
MAJOR JUDICIAL DECISIONS

Jan.–Dec., 2016

1. Constitutional Law

X v. Chiba Election Administrative Commission

Supreme Court Third Petty Bench, September 18, 2016

Case No. (*Gyo-ke*) 35 of 2016

19 LAW CASES REPORTS 2327

Summary:

The prefectural assembly election of Chiba in April 12, 2015 is constitutional under Article 14 (1) of the Constitution.

Reference:

Constitution, Article 14 (1), Public Offices Election Act, Article 15 (8).

Fact:

The Public Offices Election Act provides that the population of a district of the prefectural assembly elections should be more than half of the numbers which the population of this prefecture is divided by the population of the fixed numbers of assembly of this prefecture, and the

district is a zone of one city or a zone of one city and adjoining areas of another city. However, a proviso of the Public Offices Election Act (POEA), Article 15 (8) provides that in exceptional circumstances, districts can be set to have a balance between regions, taking into account consideration of the population. And because Chiba City is a city designated by ordinance, one ward is one district. The plaintiff argued that such a modification of the population proportional distribution violates Article 14 (1) of the Constitution and Article 15 (8) of POEA.

Opinion:

Reserved.

In light of POEA, prefectural assemblies have the discretionary power to decide whether add modifications to the population proportional distribution, and the extent of the modification. Article 14 (1) of the Constitution requires that prefectural residents should be treated equally with regard to the franchise, namely the vote value. And article 15 of POEA requires the population proportional distribution to be the most important and fundamental standard of elections for prefectural assemblies. Like this, POEA strongly requires the equality of the vote value. So the legality of a method of allocating a certain number of districts should be decided by whether the method enacted by the assembly of the prefecture can be approved as a reasonable exercise of discretionary power.

When there is an inequality in the vote value under an enacted or modified ordinance applied under POEA 15 (8), the method of allocating a certain number of districts can not be said to be a reasonable exercise of discretionary power if this inequality is not reasonable, even if it takes into consideration general elements to keep the balance between regions, or when the ordinance was enacted or amended, there was no reason which justified such inequality, though this inequality does not come to such a degree, or some reasons which ensure such inequality has been lost when the elections took place.

According to facts, the greatest difference in the population of districts is 1 to 2.51. And the greatest difference among population of districts of population proportional distribution is 1 to 2.51 under the Chiba city

ordinance of the distribution of the quorum. However, the greatest difference in the population of districts of the population proportional distribution is 1 to 2.60 if it is under article 15 (8) of the distribution of quorum. So under this prefectural election system, the inequality of the vote value in this election can not be thought that come on unreasonable inequality even if some elements to keep a balance between regions in the Chiba prefectural assembly. And the distribution of the quorum of this election is thought to provide a distribution of quorum of each district, taking the characteristic situations of each local government and the stability of the election system into account. Because the evaluation that there are special situations in the proviso of POEA 15 (8) is not unreasonable, and it is hard to say such a situations was lost, so considering the greatest difference of population between districts was less than the population proportional distribution, the failure to amend this distribution of quorum did not exceed the limit of a reasonable exercise of discretionary power.

So the distribution of the quorum of this election did not violate Article 14 (1) of the Constitution and Article 15 (8) of POEA.

Editorial Note:

In Japan, the inequality of the vote value has been a constitutional problem and many litigations about this problem have been filed, not only with regard to the national Diet but also local assemblies. However, some differences exist between the national Diet and local assemblies: while the local assembly is an unicameral system, the Japanese national Diet is a bicameral system, while Article 43 of the Constitution provides “Both Houses shall consist of elected members, representative of all the people”, there are no such provision for the local assembly, while POEA provides “districts can be set to have a balance between the regions, taking consideration of the population into account” and this proviso is regarded as an exception of the population proportional distribution for a local assembly.

Under such difference, it is important to examine whether the Constitution requires both the Diet and the assembly to have an equality of vote value, or whether it allow local assemblies less strict restrictions than the national Diet. Many constitutional scholars argue that Article 14 (1)

requires population proportional distribution and it is also the same in local assembly elections

However, this Supreme Court decision held that keeping regions in balance in the prefectural assembly should be considered, and POEA provides a distribution of the quorum of each district according to the actual situation and stability of elections. Then, the Court assumes that, unlike the national Diet election, in local assembly elections the equality of the vote value includes not only population proportional distribution but also keeping a balance between regions.

The problem is the justification of keeping regional equality, just in the local assembly election system, despite Article 14 (1). This decision justified keeping between regions equality because it is with in the discretionary power to consider the bbalance between regions. However it seems too weak a theory to justify violation of Article 14 (1).

2. Administrative Law

Yahoo Japan Corporation v. Japan

Supreme Court 1st P.B., February 29, 2016

Case No. (*Gyo-Hi*) 75 of 2015

70(2) MINSHU 242; 2300 HANREI JIHOU 29; 1424 HANREI TAIMUZU 68

Summary:

The Supreme Court held that the concept of an act or calculation that is “deemed to result in unreasonably reducing the burden of corporation tax” in Article 132-2 of the Corporation Tax Act refers to an act or a calculation of a corporation that will result in a reduction in the burden of corporation tax by improperly using the provisions as a means of tax avoidance. Determination of whether or not any such improper use was committed should be made by first taking into consideration, (a) whether the corporation’s act or calculation is of an unnatural nature, and (b) whether there was any business objective or any other reasonable ground for performing such an act or calculation, other than reducing the tax burden.