age raised. In this case, the employer raised the age limit to 60, but reduced the wages, etc. The reduction was so heavy that the court did not find it reasonable for the employer to change the work rules to effect the reduction.

The court, however, dismissed X's claim because of the general binding force of the collective agreement. Although there are diverse interpretations of Article 17, it should be pointed out that X cannot join the union that concluded the agreement. Therefore, in our opinion, the collective agreement should not bind such a worker like X.

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8. International Law

1. The export and provision of machine parts and technology to the Soviet Union in contravention of the COCOM (Coordinating Committee for Export Control) regulations.

Decision by the Thirteenth Criminal Division of the Tokyo District Court on March 22, 1988. Case No. *toku (wa)* 1547 of 1987. 670 *Hanrei Taimuzu* 257.

[Reference: Foreign Exchange and Foreign Export Control Act (before the 1987 amendment by Act Ch. 89; hereinafter referred to as the Foreign Exchange Act), Articles 25(ii), 48(1), 70(xx) and (xxix), and 73(1).]

[Facts]

In October 1979 V/O Techmashimport contacted the Toshiba Machine Company (hereinafter referred to as "Toshiba Machine") concerning the sale of Large Vessel, Propeller Manufacturing Machinery (Nine-Shaft, Simultaneous Control, Metal-Milling Machines). Since the export of the machines that Techmashimport

wanted to purchase was in contravention to the rules of both COCOM and the Foreign Exchange Act, Toshiba Machine decided that it would export the machines as "Double-Shaft, Simultaneous Control, Boring and Turning Mills" and then have Techmashimport modify them. Toshiba Machine exported the four machines in question between December 1982 and June 1983.

After Techmashimport made the modifications, Toshiba Machine took part in inspecting the installation and initial start-up of the machines; at that time Toshiba Machine had a claim made against it by Techmashimport. Toshiba Machine and Techmashimport agreed that Toshiba Machine would provide, free of charge, twelve snouts (cutter heads) and modification software to Techmashimport.

The snouts were exported to the Soviet Union from Yokohama on June 20, 1984, without the approval of the Minister of International Trade and Industry (MITI). The modification software necessary for the snouts was also provided to Techmashimport without MITI's approval, transporting it in the handbag of another trading company's employee.

Toshiba Machine was not prosecuted for the export of the main bodies of the milling machines between December 1982 and June 1983 because the limitation period under the Foreign Exchange Act (three years at that time, five years in the existing Act) had expired. However, Toshiba Machine was prosecuted for the export of the twelve snouts and the modification software.

[Opinions of the Court]

(1) Toshiba Machine's Responsibility.

Toshiba Machine exported the snouts and modification software in response to the Soviet claim concerning the start-up inspection of the machines. "Although the export of the machines in question was not prosecuted because the limitation period had expired, we cannot exclude closely related circumstances in considering this case. It is natural to think that the accused were obviously cognizant of the fact that these exports (the export of the machines and the export of the snouts and modification software) were in contravention of the laws relating to the COCOM regulations," because they were

deceptive in exporting the machines in question as double-shaft, simultaneous control, boring and turning mills, and because they exported the snouts and modification software, knowing that these machines were operating as nine-shaft, simultaneous control, metal-milling machines.

(2) Business Ethics.

"It is not condemnable that a private enterprise primarily pursues profit through free and active trade. Although we cannot overlook the merits that these economic activities have contributed to the development of our nation, the enterprise must rigidly refrain from those actions which place excessive priority on profit and ignore the rules and morals of the international community..... In the process of individual negotiations, the enterprise should not adopt a corporate policy of searching for ways to evade the law. The accused company, which is an influential large-scale enterprise, should have acted in a dignified manner and worked for the benefit of the entire business circle by strongly urging the government to clarify the Foreign Exchange Act and to insist [to foreign governments] on the relaxation and simplification of the COCOM regulations. An enterprise becomes worthy of being called a 'first-class enterprise,' not by being tempted with immediate gains and engaging in dangerous practices, but by remaining on the proper path even though it may be roundabout."

(3) The Conditions of the Accused Company.

"When considering the motives and events leading to this crime, there are circumstances that should be taken into account, such as the fact that the export to the communist bloc could have been expected in light of the measures in force at that time that the accused company had instituted in response to the economic downturn; that the Soviets had suggested to Toshiba Machine the export method to use to evade the COCOM regulations and the Foreign Exchange Act, and the Kongsberg Company of Norway actively cooperated with Toshiba Machine in doing so; that the accused company did not realize that these milling machines had military use, nor has it been proved that these machines hindered the maintenance of international peace and security; that due to this incident the accused com-

pany has already been prohibited by administrative sanction (Verfügung) from exporting to the communist bloc, and there have been various social sanctions, such as a decrease in sales; and that the accused have taken measures to prevent the recurrence of a similar act."

[Comment]

This case concerns COCOM (Coordinating Committee for Export Control) including the COCOM regulations; as a judicial decision, it is the first since the Nikkoten case (Decision by the Second Civil Division of the Tokyo District Court on July 8, 1969; Case No. (*gyo-u*) 30 of 1969; 434 *Jurisuto* 87).

Under the initiative of the United States COCOM was established in 1949 as an informal organization whose purpose was to regulate the export of strategic goods to communist countries. The present members are the United States, the United Kingdom, France, Italy, Belgium, Luxemburg, the Netherlands, Norway, Denmark, Canada, West Germany, Portugal, Greece, Turkey, Spain and Japan. Except for Japan, all COCOM members are members of NATO. Moreover, there are countries known as "COCOM Cooperating Countries" which are not members of COCOM but cooperate with them. Japan joined COCOM in 1952.

A significant characteristic of COCOM is that the organization itself is not established by treaty; it is secret and closed.

According to the *Encyclopedia of Public International Law* published by the Max Planck Institute, COCOM is described as "a secret gentlemen's agreement." It is also sometimes referred to as "le gentlemen's agreement politique," "volunteer cooperation of members," or an "international arrangement."

Since COCOM is not organized under treaty, but only by a secret gentlemen's agreement, it does not have to be public. Nor it is necessary to be registered at the UN as does a treaty (Vienna Convention on the Law of Treaties, Article 80). On the other hand, because it is not regulated by treaty, COCOM agreements or decisions have no binding force under international law. States, therefore, do not have any obligation to obey the regulations of COCOM. Article 98(2) of the Constitution of Japan provides that "The treaties concluded

by Japan and established laws of nations shall be faithfully observed," but COCOM does not amount to a treaty nor an established law of nations under this article. Thus, under the Constitution of Japan as well, Japan is not obliged to obey COCOM.

COCOM, as mentioned above, is an informal organization, and, as we shall see, it can only realize implementation of its extra-legal arrangements through the domestic laws of its members.

We can indicate two reasons why COCOM became only an informal organization.

First, there were domestic political problems in the Western Nations. After World War II, in the countries of Western Europe, the Left wing grew remarkably. In Italy and France, which were strongly affected by the Left, if the existence of COCOM had been made public or if a COCOM treaty had been concluded it would have become a decisive economic factor in East-West tensions. So, during the deliberations concerning COCOM, these governments in Western Europe indicated that they were seriously concerned about potential power struggles between the Right and the Left and the political confusion that would follow in their countries; they made it clear that such dangers should be avoided. If the draft treaty were rejected, and any single country of the West did not join COCOM, COCOM's purpose could not be attained. For these reasons, the U.S.A., which stressed the integrity of the Western countries, abandoned the attempt to conclude a treaty.

The second reason concerns problems with COCOM's method of export control. In the regulation, as we shall see, COCOM draws up a list of goods whose export should be regulated (the COCOM List), with implementation to be carried out through the export control system of each country. There was concern that if the COCOM List, the circumstances of its revision, or inquiries concerning the List were published, the contents of the List of regulated/export-prohibited goods or technology would become known to the communist countries.

Another important characteristic of COCOM is the indirect nature of the application of COCOM regulations. As mentioned above, COCOM regulations are not based on treaty. COCOM makes up

the list of regulated goods, and each country voluntarily arranges its export control system, using its own domestic law. Thus, COCOM's legal basis is the domestic laws of the individual countries. In Japan, COCOM regulations have been enforced, from the beginning, through the Foreign Exchange and Foreign Export Control Act. Prior to 1980, the government enforced the COCOM regulations through Articles 47 and 48 of the Foreign Exchange Act, and Articles 1(1) (vi) and (6) of the Export Trade Control Order. Interpreting the Foreign Exchange Act as a whole, there was room for assuming that regulation for solely economic reasons was legal, but regulation for political reasons, such as COCOM, was illegal. In fact, such a distinction was made in the Nikkoten case, in which the court decided that because the freedom to export is a basic human right, its regulation must be kept at a minimum; the Foreign Exchange Act recognizes only regulation for economic reasons; and, thus, government actions for political reasons, such as the COCOM regulations, are not recognized under this Act. Moreover, in *obiter dicta,* the court indicated that as long as the domestic laws for the purpose of complying with COCOM arrangements are specifically enacted, the regulations are possible.

MITI did not change its regulation policy, continuing to use the Foreign Exchange Act to enforce the COCOM regulations. However, with the development of the Japanese economy, the Foreign Exchange Act was amended in 1980 in order to change the policy toward foreign transactions from a restrictive to a permissive policy. In this amendment, in addition to Articles 47 and 48 which were already present, Articles 23 (relating to capital transactions) and 25 (1) (ii) (relating to service transactions) were inserted. These articles are called "security clauses," and are entirely for the purpose of the COCOM regulations. COCOM regulations came to be realized through these articles, Article 18 (iii) and (iv) of the Cabinet Order Concerning Control of Foreign Exchange, and Article 9 and the Attachment of the Ministerial Ordinance Concerning Control of Invisible Transaction Relating to Foreign Trade.

The court applied the law in the Toshiba case based on the 1980 amendments.

After Toshiba Machine was subjected to an administrative sanction for the breach of the Foreign Exchange and Foreign Export Control Act, another amendment was made in 1987. In addition to amending the Foreign Exchange Act, other new provisions are: sanctions, an advisory system under the Minister of Foreign Affairs, expansion of the scope of on-the-spot inspections, and the strengthening of penal regulations. The amendment, which is called "An Amendment to Persuade the U.S.A.," is criticized as lacking a long-range view of both COCOM's future existence and how COCOM should work in a practical sense.

The above-mentioned characteristics of COCOM raise various problems relating to the COCOM regulations. For example, the relationship between this decision and the decision in the Nikkoten case, in which the Japanese government is said to have abused its discretion in establishing concrete standards in order to provide for the COCOM regulations in the domestic law; the vague standards that are used, in contravention to the principle *nulla poena sine lege, nullum crimen sine lege,* in applying the Foreign Exchange Act (which embodies the COCOM regulations) to an actual case; and the proportionality of the Foreign Exchange Act's penal regulations in the case of a breach of COCOM in comparison with the penal regulations in the case of a breach of treaty obligations.

Commenting on the decision in this case, for the most part the court did not make the above-mentioned, essential examination of the method of applying the COCOM regulations. The court did not even examine the matter of governmental abuse of discretion in enforcing the COCOM regulations, an issue which had been previously examined in 1969. In addition, the court very strongly stressed, in *obiter dicta,* business ethics, considering the seriousness of the effect of this case on diplomatic and commercial policies and on the Japanese economy. One scholar has indicated the uniqueness of this decision and the political nature of this case. Indeed, this case is not only legal but it is also concerned with U.S.-Japanese economic and diplomatic relations; it has had a significant social effect. It has been said that the essential discussion relating to the COCOM regulations was not made in this case because defense counsel wanted to avoid

stirring up feelings in the U.S.A. as much as possible, considering Toshiba Machine's socially difficult situation. If this is true, it explains why the essential examination was not made in this case; Toshiba Machine's legal strategy was not to dispute the case (and thus there was no legal discussion). On the other hand, considering the fear of agitating the U.S.A. to be a non-legal matter, we can indeed recognize that on this point this case clearly has political characteristics.

However, while the nature of the incident itself is political, it is questionable whether the decision itself is also political.

If you consider the interpretations, it is clear that in the Nikkoten case, the court decided that only economic regulations were possible under the Foreign Exchange Act. But the above-mentioned "security clauses" were added in 1980; after the amendment, one can interpret the Foreign Exchange Act to mean that regulations based on political grounds are within the scope of the Act. According to this interpretation, one can distinguish this case from the Nikkoten case and conclude that the regulation is valid, and not an abuse of discretion.

Next, there is the problem of the special characteristics of the milling machines in this case. Despite the COCOM regulations, the communist countries worked hard to improve their technical knowledge and consequently have achieved high technical standards. The result is that it has become more difficult to distinguish between non-military technology, which may be exported, and military technology, which may be exported, and military technology, which is prohibited from being exported; the area of high technology belonging in the gray-zone is gradually expanding. The milling machines in this case fall into this gray area, and the scope of the export prohibition will continue to be an issue.

Thirdly, the reason for the tough U.S. attitude in this case was the existence of a causal connection between the export of the milling machines and the difficulty of detecting the Soviet submarines. The U.S.A. insisted that this difficulty in detecting Soviet submarines threatened the security of the West. It is important to note that on this point the court was unwilling to accept this American view.

In any event, as a result of this incident, diplomatic relations be-

tween the U.S.A. and Japan have become extremely tense, and the COCOM regulations have been strengthened through the amendment of the Foreign Exchange Act. However, the above-mentioned problems remain unsettled. And if the export regulations are strengthened further, it would have a strong impact on the free trade system. Therefore, we must pay close attention to future developments.

2. Refusal to give a reentry permit on the basis that the resident foreigner refused to be fingerprinted.

Decision by the Fourteenth Civil Division of the Tokyo High Court on September 29, 1988. Case No. *(gyo-ko)* 33 of 1986. 689 *Hanrei Taimuzu* 281.

[Reference: International Covenant on Civil and Political Rights (hereinafter referred to as "Covenant B"), Article 12(4); Constitution of Japan, Article 22(2); Immigration Control and Refugees Recognition Act, Article 26(1); Alien Registration Act (before the 1987 revision by Act Ch. 102), Article 14.]

[Facts]

Kathleen Kunold Morikawa (X), who is a national of the U.S.A., arrived in Japan in 1973, later married a Japanese national, and has resided in Japan since. She is registered as a foreigner, and now works as an English teacher in different colleges. After arrival, X had been fingerprinted in various procedures in accordance with Article 14(1) of the Alien Registration Act. On September 9, 1982, however, X refused to be fingerprinted when she applied at the Kanagawa prefecture, Yamato city office for a new certificate at the end of her second five-year period. X's basis for refusal was that fingerprinting discriminates against foreigners, fingerprinting is unpleasant, and X did not understand the necessity of fingerprinting. X planned a trip to Korea in November 1982, and applied for a reentry permit. The Ministry of Justice refused to grant a reentry permit on the basis of X's refusal to be fingerprinted. X filed a suit, seeking to have the Ministry of Justice's action withdrawn as illegal.

In the first instance, the Tokyo District Court, in its decision of March 26, 1986, dismissed X's claim because Article 22 of the Con-

stitution does not guarantee foreign residents the freedom of traveling abroad, and because the refusal of a reentry permit to X, who violated the Alien Registration Act, may be regarded as unavoidable in light of the necessity of maintaining the legal order in Japan.

X appealed to the Tokyo High Court.

[Opinions of the Court]

Koso appeal dismissed.

The Tokyo High Court expanded and revised the original decision of the lower court.

"[W]e cannot recognize an established international customary law that recognizes as a right a foreign resident's freedom to travel abroad, and ..... we cannot hold that the Constitution of Japan should be interpreted to mean that Article 12(4) of Covenant B, which was ratified by Japan, recognizes a foreigner's freedom of reentry."

"[While Article 12(2) of Covenant B] that reads 'Everybody shall be free to leave any country, including his own' provides to nationals and foreigners the freedom to leave a country, Article 12(4) guarantees the freedom to enter only to nationals; the freedom of entrance is not guaranteed to foreigners under international customary law. 'His own country' in Article 12(4) must be interpreted as 'country of nationality' in those countries that have a unified system of registration, such as nationality or census registration, as in Japan, and thus can clearly distinguish nationals from foreigners; this must be so regardless of the situation in those countries which do not have a unified system of registration and consequently can prove nationality only through birth or long-term residence. Therefore, the abovementioned article cannot be interpreted to guarantee the freedom of reentry for foreign residents."

"However, it is recognized that under the Alien Registration Act as revised by Act Ch. 102 that was promulgated on September 26, 1987, as a principle, fingerprinting is to be done only once; those who have already had their fingerprint taken (such the *koso* appellant in this case) do not have to be fingerprinted again. The revision also abolished the penalties that had been imposed on people who refused to be fingerprinted. (However, the revision did not affect

penalties for refusals that had occurred before the revision.) It is also recognized that, in adopting the bill, the Diet also adopted a supplementary resolution to the effect that 'regarding criminal and administrative sanctions against fingerprint refusers, [the government should] respond flexibly and consider the specific circumstances of the individual case from a humanitarian standpoint in light of the Diet's purpose in revising the Act.

If we consider these facts as well as the way the fingerprint refuser feels, which may be readily inferred from the examination of the *koso* appellant herself in the first instance, and furthermore the fingerprinting method used before the revision of the Alien Registration Act, which was very unpleasant for those being fingerprinted, then it is not unreasonable to assume that if a resident foreigner applied for a reentry permit now, refusing to grant the permit for the reason that the applicant had refused to be fingerprinted at some time prior to the revision of the Act would amount to the Ministry of Justice's abuse of discretion, because such refusal to grant the permit would be contrary to the purpose of the revision. However, none of these factors can be allowed to influence our aforementioned decision in the present matter: we must decide whether the Ministry of Justice's refusal was appropriate based on the circumstances as they were before the revision."

[Comment]

There is an explanation of the fingerprinting system itself in the *Waseda Bulletin of Comparative Law*, Vol. 6, pp. 75–86, in which one of the two cases referred to is another case of Ms. Morikawa herself, and Vol. 7, pp 122–127, which discusses another case where a Korean resident violated the Alien Registration Act by refusing to be fingerprinted. In a series of similar cases in 1988, the decisions did not change. In these case the courts rejected arguments which were based on the Constitution and Covenant B. The courts decided that the fingerprinting system does not amount to "degrading treatment," and that the Covenant itself can be interpreted as recognizing that states have discretion regarding their treatment of foreigners.

This is the first case that examined the legality of refusing a reentry

permit because the applicant had earlier refused to be fingerprinted; it is the *koso* appeal in which the plaintiff requested withdrawal of the government action and claimed damages. Even if a fingerprinting system is recognized, irrespective of whether such a system infringes upon human rights, a problem still remains: it is questionable whether it is possible for the government to refuse to grant a reentry permit on the basis of the applicant's prior fingerprinting refusal.

Although this case is also concerned with the Constitution, the international law issues are (1) the meaning of "his own country" in Article 12(4) of Covenant B; and (2) the validity of the government action on the basis of refusing to be fingerprinted.

First, there are two opposing views on the meaning of "his own country" in Article 12(4) of Covenant B. One view limits "his own country" to mean only "country of nationality"; the other view includes both "country of residence" and "country of nationality." At the meeting of the Third Committee of the General Assembly, the interpretation of "his own country" was discussed. Canada, Pakistan, the United Kingdom, and Japan interpreted "his own country" as "country of nationality." In the end, the Committee compromised and adopted "his own country," the wording in Article 13(2) of the Universal Declaration of Human Rights, to use in Covenant B. Furthermore, the Committee adopted the phrase "has the right ... to return to his country" in order to strengthen the right to leave the country; it therefore does not help to provide an answer concerning the scope of "his own country." Returning to the discussion of the Third Committee again, 35 countries made statements concerning "his own country." Only two countries, in addition to the four mentioned above, interpreted "his own country" as "country of nationality." They were India, which regreted the withdrawal of the Canadian draft proposing that "his own country" be limited to "country of nationality"; and Czechoslovakia, which interpreted "his own country" as meaning "the country granting nationality." Countries that welcomed the withdrawal of the Canadian draft were Yugoslavia, Afganistan, Saudi Arabia, Italy, and Lebanon. It is officially reported that the Canadian draft was withdrawn because it had the restrictive interpretation. Considering this discussion process that took

place in the Third Committee, we cannot interpret "his own country" in Article 12(4) of Covenant B to mean "country of nationality."

Regarding the freedom of reentry, before this case, there were the decisions of the lower courts in the North Korean *Shukugadan* case (Decision by the Tokyo District Court on October 11, 1968; Decision by the Tokyo High Court on December 18, 1968). Those decisions held that because Article 22 of the Constitution guarantees the freedom of reentry, and all foreigners also enjoy this freedom, the scope of the Minister of Justice's discretion is limited. Ms. Morikawa argued her case from this standpoint, which has been commonly accepted. Moreover, the Tokyo High Court has followed those decisions in other cases. From this standpoint, "his own country" in Article 12(4) of Covenant B should not be interpreted as "country of nationality."

The decision in this case, differing from the above-mentioned interpretation, limits "his own country" to mean only "country of nationality." The reason for this interpretation can be seen by comparing the wording of Article 12(2) with the wording of Article 12(4) of Covenant B. Article 12(2) guarantees the freedom to leave the country to both nationals and foreigners; Article 12(4) guarantees the freedom of reentry only to nationals. A second reason for this interpretation can be seen in the fact that the freedom of entry for foreigners is not recognized under international customary law. The first reason, however, is mistaken from a grammatical standpoint. The judges made a mistake because they were confused by the Japanese translation. From the word "*jikoku,*" used in the translation of Article 12(4) of Covenant B, judges might think that the freedom of entry applies only to "*jikokumin.*" It is true that "*jikokumin*" means "inhabitants with nationality." In Article 12(4), however, "*jikoku*" means "his own country"; the relationship between this and nationality is not definite. Consequently, these words, "*jikoku*" ("his own country") and "*jikokumin*" ("nationals"), have no relationship to each other. Therefore, in this case, as to whether the meaning of "his own country" is only "country of nationality" or also includes "country of residence," the reasoning is inappropriate. Next, although there is no international customary law recognizing a free-

dom of entry, the court discusses freedom of entry as a problem regarding only the exercise of jurisdiction; the court does not view freedom of entry as also being an issue of exercise of basic human rights. The appellant in this case, however, argued that freedom of reentry is a basic human right. From this standpoint, the court does not respond to the appellant's claim. Instead the court reasons that because there is no international customary law recognizing a freedom of entry, "his own country" should be limited in meaning to "country of nationality." This is a mistaken conclusion and an insufficient basis on which to interpret "his own country."

Article 98(2) of the Constitution of Japan provides that "The treaties concluded by Japan..... shall be faithfully observed." There are a series of decisions concerning fingerprinting; these Japanese precedents acknowledged that Covenant B can be directly applied within the territory of Japan. In this case the court of first instance tried to interpret Article 12(4) of Covenant B, and concluded that it could be directly applied to the present circumstances. The *koso* appellate court reached the same conclusion. If these lower courts' interpretation is correct, the interpretation of "his own country" that does not limit it to "country of nationality" should be applied to Covenant B, making it superior to both the Immigration Control and Refugees Recognition Act and, of course, any action under that Act. Government action that contravenes this interpretation violates both Covenant B and Article 98(2) of the Constitution.

Next, we will consider the validity of the government action on the basis of refusing to be fingerprinted.

First, changes can be seen within the fingerprinting system itself in recent years. The Alien Registration Act was revised in 1987 by Act Ch. 102. The revision established a principle that fingerprinting in the registration procedure is required only once. Before the revision, fingerprinting was required for every application to reissue a certificate of alien registration.

Following the legislative change, judicial decisions and government actions changed in the latter half of 1987. After the revision, but before it went into effect on June 1, 1988, the courts reduced penalties for those who had violated the Alien Registration Act; the

reason is that the courts were taking into consideration the soon-to-be effective revision went into effect (e.g., Decision by the Kawasaki Branch of the Yokohama District Court on November 18, 1987; Decision by the Tokyo District Court on January 29,1988; Decision by the Nagoya High Court on March 16, 1988; etc.). After the legislative and judicial changes, the action of the Ministry of Justice changed. The administration announced a new policy whereby it would relax the application conditions in order not to refuse applications for reentry and revision of residence terms on the basis of having refused to be fingerprinted if the applicant-fingerprint refuser had been fingerprinted at least once in the past. Furthermore, although the Ministry of Justice decided to continue its regulations refusing reentry permits for those fingerprint refusers who have never had their fingerprints taken, it did change its policy so as to treat even this situation more flexibly; "it sometimes occurs that the agency, viewing the individual case at hand from a humanitarian viewpoint, recognizes the application if it is an unavoidable case." In its 1989 budget, the Ministry of Justice decided to establish a "Department of Policy" in the Immigration Office in order to formulate policies concerning the problem of foreign laborers illegally residing in Japan and the fingerprinting problem.

Given the trend toward relaxation of the restrictions on both fingerprinting and on granting reentry permits in cases where the applicants are fingerprint refusers, the question that arises is whether the government's refusal in this case is valid.

From an intertemporal law viewpoint, this decision holds that despite the trend, the issue of the validity of the government's refusal is not changed because the law the court will use to determine the validity of the refusal is the law at the time of refusal. However, it is possible for the court to reconsider the validity of the refusal given that the criminal penalties for fingerprinting refusal were reduced. Indeed, the offenders can enjoy only reduction of their penalties because the illegality of their act does not change in spite of the revision. This decision is not mistaken on this point but the appellant in this case could claim damages from the state.

Next, the *koso* appellate court added to the decision of the court

of first instance by including an additional decision about the relationship between the revision and this case. We agree with the *koso* appellate court on this point, because it seems likely that a future court will rule that it is illegal for the government to refuse a reentry permit on the basis of fingerprinting refusal.

Considering the issue as a whole, we must pay attention to future judicial decisions. The interpretation of Article 12(4) of Covenant B and Article 22 of the Constitution did not change, and in fact this court's interpretation may be regressive. However, we can support the court's decision in that it suggests that, given the revision, in the future there will be a judicial guarantee to relax the requirements for granting reentry permits to fingerprint refusers.

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