
MAJOR LEGISLATION & TREATIES

Jan.–Dec., 2018

1. Constitutional Law

Act to Amend Public Offices Election Act

Law No. 65, July 25, 2018.

Background:

In 2018, the Liberal Democratic Party (LDP) proposed to amend the Public Offices Election Act. It can be summarized as follows: (1) Increase Members of The House of Councillors from Saitama Prefecture from 6 to 8 (3 to 4 in a real election: Only half of its members is elected every 3 years). (2) Increase Members of The House of Councillors from proportional representation from 96 to 100 (48 to 50 in a real election). (3) Accept “special candidates list”. It allows a party to make a priority members list though the Councillors proportional representation system has chosen an “open” party list. This amendment is based on the intention to save LDP incumbent members who are expelled from the electoral districts because of the revision of those. This act was passed by the LDP and New Komeito.

Main Provisions (after revised):

Article 4: 2 The fixed members of the House of Councillors shall be 100 from proportional representation and 148 from electoral districts, out of a total of 248.

(before revision: The fixed members of the House of Councillors shall be 96 from proportional representation and 146 from electoral districts, out of a total of 242.)

Article 14 [not revised]: The electoral districts of the Councillors and fixed members of each district shall be provided in attached table 3.

Article 86-3 [italic for added part]: Party [...] shall register the document which lists the party name and its members [...] (herein after “the Councillors list”) to make those who are listed (herein after “the listed of the Councillors list”) candidates of the election. *A Party can register the Councillors list which distinguishes those who are preferentially elected from the rest and which establishes priority in those.*

Table 3 [extract]: Saitama Prefecture 8

(before revision: Saitama Prefecture 6)

Editorial Note:

Higuchi Yoichi writes in his famous textbook (published by Sobunsha), quoting French constitutional scholar René Capitant that it is no exaggeration to say the election law is the real constitution because the substance of parliamentary government depends on the election system (not only the size and division of districts, but also includes voting measures). If so, the revision of election law has huge importance comparable with the revision of the constitution. The background of this amendment, however, has neither such awareness, nor will to make the substantial constitution of the country better. As stated at the beginning, its aim is to “gerrymander” the election system to save LDP incumbent members (it is of course not remarked in the official proposal note, but no secret). This note will offer the background, which makes the revision of the Public Offices Election Act urgent and consider this amendment in the

context of that.

In 50 years, the National Diet of Japan has had a serious weight of votes problem. The electoral districts had hardly changed though population have drifted from country to city. It is not so much worse as rotten boroughs in former England, a factor which increases the gap up to about 500% is related to poor judicial review. When *Baker v. Carr*, 369 U.S. 186 (1962) took the initiative to redistricting in the United States, the Supreme Court of Japan ruled the distribution of districts in the general election 1972, which reached up to 500% gap unconstitutional, but neither invalidated the election, nor ordered redistricting, failing to give incentives for a legislative revision. Scholars saw the Supreme Court as tending to tolerate up to 300% gap as Representatives, 600% gap as Councillors. Because the House of Councillors of Japan is a national representative assembly, not a prefectural one (like the U.S. Senate), the issue should be dissolved. It is more difficult than Representatives to dissolve the issue of the House of Councillors. For the Councillors' electoral districts are based on prefectures.

After 2000, the Supreme Court sometimes ruled that the distribution of districts is unconstitutional. On the electoral districts of the Councillors, the Court ruled the gap which is up to 500% an unconstitutional "condition" on October 17, 2012, stating that "it is needed to revise the current election system itself to resolve the unconstitutional condition of equality and more successfully reflect the public opinion as soon as possible, not only increase/decrease members of a few districts" (66 MINSHU 3357). The Supreme Court decisions have led to a revision of the election law. The 2015 amendment jointed Tottori and Shimane Prefecture districts, and Tokushima and Kochi Prefecture districts. It decreased the max gap to 308% and the Court ruled it constitutional in 2017.

Turn back to the amendment of 2018. From the view point of the voting weight problem to be resolved, it is positively appreciated to increase the members of Saitama Prefecture, but not to virtually undermine the joint districts and save incumbent members who are expelled for redistricting through a "special candidates list". The list can make the current open-list proportional representation virtually closed. For all candidates but one exception can be registered in the "special candidates list", according to the amendment. Surely the open-list system possesses the danger that

pressure groups can infiltrate a political process. For the candidates who can procure a “personal vote” like celebrities or leaders of pressure groups, enjoy an advantage, though most of the electorates vote for their party, not a pressure group. But then we should introduce a closed party list system for a progressive change, especially given the current open-list system has been introduced by the LDP in 2001 for their interests.

Besides, if we take the Court’s remarks seriously and want to make the election law better, we should introduce a simpler election system, for example, that based on a proportional representation system to reflect the public opinion in a direct fashion and repeal the current monstrous mixture of Prefectural districts (partly jointed districts, variable fixed numbers each district) and open-list (but virtually can be closed) proportional representation. The joint districts by 2015 amendment, which the Supreme Court held constitutional, should be also a temporary expedient from this viewpoint.

2. Family Law

Partial Revision of the Civil Code and the Domestic Relations Case Procedure Act

Law No. 72, July 13, 2018 (Effective on July 1, 2019 [partly, by January 13, 2019, and April 1, 2020])

Background:

The Inheritance Law of Japan enforced in 1989 had earlier been reformed in 1947, 1962 and 1980, and this revision followed those.

In the last revision in 1980, following decreasing birthrate and aging of the population, the raising of the spouse’s statutory share in inheritance was reviewed and the contributory portion system was established. Afterwards, for a space of forty years, the aging of Japan’s population advanced with the extension of the average life expectancy: the percentage of the population aged 65 or older reached 27.7 % in 2017 compared with 9.1 % in 1980. Accordingly, since the age of the surviving spouse at the time of the commencement of an inheritance had become considerably