

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.

Y had held many conferences with the Metropolitan Police Force, the Ministry of Foreign Affairs and Embassy of the People's Republic of China etc. about the security of the speech in preparing for the address. And at the conference, Y had been required by the Metropolitan Police Force to provide the lists of those present at the speech for security. According to the wishes of the Police, Y decided to render the lists through the internal discussion and rendered its copy to the Metropolitan Police Force without the consent of the students to the disclosure.

Then Xs sued Y on the ground that Y had invaded Xs' privacy by disclosure of the copy of the list given to the Police without Xs' consent.

The questions were whether Xs' privacy had been invaded with the disclosure of the lists, and whether there was justifiable cause for this disclosure.

The court of first instance and the court below dismissed Xs' claim as follows. Personal data in this case is worth protecting as a right or interest of privacy. However the disclosure of this personal data in this case cannot be recognized as an illegal disclosure which deviates from the permissible range according to socially accepted ideas and constitutes an unlawful act.

Xs filed a *jokoku* appeal.

Opinion:

The original judgment was reversed.

"The registration numbers, full name, address and telephone number are simple information by which the University distinguishes individuals, and in this respect, the necessity of concealment of this information is not absolutely high. However, it is natural of us to hope that even personal data like this would not be disclosed without reason to anyone whom we do not want to be informed of it, and this expectation should be protected. Hence the personal data in this case should be legally protected as information concerned with Xs' privacy. It can be said to have been easy for Y to ask the students for their consent to the disclosure by telling them in advance that this personal data would be disclosed to the police and then having applicants full in the lists in this case, and no special circumstances which made this procedure difficult can be found in this case. Y's disclosure of such personal data to the police without tak-

ing steps to ask for the consent of the applicants to it does not meet the reasonable expectancy of appropriate control of information concerned with privacy and provided by Xs voluntarily, and it violates Xs' privacy, and in consequence constitutes an unlawful act.

Editorial Note:

Today there is no objection to the recognition that violation of privacy constitutes an unlawful act. But the range of information protected as privacy and the manner of the violation of privacy which is regarded as illegal are being discussed.

Until now, in cases where the violation of privacy was at issue, disclosure of information which needs relatively strict concealment, such as a criminal record, has been discussed. The Supreme Court made a generalization for the invasion of privacy as follows in the case where the facts include the fact that a criminal record was published in the book. If the comparison of the legal interest of non-publication with the cause of the publication is made, and the former is superior to the latter, the publication is to be regarded as unlawful. The information, discussed in this case, is essentially to be disclosed to others in a certain range or does not need such strict concealment. However, this judgment admits that even this personal data should be legally protected as information concerned with privacy. And this judgment emphasizes that it was easy for Y to ask for Xs' consent to the disclosure in advance, and without comparison between interests, concludes that Y's disclosure without Xs' consent violates Xs' privacy and regards it as "unlawful".

Besides, in this case, the opinions of the judges that the personal data in this case are concerned with privacy and should be legally protected are unanimous, but they are not with regard to the illegality of the disclosure itself. It is notable that the dissenting opinion accepts a relatively wide justification for disclosure of information and does not see it as illegal with regard to the content and nature of personal data in this case.

Today an influential theory interprets the right of privacy as "the right to control one's own data", in relation to the governmental authority which holds personal data. From this point of view, this judgment is very important for its contribution to the right of privacy.