

advantageous change of work rules to be identical.

Prof. YOICHI SHIMADA
SHINO NAITO

7. International Law

- 1. A case in which it was held that Japanese fishing laws and regulations are applicable to fishing operations conducted in the vicinity of the Northern Territories by Japanese nationals under the pretense of a Japanese-Soviet joint venture.**

Decision by the Third Petty Bench of the Supreme Court on March 26, 1996. Case No. 466 (*a*) of 1992. A case concerning a violation of the Hokkaido Ocean Fishing Regulations. 50-4 *Keishū* 460, 1564 *Hanrei Jihō* 140, 905 *Hanrei Taimuzu* 136.

[Reference: Fishery Act, Article 65 (1); Marine Resources Conservation Act, Article 4 (1); Hokkaido Ocean Fishing Regulations (prior to amendment by the 1991 Hokkaido Rule No. 13), Articles 5 (xv), 55 (1)(i), and 57.]

[Facts]

The facts and decision in the first instance are reported in volume 12 of this *Bulletin* (pp. 93-102, 1991). The decision in the second instance is reported in volume 13 of this *Bulletin* (pp. 92-98, 1992). The main points are briefly restated here.

Defendant X is the president of A Corp., a company engaged in fishing and seafood processing and sales. In June 1989, A Corp. established a Japanese-Soviet Union joint venture (B Corp.) with a Soviet public corporation. B Corp. is a Soviet company.

In October and November 1989, the captain and the crew of a fishing vessel chartered by A Corp. from another company engaged in basket-fishing for crabs in the vicinity of Shikotan Island (one of the islands of the so-called Northern Territories) with the permis-

sion of the Soviet Fisheries Ministry, but without permission of the Governor of Hokkaido, which is required under the Hokkaido Ocean Fishery Regulations (hereinafter cited as "Fishery Regulations" or "Regulations".) The defendant was accused of having violated the Fishery Regulations.

In the first trial, decided by the Kushiro District Court, the defendant made the following assertions: The fishing operations in question were conducted by B Corp., a Soviet legal entity, under a contract with A Corp., based on permission granted by the Soviet Fisheries Ministry, and were not the operations of A Corp. Since, under the legal system of Japan, the Fishery Regulations do not apply to B Corp., a Soviet legal entity, there is no basis for the defendant to be accused of having violated the Regulations, and therefore he is innocent. The Kushiro District Court rejected these assertions; it held that since the fishing operations in question were actually conducted by A Corp. itself as A Corp.'s operations, the defendant violated Article 5 (xv) and Article 55 (1) of the Fishery Regulations. The defendant was sentenced to five months' imprisonment with a five-year stay of execution.

The defendant made a *kōso* appeal. The Third Criminal Division dismissed the *kōso* appeal.

It held that (1) the available evidence is sufficient to find that the fishing operations in questions were conducted by A Corp. itself and the error in fact-finding claimed by the defendant does not exist; (2) it can be assumed that the defendant recognized correctly that it was prohibited by Japanese fishing laws and regulations from conducting the operations in question without permission; (3) it was proper for the lower court to apply Article 5 (xv) and Article 55 (1)(i) (and Article 57) to the basket-fishing for crabs in question and there was no such error in the application of law.

The defendant made the *jōkoku* appeal claiming an error in fact-finding and that the fishing operations in question cannot be punished by the Fishery Regulations.

[Opinions of the Court]

The provisions of the Hokkaido Fishery Regulations, which pro-

hibit certain fisheries, are applied to the fisheries within the territorial sea of Japan and on the High Seas. For the accomplishment of the aim of this regulation, which is to preserve fishery resources and to establish fisheries order, it is necessary to punish the activities by the Japanese who violate the Regulation within the territorial seas of foreign countries adjoining the area within the territorial sea of Japan and on the High Seas.

The provisions of punishment are properly applied to the fisheries Japanese within the territorial seas of foreign countries. The Supreme Court determined that such legislation does apply in the territorial waters of a foreign state by way of application of Japan's personal jurisdiction in a prior decision. (Supreme Court, Second Petty Bench; *Kitajima-maru Case*, jōkoku appeal; 25-3 *Keishū* 451)

[The Hokkaido Fishery Regulations Article 5 (xv) prohibits the Japanese from fisheries within the sea area 12 nautical miles or 200 nautical miles from Shikotan Island. Those who violate this provision are subject to punishment under Article 55 (1) (i) of the Fisheries Regulations.]

[Comment]

The issue of contention in this case is, as mentioned in this *Bulletin* Vol. 12, at 95 and Vol. 13, at 95, whether the Hokkaido Fishery Regulations are applicable to the fishing operations in question, conducted in the vicinity of the Northern Territories.

This decision follows the decisions of the Supreme Court which have already established and held that in order to preserve the fishery resources and to establish order in fisheries, it is necessary to punish activities by the Japanese who violate the Regulation within the territorial seas of foreign countries adjoining the area within the territorial sea of Japan and on the High Seas.

There can be a critical interpretation that Article 5 of the Fishery Regulations is aimed at protecting small or middle-sized fishing activities and cannot reach the sea area where there is no competence for the Governor of Hokkaido to grant permission.

There should be a clear distinction, however, between a territory over which a parliament rules and judicial jurisdiction in a coun-

try. It is accepted in International Law that states may extend their jurisdiction to prohibit their nationals from engaging in certain activities in the territorial sea of a foreign country.

In addition, the nature of the crab in question makes a sound ground for the decision. The interrelationship between fishing for crab near Shikotan Island and the fishing for crab near the shore of Hokkaido are noted in the decision. The nature of legal interest which is damaged could be different if the object of the fishing were different.

This decision is very important because, in following the precedent, the Supreme Court determined that the changes of circumstances surrounding the law of the sea has little effect on the punishment for fishery activities without permission in the territorial sea of foreign states under the Fishery Law.

Prof. TOKUSHIRO OHATA
KEIKO FUJII

2. A case in which it was held that damages caused by the disturbance of interviews between lawyers and convicts should have been compensated under the State Redress Law.

Decision by the Second Civil Division of the Tokushima District Court on March 15, 1996. Case No. (*wa*) 264 of 1991, Case No. (*wa*) 268 of 1992 and Case No. (*wa*) 9 of 1991. A case claiming state redress for disturbance of interviews between lawyers and convicts. Unreported.

[Reference: Constitution, Article 32; Prison Law, Article 45 (1) and (2); Enforcement Regulation of Prison Law, Articles 121 and 127 (1); International Covenant on Civil and Political Rights, 1966 (hereinafter cited as "the Covenant"), Article 14 (1).]

[Facts]

The plaintiffs are lawyers for three convicts in Tokushima prison who were treated violently by the prison officer and received unreasonable punishment. As legal counsels in this case they claimed damages against the Government of Japan, the defendant. When they