

## 2. Law of Property and Obligations

### **The right to the identity of one's own name.**

Decision by the Third Petty Bench of the Supreme Court on February 16, 1988. Case No. (o) 1311 of 1988. A case claiming the publication of an apology. 42 *Minshū* 27.

[Reference: Civil Code, Articles 709 and 723.]

### **[Facts]**

The plaintiff, Che Chanhwa (X), filed a claim for the publication of an apology by the defendants, Japan Broadcasting Corporation (Y), on the defendants' national network and in several national newspapers. The plaintiff also sought a ruling requiring the pronouncing of X's name and to have Korean names spoken using the Korean pronunciation in Y's broadcasting thereafter. The plaintiff claimed damages of 1 yen for his mental suffering, alleging Y's act of broadcasting Y's Korean name in the Japanese pronunciation of "Sai Shou Ka" was unlawful.

In the first and second instances, the courts rejected X's claim. X submitted a *jokoku* appeal.

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

*Jokoku* appeal dismissed.

A person's name has the social effect of distinguishing and identifying a particular person from another. At the same time, from a particular person's point of view, a name is the basis of receiving personal respect and is a symbol of one's personality. The right to one's name constitutes one element of the human right of personality; therefore, a person has the legal right to be called by his own name in a correct pronunciation. This right should be protected by the law which governs unlawful acts.

Applying this general theory to the particulars of this case, X is a foreigner of Korean nationality, his name is written as "崔昌華"

in Chinese characters and pronounced as “Che Chanhwa” in Korean pronunciation. The defendants, Y, pronounced X’s name in Japanese pronunciation, “Sai Shou Ka,” in Y’s television news programs of September 1 and 2 of 1975, disregarding X’s prior rejection of the Japanese pronunciation. Comprehensively considering the historical details of writing in Chinese characters and their pronunciation in the Japanese manner, the social conditions that existed at the date of broadcasting, and other facts confirmed by the *koso* appellate court, pronouncing the names of Japanese residents of Korean nationality in the Japanese manner instead of the native Korean pronunciation is allowed because it is a socially established practice in Japanese society. Therefore, Y’s act of pronouncing X’s name in the Japanese manner was a customary practice and lacked unlawfulness. The *koso* appellate court’s decision to reject the demand for the publication of an apology on national broadcasts and in newspapers and the claim of damages based on Articles 709 and 723 of the Civil Code should be affirmed.

**[Comment]**

Korea, China, and Japan all use some Chinese characters as ideographic characters for writing their own language. As the pronunciation of Chinese characters in each language is completely different, so the problem of pronouncing Korean and Chinese names in Japanese arises. Traditionally, in Japan, Korean and Chinese names written in Chinese characters are pronounced not in their native but in the Japanese manner. The plaintiff criticized this Japanese tradition as a vicious practice based on perverted history and asked for its abolishment. According to the plaintiff’s claim, a name is a symbol of personal identity and racial subjectivity; therefore, a foreigner’s name should be pronounced in their native manner. The plaintiff further argued that correct pronunciation is the basis for personal respect; thus, broadcasting of the plaintiff’s name in the Japanese pronunciation by the defendant television broadcasting company has disgraced the pride of Korean race and has infringed upon the plaintiff’s right to personal respect guaranteed by the Japanese Constitution as a fundamental human right.

Many countries have legislation or judicial precedents that deal with the right of person's name. Article 12 of the German Civil Code recognizes "Namenrecht," and a person whose name is used by another without permission may demand the cessation of such use. This right to one's name is also treated as an "other right" under Article 823, Paragraph 1, of the German Civil Code, and the person affected can also claim damages for any loss he suffers from any person who negligently uses his name. Article 28 of the Swiss Civil Code of 1907, and Articles 6, 7 and 8 of the Italian Civil Code of 1942 also recognized the right to one's name. In France, although the French Civil Code does not specifically state this right, French judicial precedents have recognized this right. Since the 1920's, Japanese legal scholars have also advocated the introduction of the right to one's name to Japanese law. The Supreme Court decision in this case recognizes a legal right of having one's own name spoken in a correct native pronunciation. This decision is regarded as a very important development toward the protection of the general human right of personality.

On the other hand, the second point raised by this decision is the approval of Japanese traditional and customary way of pronouncing a foreigner's name using Japanese pronunciation. The Court's decision acknowledged the Japanese way of pronouncing a foreigner's name in Japanese by the defendants, Japan Broadcasting Corporation, as a customary practice in September 1975. Since then, however, the customs involving pronouncing a foreigner's name on television and radio broadcasts have changed. Nowadays, all Japanese television and radio stations pronounce foreign names in the relevant native pronunciation as a result of discussions aroused by the plaintiff's claim in this case. There was much criticism by journalists of the denial of the plaintiff's claim by the lower court decisions. Because of the change in social attitude to respect for personality, the traditional way of pronouncing a foreigner's name in Japanese has been abandoned and replaced with the new way of pronunciation. Native pronunciation has gained social acceptance in Japanese society. As a result, the Supreme Court's approval of the traditional way of pronouncing a foreigner's name in Japanese has no social

effect at all. In this sense, we regretfully recognize a vast difference in pace between social and judicial changes.

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### **3. Family Law**

Three cases regarding application for special adoption.

#### **1. A case in which the application should be granted. [②]**

Order by the Sapporo Family Court on March 18, 1988. Case No.(ka) 116 of 1988. An application for a special adoption order. 40-7 *Kasai Geppō* 185.

[Reference: Civil Code, Articles 817.6 to 817.8; Domestic Relations Adjustment Act, Article 9 (1) *kou* 8.2.]

#### **[Facts]**

The applicants married on August 9, 1977. The husband (34 years old) is a policeman and the wife (35 years old) devotes all her time to housekeeping. They are both healthy and sincere. They are happily married and financially stable. Since they had no children, they decided to bring up a foster child with the idea of adopting in the future. They were registered as foster parents at the Child Consultation Center in November 1986. On December 12, at the request of the Child Consultation Center for foster placement they started taking care of a six-month-old girl who had been brought from an infant home (an institution where children who are under two years old and in need of care and protection are placed). Since then, they have continued looking after the child for a year and three months.

The girl was born on June 3, 1986, by a woman who had gone to the hospital on that day as an emergency case. The girl was deserted two days later when the mother disappeared from the hospital without