

in protecting students' lives and bodies, preventing their misconduct, and promoting their devotion to study, the total prohibition of getting a driver's license and of riding a motorbike is beyond the authority empowered to the school body. At the very least students should be able to freely ride a motorbike once they leave school. After all, the decision easily confirms the prevailing paternalistic attitude in the society and completely lacks consideration for an individual's autonomy.

It is quite natural for the school to make deliberate considerations if it decides to expel students. There can be no objection to this conclusion.

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2. Law of Property and Obligations

A case concerning compensation for delays in certification as Minamata Disease victims.

Decision by the Second Petty Bench of the Supreme Court on April 26, 1991. Case Nos. (o) 329 and 330 of 1986. 45 *Minshū* 653.

[Reference: Civil Code, Article 709; State Tort Liability Act; Article 1(1); Administrative Litigation Act, Article 3(5)]

[Facts]

The Chisso Corporation polluted the water by dumping methylmercury into the Siranuikai Bay. Many local residents had been eating the fish and shellfish caught in the Bay and suffered from Minamata Disease, a disease of the central nervous system. The victims showed symptoms of numbness in the limbs or disturbances in mov-

ing, seeing, hearing or speaking. As the cause of the disease was made clear, it turned out that many victims have such slight symptoms that it is difficult to establish criteria of Minamata Disease.

In the 1950's and the 1960's, pollution of the air and water occurred nationwide: in Niigata, mercury poisoning; in Yokkaichi, air pollution; in Toyama, cadmium poisoning; in Minamata, mercury poisoning. The violating corporations should be held liable for compensation to pollution victims, but it takes a long time to come to a decision in civil actions. So, during this period, the victims are forced to receive medical treatment at their own expense. In order to take temporary measures through administrative powers, the government enacted the Law for Special Measures for the Relief of Pollution-Related Disease (hereinafter referred to as the Relief Law) in 1969 and the Law for Compensation of Pollution-Related Health Injury (hereinafter referred to as the Compensation Law) in 1974.

The victims of Minamata Disease filed the first suit against the Chisso Corporation and won the suit (decision by the Kumamoto District Court on March 2, 1973, 696 *Harei Jihō* 15; hereinafter referred to as case ①). After this decision, the group of victims made an agreement concerning compensation with Chisso Corporation. This agreement is more favorable than the decision of case ①. According to the agreement, so long as the victim is certificated as a Minamata Disease victim under the aforesaid laws, he may recover compensation under this agreement at his request. It is necessary for the victim to go through administrative procedures in order to be certified as a pollution-related victim under aforesaid laws. The procedures consist of three stages: ① a medical examination of the applicant, ② the Pollution-Related Health Damage Certification Council's report on the certification of the applicant and ③ the governor's decision whether to certificate a pollution-related victim. It took much time to carry out these procedures. After the decision of case ①, the number of the applications increased suddenly and the number of the pending applications increased each year. In 1974, the applicants whose application were pending filed a suit against the governor and claimed a declaration of nonfeasance for delays in the certification on Article 3(5) of the Administrative Litigation Act.

Although they won the suit (decision by the Kumamoto District Court on December 15, 1976, 835 *Hanrei Jihō* 3; hereinafter referred to as case ②), most of the applications remained pending. Between January 1972 and December 1972, 24 persons (13 persons won case ②) applied for certification of Minamata Disease under Article 3 (1) of the Relief Law and Article 4 (2) of the Compensation Law. But, in December 1977, their application still pended. Under Article 1 (1) of the State Tort Liability Act, they claimed damages for psychological suffering from delays in the procedure of the certification of Minamata Disease. At the first instance, the court allowed their claim. The governor's wrong was based on the *res judicata* of case ②. The *res judicata* of case ② was extended to parties other than the plaintiffs of case ② and to the time after the conclusion of the oral argument of case ②. The State and the governor of Kumamoto Prefecture filed a *koso* appeal. At the trial of second instance, the extension of *res judicata* was denied. It was judged not relevant to the *res judicata* of case ② whether the governor's nonfeasance after the conclusion of the oral argument of action ② is wrong. Since April 1975, the Pollution-Related Health Damage Certification Council has increased the number of openings in the council each month and the number of certifying patients in each council. The court held that, two years earlier, the council should make this improvement of the system to speed up the procedures. The *koso* appeal was dismissed. The State and the governor of the Kumamoto Prefecture then filed a *jokoku* appeal.

[Opinions of the Court]

Original (Fukuoka High Court) decision reversed and remanded.

Applicants for certification as Minamata Disease victims under the Relief Law and the Compensation Law have an interest to be freed of the feeling of the anxiety and impatience through carrying out the procedures within a reasonable time. The interest not to injure this feeling, that is, not to suffer from the feeling of anxiety and impatience, deserves a legal remedy based on the law of torts.

In the light of reason, the authority which receives the applications is under a duty to carry out the procedures of the certifications

within a reasonable time. It is not sufficient for a breach of duty to exist that the authority receiving the application simply fails to carry out the procedures of certification within the necessary time for certification as Minamata Disease victims. In addition, it is necessary that the authority leaves the application pending for an extraordinary time and does not make an effort to keep delays to a minimum.

[Comment]

There are two main issues in the case: ① whether the applicant's feeling is an interest protected by the law of torts; ② whether the authority owes a duty to carry out the procedures of certification within a reasonable time.

Concerning ①: according to Article 709 of the Civil Code, the requirement of compensation for damages is a violation of the right of another. This requirement of "violating the rights" is replaced by "violating a legal interest which deserves a legal remedy." According to Article 710 of the Civil Code, non-pecuniary damage may be compensated only when the injury is to the person, liberty or reputation of another. In practice, however, the kinds of the injury compensated are not restricted to those which are listed in this article. It is unclear what kind of interest deserves a legal remedy, in particular, in the area of the personal rights, so called "*jinkakuken*." For example, an interest to be called by one's own name in correct pronunciation deserves legal remedy (decision by the Third Petty Bench of the Supreme Court on February 26, 1988, 42 *Minshū* 27; see 9 Waseda Bulletin of the Comparative Law 32), while an interest to live a religious life in a quiet religious environment does not (decision by the Grand Bench of the Supreme Court on June 1, 1988, 42 *Minshū* 277; see 9 Waseda Bulletin of the Comparative Law 27). In this case, an interest not to suffer from a feeling of anxiety and impatience deserves a legal remedy. It is stressed that the applicants for certification as Minamata Disease Victims remain in doubt as to whether they suffer from Minamata Disease and that they are in more unstable position than the applicants of other administrative procedures. Therefore, this case is not a precedent in the case of applicants of other administrative procedures.

Concerning ②: the main point is whether the authority's duty to carry out the procedures within a reasonable time is based on the Relief Law and the Compensation Law or not. In this Supreme Court decision, this duty is not based on the the Relief Law and the Compensation Law, but is imposed on the authorities in the light of reason. Indeed, these laws may provide that the authorities must carry out the procedures of certification within a reasonable time, but the purpose of this duty based on these laws is not to protect directly an interest not to suffer from a feeling of the anxiety and impatience. In other words, this duty is not a substantive one but a procedural one. The criteria of substantive duties are different from those of procedural duties. The *res judicata* of the declaration of the authorities' wrong under the Administrative Litigation Act does not have an effect on the substantive duty.

There are three requirements for a breach of duty in the light of reason: ① the authority fails to answer the application within the necessary time for carrying out the procedures of certification; ② the delays for answering the application amount to an extraordinary time; and ③ the authorities do not make such an effort to keep delays to a minimum as is usually expected. Concerning ③, in determining whether the authorities made such an effort, various factors should be taken into consideration. These factors are as follows; the difficulty in establishing the criteria of Minamata Disease, the number of applications for certification, the capacities of the organization to examine applicants and make certification, the applicant's attitude toward the examination and so on. The High Court decided only on the data for certifying patients after the improvement of the system of the Pollution-Related Health Damage Certification Council and did not take these factors into consideration. The Supreme Court remanded the case to the High Court in order to reconsider these factors.

The Minamata Disease actions are left pending to the six district courts and one high court (see 8 Waseda Bulletin of the Comparative Law 32, concerning the decision by the Kumamoto District Court on March 30, 1987, in Third Kumamoto Disease Action). In these actions, the victims claim damages not only against the Chisso Cor-

poration but also against the government and Kumamoto Prefecture. Five courts advise the solution by way of the settlement in consideration of a long period of dispute and the plaintiffs of advanced ages. While the Chisso Corporation and the Kumamoto Prefecture accepted the advice of the settlement, the government rejected it. In 1990, the government passed the Comprehensive Measure concerning Minamata Disease. Under the Comprehensive Measure of Minamata Disease, some of the non-certificated victims were awarded costs of medical treatment. The government stressed that it did not acknowledge legal liability by issuing the Comprehensive Measure and that the Comprehensive Measure was established in light of the political liability imposed on the government. Thirty-six years have passed since a Minamata Disease victim was officially certified for the first time. Most of the victims are of such aged that they should be provided compensation as early as possible.

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3. Family Law

- 1. A case in which it was held that Article 733 of the Civil Code providing for the period of time (six months) for which a divorcée is prohibited from remarrying is constitutional.**

Decision by the Second Division of the Hiroshima High Court on November 28, 1991. Case No. (*ne*) 38 of 1991. A *koso* appeal for damages. 1406 *Hanrei Jihō* 3.

[Reference: Civil Code, Article 733; Constitution of Japan, Articles 13, 14 and 24; Convention on the Elimination of All Forms of Discrimination against Women, Preamble, Articles 2, 15 and 16;