When the "fortune de mer" perished as the result of the sinking of a vessel etc., the obligee gained no compensation under the "abandonment" system, but under the new monetary liability system he is always guaranteed a certain amount of compensation as a limitation fund based on the tonnage of the ship has been set up. On this score the Act, adopting the principle of monetary liability, can be said to be more rational than the "abandonment" system.

On the other hand, it cannot be denied that the victim is forced to suffer certain sacrifices because of the limitation of liability of the shipowner, as the claim of the obligee who is the victim is cut off at a certain amount. On this point, there was a possibility that the question might arise that the system, as such, was in contravention of the constitutional guarantee of property rights.

However, the guarantee of property rights provided for in the Constitution is not absolute, but is subject to restrictions to a certain degree by rational policies designed to promote the interest of the nation as a whole. The second paragraph of article 29 of the Constitution says that property rights shall be defined by law in conformity with the public welfare.

In the light of Japan's present situation, which is highly dependent on trade, the Act on the Limitation of Liability of Owners of Seagoing Ships can be evaluated as serving the interest of the nation as a whole through the progress and maintenance of the shipping industry. In this regard, it is believed proper for the Supreme Court to have ruled that this Act is constitutional.

By Prof. TAKAYASU OKUSHIMA
YASUHIKO YAMADA

7. Labor Law

1. A case in which the validity of discharging workers who organ-

ized a new trade union by seceding from the existing one because they were dissatisfied with an agreement between the company and the union executives, which was designed to alter the wage scale disadvantageously for the workers, and the validity of the agreement itself, were disputed.

Decision by the Osaka District Court on Feb. 16, 1981. Case No. (*Mo*) 2616 of 1978. The Osaka Shirakyu Taxi Co. case. A case of provisional disposition. Affirmed. 1020 *Rōjun* 6.

[Facts]

Company Y (the petitioned) concluded an agreement with trade union A to the effect that, for the purpose of reconstruction of the company, all the employees would be dismissed and then immediately employed, that the payment of retirement allowances would be frozen for the time being, and that a new wage scale calling for payment entirely on a percentage basis would be introduced.

Dissatisfied with the agreement, X et al. (the petitioner) withdrew from union A and organized a new union B. Thereupon, Union A ordered X et al. to attend a hearing held by a board of inquiry, which handed down a decision to expel them from the membership. At the request of Union A, Company Y dismissed X et al. in accordance with the union shop agreement.

X et al. brought an action contending that the dismissal was invalid and that the agreement could not be applied effectively to them.

Incidentally, in connection with Union A, a proposal was passed by a majority at an all-union member meeting (tantamount to a union convention), prior to the conclusion of the agreement, that "the union executives shall be vested with discretionary power to promote collective bargaining with the understanding they would accept the company's reconstruction plan."

[Opinions of the Court]

(1) Even if under the union shop agreement, should the seceders immediately organize a new and independent union qualified to

protect the workers' right to organize under Article 28 of the Constitution, the agreement cannot be extended to them validly.

Judging from the background of the current case, Union B can be recognized as an "independent union worthy of the protection to be extended to unions, even though it is organized by a small number of members." In this regard, the agreement cannot be considered binding on them and the dismissal is null and void.

(2) With regard to the wages of X et al., the conclusion of a collective agreement becomes legally valid when the authority to conclude such an agreement is left in the hands of the union leadership by the provisions of the union regulations or by the resolutions adopted at union conventions, etc. which is the highest decision making body of a union. Otherwise, the conclusion of an agreement needs to be confirmed afterwards by the resolutions adopted at the union convention.

In the current case, collective bargaining was left in the hands of the executives and, as a matter of general practice, it resulted in the settlement of the matter in question and then the conclusion of a collective agreement.

However, at a time when the company was in a state of confusion over its reconstruction plan, it cannot be admitted that the union executives were given a carte blanche to conclude an agreement which contained a new wage scale (cumulative percentage wage rate) likely to end in a grave worsening of working conditions. Accordingly, the claim for wages based on the old wage system shall be admitted.

[Comment]

The current decision concerning the dismissal by the union shop agreement was made in line with existing decisions and generally accepted views.

With regard to the validity of the agreement designed to change working conditions for the worse, the court below in the current case (Decision by the Osaka district court on Mar. 2, 1973. 951 *Rōjun* 66) ruled that the purpose of a trade union is to maintain

and improve working conditions and, therefore, an undesirable revision needs the authorization of individual union members.

Against this ruling, criticism arose that it would result in giving priority to labor contracts over collective agreements. However, the current decision disposed of the case on the ground that the agreement had not yet been concluded legally after dividing the process of transacting the agreement into negotiations and settlement on the one. hand and conclusion of the agreement on the other hand.

As the company has filed an appeal, attention is now being focussed on its outcome before a higher court.

2. A case in which the discriminative age limit system, which sets 55 years as the limit for men and 50 years for women, was judged null and void because it ran contrary to public policy or good morals (Civil Code § 90).

Decision by the Third Petty Bench of the Supreme Court, on Mar. 24, 1981. Case No. (*o*) 750 of 1979. The Nissan Motors Co. case. *Jokoku* appeal claiming confirmation of continued employment. *Jokoku* appeal dismissed (in favor of the plaintiff). 360 *Rōhan* 23.

[Facts]

The *Jokoku* appelle (plaintiff) X was an employee of the *Jokoku* appellant Y Auto Co. According to the rule of employment of Company Y, the retirement age of its employees was set at 55 years for men and 50 for women, and X was discharged on Jan. 15, 1969 upon reaching the age of 50. (Incidentally, the rule of employment were revised in 1973 and the age limit was extended to 60 in case of men and 55 for women.)

X brought an action to court contending that the dismissal was invalid for reason of irrational sex discrimination. X won the case both in the first and second instances, and Y filed a *Jokoku* appeal.

As rational ground for its discriminative age limit system, Com-

pany Y pointed out the existing differentials by sex in the qualifications to receive the old-age pension (men at 60 and women at 55) under Article 42 of the Employee Pension Insurance Act, the understanding of the majority of the people, and the differentials between men and women regarding working capacity.

[Opinions of the Court]

Upon investigating into the circumstances surrounding Company Y such as kinds of occupation, tenure of office, working capacity, wages, etc., the Supreme Court supported the original decision which recognized and judged that there was no rational reason to justify such discrimination against women.

The court below held: "Both men and women are capable of carrying out the work required by the enterprise until at least 60 years of age if it is ordinary type work, hence there is no reason why they should be all thrown out of work, and that Y had no cogent reason in connection with its business management to discriminate against women in terms of working age limit."

Thus, the Supreme Court concluded that Y's claim was null and void in accordance with the provisions in Article 90 of the Civil Code. (See also the Constitution § 14 (1) and the Civil Code §1-2.)

[Comment]

In the Izu Shyaboten Park case, the court has already passed a decision ruling that the discriminative age limit system of 57 years for men and 47 years for women was null and void because it lacked rationality. This time, the discrimination by five years judged as invalid. It is thus anticipated that the court will not admit any rationality of age limit between men and women in future cases.

The current decision will no doubt take root as a proper judgment. (Related case: The case of Izu Shyaboten Park. Decision by the Third Petty Bench of the Supreme Court, on Aug. 29, 1975. 233 *Rōhan* 45. Judgment in the first instance by the Tokyo District Court on Mar. 23, 1973. 174 *Rōhan* 23. Judgment in

the second instance by the Tokyo High Court on Mar. 12, 1979. 315 *Rōhan* 18.)

[Reference: Constitution §14 (1), Civil Code §§1-2, 90]

3. A case in which a total ban on acts of dispute by employees of the Japan Tobacco and Salt Public Corporation was judged constitutional and the administration of a reprimand against the strike participants was judged valid.

Decision by the First Petty Bench of the Supreme Court, on Apr. 9, 1981. Case No. (*o*) 828 of 1978. The case of the Yamagata plant of the Japan Tobacco and Salt Public Corporation. A claim calling for affirmation of nullity of the disciplinary punishment. *Jokoku* appeal dismissed. (Plaintiffs defeated). 1024 *Rōjun* 65 (1981)

[Facts]

X and 99 others (plaintiffs) were employees at the Yamagata plant of the Japan Tobacco and Salt Public Corporation (defendant) and belonged to Trade Union A (the All Monopoly Corporation Workers' Union). During the spring labor offensive of 1969, X et al. staged a strike for about three hours.

Contending that the strike ran counter to Article 17 of the Public Corporation and National Enterprise Labor Relations Act providing for the general and complete prohibition on act or acts of dispute and that the act in question ran counter to the rule of employment of the corporation, Y administered disciplinary punishment.

In the first instance, the punishment was judged null and void, but in the second instance it was reversed and declared valid. Thereupon, the validity of the punishment was fought before the Supreme Court.

[Opinions of the Court]

The general and complete prohibition on acts of labor dispute as provided for in Article 17 (1) of the Public Corporation and

National Enterprise Labor Relations Act does not violate Article 28 of the Constitution. Therefore, the provision banning such acts of labor dispute can be applied to the employees of the Japan Tobacco and Salt Public Corporation. (The decision referred to the judgment by the Grand Bench of the Supreme Court on May 4, 1977, in the Nagoya Central Post Office case. 31 *Keishū* 182.)

The punishment measure was found valid. Three of the five justices expressed supplementary opinions.

[Comment]

The current decision reconfirmed the so-called "Reverse Decision" of the Supreme Court. (Decision by the Grand Bench of the Supreme Court on Apr. 25, 1973 on a case involving the Japan Agriculture and Forestry Ministry's Workers' Union, 699 *Hanrei Jihō* 22, and the Nagoya Central Post Office case mentioned above.)

It is only natural that such a decision was given this time, as it was the same case as that above relating to acts of dispute by employees coming under the jurisdiction of the Public Corporation and National Enterprise Labor Relations Act.

Academic circles, however, are strongly criticial of the grounds on which the total ban on acts of dispute are based.

The issue concerns the line of business (the monopoly of tobacco and salt) and the public nature of the Japan Tobacco and Salt Public Corporation centering on its financial contributions. The act of the plaintiffs certainly decreased the corporation's stocks of tobacco, but only on a small scale.

If the dispute had lasted a long time, it is anticipated that the supply of tobacco, which is harmful to one's health, would have become irregular and the public revenue would have been slightly decreased. So it is doubtful whether it is right and proper to totally ban the basic rights of workers, because of the "public interest" of the work, to such a degree.

Should acts of dispute be prohibited simply because they are concerned in a state-owned enterprise subject to the fiscal supervision of the National Diet?

[Reference: Constitution §§ 13, 28 and 83. The Public Cor-

poration and National Enterprise Labor Relations Act §17 (1).]

4. A case in which the lawfulness of cutting family allowances of strikers was at issue.

Decision by the Second Petty Bench of the Supreme Court on Sept. 18, 1981. The case involving the Nagasaki Shipyard of the Mitsubishi Heavy Industries, Ltd. *Jokoku* appeal concerning a claim for the payment of wages. The judgment in the court below reversed, and the Supreme Court made the contrary decision. (Plaintiff defeated). 370 *Rōhan* 16.

[Facts]

Jokoku appellee X et al., members of the trade union A, staged a strike in July and August in 1972. Therefore, Mitsubishi Heavy Industries, Ltd. (hereinafter called Y) cut the family allowances for X et al. during the period of the strike.

Dissatisfied with the company's measure, X et al. demanded the payment of the allowances on the ground that the cut was unlawful and invalid. However, the wage regulations governing employees (part of the company's rule of employment) provided for a family allowance cut during a strike and had, in fact, been put into practice since 1948. In 1969, the company sought the opinion of the trade union B to which the majority of the employees of Y belonged, though it was not a party to the current case, and changed the wage regulations to include some of the details concerning the wage regulations of employees. Since then, the company had carried out wage cuts during strike periods until 1974.

X et al. won the case both in the first and second instances. The gist of the decisions of the lower courts is as follows:

"Allowances such as 'family allowances' and 'commuting allowances' should not be considered a part of wages in exchange for labor, but should be paid as a kind of subsistence guarantee for their status as employees . . . since fixed amounts of allowances are paid every month independently of the daily service of their labor, such allowances cannot be cut outright using a strike

as a reason.

"Such a cut in family allowances is extremely unreasonable even in the light of Article 35 of the wage regulations and Article 37 (2) of the Labor Standards Law. Notwithstanding the fact that the company had unilaterally cut family allowances in the past, this cannot be recognized as a lawful and valid practice."

[Opinions of the Court]

Since allowance cuts had been "carried out without opposition" until the advent of the current case in 1972, it had become a regular labor practice between X and Y. This cannot be considered extremely unreasonable in the light of Labor Standards Law Article 37 (2), etc. which provides that family allowances shall not be counted as wages which are the basis of extra pay.

The difference between the part which is subject to a wage cut during a strike and the part not subject to a cut should be distinguished in the light of the tenor of the labor contract or labor practice.

Hence, the family allowance cut cannot be considered an outright violation of the law on the ground that its direct relation to labor is tenuous. The wage claim of X et al. was then dismissed.

[Comment]

The position held in the first and second instances in the current case has been supported in most cases by the court and also in academic theories. The Supreme Court in its decision by the Second Petty Bench concerning the Meiji Life Insurance Co. case seemed to have taken the same stand. (Decision on Feb. 5, 1965. 19 *Minshū* 52).

The Supreme Court in the current case, however, refused to follow the precedence just because it was different from other cases. The point at issue needs to be scrutinized in detail in the future.

It must also be noted that the court which had not recognized this kind of labor practice did so in this case despite the apparent

objection of the trade union and union members which were party to the suit.

By Prof. AKIO SATO
KUNIYUKI MATSUO

8. International Law

a. Public International Law

Korean residents in Japan and Japanese nationality.

Decision by the Fifth Criminal Department of the Osaka High Court on Jan. 26, 1981. Case No. (*u*) 623 of 1979. A case involving violation of the Alien Registration Act. 1010 *Hanrei Jihō* 139. Have the Korean residents in Japan lost their Japanese nationality as a result of the Peace Treaty Article 2 (a) ? Decision affirmative.

[Reference: Peace Treaty with Japan, signed on Sept. 8, 1951, came into force on Apr. 28, 1952, Article 2 (a). Universal Declaration of Human Rights, adopted on Dec. 10, 1948, Article 15-2]

[Facts]

The defendant, a Korean resident in Japan, insisting that he had Japanese nationality, burned his alien registration certificate and remained in Japan without applying for the re-issuance of a registration certificate during the legal period of time therefor.

As a result, he was indicted on charges of violating the Alien Registration Act. The defendant contended that he still had Japanese nationality and therefore should not be subjected to the application of the Alien Registration Act.

In the first instance, the Kyoto District Court on Apr. 3, 1979 in its decision turned down the contention of the defendant and sentenced him to four months in jail with a stay of execution for a year on the ground that the defendant's action, as described a-