

the national government rejected beyond payments beyond the last 5 years; (2) The national government insisted to other courts that courts should reject claims of plaintiffs because to pay unpaid amount will make them lose their standing; (3) Although the national government has accepted payment of an unpaid amounts, it continues to deny national tort liability; (4) While in 2003, plaintiffs, A-bomb victims, won in the other three litigations of A-bomb victims abroad, if courts hold that the payer is the national government (there is insistence that because there is no express way of giving provision to A-bomb victims abroad, the payer is not the local government but the national government) the national government appealed to a higher court, although if the court holds that the payer is not the national government but the local government, it does not appeal; (5) While A-bomb victims ask for procedures to apply for the status of "A-bomb victims" without going to Japan, the national government remains unwilling to listen to such voices (among about 5,000 A-bomb victims abroad, only 2,200 have received the pass books for A-bomb victims).

Japan is the only State which can urge anti-war, anti-nuclear, and peace sentiments as an A-bombed State to the world. But it is not persuasive that the State, while having a negative attitude to post-war compensation and having a positive attitude to dispatching the Self-Defense Forces abroad and emergency legislation, expresses for anti-war and anti-nuclear views. The first task of Japan, in order to contribute to international peace, is to face the post-war compensation problems seriously, not preparing emergency legislation or revealing its presence in battle fields.

### **3. Law of Property and Obligations**

**Supreme Court 3rd P.B., January 29, 2002**

56 (1) MINSHU 185, 1778 HANREI JIHO 28, 1086 HANREI TAIMUZU 96

Whether there is considerable reason for newspapers, who accepted

articles from a press association and inserted them in their journals as they were, to believe that the contents were true.

**Reference:**

Civil Code, Arts. 709 & 710; Criminal Code, Art. 230-2 Sec. 1.

**Facts:**

Defendant Y1 is the newspaper who publishes and sells the journal “Nikkan Sports” and defendant Y2 is also a newspaper who publishes and sells the journal “Daily Sports”. Z is a representative press association who covers national and international news and provides articles to its members, newspapers who make a contract to receive articles from it, and private broad-casters. Y1 and Y2 made contracts with Z to receive articles and have inserted the articles received from Z without their own interviews. And according to these contracts, Y1 and Y2 should not edit personally or distort the articles received from Z, when they insert them in their journals.

By the way, when the articles in question in this case were written, plaintiff X was suspected in a murder case in which his wife was killed in Los Angeles, the so-called “Los suspicion”. Z also began interviews about this “Los suspicion” and other of X’s affairs from January 1984. On September 17, 1985, Z sent articles titled “X hid hemp in his house. His ex-wife witnessed,” to Y1 and Y2. And Y1 and Y2 inserted them in their journals as they were or with some modifications. In this case, X sued Y1 and Y2 on the ground that Y1 and Y2 defamed X.

The question is whether there was considerable reason for the newspapers, who accepted the articles from the press association and inserted them in their journals as they were, to believe that the contents were true.

The court of first instance accepted X’s claim as follows. Y1 and Y2’s articles defamed X. Y1 and Y2 had not established that they were true in their central parts. And there was no strong reason for Y1 and Y2 to believe that the contents were true, because it was not reasonable that Y1 and Y2 were not responsible for their articles on the ground that Y1 and Y2 accepted them from the confidential press association, Z. X and Y1 and Y2 appealed.

On the contrary, the court below accepted Y's appeal and dismissed X's claim as follows. Z was the representative press association, its articles were highly trusted and the communication system was organized on the premise that it was not necessary for the press to investigate for themselves. Since such a system was rational, there was considerable reason for Y1 and Y2 to believe that the articles provided by Z were true. X filed a *jokoku* appeal.

**Opinion:**

*The original judgment was reversed.*

"Because with respect to reports such as these articles, which include those by the press association, about private crimes, scandals and things that contain such facts, such reports sometimes are not carefully researched and are not true because of the superheat of the investigation, even if the articles are provided by the press association, which is personally and materially organized well enough for investigation and is generally trusted for the contents of its reports, the truth of the facts which are described in such articles are not highly trusted in our country. Consequently, at this moment, when such articles are provided by the press association, the newspapers insert them and they defame a man and there is no considerable reason for the newspapers to believe that the articles provided by the press association are true, on the mere premise that they are provided by such a press association."

**Editorial Note:**

In this judgment, for the first time as the supreme court, it has been considered how to deal with the doctrine of wire service defense, which was discussed by the lower courts and scholars. The wire service defense is the doctrine that when the press inserts articles provided by a representative press association in its journal without any substantial changes, even if these articles defame a man, the press is not responsible for his damages, except when the untruth of the articles can be easily found out or the press itself knows they are untrue.

But this judgment does not directly decide whether adopt this doctrine or not to settle the case. According to it, as regards the reports such as these articles about private crimes, scandals and things that contain

such facts, the truth of such articles are not highly trusted in our country, and then the credibility for the articles as the premise of this doctrine does not exist. And, according to the case law concerning the defamation, when it concerns the public interest, aims at the public interest and the truth of the fact which is described in it is established for the principal part, the illegality of the defamation is denied, and when there is considerable reason to believe that the fact is true, even if the truth is not established, the intention or negligence for defamation is denied. Based on this case law, the judgment decides that since such credibility does not exist, there is no such considerable reason and then Y1 and Y2 are responsible for defamation to X.

However, the judgment admits in obiter dictum that it is possible to adopt the doctrine of wire service defense about credible articles which concern other categories. And this is very important for the development of this doctrine.

## **4. Family Law**

**Sapporo High Court, October 10, 2002**

**Case No. (ra) 84 of 2002**

54 (6) KASAI-GEPP0 97

In re Murakami

When the mother died after she has been determined to be the sole-exerciser of parental power over the children in a divorce by agreement, an application for the transfer of the parental power to the surviving father should be dismissed, on instead a guardian for the minors be appointed.

### **Reference:**

Civil Code, Arts. 819 & 840.