
MAJOR JUDICIAL DECISIONS

Jan.–Dec., 2018

1. Constitutional Law

X v. Saitama City

Tokyo High Court, May 18, 2018

Case No. (*Ne*) 5012 of 2017

439 HANREI JIHO 69

Summary:

The plaintiff is a member of a haiku circle and denied the access to the city community center bulletin because of its political message, though the city authority and the circle has the agreement of publication. The Tokyo High Court affirmed the Saitama District Court that held it is unlawful on the State Redress Act.

References:

Constitution, Article 21, Social Education Act, Article 20, Local Government Act, Article 244, State Redress Act, Article 1

Facts:

The plaintiff is a member of a haiku circle of Mihashi region, Saitama City, which holds a haiku gathering at Mihashi community center every month, and the haiku, “梅雨雨空に 『九条守れ』の 女性デモ Under a rainy sky/ ‘Obey the Article 9’/ a women’s demo sounds” is selected as an excellent of the month by the members vote, in the June 2014 gathering. ‘Article 9’ means the Renunciation of War Clause of the Constitution of Japan. From those days, the public opinion has split over the Defense Acts that unconstitutionally enable the use of collective self-defense (See Waseda Bulletin of Comparative Law vol. 35 [2017] by Moriguchi and Mizushima for a detailed report).

At the end of October 2010, the chief of the center proposed to the circle to publish the excellent haiku of the month through the community center monthly bulletin, obtained the circle’s agreement, and published it from November 2010 to present, clearly indicating the name of the author and the circle.

The haiku above, however, is thought to be politically controversial and inappropriate for publication through the bulletin. For the community center to maintain its fairness and neutrality, the chief and city authority decided not to publish it.

The plaintiff’s main claims are as follows: (1) To publish the haiku on the agreement. (2) The damage compensation on the State Redress Act. The Saitama District Court dismissed (1), accepted (2).

Opinion:

Partly affirmed (reduction in compensation)

A. The Role of Community Center

The purpose of a community center is to raise the level of residents’ cultural appreciation, improve health, cultivate sentiments, develop cultural life and social welfare with providing services dealing with education, academic and cultural affairs that affect actual life (Article 20 of Social Education Act). To achieve these aims, the community center shall provide a variety of services such as open lectures or residents’ meetings (Article 22). No community center must treat any particular resident in an unjust and discriminatory way (according to Article 244, section 3 of Local

Government Act). According to the role of the community center, it is a kind of public place to improve education, culture, life and social welfare, and the staff of the community center have the obligation to justly and fairly treat the residents' social education practices to make the community center a more proper place for that role. If the staff treat the publication of results as a part of social education practices, comparing to other residents, in unjust and discriminatory ways for the resident's thought and belief, it infringes unlawfully moral interests under the State Redress Act (citing Supreme Court Jul. 14, 2005; 59 MINSHU 1569).

B. Examining the Case

The court recognizes the follows: The bulletin had published the excellent haiku of the month selected through members' vote from November 2010 to June 2014 without exception. The haiku in question was refused because it was relevant to the demonstration, expressing that Article 9 of the Constitution of Japan should not be interpreted as allowing the use for collective self-defense; namely it expresses the same thought and its publication could undermine the fairness and political neutrality of community center.

The bulletin readers, however, understand the content of the haiku as author's thought and belief. The bulletin records the name of the author and the circle clearly. It means the haiku could not necessarily undermine the political neutrality of the community center itself. If the staff deny the publication of the education results of residents, including controversial ideas, because of its controversial character, it is unjust and discriminatory treatment comparing to the publication of those not including controversial ideas.

Even the background that the public opinion is split over the use of collective self-defense when the haiku was made be taken into account, it cannot be said that there are just reasons not to publish. The staff treated unjustly the plaintiff because the haiku expresses that Article 9 of the Constitution of Japan should not be interpreted as allowing the use for collective self-defense, in short, because of the plaintiff's thought and belief, and unlawfully infringed the plaintiff's moral interest under the State Redress Act.

Aftermath:

The Supreme Court dismissed the appeal on December 20, 2018. Saitama City published the haiku in the community center bulletin of February 2019.

Editorial Note:

First, the high court decision puts emphasis on the right to education and the role of the community center. The district court held that the expression of the result of education is guaranteed not as a part of the right to education, but the freedom of expression, then dismissed the freedom of expression claim. For the plaintiff can publish the haiku through other measures like the internet. But the plaintiff's expectation of publication based on the fact that the haiku had published continuously for 3 years and 8 months on the agreement, is a legally protected interest which the State Redress Act guarantees, especially given the freedom of expression and thought provided by the Constitution of Japan. Then the district court considers the process of decision-making, recognizes the staff's 'allergy to the Constitution', which led to an inadequate decision-making to the unjust, discriminatory treatment for the author's idea. The Tokyo High Court also recognizes the unjust treatment and infringement of the moral interest, but the reasoning is coming from the public character of the community center: because the community center bears a part of public education, it is inappropriate to restrict the publication of the results easily.

What is the significance of that reasoning? Local governments often follow a "don't-rock-the-boat" principle as to controversial affairs and deny the access to the properties of local government for the expression (Shida Yoko). In this case, the local authority had the concern that the publication of the haiku might bring about criticism by those who stand for the use of collective self-defense, then decided not to publish. The plaintiff can publish the haiku through other means like the internet, so is not restricted the freedom of expression. The freedom of expression, however, needs the place, and providing the place for the people should be an important role of the government (public forum doctrine). The Tokyo High Court makes the community center's position clear and illuminates

the importance of the place for expression. Of course, the community center is a place for social education, not a flat, free market which any contents circulate. For example, the Social Education Act provides the restriction of services concerned with interests of certain political parties. But it is significant that the court provided the logic, not that the public character of community center demands the restriction of private expression (Kawagishi Norikazu). It is exactly the public character that prohibits the easy restraint of expression.

Second, both the district and high court reject the claim of the right to publish. Both recognize that the purpose of the proposal is to make the bulletin diverse and various and not authorize the access by the circle. But given that the community center plays the role of the social education, it should involve the publication of the result of education. Under the circumstances of this case, there should be room for access (Hitomi Takeshi).

2. Administrative Law

X v. Japan

Supreme Court 3rd P.B., September 25, 2018

Case No. (*Gyo-Hi*) 209 of 2017

72(4) MINSHU 317; 1456 HANREI TAIMUZU 46

Summary:

The Supreme Court held that it cannot be said it is not permitted to dispute the legitimacy of a tax notice disposition against a withholding tax related to salary income, claiming that the act causing the payment which determined the tax duty of the said withholding tax is invalid due to a mistake, simply because the claim was done after the statutory payment due date.

Reference:

Income Tax Act, Article 183, Paragraph 1; Act on General Rules for National Taxes, Article 36, Paragraph 1; Civil Code, Article 95.