mail, visually confirming the content of the mail, taking a minimum volume of the content as a sample, and forwarding it to an expert for examination, without a warrant issued by a judge and without the consent of the sender or receiver of the mail. Such an act should be allowed under Article 76 of the Customs Act (prior to the 2012 revision) and Article 105, paragraph (1), items (i) and (iii) of the Customs Act (prior to the 2011 revision), and this interpretation is not contrary to the purport of Article 35 of the Constitution.

Sup. Ct. WEB #1502

Sup. Ct., 3rd P.B., D., Jan. 31, 2017, 71(1) Minshu 63

A business operator performs searches at the request of users and provides search results consisting of URLs or codes to identify websites, and responds to the request of any user to perform a search using conditions related to a certain person and provides the URLs of websites on which articles or the like that contain facts related to the privacy of such person, the titles of such websites and excerpts from such websites, as a part of the search result. Whether such act is illegal or not should be determined by comparing and considering the legal interest of such facts not being published and various situations related to the reasons for provid-

ing such URLs and other items as the results of the search, including the nature and contents of such facts, range in which such facts are transmitted and the extent of concrete damage suffered by such person by the provision of such URLs and other items, social position and power of influence of such person, purpose and meaning of such articles, social situation when the articles were posted and subsequent changes, and need to include such facts in the articles. Considering these factors, if it is apparent that the legal interest of such facts not being published is greater than the legal interest of publishing them, the person may demand the business operator to delete such URLs and other items from the search results. (A person can request a search service provider to delete the search results on him/her based on the right to privacy.)

Sup. Ct. WEB #1511

Sup. Ct., G.B., J., Mar. 15, 2017, 71(3) Keishu 13

The Case on Constitutionality of the GPS Investigation without a Warrant

GPS investigation, which is a method of criminal investigation wherein a vehicle's location information is retrieved and monitored by secretly attaching a GPS terminal to the vehicle without the user's consent, is a compulsory disposition that is not permitted to be conducted without a warrant, since it is a method of investigation that enables investigators to invade an individual's private sphere against his reasonably inferred intention by secretly attaching to his belongings devices that enable an invasion of his privacy.

Sup. Ct. WEB #1518

Sup. Ct., G.B., J., Sep. 27, 2017, 71(7) Minshu 1139

The Malapportionment Case (2016 House of Councillors Election)

The provisions on the election districts and the apportionment of the seats prescribed in Article 14 of the Public Offices Election Act (after the 2015 revision) and Appended Table 3 of the Act do not reach inequality in the value of votes to such an extent that it raises the question of unconstitutionality at the time of the election for members of the House of Councillors in 2016; therefore, the provisions of the Act are not in violation of Article 14, paragraph (1) nor other provisions of the Constitution.

Sup. Ct. WEB #1534

Sup. Ct., G.B., J., Dec. 6, 2017, 71(10) Minshu 1817

The Case on Constitutionality of Compulsory Contract with NHK (Japan Broadcasting Corporation)

[1] Article 64, paragraph (1) of the Broadcasting Act is a provision that compels a person installing reception equipment capable of receiving broadcasts of NHK to conclude a contract for the reception of the broadcasts, and if the person does not accept an offer from NHK for the contract, NHK may seek a judgment ordering the person to manifest his/her intention of acceptance; the contract is effected when the judgment becomes final and binding. [2] Article 64, paragraph (1) of the Broadcasting Act is a provision for compelling the conclusion of a contract for the reception of broadcasts of NHK, the content of which is necessary for the appropriate and fair collection of fees for receiving broadcasts in a way befitting the NHK's purposes as prescribed in the Act, and is not in violation of Articles 13, 21, and 29 of the Constitution.

Sup. Ct. WEB #1554

Sup. Ct., 3rd P.B., D., Dec. 18, 2017, 71(10) Keishu 570

The treatment system under the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity is not in

violation of Article 14 and Article 22, paragraph (1), and the purport of Article 31 of the Constitution.

Sup. Ct. WEB #1561

Sup. Ct., 2nd P.B., D., Jul. 3, 2018, 72(3) Keishu 299

Article 299-4 of the Code of Criminal Procedure, which allows the public prosecutor to give the counsel an opportunity to know the name and address of a witness but not to let the accused know such name or address in case of risk of physical or property harm or intimidation or bafflement to the witness, and allows the public prosecutor to withhold the opportunity in case of unavoidable risk, and; Article 299-5 of the Code, which prescribes possible actions by the accused or the counsel against the measures by the public prosecutor, are not in violation of the first sentence of paragraph (2) of Article 37 of the Constitution.

Sup. Ct. WEB #1602

Sup. Ct., G.B., J., Dec. 19, 2018, 72(6) Minshu 1240

The Malapportionment Case (2017 House of Representatives Election)

The provisions on the election districts and the apportionment of the seats prescribed in Article 13, paragraph (1) of the Public Offices Election Act and Appended Table 1 of the Act do not become contrary to the constitutional requirement of equality in the value of votes at the time of the election for members of the House of Representatives in 2017; therefore, the provisions of the Act are not in violation of Article 14, paragraph (1) nor other provisions of the Constitution.

Sup. Ct. WEB #1637

Sup. Ct., 2nd P.B., D., Jan. 23, 2019, 2421 Hanji 4

Article 3, paragraph (1), item (iv) of the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder, which prescribes the lack of reproductive glands or permanently lost function of reproductive glands as the requirement for a person with gender identity disorder to receive a ruling of a change in the recognition of the gender status, is not in violation of Article 13 and Article 14, paragraph (1) of the Constitution.

Sup. Ct. WEB #1634

Sup. Ct., 3rd P.B., J., Mar. 10, 2020, 74(3) Keishu 303

The Penal Code was revised in 2017, resulting in the crime of forcible indecency becoming prosecutable without a criminal complaint. Article 2, paragraph (3) of the Supplementary Provisions of the 2017 Revision Act, as a transitional measure, also makes prosecutable without criminal complaint after the enforcement of the Act, crimes newly defined as those prosecutable without criminal complaint under the Act that were committed prior to the enforcement of the Act. Such transitional measure does not violate Article 39 of the Constitution, nor the purport of this clause. (Retrospective application of the abolition of the criminal complaint as a requirement for prosecution does not violate Article 39 of the Constitution.)

Sup. Ct. WEB #1745

Sup. Ct., G.B., J., Nov. 18, 2020, 74(8) Minshu 2111

The Malapportionment Case (2019 House of Councillors Election)

The provisions on the election districts and the apportionment of the seats prescribed in Article 14 of the Public Offices Election Act (after the 2018 revision) and Appended Table 3 of the Act do not reach extreme inequality in the value of votes to such extent that it raises the question of unconstitutionality at the time of the election for members

of the House of Councillors in 2019; therefore, the provisions of the Act are not in violation of Article 14, paragraph (1) nor other provisions of the Constitution.

Sup. Ct. WEB #1803

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