

and if there were a fear that A would impose an unreasonably heavy burden of work, it could not be called a fair deal. (In the consciousness of labor and management at that time in Japan, to cooperate with the improvement of productivity was understood to have the same meaning as to cooperate with rationalization as viewed from the management's side.) The Supreme Court, looking at Y's real intention, judged that Y intended unfair labor practices.

It can be said that the Supreme Court judged that unless an offer was clear and rational so that it might become a transaction, maintaining an ambiguous offer could not be said to be an attempt to proceed with sincere collective bargaining, and that if such insincere bargaining occurred where more than one union existed in one company and if they were treated differently, it would become unfair labor practices such as discriminatory treatment and intervention in a union.

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## 8. International Law

### a. Public International Law

#### **The status of refugees — fear of political persecution.**

Decision by the First Civil Division of the Tokyo High Court on May 7, 1984. Case No. (*gyo-su*) 1 of 1984. An immediate *kokoku* appeal from the decision to reject the complaint against the execution of a deportation order. 1118 *Hanrei Jihō* 117.

[Reference: The Immigration Control and Refugee Recognition Act §§61-2 and 50(1)(iii); The Code of Administrative Procedure §25.]

*[Facts]*

The appellant X was a noncommissioned officer of a unit of the North Korean Army, who became critical of the North Korean regime and decided to seek refuge in Japan. At the end of October 1983 he ran away from his army unit, swam to a Japanese ship which was at anchor 2 km. offshore and boarded it secretly. On November 3 he was discovered on board by the crew. At that stage the ship was on the high seas off Tsushima Island. He was arrested by the Maritime Safety Agency on suspicion of violation of §§70(i) and 3(1) of the Immigration Control and Refugee Recognition Act (hereinafter referred to as “the Act”) which provide the need to carry a passport, and was detained at an immigration center.

X applied for a grant of refugee status in accordance with §61-2 of the Act. The Minister of Justice, however, did not classify him as a refugee. X sought a special permission for residence in accordance with §50 (1) (iii), but the Minister of Justice rejected this application as well. Thereupon, the Chief Inspector of Fukuoka Regional Immigration Bureau issued a deportation order for X. X brought an administrative action seeking withdrawal of the decision, and demanded, in accordance with §25 of the Code of Administrative Procedure, that the execution of the part of the order concerning the return of X should be stayed until a final judgment on the merits was made. The Tokyo District Court handed down a decision rejecting his claim (Case No. (*gyo-ku*) 1 of 1984). X appealed from the decision.

*[Opinions of the Court]*

*Kokoku* appeal dismissed.

(1) Re the status of refugees and the extent of the Minister of Justice’s discretion in granting a special permission for residence:

The appellant stated that the reason for his escaping his army unit was that a document in which he had criticized the political regime in North Korea had been exposed by the secret police

so that he had become fearful of being punished or sanctioned. However, due to lack of consistency in his evidence, the Court cannot readily accept all his statements as being true. Moreover, the appellant was not actually detained, and indeed he was quite free despite his defiance to the North Korean regime. Thus the Court is not able to find that the appellant had a well-founded fear of being persecuted for his political opinions.

Even if there were a fear of being persecuted as the appellant claimed, it must be recalled that the Act provides no concrete standard for granting a special permission for residence by the Minister of Justice. Especially in cases where so-called illegal entrants who are found and arrested at the time of entry into Japan assert that they are refugees, as in this case, the Minister of Justice should be authorized to exercise a very broad discretion. The Minister's decision can, therefore, be judged illegal only when it is clear that it lacks any factual base because of a serious mistake in fact-finding or because it is remarkably unreasonable in the light of generally accepted views. In this case it cannot be found that the decision was illegal by reason of abuse of the Minister's discretion.

(2) Re the non-refoulement rule:

Even if the place for the appellant's deportation is specified as Korea or South Korea at the time of the execution, the deportation order is not illegal because the appellant is not a refugee and the specification of the place to which the deportation will take place is only a matter of execution.

Moreover, according to §53 (2) of the Act, when an foreigner cannot be deported to the country of his nationality, he can be deported to "another country" according to his wishes. So he should be able to rely on the political or humanitarian considerations of the authorities. The Court cannot judge that this deportation order violates the so-called non-refoulement rule.

(3) Re the right to trial and the necessity of staying execution of the deportation order:

The appellant asserted that his right to challenge the deportation order would be violated if the execution of the deportation

order were not suspended. But even if the order were executed and the appellant were deported to a foreign country, he would not be deprived of the right to have his case heard in Japan, even though difficulties would arise during the course of the case. Hence the Court cannot uphold his appeal.

*[Comment]*

On Jan. 1, 1982, the Convention Relating to the Status of Refugees came into effect with respect to Japan, in accordance with which the immigration control laws were revised and incorporated into the Act. The present case involved the application of the Act, particularly the extent of the discretion of the Minister of Justice concerning the granting of a special permission for residence as provided in §50 (1) (iii) of the Act.

As the Court pointed out, “the Minister of Justice is authorized to exercise a very broad discretion” with regard to the issuance of a special permission for residence in accordance with §50 (1) (iii) of the Act. Thus his decision is illegal only “when it is clear that it lacks any factual base because of a serious mistake in fact-finding or because it is remarkably unreasonable in the light of generally accepted views.”

In the present case, the Court considered that when an illegal entrant claimed a special permission for residence, the Minister of Justice should first make a decision as to whether he was in fact a refugee in order to provide materials for the decision about the refugee’s immigration.

The appellant stated, in claiming suspension of execution of the deportation order, that the qualifications for refugees and the recognition of the fear of being persecuted depended mainly on the rationality and credibility of statements made by the applicant, and cited the following opinion by an expert of the immigration control administration of the Ministry of Justice: “To strictly demand proof of the alleged fear of persecution will result in a heavy burden of proof being imposed on applicants. It seems that refugees often leave their countries of origin with no docu-

ments and chances are slim that there are witnesses who can support their claims .... Except in very obvious cases (self-evident to an ordinary person), we can do nothing but judge the existence of the degree of that possibility in terms of the refugees' country." (Susumu Yamagami, *The Refugees Convention and Administration of Immigration Service* (1982), p. 8)

The Court, however, denied the granting of the status of refugee to the appellant because of insufficiency of objective circumstances to support the credibility of his statements. One commentator supports this approach and recognizes the importance of objectivity. At the same time, however, he points out that it may be unreasonable to impose such a heavy burden on refugees that they could not satisfy because of the natural state of things (Yukio Shimada, 838 *Jurisuto* 278).

On the basis of its decision as to the granting of refugee status the Court concluded that, wherever the place to which the deportation might take place, the deportation order was not illegal because the appellant was not a refugee. Thus the execution of the deportation order was approved.

In a previous case of complaint against the execution of a deportation order, the Tokyo District Court made a decision to the effect that the execution of the deportation order should be suspended until the decision as to the merits of the withdrawal of the deportation order was made (Decision by the Tokyo District Court on Jan. 16, 1982, 33 *Gyō shū* 2449). It found a certain justification in the complaint and, therefore, decided to wait for the final decision so that the appellant's right to challenge the order would be respected. In the present decision the Court found no reason to do this because the appellant would not be deprived of his right to trial even if the deportation order was executed. As the appellant asserted, however, it was almost impossible for the appellant to maintain a suit on the merits if he was deported to a foreign country. With respect, it would have been more desirable had the Court suspended the execution of the deportation order until the decision on the merits had been made.

After this decision the appellant reportedly went to South Korea.

## **b. Private International Law**

### **A claim for compensation between foreign juridical persons and Japan's jurisdiction.**

Decision by the Thirty-First Civil Division of the Tokyo District Court on Feb. 15, 1984. Case No. (wa) 5812 of 1981. A case demanding compensation. 525 *Hanrei Taimuzu* 132.

[Reference: The Code of Civil Procedure §§4, 5 and 15.]

### **[Facts]**

The plaintiffs X, a juridical person under the law of Panama, had its registered place of business in Japan. X brought an action demanding ¥1,500,000,000 in compensation from Y, a Californian corporation, on the ground that Y had unduly arrested X's ship in the port of San Mateo, California, in April 1980. X insisted that the Court should have jurisdiction in the present case in accordance with the Code of Civil Procedure §§4 (3), 5 and 15 (1).

### **[Opinions of the Court]**

Action dismissed.

(1) Although it was not contended that the plaintiffs had their registered place of business in Japan, the Court would not be able to infer that the defendants are within its jurisdiction only by reason of the fact that the plaintiffs have their place of business in Japan.

(2) Claims based on the same grounds as those of the present case are being litigated in California. It is clear that California is an appropriate forum not only for the defendants but also for the plaintiffs because of greater convenience in collecting evi-