

sent of individual concerned. The significance of the decision cannot be overestimated.

2. Administrative Law

Isobe v. Prime Minister

Nagoya High Court, Kanazawa Branch, January 27, 2003

Case No. (*gyo-ko*) 12 of 2000

1818 HANREI JIHO 3; 1117 HANREI TAIMUZU 89

Summary:

This “Monju” case is a review by an appellate court on an appeal that was already been reported in the Waseda Bulletin of Comparative Law, vol. 20, 143–153 (MIZUSHIMA, Asaho/Tsuchiya, Kiyoshi). The appellate court vacated the judgment, confirmed that the permission to establish Monju by the defendant was invalid, and reversed.

Facts:

In 1980, the Power Reactor and Nuclear Fuel Development Corporation (which has been reorganized as the “Japan Nuclear Cycle Development Institute” since 1998) applied to the defendant, the Prime Minister for permission for the Corporation to be able to establish Monju (a prototype fast breeder reactor) in Tsuruga City, Fukui Prefecture. In 1983, after review by the Atomic Energy Commission and the Nuclear Safety Commission, the defendant permitted this application. In 1985, residents living around Monju filed a suit against the Corporation for an injunction against the construction and the operation (civil action), and filed a suit against the defendant seeking for an invalidity confirmation of the permission to establish Monju by the defendant (administrative litigation).

The district court denied all the plaintiffs’ standings and dismissed the petition (Fukui District Court, December 25, 1987, 38 GYOSHU 1829). But the appellate court recognized the plaintiffs’ standings only

for those who lived within the range of a radius of 20 km from Monju (Nagoya High Court, Kanazawa Branch, July 19, 1989, 40 GYOSHU 938). The Supreme Court recognized all the plaintiff's standings and remanded the case to the district court (Supreme Court, September 22, 1992, 46 MINSHU 571; 46 MINSHU 1090).

After the dispute on the standings discussed above had settled and the trial concerning the safety of Monju had begun, the reactor suffered a sodium leak accident on 8 December 1995. When the sodium used in the cooling system comes into contact with the concrete floor, which contains moisture, a hydrogen explosion occurs. In order to prevent such contact, a steel plate (liner) covers the floor. Through the verification process of the accident, it was found that the leaked sodium corrodes this more speedily than had been expected. The Nuclear Safety Commission did not consider this finding in its safety review.

This "oversight" as the point at issue in the trial concerning the safety of Monju. But the district court dismissed the petition (Fukui District Court, March 22, 2000, 1727 HANREI JIHO 33). The court said that even if the Nuclear Safety Commission had overlooked the finding, given the Ikata-ruling (Supreme Court, April 29, 1992, 46 MINSHU 1174) that the subject of the safety review is only the basic design of the reactor and not the detailed design of the reactor, such as the shape and depth of the liner, the review was rational. But the appellate court vacated the judgment, confirmed that the permission to establish Monju by the defendant was invalid, and reversed. Now the plaintiffs are appealing to the Supreme Court.

Opinion:

This opinion included discussion of many issues, but this note treats only ① the "invalid" requirement on the permission to establish the nuclear reactor, ② what subjects the safety review before permission to establish a nuclear reactor is given contains, and ③ whether the permission to establish Monju by the defendant satisfies the "invalid" requirement.

① The “invalid” requirement for permission to establish a nuclear reactor.

The court follows the Ikata-ruling, “administrative review process control approach”. This approach is that when administrative disposal is based on highly scientific and technical judgments, such as the permission to establish a nuclear reactor, the court should review whether the administrative review made before the permission was given was rational. According to the Ikata-ruling, in order to be invalid, the permission to establish a nuclear reactor, from the viewpoint of the present scientific standards, must include (a) the Nuclear Safety Commission or its subdivision, the Reactor Safety Commission, using irrational review standards, or, (b) the agency’s verification and judgment process that reached the decision that the reactor which had been had applied for fitted the review standards containing material mistakes or deficits.

This case is not a suit for cancellation but a suit for invalidity confirmation. In the Administrative Litigation Act, a suit for cancellation is accompanied by a statute of limitation, which means that a plaintiff must file suit within three months from acknowledging a disposal or within one year from a disposal being made. On the other hand, a suit for invalidity confirmation is not accompanied by any statute of limitations. However, the plaintiffs filing a suit for invalidity confirmation must establish the “material and clear illegality (deficit)” concerning the disposal by administrative agency. This requirement is heavier than that of a suit for cancellation, that is, the “illegality (deficit)” requirement. Here “clear” illegality means that “the case that the mistake is objectively obvious from the time of disposal” (Supreme Court, March, 7, 1951, 15 MINSHU 381).

Regarding this “clear” requirement, the appellate court denied its application in any case as follows. “The disposals by administrative agency are complex and various in the kind, nature, and content. In response to these disposals, citizens’ disadvantages (infringement of rights or interests), which illegal disposals give, are not uniform in extent or situation. So it is inevitable that cases will occur where it is not reasonable to necessitate the material and clear requirement for invalid confirmation.”

Then the court pays attention to one precedent. This precedent was a taxation case that was registered for a transfer of ownership without

title. Here the Court confirmed the invalidity without using the “clear” requirement, as follows (Supreme Court, April 26, 1973, 27 MINSHU 629). “Generally, given that taxation is carried out only on taxpayers and so that it is not necessary to protect the interest on which the third party put reliance, if there were exceptional situations where the mistake about the disposal was concerned with the basis of the taxation requirement and it was remarkably unfair to compel the taxpayer to have the effect of the disposal by reasons that the statute of limitations had run out, even though there is a need for stability and the smooth operation of tax collection, it would be reasonable to interpret that the disposal automatically should be invalid.”

The court induces from this ruling the general principle that it is not necessary to necessitate the “clear” requirement in confirming invalidity when the court recognizes that there is an “extraordinary situation”. Then the court applies this principle to this case as discussed below.

First, the court points out that it is more indispensable to keep the permission (disposal) to establish a nuclear reactor stable, and to protect expectations that the applicant or contractors have, than any other disposals. However, the court also points out that if there had been material mistakes or deficits in the agency’s verification and judgment process before the permission to establish the nuclear reactor was given, so that serious accidents to the nuclear reactor had happened, the damages to life, health, and the environment would be immeasurable. The court said, given the need to protect these critical interests, the need to protect the economic interests that the applicant or contractors have “are no comparison and not worth bothering about.”

Therefore, the court interprets that given the balance of interests discussed above, in the case on invalidity confirmation for the permission to establish a nuclear reactor, because the potential dangers of these come under an “extraordinary situation”, it is needless to review “clear” illegality, and it is enough to review only the “material” illegality.

As for the application of the “material” requirement, the court discussed as follows. It is indispensable for the administrative agencies to review the measures in order that radioactive material in the nuclear reactor will not leak into the atmosphere, not only at the time of daily operations but also at the time of any accidents. Therefore, when the consider-

ation of these measures was overlooked or mistaken in the administrative agency's review standards and its verification and judgment process, so that it is "impossible to deny the concrete possibility" that radioactive material in the nuclear reactor would leak to the atmosphere, the permission to establish the nuclear reactor is "materially" illegal and the court can confirm it as invalid.

② What subjects must the safety review to establish a nuclear reactor contains?

The appellate court, as well as the district court, follows the Ikata-ruling, that is a distinction between the "grand design" and "detailed design" of the nuclear reactor and says that the judgment concerning what matters come under the "grand design" is entrusted to the reasonable judgment by the Minister concerned, for which is laid the foundation by the scientific and technical knowledge provided by the Nuclear Safety Commission that consists of men of learning and experience. However, compared to commercial plants that have been almost completely technically clarified and for which much experience and knowledge have been accumulated, a fast breeder reactor such as Monju is still in the research and development stage and as yet there has been little experience of its operation. So, in the safety review to establish a nuclear reactor, it is inevitable that the subjects of the latter are wider than those of the former.

③ Whether the permission to establish the Monju satisfies the "invalidity" requirement?

As requirements for permission to establish a nuclear reactor, the "Law for the Regulation of Nuclear Source Materials, Nuclear Fuel Materials and Reactors" provides "technical ability" (article 24, paragraph 1, no.3) and that the "nuclear reactor has no deficits to prevent disasters". Appellants argued that there were "material mistakes or deficits" in the administrative safety review before permission to establish Monju was given by the appellee, on the points of ① the applicant's technical ability, ② the site condition and seismic design, ③ the secondary coolant leakage accident, ④ the damage to the steam generator tube, and ⑤ the reactor core meltdown accident. In other words, the appellant argued that, given these five points, the permission to establish Monju violated the "Law for the Regulation of Nuclear

Source Materials, Nuclear Fuel Materials and Reactors” and the illegality is thought to be “material”, so that the permission is invalid. The appellate court denied ① and ②, but recognized ③, ④, ⑤. In conclusion, it confirmed that the permission to establish Monju is invalid for these “material” illegalities.

Editorial Note:

This case attracted much attention from the mass media because it was the first case where the defendant administrative agency had lost in administrative litigation to dispute the permission given to establish a nuclear reactor. Also, this case was interesting from the viewpoint of Japanese administrative law theory because it removed the “clear” requirement from the administrative suit to confirm the invalidity of the permission to establish a nuclear reactor, on the ground of the potential danger of a nuclear reactor as an “extraordinary situation”. Japanese administrative law has divided categorically illegalities of administrative disposals between “ordinary illegality (deficit)” and “clear and material illegality (deficit)”, and the latter has been treated as having no statute of limitations that would apply in a suit for cancellation.

This substantial distinction derives from “the administrative action theory” in German administrative law. In Japanese administrative litigation system before World War II, “the judicial court” and “the administrative court” were systematically divided. On this system, illegal dispositions by administrative agencies were generally remedied only through the administrative court, which consisted of specialists on administration. However, exceptionally, in the case that anyone could recognize the disposal as materially and clearly illegal, remedies were given through the judicial court, which consisted of ordinary judges.

After World War II, the dual-court system was repealed and the unified court system, in which an ordinary court has jurisdiction over administrative litigations, was newly established on the basis of the American judicial system. Despite this unification, the remedy-distinction by the extent of illegality has continued to exist. Many scholars have criticized this distinction because it is too severe for the plaintiff to seek a suit for an invalidity confirmation. However, in the 1973 taxation ruling, the Supreme Court held that it was not necessary to require a “clear” require-

ment when third parties were not concerned in the disposal.

This Monju case is worthy of note on the point that the logic of the 1973 taxation ruling was diverted to the disposal concerning serious interests, which are potentially dangerous and critical for human life and health such as nuclear reactors.

3. Law of Property and Obligations

X v. Waseda

Supreme Court 2nd P.B., September 12, 2003

Case No. (*jyu*) 1656 of 2002

57 MINSHU 973; 1837 HANREI JIHO 3; 1134 HANREI TAIMUZU 98

Summary:

Information, such as full name and address etc. of the students who applied to attend the speech by the foreign important person which was held by the university, is to be legally protected, and the disclosure of the information to the police by the University is regarded as unlawful.

Reference:

Civil Code, Articles 709 & 710.

Facts:

Defendant Y is an incorporated educational institution which establishes Waseda University etc. Y had planned and decided to hold a speech by Jiang Zemin, the ex-Chairman of the People's Republic of China, at the university during his stay in Japan, and asked the students of the university to apply for attendance.

The application of the attend of the address was made by applicants by entering registration number, full name, address, and telephone number in the lists provided at each office of the faculties.

Plaintiff Xs, who were students of the university at that time, applied to attend the speech and entered their full names etc. in the lists.