

Japan-Soviet Joint Declaration (see Ko Nakamura, "Case Note", 1024 *Jurisuto* (1993), 278, at 280).

Prof. TOKUSHIRO OHATA
AKIRA SAKOTA

2. A case concerning claims for war compensation by Taiwanese nationals who were soldiers or civilian components of the Japanese Imperial Army and Navy.

Decision by the Third Petty Bench of the Supreme Court on April 28, 1992. Case No. 1427 (o) of 1982. 1422 *Hanrei Jihō* 91, 787 *Hanrei Taimuzu* 58.

[Facts]

Taiwan came under Japanese rule as a result of the Sino-Japanese War (1894–95) and remained so until 1945. In 1938, the year following the outbreak of war between Japan and China, many Taiwanese, who were considered Japanese subjects, were pressed into military service as civilian laborers and sent to mainland China. Following the outbreak of full-scale war numerous Taiwanese were sent to front line area to work for the military as farmers, engineers, interpreters, and prisoner-of-war camp guards. On April 1, 1942 a special army enlistment system was implemented, and a special navy enlistment system was implemented on July 1, 1943. Furthermore, the Military Service Act came into force in Taiwan on September 1, 1944. As a result, a total of 208,183 Taiwanese served the Japanese military, 80,433 as soldiers, and the others 127,750 as civilian components; by the end of the war more than 30,000 of them were killed.

The Imperial Japanese government had planned to pay compensation to those injured and the families of those killed in battle under the Veterans' Pension Law, the Employee Aid Decree, and the Lower Employee Aid Decree, but following Japan's defeat this compensation system collapsed. In 1946 the Veterans' Pension Law was amended, and payments to veterans, civilian components, and their families were suspended. In 1951 the Employee Aid Decree and the Lower Employee Aid Decree were repealed. In their place the Law

for Aid to War Wounded and Families of War Dead was enacted in 1952, and in 1953 the Veterans' Pension Law was again amended and payments to veterans were resumed. It should be noted, however, that Article 9(1)(iii) of the Veterans' Pension Law stipulates that loss of Japanese nationality is a cause of a loss of the right to receive a pension, and Article 2 of the Annex to the law provides that "this law shall not be applied to those persons who are not registered in a family register." Furthermore, Taiwanese lost their Japanese nationality under the 1951 Treaty of Peace between Japan and the Republic of China and were thus outside the applicable scope of the law. The peace treaty provides that the matter of compensation to Taiwanese war veterans should be resolved by special agreement between the two governments, but the peace treaty was terminated with the issuance of the Joint Communiqué by Japan and the People's Republic of China in 1977, making a settlement impossible. No compensation has been paid to Taiwanese who served as soldiers or civilian components of the Japanese military to the present time.

The plaintiffs, 13 Taiwanese who were either injured or are family members of war dead who served in the Japanese military as soldiers or civilian components during the Second World War, claimed 500 million yen each in compensation under Articles 13 and 29 of the Constitution of Japan, and also requested a declaratory judgment to the effect that the provisions of the Law for Aid to War Wounded and Families of War Dead (hereinafter referred to as Law for Aid to War Wounded) and the provisions of the Veterans' Pension Law concerning nationality are in violation of Article 14 of the Constitution.

The Tokyo District Court dismissed their suit on February 26, 1982, and the Tokyo High Court also dismissed their *kōso* appeal on August 27, 1985. The plaintiffs filed a *jōkoku* appeal to the Supreme Court.

[Opinions of the Court]

Jōkoku appeal dismissed.

Article 14 of the Constitution prohibits discrimination without reasonable cause. Differing legal treatment based on some actual

difference in fact is not in violation of Article 14 to the extent that the discrimination is not unreasonable. In consideration of the facts that it was stipulated in the Treaty of Peace between Japan and the Republic of China that settlement of claims by Taiwanese would be decided by special agreement by the two governments, and that Taiwanese lost their Japanese nationality, there is sufficiently reasonable cause for Taiwanese who served the Japanese military as soldiers or civilian components should be exempt from application of the Law for Aid to War Wounded and the Veterans' Pension Law. That is, it was anticipated that the question of compensation to Taiwanese soldiers and civilian components would be settled through diplomatic negotiations between the governments of Japan and the Republic of China. Therefore, even if there is discrimination between soldiers and civilian components of the military who hold Japanese nationality and those who are Taiwanese, there is no violation of Article 14 of the Constitution.

Furthermore, there is no basis for a determination that the provisions of the laws relating to nationality are in violation of the Constitution merely because discussions between Japan and the Republic of China concerning compensations to Taiwanese who served the Japanese military have become impossible because of the Joint Communiqué between Japan and the People's Republic of China. Considering the above facts, the question of whether Japan should provide any compensation to Taiwanese who served as soldiers or civilian components to the military should be determined by legislative policy.

[Comment]

As the plaintiffs claimed compensation under Articles 13, 14 and 29 of the Constitution, this case necessarily involved questions of interpretation of the Constitution; it also involved, however, issues of international law including, first, the appropriateness of the determination that the question of compensation to Taiwanese is a matter of legislative policy and second, the legitimacy of the provisions concerning nationality when examined in consideration of the International Covenant on Civil and Political Rights.

Concerning the appropriateness of the determination by the

Supreme Court that this problem can not be dealt with by the judicial organs, it is difficult to state that the decision of the Court is proper. For diplomatic talks between Japan and the Republic of China have been suspended for more than 20 years, and the accepted principle of international law under which a claim by a foreign national against a state is in no way affected by the existence of an agreement or arrangement between that state and the state of nationality of the foreigner.

Concerning the legitimacy of the provisions concerning nationality when examined in consideration of the International Covenant on Civil and Political Rights, after 1974, Senegalese who formerly served in the French armed services were provided pensions lower than French veterans by reason of their nationality. A number of Senegalese requested equal treatment as French citizens, but were refused by the French government. The case was then submitted to the Human Rights Committee (*Gaie and others v. France*) on the grounds that France was in violation of Article 26 of the International Covenant on Civil and Political Rights. The Committee handed down its opinion in 1989. The Committee determined that equal compensation should be paid for the same service in the past regardless of nationality, and that France was in violation of the Covenant. The *Gaie Case* is similar in many respects to that of the Taiwanese veterans claiming compensation. In light of the Human Rights Committee's opinion in the *Gaie Case*, it can be said that the provisions concerning nationality of the Veterans' Pension Law and the Law for Aid to War Wounded are in violation of the International Covenant on Civil and Human Rights.

Prof. TOKUSHIRO OHATA
ICHIRO MIURA