rate.

This decision made an unusual political impact. On May 23, Prime Minister Koizumi announced the "abolition of the appeal". On June 15, the government enacted the "Law to provide Compensation for the Inmates of the Hansen's Disease Sanitarium" (Law No. 63, 2001), which provided an apology in the preamble and compensation of a total of 70 billion yen. If the Kumamoto District Court had not handed down such a clear decision, these political advances could not have been anticipated. In this sense, this decision made us re-recognize the importance of the original role of courts to relieve the human rights of citizens from their violation by the administration and legislation.

2. Administrative Law

Supreme Court 3rd P.B., March 27, 2001
55(2) MINSHU 530.

The Second Supreme Court Decision in the Action for the Nullification of Nondisclosure Decision about the Social Expenses of Osaka Prefectural Governor

Facts:

In 1985, the inhabitants of Osaka Prefecture who are the plaintiff of this suit requested the Osaka prefectural governor to disclose the official document about his social expenses that had been spent from January to March, according to the Ordinance on the Opening Official Documents and so on to the Public (that would be revised as a whole in 1999). The governor made the decision not to disclose most of the documents that had been requested, because they corresponded to the nondisclosure reasons prescribed by that Ordinance. The plaintiffs instituted a suit to ask for nullification of that decision.

In 1989, the Osaka District Court held that all of the decisions concerning the nondisclosure were illegal. (1309 HANREI JIHO 3). In 1990, the Osaka High Court affirmed that judgment (41(10) GYOSAISHU 1765). But, in 1994, The Supreme Court stated that when information identified other parties, it was a principle to make those information nondisclosure, found that there were mistakes in the High Court's holdings because it held that much of the information did not correspond to matters of nondisclosure prescribed by that Ordinance, and judged that the decision be reversed and remanded. In 1996, the Osaka High Court, first, divided documents about the social expenses into the ones which corresponded to nondisclosure reasons and ones which did not correspond to nondisclosure reasons, and then held that even if documents included nondisclosure reasons (e.g. documents including gratuities to individuals, incense money, and sympathy money), parts of these documents other than the parts including information about the other parties of association were bound to be disclosed (47(6) GYOSAISHU 499).

This decision is the original decision of the Supreme Court decision discussed by this paper. This litigation is the most famous one on requests for disclosures of information about governors' association expenses in local governments, so it is involved with wider problems including the nature of association expenses. But this paper directly introduces the holdings of only the two following major issues in this case: (1) what information among information which identifies other parties of association should be disclosed? (2) whether or not disclosure of parts of information cutting off the part identifying other parties is required? To this decision, a supplementary opinion by Justice Motohara is added.

Furthermore, in 2001, in addition to this decision, two decisions concerning the association expenses of a governor were delivered (for the Tochigi prefectural governor, un-registration to casebooks; for the Kyoto prefectural governor, 1754 HANREI JIHO 63).

Opinion:

1. Distinction Between Information Corresponding to Nondisclosure Reasons and Information not Corresponding to Such Matters

Depending on the first Supreme Court decision in this case, the decision gave more particular interpretations and applications. The major holdings on the criteria of whether or not particular information about association expenses correspond to nondisclosure reasons are given the two following statements:

(1) "According to the first Supreme Court Decision, information about the association business of the governor that may identify other parties of association, if it is not found that the purposes of the association business of the governor cannot be realized, or the information is likely to exert a remarkable hindrance on fairly and properly carrying out association business such as planning and coordination business or negotiation business, — for example, information concerning names and so on of other parties which were planned to be announced officially outside from the first —, is as an exception not information corresponding to [the nondisclosure reasons — information concerning decisionmaking process or information concerning executing business — provided by that Ordinance]. The 'information concerning names and so on of other parties which were planned to be announced officially outside from the first' which was stated by this decision means information about the association that it is made under the condition that the other parties for the associations and the contents of the meetings can be known by unspecified people. So this decision held that because such information is not found to make the purposes of the association business of the governor unrealizable by announcing names and so on of other parties officially, or to be likely to exert a remarkable hindrance on fairly and properly doing the association business of the governor, it does not correspond to [the nondisclosure reasons — information concerning the decisionmaking process or information concerning executing business — provided by that Ordinance]." "Then, even if the very facts of the association between the governor and other parties can be known by unspecified people, information, in-

cluding the amount of money or the contents of the association, that cannot be known by unspecified people cannot be said to be 'information which was planned to be announced officially outside from the first'. So, if there are no other conditions that can be found to be with the above likelihood, that information is interpreted to be [corresponding to nondisclosure reasons]. That is also clear in terms of the effect stated above that information about association business that may identify other parties of association is not disclosed in principle.

(2) "Also, according to the first Supreme Court decision, among information about association expenses which may identify other parties of association, one involving other private parties in principle corresponds to [nondisclosure reasons (information involving privacy) provided by the Ordinance], but information concerning the association contents and so on, which by nature and contents were planned to be announced officially outside from the first, as an exception, do not correspond to these matters. So 'the information concerning the association contents and so on which by nature and contents were planned to be announced officially in the outside from the first' stated by the decision means information about the association that it is made under the condition that other parties for associations and contents can be known by unspecified people, 'one involving other private parties' should be interpreted to mean whether or not the other parties are officials, or one that involves an association which seems a private incident to other parties."

On the basis of such a reading of the first Supreme Court decision, the Supreme Court holds that much of information that the original decision found not to correspond reasons did correspond to nondisclosure reasons.

2. Partial Disclosure

As for partial disclosure, the Supreme Court states that the High Court's judgment that documents including information corresponding to matters of nondisclosure should be disclosed, cutting off the parts of the record about other parties. The reason is the following:

"This article is not able to be interpreted to bind implementing organs to fractionate independent unified information corresponding

to nondisclosure reasons, and to make some parts matters of nondisclosure and make other parts matters of disclosure regarding those parts as recording no information corresponding to nondisclosure reasons. So when implementing organs decide nondisclosure as unification without fractionating, residents have no right to require the disclosing of part of the information cutting off the parts that, if disclosed, will be questionable on the basis of this article. And courts cannot undo parts of that nondisclosure decision for the reason that implementing organs should disclose partly in this way."

Editorial Note:

1. The Distinction Between Information Corresponding to Nondisclosure Reasons and Information not Corresponding to Nondisclosure Reasons

At first, the Supreme Court, in the first decision, stated that some of the information that the prior two lower courts had found not corresponding to nondisclosure reasons did correspond to nondisclosure reasons. Next, in this decision, it stated that the information that the second High Court, which had expanded the scope of information not corresponding to nondisclosure reasons in accordance with the first Supreme Court decision, had found not to correspond reasons, did correspond to nondisclosure reasons. That is, the Supreme Court expanded the scope of information corresponding to nondisclosure reasons in two stages.

According to the former thought, the governor's association expenses were not suitable information for opening to the public, because to keep these secret that was highly necessary. Actually, the ordinance of Osaka Prefecture in question can be thought to have been epoch-making for those days. The way of thinking that by opening the governor's association expenses to the public local politics is hindered is being given up at present. This decision could be thought of as based on not the present point of view but the point of view of those days, because the decision for nondisclosure in question was one made about sixteen years ago, because the litigation type of this case is action for the nullification of an administrative disposition, and because this decision received the restraint of the first Supreme Court decision.

And, this decision cannot have generality because this decision devotes itself to the interpretation of the local law of the ordinance without referring to the Constitution, the Freedom of Information Act, and so on. But, according to its holdings, this decision is intended to have contents generally used in the present legal system. Actually, a decision with a similar effect was made as to the suit over the association expenses of the Kyoto prefectural governor two months after this decision.

As for the distinction in this decision between information corresponding to nondisclosure reasons and information not corresponding to nondisclosure reasons, first "the information concerning names and so on of other parties which were planned to be announced officially outside from the first" and "information concerning the association contents and so on which by nature and contents were planned to be announced officially outside from the first" themselves, that were indicated as disclosure reasons in principle in the first Supreme Court decision, are said to be questionable. It can be said that these belong to the governor's free discretion about the purpose of the governor's association expenses, and that mat do not require the nondisclosure of purpose, either. And, even if the governor's free discretion is virtually narrowed by the criticism from the inhabitants, along with the disclosure of the information, that is rather desirable. The local politics supported by public expenditure with unclear purposes cannot be evaluated as being sound. From these viewpoints, aside from the information that identifies the names of other parties of associations, the information where the official announcement of the contents of association is not scheduled should inherently not exist. Although it should be avoided that other parties when social expenses were paid suffer disadvantages by the information disclosure that may not have been able to be foreseen in those days, from now on, association with the governor will have to be carried out on the assumption that information will be announced officially.

Next, the above-mentioned place in the first Supreme Court decision was interpreted by this decision from the viewpoint of limitation: "information about the association done under the condition that other parties of associations and contents can be known by unspeci-

fied people". The limitation of "the association done under the condition which can be known by unspecified people" is a problem. Gratuities, incense money, and sympathy money were matters of nondisclosure for not corresponding to this association. But if the expenditure has been made from the viewpoint of a fixed amount, there must not be a hindrance, even if that other party's name, the amount of money, and so on are opened to the public. Otherwise, expenditure will have to be opened to the public as a critical object, which, in turn, becomes a reason why "the association done under the condition which can be known by unspecified people" is not a proper criterion.

2. Partial Disclosure

As for the partial indication, it is suspected that the Supreme Court devoted itself to the interpretation of the regulations, and didn't take the point of the Constitution and the Freedom of Information Act into account. That is, it is clear that as for opening information to the public over the governor's association expenses as well, the point of view of "the right to know", and "accountability" should be taken seriously. From this viewpoint, even when ordinances do not exist, information disclosure about the governor's association expenses is ideally a principle, not an exception. If such an institution does not exist, it is necessary to introduce that institution. If it is a premise that information disclosure is a principle, even the document including information of nondisclosure, except for exceptional cases, such as one involved with the individual's privacy, will be required to be disclosed partly, cutting off such information. But this decision not only makes "even if very facts of association between the governor and other parties can be known by unspecified people, information including the amount of money or contents of association that cannot be known by unspecified people" nondisclosure, but also states that "when implementing organs decide nondisclosure as unification without fractionating, residents have no right to require the disclosure of part of the information, cutting off parts that, if disclosed, will be questionable on the basis of this article. And courts cannot undo parts of that nondisclosure decision for the reason that implementing organs should disclose partly in this way". If this is the case, then both "the right to know" and "ac-

countability" will ring hollow.

3. Concluding Remarks

When it is contested whether particular things correspond to matters of disclosure or to matters of nondisclosure, whichever is supported, it is difficult to prove. It is desirable to classify matters of disclosure and matters of nondisclosure categorically to some degree, giving careful consideration to the secrets in administration and individual privacy, and to reflect that at the stage of making and collecting documents.

The Freedom of Information Act was enforced in Japan several days after this decision. Opening information to the public in the local government proceeds beyond the contents of this decision at least, too. While this decision goes against the fashion, and takes legislative discretion and administrative discretion more seriously than "the right to know" and "accountability", it seems to be favorable that opening information to the public proceeds as a result of legislative discretion and administrative discretion. But opening information to the public as a result of the legislative discretion or the administrative discretion is something different to opening information to the public based on a right to know, and accountability. There are many problems in this decision.

3. Law of Property and Obligations

Supreme Court 3rd P.B., March 27, 2001

NTT v. Hara

55 (2) MINSHU 434, 1760 HANREI JIHO 19, 1072 HANREI TAIMUZU 101, 1288 SAIBANSHO JIHO 17, 1628 KIN'YU SHOJI HOMU 50

When a telephone contractor's minor used a pay information service in a so-called DialQ2 service, the first class telecommunication enterprise could not sue that telephone contractor for the payment of