

**Trends in Japanese Constitutional Law Cases:
Jurisuto* Commentary on Important Judicial Decisions for 2004****

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Starting this fiscal year, I will be taking the place of Professor Makoto Ōishi as editor of Jurisuto's constitutional law section. For the present issue, I have followed this section's traditional format, selecting cases decided during the 2004 calendar year dealing with issues of substantive constitutional law and attempting to capture, as much as possible within the confines of these pages, court opinions

* Jurisuto is a widely-read legal magazine published by Yūhikaku Publishing Co., Ltd. that features special articles on the issues surrounding recently established laws. Each year, Jurisuto also publishes an annual review of major case decisions by subject area, with an introduction by a leading scholar in the field, followed by brief case notes introducing roughly eight to ten specific cases. This translation presents the introduction to the constitutional law section of the issue for 2004. APLPJ thanks Professor Tsunemoto and Jurisuto / Yūhikaku Publishing for their kind cooperation and support of this project.

** Teruki Tsunemoto, *Heisei 16 Nendo Jyūyō Hanrei Kaisetsu: Kenpō Hanrei no Ugoki* [Commentary on Important Legal Precedents for 2004: Trends in Japanese Constitutional Law Cases], 1291 JURISUTO RINJI ZŌKAN [JURISUTO, EXTRA EDITION] 1 (2005).

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published in Japanese reporters.¹ In addition, for the purposes of forming a complete record, I have also included the case numbers of decisions handed down prior to the end of April 2005 that were available solely on the Supreme Court of Japan's website.²

I. LITIGATION REGARDING JUDICIAL POWER AND THE CONSTITUTION

A. Judicial Construction of International Human Rights Law and the Opinions of Treaty Organs

Examples of the Japanese judiciary enforcing international human rights law such as the International Covenant on Civil and Political Rights³ (ICCPR) can now be found in the lower courts. Nevertheless, even though the opinions of treaty organs such as the Human Rights Committee⁴ are regarded as “supplementary means for interpreting international law,” “opinions of fact,” and a “guideline for interpreting international law,” Japanese courts never previously directly addressed the legal significance of such opinions. On March 9, 2004, the Osaka District Court tackled this question, stating that “[u]nless special circumstances exist, the ICCPR shall be interpreted in accordance with the Vienna Convention on the Law of Treaties.”⁵

¹ E.g., SAIKŌ SAIBANSHO HANREISHŪ [SUPREME COURT REPORTER], SAIBANSHO JIHŌ [COURT TIMES], HANREI JIHŌ [LEGAL PRECEDENT TIMES], HANREI TAIMUZU [LEGAL PRECEDENT TIMES].

² Supreme Court of Japan, <http://www.courts.go.jp/english/>. In addition to this survey, which provides information on important constitutional law cases, Prof. Tsunemoto also recommends referring to Yasuji Nosaka's “*Hanrei no Ugoki*” *Serekuto 2004* [*Trends in Judicial Decisions: Selected Cases 2004*], which presents some of the decisions that have not been included herein.

³ International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171.

⁴ “The Human Rights Committee was established to monitor the implementation of the Covenant and the Protocols to the Covenant in the territory of States (sic) parties. It is composed of 18 independent experts who are persons of high moral character and recognized competence in the field of human rights.” Office of the High Commissioner for Human Rights, Introduction to the Human Rights Committee, <http://www.unhcr.ch/html/menu2/6/a/introhrc.htm>.

⁵ 1858 HANREI JIHŌ 79 (Osaka Dist. Ct., Mar. 9, 2004); 1155 HANREI TAIMUZU 185 (Osaka Dist. Ct., Mar. 9, 2004); End Table, case 1; Vienna

The court clearly stated that the general comments issued by the Human Rights Committee “constitute subsequent practices in the application of the treaty, and should be given considerable deference when interpreting the ICCPR as matters pursuant to agreements established between the parties regarding the interpretation of the treaty,⁶ or as a supplementary means of interpretation.”⁷ Even if one argues that the appropriateness of the court’s stance is questionable, this decision deserves considerable attention for the court’s logical stance on this issue.

B. *The Possibility of Judicial Remedies [for War Victims]*

Ever since the Supreme Court’s November 27, 1968 Grand Bench⁸ decision on the constitutionality of WWII reparations,⁹

Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

⁶ See Vienna Convention, art. 31, ¶ 3(b). “There shall be taken into account, together with the context . . . any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation . . .” *Id.*

⁷ See *id.* at art. 32.

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

Id.

⁸ The Supreme Court hears appeals as a Grand Bench, composed of all fifteen justices, or in one of the three Petty Benches. Five justices are assigned to each Petty Bench. If a case presents a question in which a new constitutional ruling or judicial precedent may be forthcoming, it will be transferred to the Grand Bench.

Percy R. Luney, Jr., *The Judiciary: Its Organization and Status in the Parliamentary System*, in JAPANESE CONSTITUTIONAL LAW 131, 133 (Percy R. Luney, Jr., & Kazuyuki Takahashi eds., 1993).

⁹ 12 MINSHŪ 2808 (Sup. Ct., Nov. 27, 1968); End Table, case 2.

Japanese courts have consistently held that the providing of compensation for wartime injuries was something completely unanticipated at the time of the drafting of the Constitution and is simply a matter of policy for the legislature to decide. On November 29, 2004, the Second Petty Bench of the Supreme Court expanded upon this precedent. The Court held that even though the Law for Relief of War Victims and Survivors¹⁰ (hereinafter Relief Law) treats ex-soldiers and civilian employees of the Imperial Japanese Army differently depending on whether they are Japanese or Korean, this does not amount to a violation of Article 14 of the Constitution,¹¹ because paragraph two of the Relief Law's supplementary provision expressly states, "For the time being this law does not extend to persons not covered by the Family Registration Law¹² [i.e. *de facto* persons without Japanese nationality]."¹³ In addition, the Court held that, similar to the providing of relief for wartime injuries, the drafters did not foresee providing compensation to Koreans whose claims against the Japanese government were extinguished as a result of the measures established pursuant to the peace treaty between the Republic of Korea and Japan.¹⁴

¹⁰ The stated purpose of this law is to provide government relief to former soldiers and civilian employees of the Imperial Japanese Army who were injured or fell ill in the line of duty, or to the survivors of the deceased. *Senshōbyōsha senbotsusha izoku tō engohō* [Law for Relief of War Victims and Survivors], Law No. 168 of 1963, art. 1.

¹¹ "All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." *KENPŌ*, art. 14

¹² *Kosekih* [Family Registration Law], Law No. 224 of 1947. *See infra* note 17.

¹³ 1879 HANREI JIHŌ 58 (Sup. Ct.; Nov. 29, 2004); 1170 HANREI TAIMUZU 144 (Sup. Ct.; Nov. 29, 2004); End Table, case 3.

¹⁴ In exchange for settling all claims "completely and finally" against the Japanese government, in 1965 Japan and the Republic of Korea signed a treaty in which Japan agreed to provide the ROK with financial compensation and long-term, low-interest loans. Agreement on the settlement of the problem concerning property and claims and the economic cooperation between the Republic of Korea and Japan, Jun. 22, 1965, Japan-R.O.K., 583 U.N.T.S. 173.

II. FUNDAMENTAL RIGHTS

A. *The Right to Privacy and Personal Rights*

On February 27, 2004, the Osaka District Court created a stir when it handed down the first court decision in the debate on the constitutionality of the Resident Register Network System, or "Jūki Net" [Jūmin Kihon Daichō Nettowāku Shisutemu].¹⁵ The court balanced the limited necessity of protecting the confidentiality of the information handled by Jūki Net¹⁶ against the utility of such information for administrative purposes, and held that simply entering such information into the nationwide Jūki Net does not necessarily infringe upon an individual's legal rights. The court also held that Jūki Net was not an inherently dangerous system prone to misuse or likely to cause violations of legal rights involving privacy. Similarly, on June 30, 2004, in a case seeking to annul the issuing of Jūki Net's resident codes on the grounds that it constituted an illegal government action violating the right to privacy, the Toyama District Court dismissed the claim holding that the granting of the codes was merely an extension of governmental public recordkeeping, and therefore no new rights or obligations were created on behalf of the people.¹⁷ Numerous other lawsuits involving Jūki Net are being held in courts across Japan such as Tokyo, Osaka, Nagoya, Fukuoka, and Sapporo, the outcomes of which are being closely followed.

On March 2, 2004, the Tokyo District Court handed down a noteworthy decision regarding Japan's family registry system, or *koseki*.¹⁸ In that case, the plaintiffs argued that the standardized forms

¹⁵ 1857 HANREI JIHŌ 92 (Osaka Dist. Ct., Feb. 27, 2004); 1164 HANREI TAIMUZU 123 (Osaka Dist. Ct., Feb. 27, 2004); End Table, case 4.

¹⁶ Residents' names, addresses, birth dates, sexes, and eleven-digit resident codes are stored in the network, which replaces existing and localized systems that were often paper-based and of less concern for privacy advocates. Kojiro Ito, *Juki Net Clouds Privacy Rights*, THE YOMIURI SHIMBUN, June 2, 2005, at 4.

¹⁷ Unreported case (Toyama Dist. Ct., No. 6 (*u*) 2003 Jun. 30, 2004).

¹⁸ Unreported case (Tokyo Dist. Ct., No. 26105 (*u*) 1999 Mar. 2, 2004). The *koseki* plays a central role in a Japanese person's life because it is the means by which the government officially recognizes such important events as

authorized by the Ministry of Justice for recording one's family information was discriminatory against children born out of wedlock and violated Articles 13¹⁹ and 14²⁰ of the Constitution, and sought both an injunction against the existing way of completing the forms and monetary damages. In the form's column for recording a child's relationship to the holder of the family registry,²¹ children born to legally married couples were described both according to their gender and their birth order: i.e. "first daughter," "second son," etc. In contrast, in that same column, non-marital children were simply described according to their gender, thus making it easy to determine that they were born out of wedlock.

The court held that this practice of distinguishing between children born to married couples and those born out of wedlock went beyond what was necessary to fulfill the purpose of the family registry system, violating the plaintiffs' right to privacy. Unfortunately, since there was no prior case law holding that it was illegal to differentiate on the family registry form between marital and non-marital children, the court held that there was no duty of care owed by the national government or the municipality and therefore denied the plaintiffs' request for damages. The court did state, however, that "the fact that one is born out of wedlock is a personal matter" and that "a reasonable person would realize that this is a matter that neither the child nor the parent would want to be shared with others, and thus deserves legal protection as part of a person's interest as an individual." The court also recognized that given the

birth, marriage, divorce, and death. When a new couple marries, they create a new *koseki* and must use it to record the birth of any children or adoptions. Taimie L. Bryant, *For the Sake of the Country, For the Sake of the Family: The Oppressive Impact of Family Registration on Women and Minorities in Japan*, 39 UCLA L. REV. 190, 111-12 (1992).

¹⁹ "All of the people shall be respected as individuals. Their right to life, liberty and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs." KENP, art. 13.

²⁰ KENP, art. 14.

²¹ Usually the senior male link in the *ie* [literally "house"]--the basic Japanese family structure characterized by a patrilineal, patriarchal chain of authority extending between the eldest sons of successive generations. Taimie L. Bryant, *Vulnerable Populations in Japan: Family Models, Family Dispute Resolution and Family Law in Japan*, 14 UCLA PAC. BASIN L.J.1, 1-2 (1995).

many disadvantages that a child born out of wedlock faces in Japanese society, there is the possibility that use of the family registry form could facilitate further discrimination against them. Although acknowledging that the Minpō [Civil Code] has adopted the institution of legal marriage and that distinguishing between marital and non-marital children leads to disparate legal outcomes, the court held that while there is the need to indicate this distinction on the family registry, because there are other ways to do this on the form, it is illogical and unnecessary to use the “relationship column” for that purpose. As a result of this decision, the Ordinance for the Enforcement of the Family Registration Law²² was amended and starting from November 2004, children born out of wedlock were recorded in family registries in the same way as children born to legally married couples.

Nevertheless, even though the court adopted the basic reasoning behind its March 22, 1995 decision that differentiating between marital and non-marital children in the “relationship column” of resident registries²³ was illegal,²⁴ it did not explicitly rule on whether it is unconstitutional to make this distinction on family registries. In its 1995 decision, the Tokyo District Court clearly stated

²² Kosekihō shikō kisoku [Ordinance for the Enforcement of the Family Registration Law], Judicial Ordinance No. 94 of 1947. Note that ordinances provide the implementing regulations for the broader statute.

²³ The resident registry, or *jūminhyō*, is a record of the household location and family composition while the family registry indicates more significant info such as births, death, marriages, and nature of relationship. Taimie L. Bryant, *For the Sake of the Country, For the Sake of the Family: The Oppressive Impact of Family Registration on Women and Minorities in Japan*, 39 UCLA L. REV. 109, 117 (1991).

²⁴ 1529 HANREI JIHŌ 29 (Tokyo Dist. Ct., Mar. 22, 1995). In that case, an unmarried couple that had a child sued the city of Musashino for differentiating on the resident registry between children born to legally married couples and those born to couples whose marriages were not registered. Although the Supreme Court dismissed their complaint, the couple did manage to successfully negotiate with the Home Affairs Ministry to abolish this practice in 1995. The couple, along with their child, later became plaintiffs in the 2004 Tokyo District Court case challenging the use of such discriminatory descriptions of children in *koseki*. Asia Japan Women's Resource Center, *Are You Afraid to See the Concept of “Family” Change?* 13 VOICES FROM JAPAN 8 (2004), <http://www.ajwrc.org/english/sub/voice/13-1.pdf>.

that *based on Articles 13 and 14* it is impermissible to irrationally discriminate against non-marital children. In contrast, in its 2004 decision, the court held that differentiating between marital and non-marital children on family registry forms *constituted a privacy violation* because the Registration Law itself had becomingly increasingly concerned with protecting people's privacy.

Most recently, according to a report in the March 25, 2005 morning edition of the Asahi Shimbun, on March 24, the Tokyo High Court upheld the Tokyo District Court's decision on appeal. Relying on the Supreme Court's Grand Bench decision of July 5, 1995, which upheld the constitutionality of a statute that allowed non-marital children to receive only half the share of marital children,²⁵ the court added that the practice of differentiating between legitimate and illegitimate children was *not* a privacy violation.²⁶

On a separate matter, on April 15, 2004, the Takamatsu High Court found a violation of privacy rights in the disclosure of information relating to a petition.²⁷ Complying with a request under the local freedom of information ordinance, the mayor [of Ōzu City in Ehime Prefecture] publicly released a register of signature-collectors for petitions seeking to bring about a public referendum [on the construction of a local dam].²⁸ In doing so he disclosed the names, addresses, and dates of birth of [1,559] signature-collectors.²⁹ In holding that disclosing the register violated the citizens' right to privacy, the Takamatsu High Court wrote that activities such as signature-collecting, which demonstrate one's political beliefs, "bears an intimate connection to whom one is as a person, and therefore should be treated as highly sensitive material deserving of the utmost protection."³⁰

B. *Equality Under the Law*

²⁵ 7 MINSHŪ 1789 (Sup. Ct., Jul. 5, 1995); End Table, case 5.

²⁶ HANREISHŪ (Tokyo High Ct., Mar. 25, 2005) (to be recorded).

²⁷ 1150 HANREI TAIMUZU 125 (Takamatsu High Ct., Apr. 15, 2004).

²⁸ 1858 HANREI JIHŌ 134 (Matsuyama Dist. Ct., Oct. 2, 2003).

²⁹ *Id.*

³⁰ 1150 HANREI TAIMUZU 125 (Takamatsu High Ct., Apr. 15, 2004).

On January 14, 2004, the Supreme Court's Grand Bench made headlines when it addressed the constitutionality of the provision in the Public Offices Election Law³¹ that governs the apportionment of Diet members³² within the Upper House.³³ Based on precedent, the court was predicted to uphold the provision, which limited the vote weight disparity to a ratio of 1 to 5.06. While it is true that the provision did receive the necessary nine votes to uphold its constitutionality, the decision was unusual in that the nine justices' reasoning as shown in concurrences was split five to four. Furthermore, the four justices concurring not only refused to follow previous doctrine, they warned that "if in the next election, no action has been taken [to decrease this ratio] and the status quo is simply maintained, there is a good possibility that such provision would be held unconstitutional." Six months after the aforementioned Supreme Court decision, an election utilized the exact same apportionment scheme, causing a series of lawsuits around the country seeking revisit its constitutionality. The Japanese public is anxiously awaiting the Supreme Court's response.

On October 14, 2004, the First Petty Bench of the Supreme Court reexamined the constitutionality of Article 900, Section 4 of the Civil Code, which establishes that illegitimate children shall receive only half as much of the intestate estate as legitimate children.³⁴ Ever since this issue was examined in the July 5, 1995 Supreme Court

³¹ Kōshoku senkyohō [Public Offices Election Law], Act No. 100 of 1950.

³² At the time of the disputed election in 2001, of the 152 locally-elected seats in the House of Councillors, each prefecture received at least two seats with the remaining 100 seats distributed proportionately according to votes given to each party. Due to continuing rural-urban migration and the fact that each prefecture is guaranteed at least two seats, rural voters enjoy greater representation than urban voters. By the July 1992 House of Councillors election, this vote weight disparity had grown to 1:6.59. In 2004, seats were reduced to 146 and 96 respectively. End Table, case 6.

³³ 1 MINSHŪ 56 (Sup. Ct., Jan. 14, 2004); 1849 HANREI JIHŌ 3 (Sup. Ct., Jan. 14, 2004) (case II); 1144 HANREI TAIMUZU 105 (Sup. Ct., Jan. 14, 2004) (case II); End Table, case 6.

³⁴ 1884 HANREI JIH 40 (Sup. Ct., Oct. 14, 2004); 1173 HANREI TAIMUZU 181 (Sup. Ct., Oct. 14, 2004).

Grand Bench decision, the statute in question was repeatedly upheld in subsequent Petty Bench decisions albeit by the slimmest of margins.³⁵ This year the First Petty Bench once again upheld the law in a 3-2 decision. In both the original Grand Bench and subsequent Petty Bench decisions, justices offered supporting opinions that discussed their fear of the repercussions if the statute was ever held to be unconstitutional. Nevertheless, similar to the aforementioned statute regarding the recording of family registers, the justices would do well to also consider the implications of preserving this law.

On November 19, 2003, the Naha District Court ruled on a case that examined whether an organization that limited its membership to male descendants violated the rule of equality under the law.³⁶ The bylaws of an organization (the “Burakuminkai”) composed of residents that held a right of common to a forest used by the U.S. Army, limited their membership to male descendants of the [existing members]. The Court held this rule to be null and void, because it violated both Article 14 of the Constitution³⁷ and Article 1, Section 2 of the Civil Code.³⁸ On September 7, 2004, however, on appeal, the Fukuoka High Court overturned the lower court decision, noting that the right of common was steeped in the long-standing tradition of that region, and that to the extent possible such customs should be respected.³⁹ The court therefore held that the membership restriction did not go against “good public order” even though it was unfair to women.

In regards to income tax, on November 2, 2004, the Third Petty Bench of the Supreme Court, held that when a spouse, or other family member, shares the same livelihood with another relative with whom he or she resides, the fact that the family member operates his or her business independently does not make him or her exempt from

³⁵ End Table, case 7.

³⁶ 1845 HANREI JIHŌ 119 (Naha Dist. Ct., Nov. 19, 2003); 1170 HANREI TAIMUZU 209 (Naha Dist. Ct., Nov. 19, 2003).

³⁷ KENPŌ, art. 14,.

³⁸ “The exercise of rights and performance of duties must be done in good faith.” MINPŌ, art. 1, ¶ 2.

³⁹ 1870 HANREI JIH 39 (Fukuoka High Ct., Sept. 7, 2004); 1170 HANREI TAIMUZU 198 (Fukuoka High Ct., Sept. 7, 2004).

Article 56⁴⁰ of the Income Tax Law.⁴¹ This holding, based on a March 27, 1985⁴² decision by the Grand Bench of the Supreme Court, confirmed the use of a rational basis test when reviewing the conflict between tax regulations and Article 14 of the Constitution.

C. *Intellectual Freedom*

1. *Freedom of thought (or idea)*

In Japan, there have been numerous cases debating the validity of disciplinary action taken against teachers who refuse to honor the national anthem or the national flag. On July 23, 2004, the Tokyo District Court rejected a petition to estop mandatory training for teachers who were disciplined for not singing the national anthem.⁴³ The court stated that the mandatory training “reaches the level where it tramples on the individual’s freedom of thought and could consequently cause extreme mental distress,” and “that it may give rise to constitutional problems.” Yet in spite of these admissions, the court held that because it was still unclear what the content and method of the training sessions would be, and since “at the present, we can avoid causing any irreparable damage,” there was no pressing need to order a judicial stay.

⁴⁰ Under article 56, when a taxpayer pays consideration to a spouse, or other live-in family member, who shares the same livelihood, that taxpayer is not permitted to include the consideration as part of his or her necessary expenses. Shotokuzeih [Income Tax Law], Law No. 33 of 1965, art. 56.

⁴¹ The plaintiffs, a married couple who both operated solo law practices and performed work for one another, challenged the constitutionality of article 56 of the Income Tax Law, arguing that it was irrationally discriminatory to prohibit them from deducting expenses just because they chose to use the services of a family member. 1883 HANREI JIH 43 (Sup. Ct., Nov. 2, 2004); 1173 HANREI TAIMUZU 183 (Sup. Ct., Nov. 2, 2004).

⁴² In that case, the Court held that treating taxpayers differently based on their type of income (salaried or self-employed) did not violate Art. 14, Para. 1 of the Constitution, as long as the purpose of the legislation is justifiable and the method of differentiating taxpayers is not proven to be extremely unreasonable in relation to the said purpose. 2 MINSHŪ 247 (Sup. Ct., Mar. 27, 1985); End Table, case 8.

⁴³ 1871 HANREI JIHŌ 142 (Tokyo Dist. Ct., July 23, 2004).

2. *Freedom of religion and separation of religion and state*

In response to the Public Security Examination Commission's⁴⁴ ("PSEC") decision to extend surveillance over Aum Shinrikyo⁴⁵ (renamed "Aleph") for another three years, the religious sect petitioned the court to revoke the decision arguing that it violated their freedom of religion. On October 29, 2004, the Tokyo District Court addressed the PSEC's decision to continue with their surveillance under a [special organized crime law],⁴⁶ and found that the law was not in violation of Article 20⁴⁷ of the Constitution.⁴⁸ In reaching its conclusion the court focused on the fact that the stated purpose for the decision to extend the surveillance was "not to regulate the religious activities of either the organization or its members, or to weaken the members' spiritual or religious views,"

⁴⁴ The PSEC is an extra-ministerial organ of the Ministry of Justice that focuses on maintaining public security. Under the Act Regarding the Control of Organizations Which Have Committed Mass Murder, the PSEC reviews organizations that have formerly committed subversive activities and decides whether any control measure should be taken, and if so, what type of control measure. Ministry of Justice, Major External Organs of the Ministry, <http://www.moj.go.jp/ENGLISH/MEOM/meom-01.html>.

⁴⁵ On March 20, 1995, followers of the religious sect Aum Shinrikyo released poison gas in the Tokyo subway system, killing twelve people and injuring between 5,500 and 6,000 others. Although the cult's leader, Asahara Shōkō, and sixteen other Aum leaders were subsequently arrested in connection with these crimes, the PSEC unanimously voted not to ban the organization. DANIEL A. METRAUX, AUM SHINRIKYO'S IMPACT ON JAPANESE SOCIETY 155-56 (2000).

⁴⁶ Musabetsu tairyo satsujin kō'i wo okonatta dantai no kisei ni kansuru hōritsu [Act Regarding the Control of Organizations which have Committed Indiscriminate Mass Murder], Act No. 147 of 1999.

⁴⁷ "Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State nor exercise any political authority." KENP, art. 20.

⁴⁸ Unreported case (Tokyo Dist. Ct., No. 235 (u) 2003 Oct. 29, 2004).

and that the public had much to gain from this protective measure in terms of safety.

During the past year, there were a number of cases worthy of attention regarding the separation of religion and state. Foremost among these cases were a line of lawsuits⁴⁹ involving Prime Minister Junichiro Koizumi's visits to Yasukuni Shrine.⁵⁰ Although the specific claims in these cases vary, they share the following basic issues: (1) whether making a pilgrimage to Yasukuni Shrine can be considered part of the official duties of the Prime Minister, and (2) whether the Prime Minister making a pilgrimage to Yasukuni Shrine violated a legal right. In regards to the first issue, the Osaka (in its February decision), Fukuoka, and Chiba District Courts held in the affirmative; although in May, a different panel of the Osaka District Court⁵¹ held the visits to be a private act. As for the second issue, although the Fukuoka District Court went as far as to declare the visits to be unconstitutional, that court along with the Osaka (in its May decision), Fukuoka, Matsuyama, and Chiba District Courts all rejected the plaintiffs' claims that these visits violated their legal rights.

On March 15, 2004, the Fukuoka High Court ruled on the constitutionality of a statue entitled "Mother and Child," which was

⁴⁹ 1859 HANREI JIHŌ 76 (Osaka Dist. Ct., Feb. 27, 2004) (cases I & II); 1146 HANREI TAIMUZU 176 (Osaka Dist. Ct., Feb. 27, 2004) (cases I & II); 1859 HANREI JIHŌ 76 (Matsuyama Dist. Ct., Mar. 16, 2004) (case III); 1859 HANREI JIH 76 (Fukuoka Dist. Ct., Apr. 7, 2004) (case IV); 1157 HANREI TAIMUZU 125; End Table, case 9; 1876 HANREI JIHŌ 70 (Osaka Dist. Ct., May 13, 2004); 1151 HANREI TAIMUZU 252 (Osaka Dist. Ct., May 13, 2004).

⁵⁰ The Yasukuni Shrine located in central Tokyo dates back to 1869 and is dedicated to the 2.5m Japanese who have died in wars or civil wars since 1853. Current Japanese Prime Minister Junichiro Koizumi's annual visits to the shrine have sparked loud protests from China and South Korea in part because among the spirits venerated at Yasukuni are fourteen Class A war criminals who were executed after the Tokyo war tribunal, and because the shrine's war museum puts forward a controversial view of Japanese history. "[Yasukuni's] sole purpose is to glorify Japan's dead, but in doing so it tells a clear story about Japan's conquests in Korea, Taiwan and China and about the Pacific war in general: that they were heroic efforts to liberate Asia." Bill Emmott, *The Ambiguity of Yasukuni*, *ECONOMIST*, Oct. 8, 2005, at 15.

⁵¹ The Osaka District Court ordinarily has twenty-six civil panels (or benches) and thirteen criminal panels with three or more judges each.

erected in a corner of the Nagasaki Peace Park as a monument commemorating the fiftieth anniversary of the atomic bombing.⁵² The plaintiffs in that case demanded that the statue be removed because it was highly suggestive of the Virgin Mary and Baby Jesus and thus amounted to an establishment of religion. The court wrote that when visiting the epicenter of a nuclear attack, “Irregardless of one’s faith, or whether one even has a religion, it is a natural sentiment for humans to pray for the souls of those who died because of the atomic bombing and to hope for the elimination of war and everlasting peace.” The court held that because it would be a stretch to say that the intent behind Nagasaki City’s erection of the statue went beyond this desire [to honor the dead and pray for peace], and rejected the argument that the statue amounted to an establishment of religion. Furthermore, even assuming that there are people who would associate the statue with the Virgin Mary, the court held that “it would be too great a leap in logic to say it resulted in the support, encouragement, or promotion of Christianity; or that it oppressed or interfered with the religious freedom of atheists or people of other faiths.”

On June 28, 2004, the Second Petty Bench of the Supreme Court revisited the issue of whether it was a violation of Article 20, Paragraph 3 of the Constitution⁵³ for: 1) the governor of Kanagawa Prefecture or the Speaker of Kanagawa’s prefectural assembly to participate in the coronation ceremony of Emperor Akihito; or 2) for the Speaker to participate in the Daijōsai [the first ceremonial offering of rice by a newly enthroned emperor].⁵⁴ Citing to a July 11, 2002 decision by the Second Petty Bench of the Supreme Court, also known as the “Kagoshima Daijōsai case,”⁵⁵ the Court held these actions to be constitutional. With this decision, all three of the Petty Benches of the Supreme Court have now ruled on the constitutionality of the ceremonies relating to the coronation of the emperor.

⁵² Unreported case (Fukuoka High Ct., No. 34 (*ko*) 2001 Mar. 15, 2004).

⁵³ “The State and its organs shall refrain from religious education or any other religious activity.” KENP, art. 20, ¶ 3.

⁵⁴ 1366 SAIBANSHO JIH 4 (Sup. Ct., Jun. 28, 2004); End Table, case 10.

⁵⁵ 6 MINSHŪ 1204 (Sup. Ct., Jul. 11, 2002); End Table, case 11.

Similarly, on April 23, 2004, the Tokyo District Court held that when the governor of Tokyo attended the Crown Prince's marriage ceremony⁵⁶ as one of many guests, his intent to express congratulations conformed to commonly-accepted social etiquette.⁵⁷ The court wrote that "in light of the fact that marriage ceremonies have lost a considerable amount of religious significance, in this case at least . . . it is impossible to find a religious motive or purpose beyond that of exchanging marriage vows within a solemn atmosphere. And, even if there were such motives, it cannot be said that it resulted in the support, encouragement, or promotion of Shinto, or that it oppressed people of other faiths."

3. *Freedom of expression*

On January 13, 2004, the Tokyo District Court made a landmark decision on the regulation of free expression, when it ruled for the first time on the constitutionality of the regulation of commercially available comic books under Article 175 of the Penal Code,⁵⁸ which bans obscene materials.⁵⁹ In that decision, the court looked at the impact of the spread of the internet, the development of criminal legislation to counter high-tech crimes, the current crackdown on the distribution of obscene materials, and statistics on sex crimes, and held that "there is no room for question as to the constitutionality of Article 175 of the Penal Code." The court reached

⁵⁶ The ceremony took place on June 9, 1993.

⁵⁷ Unreported case (Tokyo Dist. Ct., No. 289 (*u*) 1994 Apr. 23, 2004).

⁵⁸ Distribution of obscenities -- Any person who distributes, sells or publicly displays an obscene writing, picture or other materials shall be punished with penal servitude for not more than two years or be fined not more than two million and a half yen or minor fine. The same shall apply to any person who possesses the same with the intention of selling it.

Keihō [Penal Code], art. 175.

⁵⁹ 1853 HANREI JIH 151 (Sup. Ct., Jan. 13, 2004); 1150 HANREI TAIMUZU 291 (Sup. Ct., Jan. 13, 2004).

its decision by painstakingly expanding on the framework provided by an earlier Supreme Court decision. Looking at it another way, it could be said that this decision displayed the limits of the persuasiveness of the Supreme Court's constitutional approach to this issue.

On December 16, 2004, the Hachioji Branch of the Tokyo District Court was presented with the question of whether distributing leaflets opposing the dispatch of Self-Defense Forces to Iraq in a Defense Agency housing facility amounted to an act of breaking and entering.⁶⁰ The court acquitted the defendant [even while admitting that their actions met the elements for breaking and entering]. The court wrote that:

They had a legitimate reason to enter the housing facility and it cannot be said that they deviated from this purpose. As a result, any infringements upon the legal rights of the residents or the managers of the property were negligible. In addition, mailing such leaflets is a form of political expression protected by Article 21, Paragraph 1 of the Constitution⁶¹ and is a cornerstone of a democratic society. When compared to the mailing of advertisements, a form of commercial speech protected by Article 22, Paragraph 1,⁶² the mailing of political leaflets clearly holds a superior position . . . [T]hus, considering the intent of Article 21, Paragraph 1, there is doubt whether the police can suddenly arrest and hold someone criminally

⁶⁰ Unreported case (Tokyo Dist. Ct., No. 488 (*wa*) 2004 Dec. 16, 2004).

⁶¹ "Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed." KENP, art. 21, ¶ 1.

⁶² "Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare." KENP, art. 22, ¶ 1.

liable without first lodging a formal protest or some other prior warning. From the stance of the overall legal system, the Defendant's actions did not rise to the level where it warranted criminal punishment.⁶³

On July 15, 2004, the First Petty Bench of the Supreme Court ruled on a case involving the book *Datsu-Gōmanism Sengen* [*Escaping "Gōmanism Sengen"*].⁶⁴ In ruling that the defendant, right-wing cartoonist Yoshinori Kobayashi,⁶⁵ did not commit libel when he accused the plaintiff of being a "thief,"⁶⁶ the Court wrote that as a general rule opinions and commentary do not constitute defamation. "This decision rests on the idea that the freedom to express one's opinions or comments comprises the foundation of the freedom of expression, is indispensable in a democratic society, and should be carefully protected." This marked the first time that the Supreme Court has presented the view that "expressions of a legal view per se should be treated as equivalent to expressions of an opinion or comment."

On July 15, 2004, the First Petty Bench of the Supreme Court addressed the issue of whether a principal's official order to cut out an article from a school newsletter prior to distribution to students

⁶³ The court's outrage may also pertain to the twenty-three day detention the defendant experienced for such a minor infraction.

⁶⁴ 5 MINSHŪ 1615 (Sup. Ct., Jul. 15, 2004); 1870 HANREI JIHŌ 15 (Sup. Ct., Jul. 15, 2004); 1163 HANREI TAIMUZU 116 (Sup. Ct., Jul. 15, 2004); End Table, case 12.

⁶⁵ Cartoonist Yoshinori Kobayashi became the subject of controversy surrounding a series of comic book publications entitled *Gomanism Sengen*. *Gomanism* is well-known for addressing a diverse range of conservative social and political issues as Kobayashi has used the series to blast Aum Shinrikyo, denounce the Ministry of Health and Welfare's decision to allow the import of HIV-tainted blood products into Japan, and downplay the Japanese government's role in recruiting Korean comfort women. MANGAKA JINMEI JITEN [WRITERS OF COMICS IN JAPAN: A BIBLIOGRAPHICAL DICTIONARY] 156 (2003).

⁶⁶ End Table, case 12.

violated Articles 21, 23, and 26⁶⁷ of the Constitution.⁶⁸ In that case, the principal of a prefectural high school ordered teachers to cut out an article that had been contributed by one of the faculty because of its specific political opinions. In upholding the constitutionality of the principal's actions, the court cited to [a series of well-known prior cases]⁶⁹ to address the alleged violations of Articles 21, 23, and 26. A substantive explanation from the Supreme Court, however, is necessary to make the reasoning behind their judicial precedent more readily apparent.

On March 16, 2004, the Tokyo District Court approved a petition for a temporary injunction made by the eldest daughter of a well-known Diet member who moved to estop the magazine *Shūkan Bunshun* from publishing an article on her divorce. In response to the court issuing a temporary injunction on sales of the issue in question,

⁶⁷ KENP, art. 21. "Academic freedom is guaranteed." KENP, art. 23. "All people shall have the right to receive an equal education correspondent to their ability, as provided by law. (2) All people shall be obligated to have all boys and girls under their protection receive ordinary educations as provided for by law. Such compulsory education shall be free." KENP, art. 26.

⁶⁸ 1875 HANREI JIH 48 (Sup. Ct., Jul. 15, 2004); 1167 HANREI TAIMUZU 137 (Sup. Ct., Jul. 15, 2004).

⁶⁹ Judgment on the Appeal Hearing to the Sarufutsu Incident. Japan v. Osawa, 9 KEISHŪ 393 (Sup. Ct., Nov. 6, 1974) (overturning an acquittal and confirming a conviction of a postal worker for putting up political posters on a public bulletin board during his off-work hours).

Judgment on the Appeal Hearing to the Yodogo Newspaper Article Erasure Incident. 5 MINSHŪ 793 (Sup. Ct., Jun. 22, 1983); End Table, case 13 (dismissing an appeal by members of the Japanese Red Army challenging the constitutionality of an order by the head of the Tokyo Detention House to prevent them from reading while in pre-judgment detention any newspaper articles or books about the group's hijacking of the Japan Airlines jet Yodogō).

Judgment on the Appeal Hearing to the Constitutionality of Sapporo Customs Inspection. 12 MINSHŪ 1308 (Sup. Ct., Dec. 12, 1984); End Table, case 14 (dismissing plaintiff's appeal challenging the finding by a Customs Director that the films and books the plaintiff was attempting to import into Japan were prohibited, pornographic materials).

Judgment on the Appeal Hearing to the Asahikawa Scholastic Ability Test Incident. 5 KEISHŪ 615 (Sup. Ct., May 21, 1976) (finding the plaintiffs to be guilty of obstructing the performance of a public duty when they prevented a nationwide academic assessment test from being conducted at the junior high school).

the defendant publishing company filed an appeal to the same court seeking its repeal.⁷⁰ On March 19, the District Court upheld the injunction and the plaintiff appealed to the Tokyo High Court.⁷¹ On March 31, the Tokyo High Court recognized that even though the plaintiff is the relative of a famous politician, at the time she was still a private figure, and therefore the disclosing of details of her personal life to unspecified multitudes constituted an invasion of her privacy.⁷² Still, the court nevertheless reversed the lower court's decision and rejected the petition for an injunction, holding that because the fact that one is a divorcee does not in and of itself bring about criticism by society or is seen as a defect in one's character, the article in question did not deserve an injunction as it could not be said that it would "cause grave and irrecoverable damage [to her]." The court also stated that "freedom of expression, which includes the right to know, is essential to the existence and sound development of democratic society and is one of the rights that must be most respected under the Constitution," and therefore "the issuing of prior restraints to publication deserves the utmost discretion."

On November 25, 2004, the First Petty Bench of the Supreme Court ruled on a case of first impression brought by a woman who claimed that an incorrect NHK [Nippon Hōsō Kyōkai, or the "Japan Broadcasting Corporation"] broadcast had defamed her and sought pursuant to Article 4, Paragraph 1 of the Broadcast Law,⁷³ a court

⁷⁰ Unreported case (Tokyo Dist. Ct., No. 1002 (yo) 2004 Mar. 16, 2004).

⁷¹ 1865 HANREI JIHŌ 18 (Tokyo Dist. Ct., Mar. 19, 2004); 1865 HANREI TAIMUZU 145 (Tokyo Dist. Ct., Mar. 19, 2004).

⁷² 1865 HANREI JIHŌ 12 (Tokyo High Ct., Mar. 31, 2004); 1157 HANREI TAIMUZU 138 (Tokyo High Ct., Mar. 31, 2004); End Table, case 15.

⁷³

(1) In cases where, within three months from the day of the broadcasting, there is a request from the person whose rights have been infringed upon by the broadcasting of untrue matter, or from any person directly concerned in the case, the broadcaster shall investigate without delay whether such broadcasted matter was untrue or not, and if the untruthfulness is proven, shall, within two days from the day on which such untruthfulness was proven, broadcast the correction or cancellation in an appropriate manner through a broadcasting system equivalent to the system through which the original broadcasting was made.

order to broadcast a correction.⁷⁴ In regards to the regulation in question, the Court wrote that “the law stipulates that in the event of an untruthful broadcast, broadcasting companies have a public duty to the nation to air corrections on their own accord to maintain the credibility of their program content and to ensure no outside interference in their freedom of expression.” For the first time the Court concluded that “the purpose of the regulation is not to grant to the injured party a private right of action under private law to demand that a correction be aired.”

D. *Constitutional Criminal Procedure*

In recent years, there has been an increase in the number of cases involving medical malpractice cover-ups. On April 13, 2004, the Third Petty Bench of the Supreme Court clearly stated for the first time that the obligation to report under Article 21 of the Medical Practitioners Law,⁷⁵ which requires doctors to report anything suspicious discovered in the postmortem inspection, does not violate Article 38, Paragraph 1⁷⁶ of the Constitution, which protects against people being compelled to testify against themselves.⁷⁷ This holds true even in cases where the doctor might be charged with the crime of involuntary manslaughter committed in the line of duty. The Court reasoned that even if a doctor might be put at a disadvantage by being obligated to report suspicious findings, the “imposition of such a

Hōsōhō [Broadcast Law], Law No. 132 of 1950, art. 4.

⁷⁴ 8 MINSHŪ 2326 (Sup. Ct., Nov. 25, 2004); 1880 HANREI JIHŌ 40 (Sup. Ct., Nov. 25, 2004); 1169 HANREI TAIMUZU 125 (Sup. Ct., Nov. 25, 2004); End Table, case 16.

⁷⁵ “A doctor shall, when he has found anything suspicious in the conduct of a post mortem inspection of a dead body or a baby who is stillborn after the fourth month or more of pregnancy, report it to the competent police office within 24 hours.” Ishihō [Medical Practitioners Law], Law No. 29 of 1948, art. 21.

⁷⁶ “No person shall be compelled to testify against himself.” KENP, art. 38, ¶ 1.

⁷⁷ 4 KENSHŪ 247 (Sup. Ct., Apr. 13, 2004); 1861 HANREI JIHŌ 140 (Sup. Ct., Apr. 13, 2004); 1153 HANREI TAIMUZU 95 (Sup. Ct., Apr. 13, 2004); End Table, case 17.

disadvantage shall be seen as acceptable as a reasonably-based burden that pertains to a medical license.”

III. POLITICAL ORGANIZATION AND GOVERNING SYSTEM

A. *Electoral System*

In the January 14, 2004 decision mentioned previously in Section 2, “Equality under the Law,” in addition to the problem of apportionment of Diet members within the House of Councillors (Upper House), the Grand Bench of the Supreme Court also ruled on the constitutionality of the use of the Public Offices Election Law’s “open-list system”⁷⁸ for House of Councillors elections.⁷⁹ The Grand Bench of the Supreme Court had previously decided on November 10, 1999⁸⁰ that the use of a fixed-list, proportional representation⁸¹ system

⁷⁸ “Most of Western Europe and Latin America employ list PR [Proportional Representation], a system in which voters typically select one from a number of parties listed on a nominal ballot, sometimes with the option of choosing and/or ranking candidates within the list of the party selected (open list).” ENCYCLOPEDIA OF DEMOCRATIC THOUGHT 262 (Paul Barry Clarke & Joe Foweraker eds., 2001).

⁷⁹ 1 MINSHŪ 1 (Sup. Ct., Jan. 14, 2004); 1849 HANREI JIHŌ 3 (Sup. Ct., Jan. 14, 2004) (case I); 1144 HANREI TAIMUZU 105 (Sup. Ct., Jan. 14, 2004) (case I); End Table, case 18. Under the 1982 amendment to the Public Offices Election Law, lawmakers replaced the nation-wide constituency system with a fixed-list proportional representation system for House of Councillors elections. Under this amendment, political parties would submit a list of their candidates and indicate their ranking for being chosen. In 2000, Japan switched from this fixed-list proportional representation system to an open-list representation system in which the candidates’ rankings for being chosen are no longer indicated. End Table, case 18.

⁸⁰ 8 MINSHŪ 1577 (Sup. Ct., Nov. 10, 1999); End Table, case 19.

⁸¹

Some voting systems, but in particular the plurality system, can have the effect of distributing electoral gains in a very uneven fashion. Proportional representation refers to any method of election which seeks to ensure that minorities as well as majorities and pluralities are adequately represented in the legislature, and which distributes seats or units of legislative representation in accordance with the proportion of the vote recorded in the whole electoral division.

for elections for the House of Representatives (Lower House) violated neither the right to vote nor the right to direct election, but this marked the first time the Supreme Court had ruled on the .

Incidentally, just as the Grand Bench in November 10, 1999 had to rule on the validity of an election held in 1996, there was another lawsuit challenging the constitutionality of the House of Representatives' 2003 election. On December 7, 2004, the Third Petty Bench of the Supreme Court dismissed the claim of unconstitutionality citing to the 1999 decision.⁸²

B. *Obligation and Nonfeasance to Legislate*

On March 24, 2004, the Tokyo District Court handed down a noteworthy decision holding that the failure by legislators to take measures to provide relief for students not covered by the National Pension Law⁸³ was unconstitutional and amounted to nonfeasance to legislate under the National Redress Law.⁸⁴ The plaintiffs, who became disabled while they were college students, had their applications to receive annual basic disability benefits denied, when under the National Pension Law that was then in effect they were deemed to be uninsured. The plaintiffs had fell into a loophole because at the time the government did not require students over 20-years old to join the pension system and the plaintiffs had opted not to do so. The plaintiffs' sued to rescind the decisions that held them to be non-covered students for National Pension Law purposes and for damages.

In a case arising from similar circumstances of non-covered students elsewhere, on October 28, 2004, the Niigata District Court established a standard for determining the illegality of legislation

David Robertson, *A DICTIONARY OF MODERN POLITICS* 409 (3d ed. 2002).

⁸² 1881 HANREI JIHŌ 51 (Sup. Ct., Dec. 7, 2004); 1172 HANREI TAIMUZU 127 (Sup. Ct., Dec. 7, 2004).

⁸³ Kokumin nenkinhō [National Pension Law], Law No. 141 of 1959.

⁸⁴ 1852 HANREI JIHŌ 3 (Tokyo Dist. Ct., Mar. 24, 2004); 1148 HANREI TAIMUZU 94 (Tokyo Dist. Ct., Mar. 24, 2004); End Table, case 20; Kokka baishōhō [National Redress Law], Law No. 125 of 1947.

inaction.⁸⁵ “When a reasonable period of time has elapsed and the legislature has still failed to take necessary measures to correct legislation that is obviously unconstitutional, and when this failure has caused the public to suffer grave violations of human rights and other disadvantages that make the providing of judicial relief absolutely necessary, there is a recognizable legal obligation on the part of Diet members to respond to the rights of these citizens.” The court therefore held the enactment of the 1985 amendment to the National Pension Act [which failed to address the problem] and subsequent lacuna to be illegal, found negligence on behalf of the government, and held the government responsible for providing compensation to the plaintiffs.

It is clearly an act of irrational discrimination in violation of Article 14, Paragraph 1 of the Constitution to differentiate between students over 20-years old and other individuals over 20-years old who are not students, and to deny all access to annual basic disability benefits to individuals who suffered serious injuries while a student because at the time they were not enrolled in the national pension system. The 1985 amendment resulted in legislation that was clearly unconstitutional in regards to students at vocational schools.⁸⁶ In regards to the college students, from the time of its enactment in 1959, and at the latest by the mid-1950s, it had become clear that the National Pension Plan needed to be amended [to address the coverage loophole]. Therefore, by the time the National Pension Law was

⁸⁵ Unreported case (Niigata Dist. Ct., No. 7 (u) 2001 Oct. 28, 2004).

⁸⁶ The 1985 amendment to the National Pension Law also did away with the requirement that vocational school students 20-years old and over join the National Pension Plan. Thus, just like college students, joining the Pension Plan became optional and gave rise to the same problem of injured parties being unable to receive annual basic disability benefits. 1852 HANREI JIHŌ 3.

amended in 1985 a reasonable period of time had elapsed since the need to amend the law became apparent. Nevertheless, when it amended the Law in 1985, the legislature failed to enact legislation to eliminate the provision that would treat college students as parties not covered by the National Pension Plan.

At the time of this decision by the Niigata District Court, there were nine other lawsuits filed in district courts throughout Japan addressing this issue of compensation for disabled students who had been denied access to national pension benefits.

**Table of Jurisuto Case Notes and English Language Translations
(when available)**

Several of the cases that appear within the original Japanese version of this commentary contain references to case notes published in Jurisuto. Readers of Japanese interested in learning more about a particular case are encouraged to refer to the following table to look up its corresponding case note. The table provides the issue of Jurisuto and the title of the section in which the case note appears, followed by the note's sequential number. Also, when available, the translator has provided links to English translations of cases.

No.	Court	Date	Jurisuto Case Note	Link to English Translation
1	Osaka Dist. Ct.	Mar. 9, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō [Japan Const.], case note 1	N/A
2	Sup. Ct.	Nov. 27, 1968	Shōwa 43 Nendo Jūyō Hanrei Kaisetsu, Kokusaihō, [International Law], Kokusai Shihō [Private International Law], case note 1	N/A
3	Second Petty Bench, Sup. Ct.	Nov. 29, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 2	N/A
4	Osaka Dist. Ct.	Feb. 27, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 3	N/A
5	Sup. Ct.	Jul. 5, 1995	Heisei 7 Nendo Jūyō Hanrei Kaisetsu, Minpō, case note 10	<i>Decision on the Share in the Inheritance of an Illegitimate Child.</i>
6	Sup. Ct.	Jan. 14, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 4-2	<i>Judgment upon the Constitutionality of Article 14 and Appendix Table 3 of the Public Offices Election Law which Stipulates the Apportionment of Seats for House</i>

				<i>of Councilors Members to be Elected under the Constituency System</i>
7	Sup. Ct.	Jul. 5, 1995	Heisei 15 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 5.	<i>Decision on the Share in the Inheritance of an Illegitimate Child</i>
8	Sup. Ct.	Mar. 27, 1995	Shōwa 60 Nendo Jūyō Hanrei Kaisetsu, Kenpō, case note 2	<i>Judgment to Rule that the Provisions in the Income Tax Law Not Allowing Deduction for Necessary Expenses on Actual Terms in Calculating the Amount of Employment Income Does Not Violate Article 14, Paragraph 1 of the Constitution (Case of Salaried Workers' Taxation)</i>
9	Fukuoka Dist. Ct.	Apr. 7, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 5	N/A
10	Second Petty Bench, Sup. Ct.	June 28, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 6	N/A
11	Second Petty Bench, Sup. Ct.	Jul. 11, 2002	N/A	<i>Judgment upon the Case Concerning the Participation of the Prefectural Governor in the Daijosai Ceremony was Found Not to be Against Article 20, Para. 3 of the Constitution</i>
12	First Petty Bench, Sup. Ct.	Jul. 15, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Minpō, case note 7; Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Chiteki Zaisanh [Intellectual Property Law], cases note 1	<i>Judgment Concerning Whether a Presentation of a Legal View, for which Defamation is Being Disputed, is Deemed to be a Presentation of an Opinion or Comment</i>
13	Sup. Ct.	Jun. 22, 1983	N/A	<i>Judgment Concerning Whether or Not the Provisions of Article 31(2) of the Prison Law and of Article 86(1) of the Prison Law Enforcement Order are in Violation of Article 13 or 19 of</i>

				<i>the Constitution in Cases where Pre-judgment Detainees' Freedom to Read Newspapers or Books is Restricted in Order to Maintain Prison Discipline and Order,</i>
14	Sup. Ct.	Dec. 12, 1984	N/A	<i>Judgment upon Case of Constitutionality on Customs Inspection</i>
15	Tokyo High Ct.	Mar. 31, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 7	N/A
16	First Petty Bench, Sup. Ct.	Nov. 25, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 8	<i>Judgment Concerning Whether or Not a Person Whose Rights Were Infringed Due to the Broadcasting of an Untrue Matter By a Broadcasting Business, or Any Other Person Concerned, has a Right Under Private Law to Request the Broadcasting Business to Broadcast a Correction or Retraction in Accordance with Article 4(1) of the Broadcast Law</i>
17	Third Petty Bench, Sup. Ct.	Apr. 13, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu; Keiji soshōhō [Code of Criminal Procedure], case note 1	N/A
18	Sup. Ct.	Jan. 14, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 4-1	<i>Judgment upon the Constitutionality of the Open-list Proportional Representation System Adopted Under the Public Offices Election Law for Elections of (Proportional Representation) Members of the House of Councillors</i>
19	Sup. Ct.	Nov. 10, 1999	Heisei 11 Nendo Jūyō Hanrei Kaisetsu Kenpō, case note 7-1	<i>Judgment on the Constitutionality of the System of Dual Candidacy and Proportional Representation</i>

				<i>System in the Election of the Members of the House of Representatives</i>
20	Tokyo Dist. Ct.	Mar. 24, 2004	Heisei 16 Nendo Jyūyō Hanrei Kaisetsu, Kenpō, case note 9	N/A