

Material

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

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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 circles²⁾ 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) *M_{INSHU}* 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) *M_{INSHU}* 1043) and the Foreign Resident’s Local Voting Rights Case (Sup. Ct., 3rd P.B., J., Feb. 28, 1995, 49(2) *M_{INSHU}* 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	<i>Saiko Saibansho Minji Hanreishu</i> [Supreme Court Reporter, Civil Cases]
KEISHU	<i>Saiko Saibansho Keiji Hanreishu</i> [Supreme Court Reporter, Criminal Cases]
SHOGETSU	<i>Shomu Geppo</i> [Monthly Materials edited by the Litigation Section of the Ministry of Justice]
HANJI	<i>Hanrei Jiho</i> (one of the case materials by private publishers)
Maki (1964)	John M. Maki ed., <i>Court and Constitution in Japan: Selected Supreme Court Decisions, 1948–1960</i> (University of Washington Press, 1964)
Itoh/Beer (1978)	Hiroshi Itoh and Lawrence Ward Beer eds., <i>The Constitutional Case Law of Japan: Selected Supreme Court Decisions, 1961–1970</i> (University of Washington Press, 1978)
Beer/Itoh (1996)	Lawrence W. Beer and Hiroshi Itoh eds., <i>The Constitutional Case Law of Japan: 1970 through 1990</i> (University of Washington Press, 1996)
Milhaupt et al. (2001)	Curtis J. Milhaupt et al. eds., <i>Japanese Law in Context: Readings in Society, the Economy, and Politics</i> (Harvard University Asia Center, 2001)
Bälz et al. (2012)	Moritz Bälz et al. eds., <i>Business Law in Japan - Cases and Comments: Intellectual Property, Civil, Commercial and International Private Law</i> (Kluwer Law International, 2012)
Port et al. (2015)	Kenneth L. Port et al. eds., <i>Comparative Law: Law and the Process of Law in Japan</i> , 3rd. ed., (Carolina Academic Press, 2015)
JAIL	The Japan Branch of the International Law Association ed., <i>The Japanese Annual of International Law</i> , No. 1 (1957) - 50 (2007)
JYIL	The International Law Association of Japan ed., <i>Japanese Yearbook of International Law</i> , Vol. 51 (2008) - present
PJSCQC	<i>Series of Prominent Judgments of the Supreme Court upon Questions of Constitutionality</i> [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 high-

est 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 authoriz-

ing 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, para-

graph (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 contravenes 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 build-

ing 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 Communiqué 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 viola-

tion.

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 interfering 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 pro-

hibit 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 there-

fore 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 pos-

essor 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 influ-

ence 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 assem-

bly 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 Organi-
zation-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
Tamagushiryō Case*

The Ehime Prefecture contributed 5,000 yen on each of nine occasions (a total of 45,000 yen) from public funds as *tamagushiryō* (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 *kentoryō* (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 *ku-motsuryō* (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 stan-

dard 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-

terminated 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 Par-

ticipants 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 elec-

tions 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 re-

port 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 Of-

fices 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-ins*.) 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-ins* 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 pro-

visions 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