
MAJOR LEGISLATION & TREATIES

Jan.–Dec., 2002

1. Constitutional Law

Law Partially Amending the Basic Residential Register Law

Law No.133, August 18, 1999 (Effective on August 5, 2002).

Background:

The “Basic Residential Register Law” (Law No.81, 1967) obligates municipal mayors to compile a basic residential register. The basic residential register is a register collecting the resident cards related to each individual resident per each household. The following information about the residents is registered on the resident card: name, date of birth, gender, name of householder and relation to householder, indication of family register, date of becoming residents, address and so on. When residents move in and out or change residence or household, they must notify the mayor of that fact. The mayor registers the basic residential register based on these notifications or the notifications related to the family register from the residents. The basic residential register is used by the municipality as the base for the public certification of the residence of the residents and the businesses related to the residents, such as the register of

electors, compulsory education, national health insurance, national pensions, the certification of a seal impression, and so on.

While the basic residential registers were managed on paper in old days, the manufacture of resident cards with magnetic tapes (later, magnetic discs) was recognized by a 1985 legal amendment with the progress of computerization of the basic residential register business in each municipality, and most municipalities manage the resident cards with a computer system at the present time. But, because the management of the basic residential register was provided as an "autonomous service" of the municipality by the "Local Autonomous Law," personal information registered on the resident cards were not transmitted among the municipalities and to the State and the prefectures up to now. Therefore, the residents could not obtain a copy of the resident card outside their home municipality. In the case of moving in and out, the residents needed to obtain a certification of moving-out from the municipality they move out from and conduct a moving-in notification, attaching this certification to the municipality they move into. Furthermore, when the State and the prefectures conducted business requiring personal certification, such as the payment of pensions, employment insurance, family allowance and so on, they needed to ask the applicants to attach a copy of the resident card or to inquire to the municipalities.

This Amendment purports to introduce the "Basic Residential Register Network System," known as "Juki Net." This system is the system that allots all the people an eleven-digit resident card code based on the resident card, and manages the individual identification information registered on the basic residential register on a nationwide scale on a computer network-system combining the municipalities, the prefectures and the State.

Full scale consideration of the Juki Net started when the "Study Committee about the Building of the Network of the Residential Record System" was established in the Ministry of Home Affairs (now, the Ministry of Public Management) in August, 1994. In March, 1995, an interim report was announced by the Committee, and the Basic Residential Register Number System, which assigned all the people nationwide numbers, was proposed. In fact, the Juki Net was built as

the report proposed. In March, 1998, the Cabinet decided the “Bill Partially Amending the Basic Residential Register Law” in a Cabinet meeting and submitted it to the Diet. In the Diet deliberation, because of fears about the circulation of personal information on a nationwide computer network, questions about the protection of privacy were fired at the national government by many members of the Diet. As a result, the following amendment was added as Article 1, Paragraph 2 of the Schedule: “In enforcing this law, the national government shall promptly take necessary measures to make sure of the protection of the personal information.” About these “necessary measures,” then-Prime Minister Obuchi explained as follows: “I recognize that it is a condition of enforcing the Juki Net that the national government shall promptly establish a legal system regarding the protection of personal information covering also the nongovernmental sector.” In August, 1999, the “Law Partially Amending the Basic Residential Register Law” was passed on the condition that the necessary measures for the protection of personal information would be taken before the enforcement of this amendment.

The Juki Net was scheduled to be launched in two steps by the government ordinance. The first step, composed of the notice of individual identification information to the prefectures and the appointed information processing body and the notice of the resident card code to the residents, was scheduled to be launched on August 5, 2002. The second step, consisting of a widespread issue of resident cards, the special treatment of moving-in and out and the issue of the basic residential register card, was scheduled to be launched on August 25, 2003. However, there was no likelihood that the “necessary measures” would be taken by August 5, 2002, the date of the first launch, because the bill for the protection of personal information submitted by the national government incurred fierce criticism that it led to the suppression of freedom of expression and reporting from many opposition party members and the mass media. So, many citizens and municipalities required the postponement of the first launch. In fact, for fear of abuse and the leakage of information, some municipalities, such as Sugunami Ward and Kokubunji City, refused to log on to the Juki Net and Yokohama City left the final choice about the transmission of personal information to the Net to each resident. Notwithstanding such opposition of the residents and the municipalities,

the Juki Net started to be launched on August 5, 2002 as scheduled.

Main Provisions:

(1) Resident Card Code

“Resident card code,” which is an eleven-digit number, is added as the new information registered on the resident card (Art. 7, para. 13). Each municipal mayor registers the code on the resident card (Art. 30.2, para. 1 & 2). Before the mayor registers the code, the prefectural governor consults and coordinates with other governors to avoid the overlap of the code across the nation, and the prefectural governor designates and notifies the code which the municipal mayors within its district can register (Art. 30.7). When registering the code on the card, the municipal mayor must notify the residents of that fact and their codes in writing (Art. 30.2, para. 3).

(2) Simplification of the Basic Residential Register Business

The residents can obtain a copy of their own or the same household members’ resident cards outside their home municipality (Art. 12.2). And the residents with the basic residential register card can conduct the notification of moving-in without the certification of moving-out if he or she sends the notification of moving-out by post (Art. 24.2). In either case, the municipalities concerned send the necessary information to each other with an on-line system (Art. 12.2, para. 5; Art. 24.2, para. 5).

(3) Notice of the Individual Identification Information to Prefectural Governor by Municipal Mayor

When the registration or deletion of the resident card, or the modification of the name, the date of birth, gender, address or resident card code is conducted, the municipal mayor must notify the prefectural governor of the “individual identification information” with the on-line system (Art. 30.5, para. 1 & 2). The individual identification information is composed of (a) name, (b) address, (c) gender, (d) date of birth, (e) resident card code and (f) incidental information (matters concerning registration, deletion and modification of the resident card). The prefectural governor must preserve the individual identification information on magnetic disc for a certain period of time (Art. 30.5, para. 3).

(4) Use of Individual Identification Information and Offer of Information to the State and Other Local Governments by the Prefectural Governor

The prefectural governor can use the individual identification information in performing the businesses provided by the schedule and the ordinances (Art. 30.8, para. 1). The prefectural governor offers the individual identification information to the State only when the State requests the offer for identification of the residents in the limited cases of the performance of the businesses provided by the schedule (Art. 30.7, para. 3). The prefectural governor offers the information to the municipalities within its district, the other prefectures and the municipalities within other prefectures in certain cases (Art. 30.7, para. 4–6). While the businesses in the performance of which the State can use the individual identification information was limited to the 93 administrative fields of 10 ministries and agencies at first, the national government submitted the bill to extend the businesses from 93 fields to 246 fields on June 7, 2002, and this bill was passed as the “Law Concerning the Preparation of the Relating Laws Following the Enforcement of the Law Concerning the Use of Information Technology in the Administrative Procedures” (Law No.152, 2002) on December 13.

(5) The Business of the Appointed Information Processing Body

The prefectural governor can entrust the “information processing body” appointed by the Minister of Public Management with the following “business processing individual identification information”: (a) the designation and notice of the resident card code to the municipal mayors, (b) the consultation and coordination with the other prefectural governors in designating the resident card code, (c) the offer of individual identification information to the State, the municipalities within the district, the other prefectures, and the municipalities within other prefectures (Art. 30.10, para. 1). The prefectural governor notifies the information processing body of the individual identification information, and the body preserves the information on magnetic disc for a certain period of time (Art. 30.11, para. 1–3). In November, 1999, the Ministry of Public Management appointed the “Local Authorities Systems Development Center” as the information processing body. The Ministry instructed every prefectural governor to entrust this Center with the businesses, and

all prefectures followed the instruction.

(6) Protection of Individual Identification Information

The following measures are provided for the protection of individual identification information: (a) security measures, restrictions on the provision of information, duty of personnel to keep secrets, and a complaints procedure by municipalities, prefectures and the information processing body (Art. 30.29–30.32; Art. 36.2), (b) security measures, prohibitions on the use of information for outside purposes, and the duty of the personnel to keep secrets by the State (Art. 30.33–Art. 30.36), (c) resident's right to claim the release of one's own individual identification information against prefectural governors and the information processing body (Art. 30.37–Art.30.41; Art. 36.3), (d) prohibition on the use of the resident card code by the nongovernmental sector (Art. 30.42; Art. 30.43) and (e) a weighting penalty for offenders against the duty to keep secret individual identification information and a penalty for offenders against the prohibition on the use of resident card codes.

(7) Issue of Basic Residential Register Card

The residents can request the municipal mayor to issue the basic residential register card and the requested mayor must issue the card (Art. 30.44, para. 1 & 3). The municipal mayor can use this card for the purpose provided by the ordinances (Art. 30.44, para. 8).

Editorial Note:

In Japan, there was no system that the State assigned all the people a number and managed the personal information in a unified way until this amendment. So, against the Juki Net introduced by this amendment, opposition has been mounting and many problems have been suggested, from before the adoption to the present time. In this note, we want to suggest the problems from the point of view of constitutional studies.

First, the Juki Net is likely to threaten the right to privacy guaranteed by Article 13 of the Constitution of Japan. In the first place, it goes without saying that personal information should be managed as dispersedly as possible in order to minimize the leakage, outflow and unfair use of personal information in a highly developed information-oriented society. Particularly, under the Juki Net, which manages the individual identification information with the resident card code on a nationwide scale

and intends to use the information in many administrative fields, the danger of a large scale and comprehensive overflow of personal information and data-matching increases dramatically, because the resident card code could become the master key to search for many kinds of information about a resident. Given the impossibility of the prefect prevention of leakage, outflow and unfair use of personal information in modern society, the seed of a threat to privacy is innate in the building of such a system itself. In particular, because this amendment was enforced without taking the “necessary measures” for the protection of personal information, which was the condition of its enforcement, its threat to privacy is all the more evident. And, given such a threat to privacy, people should be granted a choice about whether they seek the convenience of the Juki Net in spite of the threat to privacy, as part of the right to control one’s own information grounded in the right to privacy. However, this amendment, which assigns every person a resident card code based on the resident card, has no room for recognizing such a choice. The Juki Net is just the system that coerces all the people to suffer the “big threat” for the “little convenience.”

Next, the Juki Net is likely to threaten the local self-government system guaranteed by Chapter 8 of the Constitution. The basic residential register business is provided as the “autonomous service” of the local government by the “Local Autonomous Law” revised in 1999. Therefore, each municipality simultaneously has the duty to properly manage the basic residential register and to prevent the leakage, outflow and unjust use of personal information registered on the register and must be granted autonomy for this business. Furthermore, the possibility for the residents to control their own personal information becomes high, if only the municipalities, the layer of government closest to the residents, manage the basic residential register. In fact, the national government has explained the Juki Net as the “system of local government” considering this point. But, in fact, the Juki Net is not the “system of local government” at all. As mentioned in the Background, while some municipalities refused to log on the Juki Net to protect the personal information of the residents, the national government criticized their action as “unlawful.” This is the denial of the autonomy of the municipalities related to the basic residential register business. It is evident that the Juki Net is the

system that can only stand at the sacrifice of the local self-government system.

If important state interests are achieved by the introduction of the Juki Net, the threats to privacy and local self-government perhaps could be justified. But, the merits of the Juki Net, which the government has propagandized toward the people, do not seem very attractive. The merits the government has advertised are mainly two. One is the improvement of the services for the residents: that is, the residents can obtain a copy of the resident card and residents have only to report changes of address once in moving-in and out. The other is the simplification of the administrative services of the State: that is, the attachments of the copy of the resident card become unnecessary in the State's administrative services such as the pension, employment insurance, family allowance, and so on. But it is unthinkable that such expedient interests have an attraction exceeding the danger of the threat to privacy and local self-government. The opposition of residents and municipalities just before the launch of the Juki Net is sufficient proof.

Then, why has the national government ventured to introduce the Juki Net in spite of the threat to privacy and local self-government and the opposition of residents and municipalities? If ostensible interests are not very attractive, we cannot help finding the hidden purpose behind it: that is, the introduction of the "National ID Number System." The "National ID Number System" is the system that the national government manages all the personal information of all the people and always keeps watch on the conduct of people by giving all people the nationwide number and using that number as a common number in the many kinds of fields. The fear felt by many people about the Juki Net has really been that the Juki Net would become the "National ID Number System." To relieve such a fear, the national government has explained that the Juki Net could not be the "National ID Number System" at all, and the House of Representatives adopted the supplementary resolution that "the national government shall not attempt the easy expansion of the use of the Juki Net" in 1995. However, as mentioned in Main Provisions, the national government submitted the bill to expand the businesses in the performance of which the State could have access to the individual identification information from 93 fields to 246 fields on June 7, 2002,

immediately before the first launch of the Juki Net. Given these realities, we cannot help feeling misgivings that the door toward the “National ID Number System” was opened just by the introduction of the Juki Net.

In this way, Japan took a step toward becoming a “surveillance state” based on a “National ID Number System” by the introduction of the Juki Net. It was symbolic that the “Law Concerning the Interception of the Communication for the Criminal Search” (Law No.137, 1999) was adopted on the same day as the adoption of this amendment. And, at last, on June 6, 2003, the “Three Laws concerning Emergency Defense” were adopted as if backing up our fear, because such a surveillance system could bring its ability into the fullest play just in the emergency. The image of the state arising from these circumstances is the “state preparing for war” which always keeps a watch on people and mobilizes people as personal resources in emergency. We the people need always to keep “surveillance” on the movements of the State to prevent Japan from driving recklessly toward the “surveillance state.”

2. Administrative Law

The Act on the Use of Information Technology in Administrative Procedures and Others

Law No.151, December 13, 2002 (Effective on February 3, 2003).

Background:

This Act is one which provides common rules allowing applications, reports, and other administrative procedures which have only been carried out in writing in the existing legal institutions to be carried out online for the purpose of promoting national and local electronic government. This Act is generally called “the Act on Making Administrative Procedures Available”.

In Japan, the idea of making administrative procedures available online had been under examination by the national government with the aim of promoting it since the Cabinet decision to employ “the Basic Plan