

Development and Current Issues with the NHK Receiving Fee System

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I. INTRODUCTION

Japan is among the countries that use television licenses to fund its public broadcasting network. Under the Japanese Broadcasting Act,¹ persons who install equipment capable of receiving public broadcasts must enter a contract with the Japan Broadcasting Corporation (*Nippon hōsō kyōkai*; hereinafter NHK) and pay a fee. This system is in itself not rare, with similar systems existing in England, Germany, Italy, France, South Korea and other parts of Europe. In contrast, some countries, like the United States, Brazil, Australia and Canada, amongst others, have abolished such a system or never had one in the first place. The Japanese Broadcasting Act, however, does not establish an obligation to pay, creating instead merely an obligation to enter a contract, the contents of which are decided by NHK and the Cabinet. Consequently, there is a not insignificant number of people installing such equipment who do not inform NHK and who never sign such a contract. As of 2006, NHK began to sue individuals and businesses to force them to sign the contract and pay the fee; this resulted in several questions regarding the legal nature of the NHK fee contract being resolved by the courts. In 2017 the Supreme Court was asked to rule on the constitutionality of the Broadcasting Act provision that serves as the basis for the fee system. This article presents the story behind the development of the fee system in Japan as well as the case law regarding some of the issues sur-

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1 *Hōsō-hō*, Law No. 132/1950.

rounding the interpretation of both the law and the underlying contract. We finish with the most recent Supreme Court case² on the matter and formulate some considerations regarding the conclusions drawn by the justices.

II. THE BROADCASTING ACT

NHK was first established in 1925 as a radio broadcast corporation. Originally, approval from the government was required to receive the radio signal; thus people who wanted to install a radio had to apply for a permit. Entering a contract with NHK was not a legal requirement for obtaining the approval, but since the contract with NHK was part of the paperwork required to obtain the permit, it was a *de facto* requirement.³ Those who installed a radio without the permit faced up to one year in jail or a fine of up to Yen 1,000. After the war, the Supreme Commander for the Allied Forces (GHQ as it is known in Japan) began advancing a political process aimed at eliminating the permit required to install a radio.⁴ The goal of GHQ was to reform not only the permit system but the broadcast system in general. This led to the issue of how to obtain funds for the new broadcast system that was being devised during the aftermath of the war. A draft of the Broadcasting Act from January 1948 did away with the permit but required informing the NHK and gave it the right to collect a fee. The draft also established a prison punishment of up to six months or a fine of up to Yen 5,000 for those who did not inform NHK that they had installed a receiving device. However, the fee was not the only source of income that was being considered to fund NHK; allowing commercials and paid transmission were also amongst the options put forth for debate⁵.

Nevertheless, a draft from February 1948 separated the obligation to inform NHK from the obligation to pay the fee, and, regarding the latter, the draft legislation established only that NHK could charge a fee. As to the reasons why these two obligations were separated, the Civil Communication Section (*Minkan tsūshin-kyoku*) of GHQ was opposed to the idea that a governmental action, such as the collection of a fee, would be combined with entering a contract, which is a private action. By contrast, the general office of the Ministry of Communication (*Teishin-shō*) considered that the

2 Supreme Court, 6 December 2017 (Case Number Heisei 26 (o) 1130), available at: http://www.courts.go.jp/app/files/hanrei_jp/281/087281_hanrei.pdf.

3 S. MURAKAMI, *Hōsō-hō jushin-ryō kanrei kitei no seiritsu katei: senryo-ki no shiryō bunseki kara* [Legislation Process of the Articles Related to Receiving Fees in the Broadcast Act: Analyzing Documentation Made During the Postwar Occupation Period], *Hōsō Kenkyū to Chōsa* (Geppō) 64 (2014), 32, 33.

4 *Idem* at 34.

5 *Idem* at 36.

changes were required to secure funding for public broadcasting.⁶ Thus, by 1948 the system was changed from requiring a permit for installing devices capable of receiving the signal to an after-the-fact sign-up system. In June of 1948, a new draft was presented to the second session of the Diet. This new draft did away with the obligation to inform NHK and established that all individuals had the right to install equipment capable of receiving signals (the draft does not specifically refer to radio signals), but it made it clear that NHK had the right to collect a fee if the equipment could receive broadcasts from NHK. The discussions around the draft extended until November, when the Ministry of Communications withdrew the draft after the then Prime Minister Hitoshi Ashida had stepped down and was succeeded by Shigeru Yoshida.

In December 1948 the Legal Section of GHQ pushed to remove restrictions and punishments on new programs.⁷ The next attempt to regulate the matter came in March 1949 when a new draft was prepared. The new draft did not make any substantial changes on the matter of the NHK fee, allowing private individuals to install receiving equipment and giving NHK the authority to collect the fee. However, this new draft raised some questions regarding the authority of the NHK director, and thus it was never presented to the Diet.⁸ On 13 August 1949 a new draft had been prepared, one that removed the freedom to install receiving equipment and stated that whoever installed equipment capable of receiving broadcasts from the NHK would be deemed to have entered a contract with the NHK, setting the fee at Yen 35 a month. Almost two weeks later, on 27 August, the draft was modified to remove the phrase “deemed to have entered a contract”, replacing it with “must enter a contract”. The 27 August draft also removed the amount of the fee and left that decision to the Diet. Nevertheless, this was replaced once again with a Yen 35 fee under a 24 September draft. Finally, in October 1949, the office of the Cabinet settled on a draft, which regarding the fee was the same as the one prepared on 24 September, and sent it to the National Diet for discussion on 22 December of the same year.⁹

The discussion in the Diet extended for about four months. The government defended the obligation to pay the NHK fee with the argument that without that provision NHK would not have any legal basis to collect the fee; thus the provision was needed to force citizens to enter a contract with NHK.¹⁰ Afterward, the bill was modified and discussed not only by the Diet

6 *Idem* at 37.

7 *Idem* at 40.

8 *Idem* at 41.

9 *Idem* at 43.

10 *Idem* at 44.

but also by the Government Section of GHQ. In the end, the bill was made into a law on 2 May 1950, removing the fixed fee of Yen 35 and keeping the obligation to enter a contract with the NHK.¹¹ In 2010 the law was amended to combine four laws into the current Broadcasting Act. While the reform changed the definition of broadcasting” (*hōsō*) to better reflect technological changes, the fee system was not reformed and only underwent a change in enumeration.

III. CURRENT STATE OF THE ISSUE

As it stands now, in 2018, the law’s goal is to regulate broadcasting so as to conform to standards for public welfare and to facilitate the sound development of broadcasting in accordance with three principles: (1) Reaching as much of the general public as possible, (2) Ensuring freedom of expression by guaranteeing impartiality, truth and autonomy, and (3) Contributing to the development of a healthy democracy by clarifying the responsibilities of persons involved in broadcasting (Article 1 Broadcasting Act).¹² Thus, in principle, the goal of NHK is to provide the public with information in an impartial and truthful manner regardless of where they might reside. To ensure that NHK can accomplish its goals, Article 64(1) establishes a fee system.¹³

Article 64

(1) Persons installing reception equipment capable of receiving NHK broadcasts conclude a contract with NHK for the reception of those broadcasts; provided, however, that this does not apply to those persons who have installed reception equipment not intended for the reception of broadcasts or reception equipment only capable of receiving radio broadcasts (meaning broadcasts comprising of voices and other sounds that do not come under television broadcasting or multiple broadcasting; the same applies in Article 126, paragraph (1)) or multiple broadcasting.

Most information on Article 64 and its interpretation comes from NHK. For example, the definition of *installing reception equipment* has changed over the years. Until 2009 NHK considered that having a television but no antenna that could receive broadcasts did not fall within the purview of Article 64. However, in 2010 this part of a question was removed from the FAQ

11 There were, however, discussions between the Japanese government and GHQ regarding the budget of NHK as to whether it should be sent to the Diet or be managed by the Cabinet. MURAKAMI, *supra* note 3, at 45.

12 The text follows the English translation of the Broadcasting Act which the Ministry of Justice makes available at: <http://www.japaneselawtranslation.go.jp/law/detail/?id=2954&vm=&re=>.

13 The fee for receiving radio broadcasts was abolished in 1968.

provided by NHK, and presently there is no official word on the matter. Another issue occurred with individuals that had a cable television contract. Before the 2010 reform, the language of Article 64 (then Article 32) limited the obligation to equipment capable of directly receiving the broadcast. Furthermore, the law restricted the definition of broadcasting to wireless broadcasting. Thus, Hideo Tsuchiya argued that individuals who received the NHK broadcast via cable television were exempt from paying the fee,¹⁴ as that type of communication did not fall within the definition of broadcasting. Nevertheless, the 2010 reform brought an end to this argument by eliminating any reference to wireless broadcasting.¹⁵ Currently, installing receiving equipment is used to refer to ownership of a television; thus television owners are obligated by law to enter into a contract with NHK. This standardized contract, which must be approved in advance by the Minister of Internal Affairs (*Sōmu daijin*; Article 64(4)), features some discounts given to students and residents of Okinawa, and its application varies depending on whether the television owner is a private individual or a company; families usually pay one subscription for all televisions within the household¹⁶ while some companies such as hotels are required to pay one subscription per television.¹⁷ There have been discussions as to the legal nature of the fee, with some commentators arguing that the obligation to pay emerges from the contract (contractual theory), others that the fee is a type of tax (tax theory) and still others arguing that it is a burden that should be shouldered for the benefit of the public (public use theory). The official stance taken by the government, however, is that the fee is a burden based on the right granted to NHK under the law.¹⁸

The contract itself has 20 articles,¹⁹ but we will limit our analysis to those regarding the obligation to pay the fee. The contract establishes the

14 H. TSUCHIYA, *NHK Jushin-ryō hitei wa dekiru no ka: Jushin-ryō seido kenpō mondai* [Is it possible to not pay the receiving fee? Constitutional issues on the receiving fee system] (Tōkyō 2007) 57.

15 Article 2 (i) of the Broadcasting Act defines broadcasting as follows:

(i) the term "broadcasting" means the act of transmitting (including transmitting using the telecommunications equipment of other persons (meaning the telecommunications equipment provided for in Article 2, item (ii) of the Telecommunications Business Act (Law No. 86 of 1984); the same applies hereinafter)) through telecommunications (meaning telecommunications as provided for in Article 2, item (i) of the Telecommunications Business Act) content intended to be received by the public.

16 <http://www.nhk.or.jp/faq-corner/2jushinryou/02/02-02-01.html>.

17 <http://www.nhk.or.jp/faq-corner/2jushinryou/02/02-02-18.html>.

18 MURAKAMI, *supra* note 3, 32.

19 The original Japanese version of the contract as of March 2018 can be found at: https://pid.nhk.or.jp/jushinryo/kiyaku/nhk_jushinkyaku_290530.pdf.

type of broadcasting (terrestrial, satellite and special) as well as the respective fee.²⁰ Article 1 of the contract defines receiving equipment as any equipment capable of receiving the NHK broadcast signal regardless of whether the equipment is installed in a household, a vehicle or if it is portable or any other type of device. Thus, under the contract, not only televisions but 1-seg cellphones and vehicles with a screen capable of receiving TV signals are subject to the receiving fee. Article 2 established the one-contract-per-household rule but makes it clear that where a person has two or more residences they must enter a contract for each one of them. Article 3 establishes the obligation of the person who installed the receiving equipment to inform NHK of their name and address, the date of installation, the type of contract they wish to enter, the type of signal they can receive and whether the equipment was installed in a place other than their residence. The same applies when disposing of the equipment or installing equipment capable of receiving a different type of broadcast. Finally, Article 3 provides that the notice can be given via letter, internet or phone. Article 4 provides that the contract is entered into on the date the equipment was installed. However, in the event of a change or disposal of the receiving equipment, the change or cancellation of the contract takes place the day notice was given to NHK, provided NHK can confirm the notice.

Article 5 provides that the fee is due from the month the equipment was installed until the month before the equipment was disposed of. It also sets the fee for each type of contract. The fee depends on whether the reception is accomplished via satellite or is a terrestrial connection, with payments divided into two-, six- and twelve-month installments. The one-year installment for a terrestrial connection is Yen 13,990 if paid via standing order (paid at a bank, post office or with a credit card) or Yen 14,990 if paid via postal order. In the case of satellite connections, the fee is Yen 24,770 for standing orders and Yen 25,770 for postal orders.

Lastly, Article 9 sets the method by which the contract can be canceled. Specifically, the persons giving notice must provide their name and address, the number of machines, if they have receiving equipment also at a different location, and the reason they wish to cancel the contract. The second paragraph of Article 5 restates Article 4 in that the contract is deemed to have been canceled on the date the notice was given, provided NHK confirms that the equipment has been disposed of. It also provides that when the person could not give notice of the disposal because of disasters, the contract is deemed to have been canceled on the date the disaster occurred.

20 An overview of the fee system is available in English at: <https://pid.nhk.or.jp/ju/shinryo/multilingual/english/index.html>.

Mobile phones capable of receiving broadcast using the 1-seg standard (*wansegu keitai*) are another point of contention regarding the obligation to enter a contract with NHK, especially under the language of the law and Article 1 of the contract. Both the government and NHK argue that since these types of phones can receive the broadcast signal, they fall within the purview of Article 64 Broadcasting Act. Nevertheless, they have made clear that those who have already entered a contract do not need to apply again, while those who have not entered a contract must do so.²¹ Further issues arose with the introduction of broadcast over the internet. In a 2017 report on the matter,²² NHK expressed the view that households already paying the fee would not be obligated to pay an additional fee for the internet broadcast. The same report also discusses two approaches regarding how to handle the issue of households without a television in the era of internet broadcasting:²³ (1) by having them pay a support fee similar to the current receiving fee system or (2) by setting a price and having the users pay to access the content. While acknowledging that both systems are feasible, the report argues that if the issue is approached with NHK's public function in mind, the support fee system is the better suited of the two. However, the report also admits that it might take time to obtain public support; therefore, it is necessary to explore the viability of a pay-for-access system or a system that allows for limited viewing for free.²⁴ Interestingly, while the report also mentions that some countries, such as Italy and South Korea, provide internet broadcasting for free, it is quick to point out that most households in those countries pay their receiving fee and thus they are not in the same situation as Japan.²⁵ Yet what NHK fails to mention in their report is that both the Italian and South Korean fees are lower than the NHK fee (Euro 100 and 20 respectively) and that in both countries the fees

21 *Dai 164-kai Sangiin sōmu iinkai kaigi roku dai 11*, [Record No. 11 of the 164th Meeting of the House of Councilors' Committee on General Affairs] at 5. Available at: <http://kokkai.ndl.go.jp/SENTAKU/sangiin/164/0002/16403300002011.pdf>.

22 NHK *Jushin-ryō seido tō kentō iinkai* [NHK Investigative Commission on the Receiving Fee System, etc.], *Jōji dōji haishin no futan no arikata ni suite* [Regarding the Burden for Simultaneous Transmission] at 3. Available at: <http://www.nhk.or.jp/keieikikaku/shared/pdf/01toushin.pdf>.

23 *Id.*

24 *Idem* at 4.

25 *Idem* at 11.

are collected through the electricity bill, thus the high collection rate.²⁶ Lately, the NHK seems to avoid the issue when asked about it.²⁷

But the biggest issue with the receiving fee system is the actual collection of the fee. According to a 2017 report, there are over 50 million households in Japan. Collection of the fee stands at a 78.2%, with Akita leading the list at 95.2% and Okinawa last at 49.9%.²⁸ The language of the Broadcasting Act does not provide for a *de iure* establishment of a contract but rather only forces the person who installed the equipment to enter into a contract with NHK. The law does not, however, provide NHK with any special means of enforcing Article 64. Thus, it falls on the television owner to inform NHK and enter the contract. This type of voluntary system led to many people not contacting NHK, either because they did not know of their obligation or because they simply did not want to pay the receiving fee. Since the fee is not owed until after the contract has been finalized, NHK representatives began to visit houses and apartments, asking residents if they possess a television and, if they do, reminding the person of their obligation to enter a contract with NHK. Since these representatives do not have any legal authority to enter the residence of the person they are visiting, they have no means of confirming whether there is a television other than seeing it or the person telling them. This has resulted in people stating that they did not have a television, forcing the representative to leave. However, since the visit is carried out by a subcontractor, it is common to have different people visit many times a year to ask if there is a television in the household. Furthermore, there have been cases in which the NHK representative has forcefully entered the house or threatened the person they were visiting to get them to sign the contract. In 2006 NHK decided to take legal action against the worst offenders and began suing people to secure payment of the reception fee as well as any fees that they had not received since the installation of the television.

26 In the case of Italy, the Stability Act of 2016 (Law 208 of 28 December 2015) established a presumption of ownership when a contract for distribution of electricity is entered. For South Korea see <http://office.kbs.co.kr/susin/about-tv-license-fee>.

27 *NHK jushin-ryō de tōshin, netto dōji haishin ni furezu seido kentō-i* [The committee on NHK's license fee system reports without addressing simultaneous online broadcast] Nihon Keizai Shinbun, 13 September 2017, available at: https://www.nikkei.com/article/DGXLASDZ1210Y_S7A910C1T11000/.

28 NHK, *Heisei 28-nendo-matsu jushin-ryō no suikei setai shiharai-ritsu* [Collection Estimate for the 2016 Fiscal Year], available at: <https://www.nhk.or.jp/pr/keiei/other/press/pdf/20170523.pdf>.

IV. RECEIVING FEE SYSTEM – RELATED LITIGATION

According to statistics provided by NHK, from November 2006 to December 2017 there have been a total of 9,575 cases in which NHK demanded payment of the receiving fee.²⁹ Of those cases, the fee has been paid in 8,514 cases. Of the total, 4,144 cases reached the courts, with 3,002 cases being resolved via settlement or a decision of the court (*kettei*), 1,084 cases ending via a ruling (*hanketsu*) and 58 cases still ongoing, two of which are appeals.³⁰ 901 cases have been resolved by the courts but remain unpaid. And finally, there are 102 cases which are still being processed.³¹ Once NHK began using the court system to secure payment, the issues inherent to the fee system became a topic of public discussion. In a 2010 case,³² a woman entered the NHK fee contract, after which NHK sued her husband for payment. NHK based its claim on four legal arguments: First, that the payment of the NHK fee fell within the definition of a household necessity under Article 761 of the Civil Code,³³ thus making both the husband and wife jointly liable. Second, that the man had granted his wife power to represent him. Third, that the contract was binding under the rules of apparent authority set forth by Article 110 Civil Code. And fourth, that the man had ratified his wife's signing of the contract. In rejecting the NHK claims, the Sapporo District Court held that Article 761 Civil Code was applicable only to bilateral contracts to protect third parties., The NHK fee contract, however, should be construed as a unilateral contract where no *quid pro quo* existed;³⁴ therefore, it fell outside the joint liability set forth by Article 761 Civil Code. The court also rejected the NHK argument that the man had granted his wife the power to represent him by pointing out that the man had declined to enter the fee contract numerous times while married and that the language of Article 64(1) Broadcasting Act did not allow a representative to sign the

29 NHK, *Hōsō jushin-ryō ni kakaru minji tetsuzuki no jōkyō ni tsuite* [State of affairs of civil litigation regarding the broadcast license fee] Available at: <https://pid.nhk.or.jp/pid99/osk/000000/000043088.pdf>.

30 *Kettei* do not require oral arguments and usually deal with the incidental issues of the trial. *Hanketsu* require an oral argument and address the main issue that is in front of the court.

31 The report lists them as in process (*tetsuzuki-chū*) but does not specify what this means.

32 Sapporo District Court, 19 March 2010, Case number Heisei 20 (wa) 1499, available at: http://www.courts.go.jp/app/files/hanrei_jp/134/080134_hanrei.pdf.

33 *Minpō*, Law No. 89/1896.

34 The ruling uses the terms *taika kankei*, which can be translated as consideration. However, since Japanese contractual law does not require consideration, or rather it has a different meaning than the common law requirement of consideration, we have opted to translate it as *quid pro quo*.

contract. Regarding the apparent authority claim, the court pointed out that the goal of Article 110 Civil Code was to protect third parties in bilateral contracts; therefore, it was not applicable in the case of a unilateral contract not featuring a *quid pro quo*, such as the one in this case. Finally, regarding the ratification, NHK argued that since the husband had waited ten months to act he had ratified the contract. To this, the court simply held that such a claim was mere conjecture and rejected it.

In 2012 the Asahikawa District Court,³⁵ acting as an appellate court, had to rule on the statute of limitations for claims regarding fees. In this case, the appellant (television owner) had been ordered by the small claims court to pay almost Yen 100,000 in fees for the period of 1 December 2004 to 11 November 2010. The appellant argued that the obligation to pay NHK infringed multiple articles of the Civil Code and the Commercial Code,³⁶ as well as Article 19 (freedom of thought and conscience) and Article 21 (freedom of assembly, speech and press) of the Constitution,³⁷ therefore rendering the contract void. Furthermore, the appellant argued that the NHK fee contract should be considered a consumer contract, to which consumer protection law applied. The appellant also claimed that the fee contract was a private contract in nature as it provided a broadcast signal in exchange for a price. Nevertheless, the appellant continued, even if the contract should be construed as an administrative contract, it should be subject to the statute of limitation set by the Civil Code, as the Broadcasting Act did not have any such provision and the Supreme Court had previously ruled that administrative contracts, such as those for public services, were subject to the Civil Code rules.

The court rejected the appellant's claims and found for the appellee. The ruling begins with an analysis of the legal nature of the fee by pointing out that the appellant is not paying for the broadcast; rather its legal basis is found in the Broadcasting Act, which grants NHK the right to require payment. The court also held that to rescind the contract the appellant had to prove that they no longer owned a TV, which had not been established during the trial. Regarding the infringement of Articles 19 and 21 of the Constitution, as well as other legal provisions from both the Civil Code and the Commercial Code, the court rejected the claim based on the public nature of NHK. Finally, the court held that the NHK fee was subject to a five-year limit under Article 169 Civil Code.³⁸

35 Asahikawa District Court, 31 January 2012, Case number Heisei 23 (re) 45 (2012 WLJPCA01319016).

36 *Shōhō*, Law No. 48/1899.

37 *Nihon-koku kenpō*, 1946.

In 2013, the Yokohama District Court³⁹ had to rule on when the contract was formed. In this case, NHK had informed the defendant on multiple occasions of their obligation to enter a contract; nonetheless, the defendant refused to sign the contract. NHK argued that since the defendant had a legal obligation to enter a contract with NHK, the contract should be considered formed despite the defendant's having refused to sign the contract where a reasonable time had passed since the defendant's having received notice from NHK. The court rejected this argument based on the proviso of Article 414-2 Civil Code, which requires a creditor to seek a judgment ordering the debtor to perform a specific legal act. The court concluded, however, that the defendant indeed had the obligation to pay the NHK fee, finding that the defendant had presented insufficient evidence in support of the defense that their television had broken during the 2013 Tōhoku earthquake. Nevertheless, the law does not specify how the contract should be dissolved in cases where an individual no longer owns a television. Both the Yokohama and Asahikawa courts held that the person must prove they no longer own a television, but they provide no standard as to what constitutes proof. By contrast, there are reports of a Tsuchiura Small Claims Court that found for an individual who called NHK to inform the agency that their television had broken and they were thus ending the contract. NHK argued that Article 9 of the contract prevents individuals from unilaterally terminating the contract unless they inform NHK of their name and address as well as the number of the devices that were disposed of, which is to be followed by NHK confirming that the equipment is no longer functional. The court simply accepted the plaintiff claims and rejected NHK's arguments.⁴⁰

The district courts are also divided on the issue of 1-seg phones and whether they fall within the scope of "installing" as provided by Article 64(1) Broadcasting Act. In 2016 the Saitama District Court found that phones using the 1-seg technology do not fall within the scope of Article 64(1), pointing out that the law makes a distinction between install

38 Other courts reached the same conclusion. Sapporo High Court, 21 December 2012, Heisei 24 (tsu) 4, available at: http://www.courts.go.jp/app/files/hanrei_jp/870/082870_hanrei.pdf; Chiba District Court, 3 February 2012, Case number Heisei 23 (re) 566, available at: http://www.courts.go.jp/app/files/hanrei_jp/302/082302_hanrei.pdf.

39 Yokohama District Court, 27 June 2013, Case number Heisei 25 (wa) 82, available at: http://www.courts.go.jp/app/files/hanrei_jp/393/083393_hanrei.pdf.

40 Nikkan Gendai Digital, *Terebi Koshō mitomeru hanketsu NHK jushin-ryō kaiyaku rasshu no kanōsei* [Ruling accepts television breakdown, possible rush to cancel the NHK license fee] <https://www.nikkan-gendai.com/articles/view/news/163822>. We were not able to locate the original document for this case. NHK appealed but at the time of this writing no ruling has been issued.

(*setchi*) and carry (*keitai*). Accordingly, from the ordinary meaning of the words the term “install” as written in Article 64(1) cannot be said to include the meaning of “carry”. Owners of phones capable of receiving the NHK broadcast therefore do not have to enter a contract with NHK.⁴¹ However, in a 2017 Mito District Court case a plaintiff similarly argued that “install” should not be construed as to include cellphones using the 1-seg technology.⁴² This court rejected the argument and found for NHK. The court recognized that the ordinary meaning of the word install is to connect something and that it has a different meaning than the word “carry”. However, the court continued, legal provisions make use of words not only in their general meaning but also in a broader more abstract meaning, and other laws have made use of the word install in a broader sense, not limited to only connecting something. Thus, the court ruled that the term “install” under Article 64(1) is not necessarily limited to its ordinary meaning and, after reviewing the legislative process, it concluded that the term “install” as written in Article 64(1) includes the meaning carry.

Recently, the 2017 Tōkyō High Court⁴³ ruled on the meaning of the phrase “installing receiving equipment” in the case of apartments. In the case at issue, the tenant (the appellee) had rented an apartment fitted with all the necessary household items, including a television. The contract between the appellee and the landlord clearly stated that the NHK fee was not included in the price and was the responsibility of the tenant; thus the appellee concluded the license fee contract with NHK (the appellant). The appellee later sued NHK for reimbursement of the fee plus 5% annual interest under the argument that he did not fall within the definition set forth by Article 64(1) Broadcasting Act (persons installing reception equipment); accordingly, the appellee argued that the contract was void since it went against public policy. The trial court found for the tenant and ordered NHK to reimburse the fee, but it rejected the request for interest payments.

NHK appealed, arguing that the term “install” should not be construed according to the dictionary meaning but rather that it should be defined as “putting (the device) in a condition where it can receive the broadcast”. Additionally, NHK asserted that considering the legislative background of the bill, “install” means “to be in a situation where it is possible to use a device capable of receiving the NHK broadcasts”. Regarding the term “per-

41 Saitama District Court, 26 August 2016, Case Number Heisei 27 (wa) 1802 (2016WLJPCA08266001).

42 Mito District Court, 25 May 2017, Case Number Heisei 28 (wa) 615 (2017WLJPCA05259001)

43 Tōkyō High Court, 31 May 2017, Case Number Heisei 28 (ne) 5233, available at: http://www.courts.go.jp/app/files/hanrei_jp/848/086848_hanrei.pdf.

sons”, NHK posited that it was not limited to the person who owned the equipment but applied to anyone that is in a position of benefiting from receiving the broadcast. Further, NHK claimed that since the law does not define “persons”, the term should be construed in a broad manner and that it might include multiple individuals, in which case each of them was jointly liable to pay the NHK fee. Thus, in the case of an apartment equipped with a television, “person” refers to both the landlord and the tenant.

The High Court found for NHK, holding that the term “persons who install” was a term unique to the Broadcasting Act, and as such it should be understood by considering the legislative process behind the provision. The court said that “persons who install” should not be construed under its literal meaning, i.e. someone who physically places the object, but rather that it meant the person who obtained the right to use the receiving equipment, as a literal interpretation would mean that persons who installed the device but then lost control over it, e.g. by selling the house along with the device, would be held responsible for paying the license fee until the device was disposed of, which would go against the Broadcasting Act. The court also accepted the argument that the term “persons” included both the owner of the television as well as the possessor.

V. THE SUPREME COURT CASES

Since most of the claims have little monetary value, they are often resolved by the small claims courts, the district courts and, in very few cases, by the high courts acting as an appellate court. Nevertheless, there have been two cases in which the Supreme Court has been called upon to rule on the issue of the fee system. The first case was adjudicated in 2014 and dealt with the statute of limitations applicable to the obligation to pay the NHK fee. The ruling itself is quite brief, being only a page long, and upholds the Tōkyō High Court judgment that the NHK fee is subject to a five-year statute of limitation based on Article 169 Civil Code.⁴⁴

The second case is of far more importance and deals with the constitutionality of Article 64(1) Broadcasting Act. In 2012 NHK asked the Tōkyō District Court to order a man to enter a contract and pay the corresponding fee. As it had done in previous cases, NHK argued that the contract was completed the moment the defendant received the paperwork. In response, the defendant argued that Article 64(1) could not be construed as a compulsory provision but was rather a voluntary one, i.e. a provision that can be changed by the will of the parties. Furthermore, even if Article 64 was a

44 Supreme Court, 5 September 2014 Minshū 247, 159, available at: http://www.courts.go.jp/app/files/hanrei_jp/446/084446_hanrei.pdf.

compulsory provision, it still infringed upon the defendant's rights as enshrined in Article 13 (right to life, liberty and the pursuit of happiness) and Articles 21 (freedom of assembly and expression) and 29 (right to own property) of the Constitution. The defendant also contested when the contract should be considered completed and argued that part of the fee was preempted because of the statute of limitation. Both the trial court and the appellate court held for NHK based on the public nature of the service it provided and the necessity of serving the public welfare. The Supreme Court rendered its decision in December 2017,⁴⁵ and while it found for NHK, its ruling is far more complex than it initially appears.

First, the Court analyzed the nature of Article 64 Broadcasting Act and the issue of when the contract is formed. The Court concluded that Article 64 is a compulsory provision; however, the contract is not completed by the mere sending of the documents. Rather, if the person does not sign the contract, the NHK must sue to force them into entering the contract. Therefore, the contract is only valid from the moment the final judgment is rendered. The Court also rejected NHK's claim that a failure to sign the contract in a timely manner constitutes a delay in performance since the contract already grants NHK the right to collect the fee from the time the equipment was installed. Regarding this last point, the Court made it clear that even where a contract is formed upon the rendering of a final judgment in favor of NHK, the fee is due from the month the equipment was first installed since holding otherwise would be unfair to those who have been paying the fee from the outset, thus making this obligation to pay a reasonable burden in line with the goals of the Broadcasting Act. Regarding the constitutional issues, based on the public nature and goals of NHK, the Court rejected the defendant's claims that Article 64 infringed upon their constitutional rights. Perhaps the most important part of the ruling is the one dealing with the statute of limitations. The Court begins its analysis by pointing out that Article 166(1) Civil Code establishes that the period for prescriptive extinction only begins to run once it is possible to exercise the right and that NHK could not exercise its right to collect the fee until after the contract had been concluded. Consequently, there is a distinction between those who have concluded the contract and those who have not, since NHK can collect the fee only from those who have already entered a contract and has no means to confirm whether the equipment has been installed other than the notice provided by the owner of the equipment. Thus, in the case of individuals who have not completed the paperwork, NHK is not able to exercise its right to collect the fee. Therefore, the Court concluded, the prescription period begins to run only once the contract has been completed.

⁴⁵ *Supra* note 2.

This ruling also has the peculiarity that the “right to know” was used as one foundation to uphold the constitutionality of Article 64.⁴⁶ Specifically, the ruling points out in various places that the fee system’s goal is to fulfill the people’s right to know in a realistic manner. The justices also submitted their own concurring opinions on the matter. Justice Okabe points out that the Broadcasting Act mentions “persons installing” and not “persons receiving”; thus the obligation to pay arose from the moment the equipment was installed. Furthermore, she posits that freedom of speech includes both the right to gather information and the right not to gather information. She concedes that the argument can be made that an individual’s right to gather information is infringed if installing a television also entails a further economic burden. However, she argues that following the logic of the majority vote, the NHK fee system is an important system to protect the people’s right to know by preventing control or influence from any one individual, group or state agency. In addition, by installing receiving equipment the defendant could learn of disaster warnings, and, based on the defendant’s situation, the fees were a reasonable economic burden.

Justice Onimaru’s opinion follows the majority regarding the constitutionality of Article 64 Broadcasting Act, acknowledging that the NHK contract is an exception to the principle of freedom of contract. However, since the law established only the obligation to enter the contract, with the details being contained in the contract itself, Justice Onimaru suggests that the specific content be addressed via legislation. Furthermore, she points out that Article 2 of the NHK contract provides for one contract per household but that such provision might be difficult to enforce under the present language of Article 64. For one, neither the contract nor the law establishes who within the household has the authority to sign the contract. The fact that a compulsory contract such as an NHK contract does not clearly state who is responsible is problematic. In addition, given that the concept of family is evolving, and coupled with the fact that neither the contract nor the law specifies the person responsible for entering the contract, an individual might even find it difficult to know that they have the obligation to sign the contract in the first place.

Justice Kiuchi’s dissenting opinion adopts the view that Article 64 did not grant NHK a right to seek specific performance in the form of an order requiring the defendant to enter the contract with NHK. Justice Kiuchi

46 In Japanese law the expression right to know, or *shiru kenri*, is commonly used in discussions regarding an individual’s access to public information in the context of Article 21 of the Constitution, which deals with free speech. In addition, the right to know is also invoked in cases dealing with medical malpractice, in particular those that arise from a lack of informed consent.

argues that for this type of claim to succeed the content of the contract must be established beforehand; however, the NHK license fee contract is a continuous contract, which differs from other contracts in the fact that its contents are not immutable and thus cannot be considered as having been established. He also points out that Article 174 of the Civil Execution Act⁴⁷ establishes that when a judgment or any other judicial decision ordering the obligor to manifest his/her intention has become final and binding, or when a title of obligation pertaining to a settlement, acknowledgment, mediation or labor tribunal judgment has been established, the obligor is deemed to have manifested his/her intention at the time when such judicial decision became final and binding or such title of obligation was established. Thus, there is the issue of the content of the contract in relation to the date of the judgment, i.e. whether the content of the contract could be said to have been the content established by NHK on the date the final judgment was issued.

He presents three issues in respect of the NHK contract. The first concerns the obligation to pay and its relation to the contract. Article 174 Civil Execution Act only allows for performance from the date of the final judgment; thus, a judgment that orders the defendant to enter the contract with NHK cannot be construed as having retroactive effects to the day the equipment was installed. Second, since the obligation to pay the fee consists of periodic payments, it cannot exist without a contract; thus, the NHK claim that the obligation extends to the month the machine was installed has no basis. Third, Justice Kiuchi's opinion also addresses the issue of who has the responsibility of entering into the contract. He points out that since the contract establishes the one-contract-per-household rule, in cases where parents and children are living together (and where they own or dispose of their own devices), it is not clear whom the judge has to order to enter into the contract. Regarding the end of the obligation to pay, he once more reminds the reader that a claim for specific performance cannot order action where no past duty existed; thus a judge cannot issue an order in respect of someone who was under no obligation when the judgment was rendered. From that perspective, individuals who have disposed of their devices are not liable to pay from the day they inform NHK. As they are at that point no longer under any obligation to enter the contract, the court cannot order them to sign an agreement acknowledging a duty to pay a past fee, thus rendering the whole process meaningless.

Justice Kiuchi also expresses doubts that the Broadcasting Act gives NHK a claim for specific performance, pointing out that while the NHK contract can be construed as an embodiment of Article 64, it is not the type of contract that creates a claim for specific performance. Thus, the law does

47 *Minji shikkō-hō*, Law No. 4/1979.

not provide NHK with a claim to force an individual to enter the contract. He also criticizes the majority opinion as to the question of the date on which the contract is concluded, pointing out that while it might be fair for other people who have been paying their fee to set the starting date as the day the device was installed, the law does not establish such an obligation. Thus, by making the defendant pay fees retroactively from the month the machine was installed, the majority opinion is not ordering them to enter a contract and is instead ordering them to pay, which goes against the language of Article 64 as it only compels individuals to enter a contract.

Justice Kiuchi also rejects the majority opinion that the extinctive prescription period begins to run only from the date the final judgment is rendered. He contends that NHK's not being able to collect the fee until after the contract is entered is an unavoidable circumstance, and he posits that when compared to the twenty-year period in cases of delictual liability and the ten-year period for unjust enrichment, there is no reason to create an obligation that effectively never lapses. However, and perhaps surprisingly, despite authoring a very critical dissenting opinion, Justice Kiuchi supports the idea that NHK has the right to claim reparations based on Article 709 Civil Code (delictual liability). Furthermore, he argues that being able to receive the NHK broadcast can be considered as a benefit that arises from NHK's services, and by not paying the license fee the defendant lacks any legal basis to have received the broadcast. Hence, the defendant must make restitution.

Justices Koike and Kanno concur with the majority opinion, but they also oppose some of the views presented by Justice Kiuchi. While agreeing that Article 174 Civil Execution Act does mean that the effects of the specific performance order to enter a contract arise only on the date of the final judgment, they reject the idea that by granting the NHK claim they are rendering a judgment that takes effect before that date. Rather, they claim that the judgment should be understood as a contractual matter, i.e. the content of the contract allows NHK to collect the fee from the month the device was installed; thus requiring payment of the fee does not go against Article 174. Regarding Justice Kiuchi's claim that the court cannot force an individual who has already disposed of their television to enter a contract for past fees, they simply assert that such a claim is viable without explaining why. Finally, they address the theory proposed by Justice Kiuchi that NHK has a claim either under delictual liability or unjust enrichment rules. They reject the former, arguing that the act of installing receiving equipment cannot be construed as a delictual act against NHK, but also contending that this legal reasoning is not appropriate when considering the nature and goals of public broadcasting. As regards the latter, they argue that an unjust enrichment claim would not only ignore the fact that the fee must be

collected based on a contract, but also that it would be difficult to argue that NHK suffered a loss.

The December 2017 Supreme Court decision had considerable impact on the news and in academic circles. This was true especially in light of the conservatism that characterizes Japanese Supreme Court rulings on matters regarding constitutional issues.⁴⁸ Keiō University professor Hiroyuki Hirano⁴⁹ and Shōichirō Nishido from Seijō University⁵⁰ provided two early comments on the case. In his short analysis of the Supreme Court ruling, professor Hirano is highly critical of the contractual system that the legislature adopted in order to collect what he and other scholars consider a type of tax, and he finds that the importance of the contractual aspect of the fee should not be overstated, as the obligation to pay the fee is a type of tax that takes the form of a contractual agreement. He does concede, however, that this state of affairs is due to the negligence of the Diet. Regarding extinctive prescription, Professor Hirano agrees with the view that the prescription period should start from the moment NHK could exercise their right, i.e. from the moment they could confirm that the receiving equipment has been installed, and that people who do not inform NHK should be barred from using a prescription defense under the good faith principle as their actions constitute bad faith.

However, Professor Hirano's argument is not compatible with the current state of the law. For one, the Broadcasting Act does not establish an obligation to pay, only an obligation to enter a contract with NHK, with the contents of this contract to be determined by NHK and the Cabinet. Accordingly, NHK and the Cabinet could decide to provide the service for free, which

48 At the time of the writing there have been only sixteen instances where the Supreme Court has struck down a law as unconstitutional, in part due to the influence of the Cabinet office. The Cabinet Legislative Bureau is tasked with offering legal advice and counsel to the office of the Prime Minister and other government officials. One of its main functions is to review bills and other legal documents to ensure they are in line with constitutional and legal interpretation. For more see: J. SATŌ, *Judicial Review in Japan: An overview of the case law and an explanation of trends in the Japanese Supreme Court's constitutional oversight*, *Loyola of Los Angeles Law Review* 41 (2008) 603. S. MATSUI, *Why is the Japanese Supreme Court so Conservative*, *Washington University Law Review* 88 (2011) 1375.

49 H. HIRANO, *Hōsō-hō 64-jō 1-kō no jushin keiyaku teiketsu gimu oyobi jushin-ryō shiharai gimu no seiritsu jiki narabini jikō-ki santen* [Commencement and Prescription of the Obligation to Enter a Contract and Pay the Broadcasting Fee under Article 64 (1) of the Broadcasting Act], *Shin Hanrei Kaisetsu Watch Saizan-hō* No. 140 (2017).

50 S. NISHIDO, *Jushin-ryō seido no goken-sei*, *Shin Hanrei Kaisetsu Watch Kenpō* No. 136 (2018), available at: https://www.lawlibrary.jp/pdf/z18817009-00-011361577_tkc.pdf.

would result in no obligation to pay. Furthermore, Professor Hirano's argument that the extinctive prescription defense should not be available to those who do not inform NHK is also untenable. If we accept Professor Hirano's view that the NHK fee is a type of tax, then the next logical step is to look at other taxes to determine if they are subject to extinctive prescription. One does not have to look far to find that national taxes are subject to a five-year period of extinctive prescription from the date they were due.⁵¹ In addition, Professor Hirano's argument does not address the points made by Justice Kiuchi regarding the existence of absolute prescription terms for delictual liability and unjust enrichment claims. Moreover, the fact that criminal law establishes extinctive prescription for even the most atrocious conduct leaves little space to argue that not informing NHK about installing a television should be held to a higher standard. There is also the issue of whether the NHK fee can be considered a tax or not. However, Article 84 of the Constitution establishes that "[n]o new taxes shall be imposed, or existing ones modified except by law or under such conditions as the law may prescribe"; thus the argument can be made that the NHK contract is legally binding as a means to change the NHK fee tax.

Furthermore, in May 2018 the journal "Jurisuto" dedicated a special issue to the December 2017 Supreme Court decision and its impact.⁵² The centrepiece of the issue was a roundtable talk featuring Professor Yoshihiro Oto from Sophia University, Professor Hidemi Suzuki from Keiō University's Institute for Journalism, Media and Communication studies, and Professor Kazuhiko Yamamoto from Hitotsubashi University; the talk was moderated by Professor George Shishido from Tōkyō University. In their discussion the members of the roundtable tackled a variety of topics rang-

51 Article 72 *Kokuzei tsūsoku-hō* [Act on General Rules for National Taxes] Law No. 66/1962.

Article 72 (1) The right of the State to collect a national tax (hereinafter referred to as the 'right of collection of a national tax' in this Section) shall be extinguished by prescription if it is not exercised within five years from the statutory due date for payment of the national tax (in the case of a national tax to be paid based on a reassessment or determination, etc. set forth in paragraph (1), item (i) of the preceding Article, from the day on which the decision, etc. or the reassessment prescribed in said item was made; in the case of a national tax to be paid by reason of an overstatement of the tax amount equivalent to the amount of a refund based on a return form for a refund claim, as well as the expenses for the delinquent tax collection procedure, from the day on which the right of collection may be exercised for these taxes; and in the case of delinquent tax due to default on a stamp tax, from the day on which the tax liability was established; the same shall apply in paragraph (3) of the following Article).

52 *Zadan kai: NHK jushin-ryō soshō dai-hōtei hanketsu wo ukete* [Roundtable Talk: On the Supreme Court's Ruling on the NHK License Fee] *Jurisuto* 1519 (2018) 14.

ing from how other countries handle the issue to how the ruling will influence the future of NHK. One point on which the members shared a similar opinion was the use of the term “contract” as found in the Broadcasting Act. For example, Professor Yamamoto points out that if the main argument to collect a fee is that NHK is a public entity and that its costs should thus be shouldered by everyone, then another form of public funding would be better than using the term contract – a point on which Professor Suzuki agrees, pointing out that the term contract as found in the Broadcasting Act is misleading.⁵³ Notwithstanding the participants’ agreement on the inadequacy of the term contract, they do not seem to share the same views on the need to change it. Thus, Professor Shishido argues that the law should abandon the term contract and adopt a direct method of collecting the fee. By contrast, Professor Suzuki posits that in order to protect NHK’s autonomy, the current system should not be subject to drastic reforms.⁵⁴

Reading the ruling it becomes clear that the Court considered that the public function of the NHK outweighs an individual’s right to decide upon the contracts they enter. However, as pointed out earlier, one fails to see how twisting or ignoring the meaning of contract will achieve this goal. Indeed, we could argue that if the Court had ruled against the obligation to enter a contract, it would have forced the government to address the issue under a public funding perspective, perhaps adopting a system similar to Italy or South Korea which in the long run would have resulted in a larger funding to the NHK. Nevertheless, since the Court decided to accept the NHK’s claims there seems to be little hope that the system will change.

VI. CONCLUSIONS

The use of television licenses as means to fund public broadcasting is not unique to Japan. However, the roundabout manner in which it has been carried out has led to complications that could have been solved at any point by an act of the legislature. In addition, the manner in which NHK has attempted to collect fees via litigation has affected its image as a public corporation. Setting aside discussions on the popularity of the fee, as it stands now the NHK contract is a typical adhesion contract, which leads to various issues regarding its legal nature. For instance, there is no reason to believe that this contract should be treated any differently than any other private contract. However, in contrast to other adhesion contracts in which the courts will interpret any ambiguous provisions in favor of the consumer or the weaker party, the courts have tended to favor NHK when deciding

⁵³ *Idem* at 19–20.

⁵⁴ *Idem* at 26.

cases involving the broadcasting company instead of the weaker party. The argument that NHK fulfills a public duty by providing public broadcasting is not in itself enough to confer the contract any special treatment as the same could be said of many other services, such as public transportation, education, healthcare, etc. Furthermore, many of the issues regarding the NHK fee system, such as the date when the contract is entered into or from when the payment is due, are based not on the law but on the letter of the contract. Since the main goal of the NHK in suing individuals and companies for payment of the fee is to secure funding, it stands to reason that, as a company, NHK will try to maximize its collecting ability via a broad interpretation of both the law and the contract. This is particularly obvious if we look at NHK's claim that any member of a household is responsible for paying the receiving fee. The December 2017 Supreme Court ruling tried to resolve some of the issues surrounding some claims made by NHK in other cases. On one hand, the Supreme Court's having upheld the constitutionality of the collection fee can be considered a foregone conclusion once we consider the conservatism that characterizes the Court. However, while the ruling did cement the NHK position that the fee is constitutional, it also brought forth a new set of questions. Justice Onimura's concurring opinion firmly establishes that the law is not clear on the contents of the obligation, thus making it difficult for an individual to know if they must inform NHK. Such ambiguities allow NHK to adjust its claims to suit its purposes.

For instance, under the majority opinion's view that the extinctive prescription period does not begin to run until after NHK is in a position where it can exercise its right, it would be possible for NHK to sue a child or grandchild of the original owner if they were a member of the household at any point in time, as NHK could simply argue that they are liable since NHK was not able to exercise its right at an earlier time. We do not believe that the Court will find for NHK if the circumstances are unreasonable; nevertheless, the Court in effect created an obligation that is, for all intents and purposes, not subject to prescription. Justice Kiuchi's opinion is very thorough in analyzing the shortcomings of the NHK contract. We would like to add one point to his view. While the law does establish an obligation to sign the contract, there is no doubt that it is a private contract. Thus, NHK, as the party who wrote the contract, should shoulder any burdens arising from ambiguities in both the law and the contract. If the courts started to rule against the NHK based on ambiguities, the Diet would be forced to act and make clear the contents of the contract and the technologies subject to it.

In the end, the number of issues that the contract system has caused, as well as its unpopularity, suggests that a different approach would yield much better results. Perhaps a model similar to Italy and South Korea,

where the fee is part of the electric bill, would allow the NHK to charge less and collect more money by making everyone share the burden. The time, money and energy used to pursue claims in court can be better utilized to allow NHK to fulfill its role as a public broadcaster.

SUMMARY

The NHK broadcast fee system is almost a century old. Originally limited to radio signals, it was later reformed after the war under the influence of the allied forces. The result was a mixed system that looks to fund the public broadcast while providing access to information. However, since the Broadcasting Law does not establish an obligation to pay, with Article 64 instead setting an obligation to enter a contract with NHK, the nature and scope of the system have come into question. This paper analyses the development of the fee system as well as the latest trends in the case law. Since 2006 NHK has opted to sue individuals and business that have not entered the contract despite their obligation to do so. Thus, the courts have been called on to interpret both the law and the receiving fee contract itself, which in turn gave rise to a scholarly debate on the matter. Indeed, since the law does not actually provide for the contents of the contract, leaving this issue to NHK and the Cabinet, many issues have been subject to debate regarding, for instance, the person who must enter the contract, the prescriptive extinction period applicable to the NHK claims and the possibility of technologies besides television falling under the scope of the law. On one hand, NHK tends to make claims that will produce the best economic benefit for the corporation, with the outcome that at times it brings claims which seem outlandish. On the other hand, the public nature of the service provided by NHK cannot be denied, and thus the issue of funding is one that cannot be ignored.

The courts, for their part, tend to favour NHK, which raises question as to the nature of the contract. While the law does establish that individuals who have installed equipment capable of receiving the NHK broadcast must enter into a contract, the contract itself is no different from any other private contract. In fact, it is a classic example of an adhesion contract. Therefore, under general principles of contract interpretation, any burden that arises from contractual ambiguities should be borne by NHK. In 2017 the Supreme Court had to rule, amongst other things, on the constitutionality of the obligation to enter the NHK fee contract as set by the Broadcasting Act. The result was a decision that gave NHK the legal backing to continue their claims, but the ruling also raised questions as to the scope of the contract.

ZUSAMMENFASSUNG

Das Rundfunkgebührensysteem der NHK ist schon fast einhundert Jahre alt. Ursprünglich war es auf den Hörfunk begrenzt, wurde aber unter dem Einfluss der amerikanischen Besatzungsmacht nach dem Zweiten Weltkrieg reformiert. Das Ergebnis ist ein Mischsystem, das einerseits den öffentlichen Rundfunk finanzieren, andererseits den Zugang zu Informationen sichern soll. Da das japanische Rundfunkgesetz jedoch keine gesetzliche Verpflichtung zur Entrichtung von Gebühren vorsieht, sondern Art. 64 des Gesetzes lediglich eine Verpflichtung statuiert, einen Vertrag mit der NHK abzuschließen, wirft das System hinsichtlich seiner Funktionsweise und seines Anwendungsbereichs Probleme auf. Der vorliegende Beitrag analysiert die Entwicklung des japanischen Rundfunkgebührensystems und die jüngsten gerichtlichen Entscheidungen hierzu. Seit dem Jahre 2006 hat die NHK begonnen, Personen und Unternehmen, die sich weigern, einen Standardvertrag abzuschließen, zu verklagen. Auf diese Weise ist es zur Aufgabe der Gerichte geworden, die gesetzlichen Grundlagen und den Standardvertrag selbst auszulegen, was zugleich eine akademische Debatte ausgelöst hat. Da das Gesetz selbst den Inhalt des Vertrages nicht näher bestimmt, sondern der NHK und einer Regelung durch das Kabinett überlässt, sind verschiedene Punkte umstritten, u.a. wer den Vertrag abzuschließen hat, welche Verjährungsfrist für Forderungen der NHK gilt, und welche Technologien über das Fernsehen hinaus erfasst werden. Einerseits sucht die NHK ihre Einnahmen zu steigern und tendiert dabei bisweilen zu überzogenen Forderungen, andererseits erbringt sie zweifellos Dienstleistungen im öffentlichen Interesse, und das Bedürfnis, diese zu finanzieren, lässt sich kaum bestreiten.

Die Gerichte nehmen tendenziell eine Haltung ein, welche die NHK begünstigt, aber Fragen bezüglich der Rechtsnatur des Vertrags aufwirft. Während das Gesetz jeden, der eine Einrichtung zum Empfang von NHK Sendungen installiert, verpflichtet, einen Vertrag mit der NHK abzuschließen, ist der Vertrag als solcher ein gewöhnlicher privatrechtlicher Vertrag. Man kann ihn als ein klassisches Beispiel für einen Adhäsionsvertrag ansehen. Nach den allgemeinen Auslegungsprinzipien sollten daher Zweifel zulasten der NHK gehen. Im Jahre 2017 hatte der Oberste Gerichtshof u.a. über die Verfassungsmäßigkeit der Verpflichtung nach dem Rundfunkgesetz, einen Vertrag mit der NHK abzuschließen, zu entscheiden. Die Entscheidung des Obersten Gerichtshofs bestätigte im Ergebnis das Recht der NHK, Gebühren zu verlangen, warf jedoch auch Fragen bezüglich des Regelungsbereichs des Vertrags auf.

(Die Redaktion)