pose that the Court has attached importance to the fact of rehabilitation. However, there remains some ambiguity in this theory. For example, when does an ex-convict begin to have such an interest? In any event, the Court should have explained more in detail.

The Court has enumerated three justifiable causes for publishing the facts concerning a previous conviction and the like: when it is recognized that there is historical or social significance in making the case itself public; when it is used as one of materials to criticize or evaluate someone's social behavior, depending on the quality of his behavior and the degree to which he can influence the public through his behavior; when it is used as one of the materials to judge whether it is proper to have a person as a public official if he is a public figure such as an elected public official or a candidate, to whom the general public pays a due attention. This method of definitional or categorical balancing is expected to function as the guideline for future cases. However, the Court has not premised its position on the concept of the preferred position of free speech. In particular, the Court has prohibited the use of an ex-convict's real name as a general rule and has permitted it as an exception only. From the viewpoint of freedom of speech and the press, the Court should have considered the writer's interest more seriously. For this reason, this decision will be subject to criticism.

b. Administrative Law

A case in which the official documents concerning the social gatherings and receptions held by the Osaka Prefectural Waterworks Bureau for the purpose of execution of the undertakings was held ineligible for protection from disclosure under the Osaka Prefectural Ordinance for the Publication of Official Documents.

Decision by the Third Petty Bench of the Supreme Court on February 8, 1994. Case No. (*gyo tsu*) 149 of 1990. A case demanding cancellation of a disposition ordering the documents to be closed. 48 *Minshū* 2-255, 1488 *Hanrei Jihō* 3; 841 *Hanrei Taimuzu 91.*

[Reference: Osaka Prefectural Ordinance for the Publication of

Official Documents, Article 8 (4) and (5)]

[Facts]

In 1985, X (plaintiff, *kōso* respondent, *jōkoku* respondent), a resident of Osaka Prefecture, demanded the publication of official documents concerning the expenses for the social gatherings and receptions held by the Osaka Prefectural Waterworks Bureau, in accordance with the Osaka Prefectural Ordinance for the Publication of Official Documents. Y (defendant, *kōso* appellant, *jōkoku* appellant), a manager of Osaka Prefectural Public Waterworks Corporation, identified the official documents in question as payment slips as well as creditors' bills and documents related to expenditures. Y had decided that information recorded in those documents came under the grounds enabling a public entity to keep official documents free from disclosure to the public. X brouhgt an action demanding cancellation of the decision by Y.

The Osaka Prefectural Ordinance for the Publication of Official Documents, which was enacted in 1984, enumerates the grounds for keeping official documents free from disclosure in Article 8. In this case, among other things, Article 8 (4) and (5) were involved. Section 4 exempts from publication information concerning "investigations, projects, coordination and the like conducted by prefectural or national government agencies, which has the possibility of interfering seriously with the implementation of the said or the same kind of investigations, projects, coordination and the like fairly and appropriately, if made public". Section 5 exempts from publication information concerning "affairs of regulation, supervision, on-the-spot inspection, permission, approval, examination, bidding, negotiation, public relations, litigation and the like conducted by prefectural or national government agencies, which has the possibility of preventing the attainment of the said or the same kind of affairs' purpose, or of interfering seriously with the entity's administering these affairs fairly and appropriately, if made public".

Since the Osaka District Court in 1989 and the Osaka High Court in 1990 respectively ruled in favor of the plaintiff, the defendant appealed to the Supreme Court.

[Opinions of the Court]

Among the meetings which were held at outside restaurants for the enforcement of affairs or undertakings, there may be (1) meetings for the purpose of secret consultation with the parties involved concerning matters necessary for the enforcement of undertakings (for example, meetings for the purpose of seeking prior intentions of or negotiations with individual land owners whose land is a planned site to be purchased for water service), (2) meetings for purpose of administering other affairs (for example, simple arrangement of matters within the Bureau or with the national administrative agencies concerned).

If the documents concerning meetings such as type (1) above are published and the parties of the meetings are made clear from the recorded contents, it is conceivable that the parties will have a feeling of discomfort or distrust, or will fear having rumors circulate after the meetings, so that they might refuse to attend future meetings or abstain from expressing candid opinions. If so, it cannot be denied that there is a danger of interfering seriously with the administration of the said or the same kind of matters fairly and appropriately by publishing these kinds of the documents.

However, it is hard to believe that the publication of the documents concerning the meetings of type (2) will lead to an inconvenient situation such as above mentioned with respect to above type (1) meetings. Therefore, it cannot be said that there is a danger of interfering with the administration of the said or the same kind of matters fairly and appropriately by publishing these kinds of the documents.

In order to say that there is such a danger in publishing the documents in question, the burden rests necessarily on the appellant to insist and establish that the meetings concerned come within the affairs of projects, coordination, or of negotiation, that the meetings were held for the purpose of secret consultation with the parties concerned, concerning matters necessary for the enforcement of undertakings, and that there is a possibility of recognizing the parties of the meetings through the content of information recorded in the docu-

ments or by using other relevant information. We have no right to say that there is such a danger in publishing the documents in question, unless the appellant insists and establishes those points concretely enough to make such decisions possible.

In this case, however, the appellant has not insisted those points concretely.

Therefore, the judgment below, which denied the applicability of sections 4 and 5 to the documents in question, should be upheld.

[Comment]

Recently, not a few local public bodies in Japan have enacted their own ordinances concerning the publication of official documents. Of course they are different in their detailed provisions, but they have a basic idea in common. In order to participate in self-government, individual citizens have to be guaranteed access to various kinds of information which is usually monopolized by local public bodies. The system of publication of official documents serves a citizens' right to know and is the essential starting point from which the citizens may form their own opinions about their political lives.

It is generally observed that these ordinances usually exempt several kinds of information from publication, such as information concerning individuals, information concerning corporate undertakings, information concerning administrative enforcement, which includes information concerning the formative process of an intention and information concerning the execution of affairs or enterprises, and information concerning secrets as provided by laws and ordinances. In this case, Article 8 (4) may apply to infomation concerning the formative process of an intention, and Article 8 (5) may apply to information concerning the execution of affairs or enterprises, respectively. However, the Third Petty Bench of the Supreme Court did not affirm automatically the applicability of Sections 4 and 5 to all the documents in question, although the Court admitted that the documents in question had the possibility of falling under the scope of protection of these sections.

In this respect, the view of the Third Petty Bench is quite in contrast with that of the First Petty Bench of the Supreme Court, which

held on January 27, 1994 that the publication of documents which might identify the parties concerned would have the possibility to impair the confidential or friendly relationship of the parties concerned, so that there was a danger of not attaining the purpose of affairs of negotiation. Since the First Petty Bench's decision concerned the social expenses of the Governor of Osaka Prefecture, one may suppose that the Court may have thought that the Prefectural Waterworks Bureau had narrower discretion to use its expenses for the social gatherings and receptions than the Governor of the Prefecture had. However, is it possible to distinguish the character of the expenses merely by who used them? Is it persuasive? And even if it is so, may this lead to a difference in proof and in concluding about the propriety of the publication of the documents in question? It seems that there is still room for further inquiry.

Finally, it is strongly desirable to establish a system for the publication of official documents at both local and national levels immediately. In addition, from the viewpoint of the citizens' right to know, once the system is developed, it is also desirable that the grounds for enabling an entity to have official documents closed should be specified as a general rule and narrowly interpreted in application.

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2. Law of Property and Obligations

1. A case in which it was held that the damages caused by fire from a television should be compensated by its manufacturer.

Decision by the Osaka District Court on March 29, 1994. Case No. (*wa*) 4761 of 1992. A case claiming damages, 842 *Hanrei Taimuzu* 69.