Although there is no doubt that the current decision has followed the stand of the generally accepted views and judicial precedents, it has pointed out the propriety of providing the Korean residents with a chance to choose or recover their nationality and, at the same time, take stock to a certain extent of the arguments voiced by antagonists. On this score, the current decision is worthy of special attention.

[Reference: 768 *Jurisuto* 271, June 10, 1982, Kotera Akira's Comment on Major Decisions in 1981.]

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b. Private International Law

International jurisdiction and Malaysia Airlines case.

Decision by the Second Petty Bench of the Supreme Court on Oct. 16, 1981. Case No. (*o*) 130 of 1980. A case demanding compensation. 35 *Minshū* 1224. 1021 *Hanrei Jihō* 9. 452 *Hanrei Taimuzu* 77. Claim for compensation against a foreign juridical person whose business office is located in Japan, and international jurisdiction.

[Reference: Law of Civil Procedure § 4 (1), 4 (3), Law concerning Application of Laws in General § 7]

[Facts]

On Dec. 4, 1977 a Japanese A boarded an airplane operated by Y (defendant, appellee and *Jokoku* appellant) under the air passenger contract he concluded in Malaysia with Y, but he died when the plane crashed in Malaysia the same day.

X, his bereaved family living in Aki City, Aichi Prefecture, Japan, (plaintiff, appellant and *Jokoku* appellee) brought an action before the Nagoya District Court demanding more than

¥40,450,000 in compensation from Y on the ground of Y's breach of duty in the air transport contract.

In the first instance, the Nagoya District Court turned down the plaintiff's complaint saying that it could not admit jurisdiction by a Japanese court. (Decision by the Nagoya District Court on Mar. 15, 1979. Judicial precedents, etc. not published yet.)

Dissatisfied with the decision, X et al. appealed and the Nagoya High Court, in the second instance, recognized Japanese jurisdiction over the case and revoked the decision in the first instance, sending the case back to the Nagoya District Court. (Decision by the Nagoya High Court on Nov. 12, 1979. 402 *Hanrei Taimuzu* 102). Thereupon, Y field a *Jokoku* appeal.

[Opinions of the Court]

Appeal dismissed.

"By nature, the state jurisdiction functions as part of sovereignty and the scope of such jurisdiction is, as a matter of principle, the same as that of sovereignty. So, since the defendant is a foreign juridical person whose head office is located overseas, Japan's jurisdiction does not extend to the juridical person in principle unless the latter takes the initiative in submitting to jurisdictional authority.

"However, it cannot be denied that there are exceptional cases in which the defendant has to obey Japan's jurisdiction regardless of his nationality or location, for instance, in cases in which land involved is part of Japan's territory or in cases in which a defendant has some legal relations with this country in one way or another.

"And, the scope of such exceptional handling should be decided reasonably on the basis of the idea that guarantees equity among the parties concerned, and the adequacy and swiftness of a trial under the present circumstances in which there are no laws or regulations directly providing for international jurisdiction or dependable treaties or generally accepted precise principles of international law.

"Moreover, it stands to reason to let the defendant come under Japan's jurisdiction in case one of the provisions relating to land,

such as the defendant's domicile (Law of Civil Procedure § 2), place of office or place of business of the juridical person or other organiztions (§ 4), place of performance (§ 5), the place of property of the defendant (§ 8), or the place where an illegal act is committed (§ 15) and the general forum provided for by the law of Civil Procedure, is in Japan.

"However, according to what was lawfully established by the lower court, the *Jokoku* appellant is a company established in conformity with Malaysian company law and has its head office in Malaysia, but has its place of business at 3-3-9, Shimbashi, Minato-ku, Tokyo, Japan, with Zhang Yuxiang as its representative in Japan.

"Hence, it stands to reason to let the *Jokoku* appellant fall under Japan's jurisdiction even if he is a foreign juridical person whose head office is located in a foreign country.

"Therefore, the judgment of the lower court that a Japanese court has jurisdiction in the current lawsuit can be recognized as just, and there is nothing unlawful about the opinion of the lower court's decision."

[Comment]

With regard to the question of so-called international jurisdiction, that is, which country's court should have jurisdiction over the interpretation of civil and commercial disputes involving overseas elements, there has been a dominant view especially among the scholars on the law of civil procedure.

According to this view, if the general or special forum provided by Japan's Law of Civil Procedure is located in Japan concerning the lawsuit involving overseas elements, it should be presupposed that international jurisdiction also rests with Japan as a prerequisite. Hence, the existence of Japan's international jurisdiction should be inferred from the other way round. (Hajime Kaneko, System of Law of Civil Procedure, 84 (1956))

On the other hand, another prevailing theory held mainly by scholars of private international law advocates that the question of international jurisdiction should be decided by the international

law of civil procedure on the prerequisite that jurisdiction, as part of the functions of sovereignty, shall be recognized by international law. This also involves the question of local distribution of jurisdiction on an international scale and since there are no explicit written provisions about it, the issue should be settled reasonably taking into account the adequacy of the trial, equity among the parties concerned, the efficient handling of the case, and the effectiveness of the decision reached. This is what is called universalism. (Sueo Ikehara, "International Jurisdiction," 7 *New Lecture Series of Law of Civil Procedure* 3 (1982).)

However, even in universalism, since the distribution of international jurisdiction decides the local distribution of jurisdiction, it recognizes that it should be decided in accordance with the same principle as the distribution of jurisdiction among local courts at home intrinsically.

It then points out, in inferring jurisdiction in terms of personnel or place in the domestic law of civil procedure, the necessity of international consideration on the difference of social conditions between international and domestic spheres (id. at 12).

The current decision, by adopting the position of such universalism, has inferred the provision concerning the distribution of place in the domestic law of civil procedure, but it is highly questionable to what extent the decision has paid international consideration.

As a matter of consequence, the decision seems to have adopted a stand that is not much different from the position of the principle of "inference from the other way round." In this sense, the following criticism of universalism against the principle of reverse inference stands pertinent in the case of the current decision.

When a stand involving the "reverse inference" principle is adopted, "international jurisdiction ought to be a prerequisite to domestic jurisdiction as a matter of logic, but in practice, the existence of domestic jurisdiction is considered a prerequisite. So, if only the court considers, in accordance with the provision of jurisdiction in the domestic law of civil procedure, whether or not it has domestic jurisdiction, it does not have to consider once again, as a

matter of principle, as to the existence of international jurisdiction.

"As such, the logical independence as well as superiority of international jurisdiction vis-a-vis domestic jurisdiction becomes ambiguous. Moreover, the international jurisdiction of various countries may become established after all by provisions of domestic jurisdiction in the domestic law of civil procedures, which those countries establish as they please from their independent and purely domestic standpoing.

"Thus viewed, it is difficult to establish the principle of international jurisdiction which is at once pertinent internationally and is equipped with rationality as the principle of distribution of jurisdiction in the international law of civil procedure. (id. at 16-17.)

Moreover, the *Jokoku* appellant (defendant) admitted the existence of international jurisdiction concerning the current case on the ground that Japan has the general forum of a person as provided for in the Law of Civil Procedure Article 4, Item 3. But, a recent majority view has it that in a case where a foreign juridical person has a place of business in Japan, the problem of whether or not the international jurisdiction on the claim against the said foreign juridical person should be recognized, should be decided by inference after paying international consideration as described in Article 9 of the Law of Civil Procedure, not by Article 4, Item 3 of the same law. Article 9 of the Law of Civil Procedure requests involvement of the office or place of business in the business concerned as a prerequisite to bringing a suit against the office or the place of business. (id. at 23 and 25 note (5); Makoto Hiratsuka, 770 *Jurisuto* 141.)

According to this majority view, it is not right to recognize Japan's international jurisdiction on the ground that the *Jokoku* appellant's place of business is located in Tokyo as shown in the decision, because the *Jokoku* appellant's place of business has nothing to do with the conclusion of the passenger transport contract in the current case. (Hiratsuka, ibid.)

The current decision of the Supreme Court is the first of its kind in that it has described a general opinion concerning inter-

national jurisdiction and is expected to exert considerable influence on future practices.

However, as strong criticism is anticipated as shown by the influential academic theory mentioned above, it is unlikely that the question of international jurisdiction can be settled smoothly in the future by the general opinion described in the current Supreme Court decision.

[References in addition to those quoted in this article: Hideyuki Kobayashi, '"International Jurisdiction and Malaysia Airline Case," 324 *Hōse* 20 (1982); Akifumi Goto, 768 *Jurisuto* 278 (1982); Takao Sawaki, "Recent Supreme Court Decision on Jurisdiction of Japanese Court," 9 *Saishō* 611 (1981); Tsutomu Shiozaki, "Supreme Court Decision on the Crash of Malaysia Airline," 10 *Saishō* 14 (1982)]

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