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Date of the judgment	1993.03.16
Case number	1986(O)No.1428
Reporter	Minshu Vol.47, No.5, at 3483
Title	Judgment upon the case concerning constitutionality of screening of textbooks for high schools based upon Article 21, paragraph 1 of the Law on School Education (before the amendments by Law No.48, 1970), Article 51 of the same Law (before the amendments by Law No.70, 1974), former Rules on Screening of School Text Books (Ordinance of the Ministry of Education No.4, 1948), and the former Standards for the Review of School Text Books (Notification of the Ministry of Education No.86, 1958) , and other topics
Case name	Appeal on a Claim for Compensation and Accompanied Appeal
Result	Judgment of the Third Petty Bench, dismissed
Court of the Second Instance	Tokyo High Court, Judgment of March 19, 1986
Summary of the judgment	<ol style="list-style-type: none">1. Screening of textbooks for high schools based upon Article 21, paragraph 1 of the Law on School Education (before the amendments by Law No.48, 1970), Article 51 of the same Law (before the amendments by Law No.70, 1974), former Rules on Screening of School Text Books (Ordinance of the Ministry of Education No.4, 1948) and the former Standards for the Review of School Text Books (Notification of the Ministry of Education No.86, 1958) is not against Article 26 of the Constitution and Article 10 of the Fundamental Law on Education.2. Screening of text books for high schools based upon Article 21, paragraph 1 of the Law on School Education (before the amendments by Law No.48, 1970), Article 51 of the same Law (before the amendments by Law No.70, 1974), former Rules on Screening of School Text Books (Ordinance of the Ministry of Education No.4, 1948) and the former Standards for the Screening of School Text Books (Notification of the Ministry of Education No.86, 1958) is not against the first part of Article 21, paragraph 2 of the Constitution.3. Screening of text books for high schools based upon Article 21, paragraph 1 of the Law on School Education (before the amendments by Law No.48, 1970), Article 51 of the same Law (before the amendments by Law No.70, 1974), former Rules on Screening of School Text Books (Ordinance of the Ministry of Education No.4, 1948) and the former Standards for the Screening of School Text Books (Notification of the Ministry of Education No.86, 1958) is not against the Article 21,

paragraph 1 of the Constitution.

4. Screening of text books for high schools based upon Article 21, paragraph 1 of the Law on School Education (before the amendments by Law No.48, 1970), Article 51 of the same Law (before the amendments by Law No.70, 1974), former Rules on Screening of School Text Books (Ordinance of the Ministry of Education No.4, 1948) and the former Standards for the Screening of School Text Books (Notification of the Ministry of Education No.86, 1958) is not against Article 23 of the Constitution.

5. The determination of the suitability for high school text books in the screening process based upon Article 21, paragraph 1 of the Law on School Education (before the amendments by Law No.48, 1970), Article 51 of the same Law (before the amendments by Law No.70, 1974), former Rules on Screening of School Text Books (Ordinance of the Ministry of Education No.4, 1948) and the former Standards for the Screening of School Text Books (Notification of the Ministry of Education No.86, 1958) left to the reasonable discretion of the Minister of Education. However, in cases where, in the process of determination by the Screening and Examination Board of School Text Books, which is a consultative body to the Minister of Education, there was an error which cannot be overlooked on the understanding of the state of academic theories at the time of the screening which serves as a basis for the content of the manuscript of the proposed text book or in identifying mistakes in the manuscript, or in the evaluation that the manuscript does not coincide with the screening standards and it is acknowledged that the determination of the Minister of Education was based upon such an error, the determination is unlawful as an excess of discretion under the Law on State Compensation.

Main text of
the
judgment

The appeal shall be dismissed.

The cost of appeal shall be borne by the jokoku appellant.

Text of the Judgment

i On the grounds of appeal Part 3, section 3 by the representatives of the appellant:

1. The gist of the argument is that Screening of text books for high schools which is based upon Article 21, paragraph 1 of the Law on School Education (before the amendments by Law No.48, 1970), Article 51 of the same Law (before the amendments by Law No.70, 1974), former Rules on Screening of School Text Books (Ordinance of the Ministry of Education No.4, 1948) and the former Standards for the Review of School Text Books (Notification of the Ministry of Education No.86, 1958) is against Article 26 of the Constitution and Article 10 of the Fundamental Law on Education, since it is an interference by the state with education.

2. However, Article 26 of the Constitution does not directly provide for

the matter of who should decide the content of children's education. According to the Constitution, parents have the freedom of education over their children in home education etc., and teachers have certain freedom of education in that they are given a certain freedom concerning the specific contents and methods of class room teaching in general education below the high school level. Also freedom of education by private schools is recognised within a limit, but in other areas, the state is empowered to determine the content of children's education for the protection of the interest of the children or to respond to the social and public interests and concerns on the development of children within a necessary and adequate scope. Nevertheless, state interference with the content of education is required to be as restrained as possible, especially, interference which prevents the development of children as free and independent persons, for example, forcing education with the content which implants wrong knowledge or partial ideas on children should not be allowed. Furthermore, administrative agencies in education is not necessarily prohibited by Article 10 of the Fundamental Law on Education to impose necessary and reasonable regulations on the contents and methods of education based on laws and ordinances for legitimate purposes. The above are indicated by the precedent of the Supreme Court (Supreme Court, Showa 43 (A) No.1614, Judgment of the Grand Bench, May 21, 1976, Keishu 30-5-615).

3. Article 21, paragraph 1 of the Law on School Education provides that at elementary schools, school text books etc. (hereinafter, 'Text Books') which have been screened by the Minister of Education must be used, and Article 40 of the same Law applies this with modification to secondary schools, while Article 51 of the same Law does the same to high schools. Accordingly, Article 1, paragraph 1 of the former Rules for the Screening of Text Books provided that the screening by the Minister of Education was to approve books which have been submitted by the author or publisher comply with the goals of the Fundamental Law on Education and the Law on School Education and are appropriate to use as text books. Specific criteria for the screening are provided by the former Rules for the Screening of Text Books. According to the criteria, the screening of high school text books for Japanese history which is at issue in the present case is conducted in the light of three absolute requirements, i.e. (i) the text book complies with the goals and policies of education as provided by the Fundamental Law on Education and the goal of the given school as provided by the Law on School Education, (ii) complies with the aim of the given subject as provided by the Study Guidance Programme (gakushu-shido-yoryo), and (iii) its stance on politics and religions is fair (if these requirements are not met, the proposed book is regarded as absolutely inappropriate). There are also 10 items of 'necessary requirements', such as the chosen content (whether the content is in accordance with the content of the subject as determined by the Study Guidance Programme), accuracy (whether there are errors, inaccuracy, or part which takes up only a partisan view), choice of the content (whether appropriate contents which are suitable for achieving

the goals of the subject as indicated by the Study Guidance Programme are selected), level of the content (whether the content corresponds to the intellectual and physical development level of pupils and students of the given grade), organisation, system, and volume (whether the organisation, system, and volume are designed to implement the Study Guidance Programme in an effective way) (those proposed books which fail to fulfil these requirements are regarded as defective, but not absolutely inappropriate). The same principles apply to subjects other than Japanese history. Therefore, the screening is not only a formal review which focus on literary and typological errors, but extends to the substance of the content, i.e. the content of education.

However, considering the fact that in elementary and secondary education, pupils and students have not developed sufficient capability of criticising the content of the teaching and that they have little choice of schools and teachers and therefore, equal opportunity of education should be sought, it is required that the content of education is accurate, neutral and fair, and is above a certain standard throughout the nation regardless of the region or school. This also applies basically to high school education, although there may be difference in its extent. It is also obvious that the content of the education of pupils and students should coincide with the level of their intellectual and physical development. The fact that the screening in the present case is aimed at realising these requirements is evident from the content of screening, and the former Rules for the Screening of Text Books which served as the criteria of screening cannot be regarded as being in excess of the necessary and reasonable scope needed to achieve these purposes, nor have contents which prevents children from developing free and independent personality. Neither can the use of textbooks which have been screened deprives the discretion of teachers in classes.

Incidentally, the argument refers to the freedom of writing a textbook as part of the freedom of education, but, as mentioned above, Article 26 of the Constitution does not provide for this, and the relationship with articles 21 and 23 is determined in section II and III below.

Therefore, the screening in the present case is not against Article 26 of the Constitution and Article 10 of the Fundamental Law on Education. This is evident in the light of the above-mentioned judgment of the grand bench of the Supreme Court. The judgment of the original instance court, which is in line with this, is justifiable and the arguments of the jokoku appellant cannot be accepted.

II On the grounds Part 3, Section 2 of the grounds of appeal (concerning the breach of Article 21 of the Constitution):

1. The title, the name of the author, the name and address of the publisher etc. of the publications which passed the screening at issue in the present case are publicised in the official gazette (Article 12, paragraph 1 of the former Rules for the Screening of Text Books) and the publication will be included in the list of textbooks which the Minister of

Education sends to the prefectural educational committees; publishers are allowed to exhibit the textbook at the exhibition of school textbooks organised by prefectural educational committees (Provisional Measures Law on the Publication of Textbooks, Articles 5, paragraph 1, Art.6, subparas. 1 and 3). As mentioned above, in schools, teachers, pupils and students must use textbooks which have been selected from among the textbooks exhibited. On the other hand, publications which failed to be approved at the screening process are not entitled to such preferential treatment and are excluded from being published as textbooks. However, this restriction is limited to the form of publication as a textbook which is mandatory to be used in elementary and secondary education; it is not prohibited to publish them as a general publication and make them accessible to teachers, pupils and students and thus place them in the free market of thoughts (according to the facts lawfully ascertained by the original instance court, the appellant actually published in 1959 a book whose content is almost identical to the textbook which failed the screening in April 1957 as a general publication. It is publicly known that the appellant subsequently published the textbook in the title of 'the History of Japan disapproved by textbook screening' and accumulated editions). It is also possible to apply for screening the books which have been published as a general publication for a potential use as a textbook.

2. Censorship in the context of Article 21, paragraph 1 of the Constitution should be understood as a system operated by the administrative power which has the products of expression of thoughts etc. as its object, reviews their content comprehensively and generally before its publication with the purpose of the prohibition of the publication of all or part of them, and prohibits its publication which it regards as inappropriate. The screening in the present case, as mentioned above, does not prevent the publication of the manuscript as a general book, and does not purport to prevent publication nor reviews the book in advance of its publication, and therefore, does not comprise censorship and is not against the first part of Article 21, paragraph 1 of the Constitution. This is evident in the light of the judgment of the Supreme Court (Supreme Court 1982, Gyo (Tsu) 156, Judgment of the Grand Bench of the Supreme Court, December 12, 1984, Minshu 38-12-1308).

3. Furthermore, even the freedom of expression as provided by Article 21, paragraph 1 of the Constitution is not guaranteed without any restriction. It may be restricted on the ground of public welfare within a reasonable and necessary scope. Whether the restriction falls within this scope and is permissible shall be determined by balancing the level of necessity of the restriction, the content and nature of the restricted freedom, and the specific manner and level of restriction. In the present case, (1) as mentioned above, in elementary and secondary education, there are requirements for the neutrality and fairness as well as the maintenance of a certain level of education, and in order to fulfil these requirements, there is a necessity of prohibiting publication and use of books as textbooks which are inappropriate in the light of these requirements (the use of such textbooks in the elementary and secondary

education poses undue burden on pupils and students who do not yet have sufficient capability of criticism), (2) considering the fact that the restriction is merely to prohibit publication in the form of a textbook of only those books whose content is inappropriate from the above viewpoint, restriction on the freedom of expression by the screening in the present case is within the reasonable and necessary limit and is not against Article 21, paragraph 1 of the Constitution. This is evident in the light of the judgments of the Supreme Court (Supreme Court, 1969 (A) No.1501, Judgment of the Grand Bench, November 6, 1974, Keishu 28-9-393; Supreme Court, Showa 52 (O) No. 927, Judgement of the Grand Bench of the Supreme Court, June 22, 1983, Minshu 37-5-793; Supreme Court, 1986 Gyo (Tsu) No.11, Judgment of the Grand Bench of the Supreme Court, July 1, 1992, Minshu 46-5-437). Supreme Court, 1981 (O) No.609, Judgment of the Grand Bench of the Supreme Court, June 11, 1986, Minshu 40-4-872 ruled that prior restraint was allowed only under strict and clear conditions in a case involving interim measures which prohibited printing, binding, sale, and distribution of a periodical before publication; the present case does not prevent the appearance of the publication in the free market of thoughts, and therefore, the above judgment does not apply.

The appellant argues that since the criteria of screening is vague, it is against Article 21, paragraph 1 of the Constitution. Admittedly, some of the former Standards for Screening are general and whether they are applicable to a particular description of the proposed textbook is not necessarily clear. However, the former Standards for Screening and the Study Guidance Programme for High Schools (Notification No.94, Ministry of Education, 1960) on the goals of the subjects and their contents which were incorporated in the Standards are systematically prepared from the academic and educational viewpoint and are not vague to the extent that they cannot be applied on specific descriptions of the textbook, if the authors of the textbook, who have specialist knowledge of the given subject comprehend them as a whole. The argument on unconstitutionality lacks the prerequisite and is inappropriate. Therefore, the screening in the present case is not against Article 21, paragraph 1 of the Constitution, and the judgment of the original instance court in line with this is justifiable. The arguments cannot be accepted.

III. On the Grounds Part 3, Section 3 on the breach of Article 23 of the Constitution:

Textbooks are teaching materials which are organised and laid out in accordance with the teaching programme of the subjects and used in general education for pupils and students (see IV 2 infra), and are not aimed at the publication of the product of academic research. The screening in the present case merely limits the publication of the product of academic research in the form of a textbook, if such a product accommodated in the proposed textbook is not supported in the academic world despite the author's confidence in its correctness, or is not

acknowledged as appropriate to be selected for the education of pupils and students of the given school, subject, and grade, and thus, does not fulfil the requirements of the former Standards of Screening. The fact that such a screening is not against Article 23 of the Constitution which guarantees the freedom of academic research is evident from the judgment of the Supreme Court (Supreme Court, 1956 (A) 2973, Judgment of the grand bench of the Supreme Court, May 22, 1963, Keishu 17-4-370; Supreme Court, 1964 (A) 305, Judgment of the grand bench of the Supreme Court, October 15, 1969, Keishu 23-10-1239). The judgment of the original instance court, which is in line with the above, is justifiable, and the arguments are not acceptable.

IV. On the grounds of appeal Part 3, Section 4 on the breach of the rule of law (articles 13, 41, and 73, subpara.6 of the Constitution):

1. Article 21, paragraph 1 of the Law on School Education which is applied with modification to high schools by Article 51 of the same Law provides that the Minister of Education has the power to screen textbooks and that at schools, it is mandatory to use screened textbooks. It can be regarded as the basic provision for screening, which provides for the subject and effect of screening.

2. The content, standards, and the procedure of the screening in the present case are provided by former Rules for the Screening of School Textbooks and the former Standards for the Screening of School Textbooks which are the ordinance and notification of the Ministry of Education respectively. However, textbooks are teaching materials which are organised and laid out in accordance with the teaching programme of the subjects and used in general education for pupils and students (Article 2, paragraph 1 of the Temporary Measures Law on the Publication of Textbooks before the amendments by Law No.48, 1970). It is evident from the relevant provisions of the Fundamental Law on Education and the Law on School Education that the education in schools must be accurate, neutral and fair, and should be implemented in accordance with the goals of the school and education, the content of the subject as determined in line with the level of intellectual and physical development of the pupils and students. According to these provisions, it is obvious that the content of the textbooks (more specifically, Guidelines for Teaching based upon delegation by the Law), etc., should be accurate, neutral and fair, corresponds to goals of the school, purpose of education, the content of the subjects, the level being in accordance with the stage on intellectual and physical development of pupils and students, and should be suitable for use by pupils and students. The former rules and standards, as mentioned above, have merely realised the requirements for textbooks as evident in the relevant provisions of these laws as the content and standards of the screening. Therefore, by setting the content and standards of the screening and the procedure for the screening, which is an implementation rule of the screening based upon Article 88 of the Law on School Education ('in addition to the matters

provided by the present Law, matters necessary for the implementation of this Law which are to be handled by the agencies of the local government shall be determined by a cabinet order, and other matters shall be determined by the supervisory agency'), the Minister of Education cannot be regarded to have acted without delegation of law.

3. Therefore, the argument on unconstitutionality lacks the prerequisites and is inappropriate. The judgment of the original instance court which is in line with the above is justifiable, and the arguments cannot be accepted.

V. On the grounds of appeal Part 3, Section 4 on the breach of due process (Article 31 of the Constitution):

1. The appellants argue that while Article 31 of the Constitution is applicable to administrative procedure as well, (1) the process of screening is not open to the public, (2) in cases of failure to pass the screening, the reason for rejection is not given in advance, and there is no opportunity to explain or defend the position of the applicant, and the post de facto notice is given only in part of the reasons, (3) the selection of the Board for the Screening and Research of Textbooks is unfair, (4) the content of the standards for the screening (former Screening Standards) is vague and therefore, the screening in the present case is against the due process of law (the remaining arguments merely criticises the choice of evidence and fact finding which belong to the exclusive power of the original instance court, or the application of law based upon unique views).

2. However, item (3) on the unfairness in the choice of the member of the Board is based upon the fact not in accordance with the facts ascertained by the original instance court, and concerning item (4), as mentioned above, the former Standards for Screening cannot be regarded as vague, and therefore, as far as (3) and (4) are concerned, the argument of unconstitutionality lacks prerequisites.

3. Concerning administrative decisions, there may be instances where the guarantee of due process as provided by Article 31 of the Constitution is applicable, but administrative decisions vary depending on their purposes, and therefore, the requirement of giving a notice, opportunity for explanation, or defence to be given to the recipient of the administrative decision is not always applicable.

Restrictions imposed by the screening in the present case does not extend to the entry into the free market of thoughts which is an essential part of freedom of expression, but is implemented for the highly public purposes of maintaining the neutrality and fairness as well as the certain standard of education. Furthermore, considering the facts lawfully established by the original instance court in total that (i) in order to maintain the fairness of the screening, the above-mentioned Board which comprises members from teachers and academics who are specialists in education and academic research was set up as a consultative body to the Minister of Education (Article 27, paragraph 1 of the Law on the Establishment of

the Ministry of Education before the amendments by Law No.78 of 1983, Article 1, Article 3, paragraph 1 of the Cabinet Order on the Board for the Screening and Examination of School Textbooks before the amendments by Cabinet Order No.229 of 1984), (ii) the decision to accept or reject the textbook by the Minister of Education is made on the basis of the recommendation of this Board (Article 2 of the former Rules of Screening), (iii) the decision of rejection which is handed to the applicant indicates which requirement of the former Standards for Screening was primarily not fulfilled by the proposed textbook and the textbook research officers who qualify as an auxiliary agency to the Minister of Education give supplementary explanation orally by indicating specific failed parts as examples and on this occasion, short-hand recording or tape recording is permitted, the applicant, by taking account the above explanation and response, may reapply the same rejected publication in the given accounting year or the next year, despite (1) and (2) above, the screening in the present case cannot necessarily be found to be against the meaning of Article 31 of the Constitution. This is evident by the precedent of the Supreme Court (Supreme Court 1986 (Gyo-tsu) No.11, Judgment of the Grand Bench of the Supreme Court, July 1, 1992, Minshu 46-5-437)(since then, the former Rules for the Screening of Textbooks have been totally replaced by the new Rules by the Ordinance of the Ministry of Education No.32, 1977, and by virtue of Article 11 of the new Rules, systems of prior notification of the grounds for rejection and the hearing of defence have been introduced, as explained in the judgment of the original instance court).

4. Therefore, the judgment of the original instance court on the arguments is justifiable in concluding that there was no violation of due process. The arguments cannot be accepted.

VI. On the grounds of appeal, Part 4 (excluding the ticked parts of the table on specific screened parts attached to the present judgment. These parts were withdrawn from the grounds of appeal by the supplementary grounds of appeal dated November 24, 1988. The same applies to VII, and VIII infra):

Fact finding by the original instance court on the arguments by the appellants can be confirmed by the evidence listed in the judgment of the original instance court, and its conclusion that under these facts, in the decisions on screening in the present case, relevant laws and ordinances on the screening of the textbooks have been applied or implemented against the Constitution or the Fundamental Law on Education is justifiable in the light of the above-mentioned judgments of the Supreme Court (Judgments of May 22, 1963, October 15, 1969, November 6, 1974, May 21, 1976, June 22, 1983, December 12, 1984, July 1, 1992), and the process of judgment is not unlawful for the absence of judgments on specific points as argued by the appellants. The arguments cannot be accepted.

VII. On the grounds of appeal Part 5 (excluding Section 1, item 4, and the points on the breach of equal treatment and consistency principle):

1. In the determination of the School Textbooks Screening and Research Board in the present screening, on absolute requirements, the pass or failure is determined on each requirement, while for necessary requirements, for each requirement, the parts which are defective in the applied manuscript are specifically pointed out (this is called the 'screening opinions'). Points on each part, depending on the nature and quantity of the defect, are determined and the total points determines the pass or failure (a total of 1050 points are allocated to the necessary requirements as a whole and the pass mark is 800), and those publications which fulfilled both the absolute and necessary requirements are found to have passed the screening. In such cases, if the defects which have been identified and are significant, the publication passes the screening only on the condition that the defects are removed (Internal Rules on the Examination and Valuation of the Manuscripts Applied for the Screening for Textbooks for Secondary and High Schools, decision of the Board, December 12, 1959). Concerning the publication applied for screening by the appellant, in 1962, 323 defects were found, and while the absolute requirements were all fulfilled, the total point for the necessary requirements was 784 and failed, and the publication was determined to have failed overall. In 1963, 290 defects were pointed out in the manuscript, but both absolute and necessary requirements (total 846 points) were fulfilled and subject to re-examination after the correcting of the defects, the publication was determined to be a 'pass'. The determination of the Board on the pass or failure was recommended to the Minister of Education with the identified defects ('screening opinions'), and the Minister of Education made the decision in accordance with the recommendation in both years (in 1963, at the re-examination stage, further defects were pointed out). The above facts have been lawfully ascertained by the original instance court.

2. Although there is no law which directly sets out the standards for screening, the power of the Minister of Education in the screening must be exercised in accordance with the requirements of the Constitution as mentioned in I 2 and comply with the Fundamental Law on Education and the Law on School Education. As indicated above, since the former Rules for the Screening and the former Standards for the Screening which provide for the specific contents of the screening have realised these requirements and relevant provisions, the power of screening must be exercised in accordance with these relevant rules. The examination and determination in the screening are made from various viewpoints such as whether the publication's content is academically accurate, neutral and fair, suitable for achieving the goals of the subject, and corresponds to the level of intellectual and physical development of pupils and students, and is a judgement which requires academic and educational expertise and technique, due to its nature, has been entrusted to the reasonable discretion of the Minister of Education. Therefore, in

cases where, in the process of determination by the Screening and Examination Board of School Text Books, which is a consultative body to the Minister of Education, there was an error which cannot be overlooked on the understanding of the state of academic theories at the time of the screening which serves as a basis for the content of the manuscript of the proposed text book or in identifying mistakes in the manuscript, or in the evaluation that the manuscript does not coincide with the screening standards and it is acknowledged that the determination of the Minister of Education was based upon such an error, the determination is unlawful as an excess of discretion under the Law on State Compensation.

Since the screening opinion specifically points out the defects accompanied by reasons on each necessary requirement, the state of academic opinions and education which serves as its basis varies from opinion to opinion. For example, a screening opinion on the accuracy should be based upon the state of objective academic opinions at the time of the screening. In such cases, the screening opinion may (1) require description based upon another academic opinion on the ground that the description in the manuscript is wrong, or (2) require other views to be added in a parallel way, since the description in the manuscript is one-sided and definitive. Whether there is an error which cannot be overlooked in the screening opinion should be judged in (1) from the viewpoint of whether the academic opinions which serve as the basis of the screening opinion is widely supported in the academic world as a common or established view and whether the description in the manuscript can be assessed as an error or not, and in (2), should be determined from the viewpoint of whether there is no established views in the academic world and whether the description in the manuscript can be regarded as one-sided. On the other hand, screening opinions on the selection and the level of the content focuses not on the academic accuracy of the description of the manuscript, but on the educational adequacy, and should be determined from the viewpoint of whether the selected contents can be regarded as inadequate in the light of the goals of the subjects as provided by the Study Guidance Programme and the stage of intellectual and physical development of pupils and students.

3. The criteria for the determination of the excess of the scope of discretion which the original instance court has set out is ultimately identical to the above, and are justifiable.

Moreover, the fact finding by the original instance court on each screening opinion (see the column 'original abuses' in Table of Specific Screening Results, *supra*) can be accepted in the light of the evidence listed in the judgment of the original instance court, and under these facts, although the determination of the original instance court is not immune from inadequate expression in some parts, it is not impossible to concur with it in its conclusion that these screening opinions do not have errors which cannot be overlooked (in the screening opinions, there are those which go too much into details, but they still do not qualify as errors in breach of the former Standards of Screening which cannot be

overlooked).

4. Therefore, it cannot be said that the decision of the Minister of Education concerning the screening in the present case is in excess of the scope of discretion as argued, and the judgment of the original instance court which shares the same conclusion is appropriate. The arguments criticise the choice and evaluation of evidence and fact finding which belong to the exclusive power of the original instance court or criticise the judgment of the original instance court from a unique point of view, and therefore, cannot be accepted.

VIII. On the part of grounds of appeal Part 5 on the breach of equality principle and the principle of consistency:

Under the facts lawfully ascertained by the original instance court, the determination of the original instance court that there was no excess of the scope of discretion by a breach of equality principle or principle of consistency is justifiable in its conclusion. The arguments cannot be accepted.

IX. On the grounds of appeal, Part 5, Section 1, item 4:

The determination of the original instance court on these points are justifiable in the light of the records, and there is no unlawfulness as argued in the judgment of the original instance court. The argument merely claims the unlawfulness of the judgment of the original instance court based upon the grounds which were not presented at the original instance, and therefore, cannot be presented.

X. Conclusion

Thus, in accordance with articles 401, 95, and 89 of the Code of Civil Procedure, the justices unanimously rule as the main text of the judgment.

The Third Petty Bench of the Supreme Court

Presiding	KABE Tsuneo
Judge	JusticeSAKAGAMI Toshio
	JusticeSONOBE Itsuo
	JusticeSATO Shoichiro

(*Translated by Sir Ernest Satow Chair of Japanese Law, University of London)