

worker besides the content of the procedures in judging a breach, this decision used only the content of the procedures as an element of judgement.

The third point is that the Court decided that Article 7 Procedures is just a duty of efforts, not affecting the effect of labor contract succession, and forms just one condition for considering a breach of Article 5.

Many theories support the framework of judgement taken by the Supreme Court, and, however, they are very critical of the decision about how to apply a specific framework, that is, rejection of a breach of Article 5 Consultation in this case.

8. International Law and Organizations

Xs v. Ys

Kumamoto District Court, January 29, 2010

Case No. (wa) 1711 of 2007 and 660 of 2008

2083 HANREI JIHO 43; 1323 HANREI TAIMUZU 166; 1002 RODO HANREI 34

Summary:

The Court upheld that the Labor Standards Act and the Minimum Wages Act could be applied to trainees (Xs) who came to Japan and worked in the framework of the Technical Intern Training Program. In the light of these Acts, the Court recognized the tort liability of the companies (Y_1 and Y_2) running the sewing plants where Xs had worked and that of the cooperative association (Y_3) which had the duty to supervise these companies for placing Xs under cruel working conditions and depriving Xs' passports and bank books.

Reference:

Labor Standards Act, Articles 9 and 10; Minimum Wages Act, Article 2; Immigration Control and Refugee Recognition Act (prior to revision by Act No.79 of July 15, 2009), Article 19, paragraph 1, Appended Tables I (4) and I (5); Civil Code, Article 709.

Facts:

The Technical Intern Training Program was established to contribute to the economic and industrial development of third world countries by providing youth and adult workers from abroad with the opportunities of learning technical skills and knowledge through training in Japan. However, it has sometimes been abused and degenerated into a nest of forced labor.

Xs, having had come to Japan from China in 2006 by this Program, filed the damages suits over;

- the cruel working condition imposed by Y₁ and Y₂ as well as the forced control of passports and bank books of Xs,
- the breach of obligation by Y₃ to supervise Y₁ and Y₂, and
- the breach of obligation by Japan International Training Cooperation Organization (Y₄) to protect trainees of the Program.

Opinion:

The claims partially upheld and partially dismissed.

(1) According to article 9 of Labor Standards Act, “a worker means one who is employed at an enterprise or office and receives wages therefrom, without regard to the kind of occupation”. It is therefore not by their legal status but by their actual situations that the court should decide whether this article as well as article 2 of the Minimum Wages Act can be applied to the trainees of the Project.

It is not admitted that what Xs involved in was a part of “training” because of their cruel working conditions in which they were forced to work hard for long hours with tough production quotas. As Xs substantially had employment relationship with Y₁ and Y₂, it is appropriate to find that Xs were “workers” to whom the Labor Standards Act and the Minimum Wages Act were applied to protect. Although the trainees are prohibited to be involved in paid work under the Immigration Control and Refugee Recognition Act, it does not necessarily suggest that the two Acts above are not applied to them.

(2) For foreign residents, their passports work as IDs in Japan. Thus depriving trainees of their passports for the purpose of preventing their escape constitutes a breach of law. Further, the forced control of

bank books and seals by Y_1 and Y_2 constituted illegal conditions of working. On the whole, these illegal conducts infringe on the personal rights of X_s and, in the light of the relationship between Y_1 and Y_2 , their conducts constitute a joint tort.

(3) Despite the fact that Y_3 had an obligation to supervise Y_1 and Y_2 , it failed to do so. This breach of obligation caused the continuation of illegal conducts by Y_1 and Y_2 . Hence, Y_3 is also liable for these conducts jointly with them.

(4) While Y_4 was obliged to carry out the Program smoothly and properly, it was not directly involved in the implementation of each training activity. In addition, it was not vested with any competence with coercive power to control the implementation of the Program by Y_1 and Y_2 . It follows that Y_4 did not have any obligation to take measures to prevent the illegal conducts above.

Editorial Note:

The Technical Intern Training Program started in 1981, and foreign trainees were first categorized as “student” for the purpose of resident permission. Later in 1990, however, in order to meet the request from the industrial community which had been positive to accept foreign workers, the Immigration Control and Refugee Recognition Act was revised to establish a new category of “trainee”. In 1993, the Act was amended again to the effect that a trainee having a one-year technical training and gaining a certain level of skill and knowledge was admitted to change his/her resident status to the category of “Designated Activities”, and to conclude an employment contract with the company where he/she had worked as “trainee”. In 1997, furthermore, the period of residence for trainees was extended from two years to three years.

The Program achieved success to a certain extent in providing young workers from third world countries with the opportunity of learning technical skills and knowledge. At the same time, however, it caused some serious problems like the exploitation of low-wage labor and the disappearance of trainees. Thus, in October 2008, the Human Rights Committee considered the national report submitted by Japanese government and recommended that the Program should be improved to focus more on capacity-building while duly protecting trainees and without serv-

ing as the recruitment of low-paid labor (CCPR/C/JPN/CO/5, para.24). The Committee on the Elimination of Discrimination against Women also expressed its concern in its concluding observations of August 2009 that the program could be used for the purposes of forced labor and sexual exploitation (CEDAW/C/JPN/CO/6, paras.39-40).

By the amended law of July 15, 2009, the trainees are subject to the protection of the Labor Standards Act and Minimum Wages Act. Therefore, the finding of the Court that these Acts could be applied to the trainees followed the object and purpose of the amended law which cannot be applied to this case directly. More significant is that the Court recognized not only the tort liability of Y₁ and Y₂ but also that of Y₃. The Court clearly found that Y₃ had a duty to supervise Y₁ and Y₂ and to prevent their illegal conducts. This finding would contribute to improving the implementation of the Program not only by the companies which receive trainees, but also by the organizations which have supervising power over those companies.

The case was appealed by Y₃. The appeal court held the original decision and the appeal was rejected.

Xs v. Y

Tokyo District Court, April 9, 2010

Case No. (*gyo-u*) 120 of 2009

2076 HANREI JIHO 19; 1326 HANREI TAIMUZU 76

Summary:

The Tokyo District Court rescinded the decision of the Foreign Minister and the Finance Minister not to disclose the documents having made an agreement between Japan and the U.S. (the so-called “secret agreement”), in which Japan allegedly pledged to incur extra costs to be paid to the U.S. beyond the financial burden that the Okinawa Reversion Agreement provided for without disclosing that fact to Japanese people, and ordered both ministers to disclose these documents.

Reference:

Act on Access to Information Held by Administrative Organs (Access

to Information Act), 4 (1); Agreement between the United States of America and Japan Concerning the Ryukyu Islands and the Daito Islands (Okinawa Reversion Agreement), Article 4 (3) and 7; Vienna Convention on the Law of Treaties (VCLT), 2 (1) (a).

Facts:

Xs (plaintiffs) insisted that an agreement in which Japan pledged to incur extra costs to be paid to the U.S. beyond the financial burden that the Okinawa Reversion Agreement provided for was made during the negotiation between the Japanese Government and the U.S. Government and that the Ministry of Foreign Affairs (MOFA) possesses the “Summation of Discussion” and the “Memorandum (Documents 1 (1) and (2)),” and then claimed the Foreign Minister to disclose these documents. Xs also claimed the Finance Minister to disclose the “Memorandum (Documents 2 (1))” made at that time. Documents identical to the Documents 1 (1) and (2) and 2 (1) had already been disclosed to the public at the United States National Archives and Records Administration. However, the Foreign Minister and the Finance Minister made decisions not to disclose those documents because they did not possess such documents.

Xs filed a suit against Y (the Japanese Government) claiming to rescind the decisions made by the Foreign Minister and the Finance Minister and to let Y disclose the documents. Y insisted that it was natural for the MOFA and the Ministry of Finance (MOF) not to possess the documents because these documents did not constitute finalized agreements.

Opinion:

The claim is affirmed.

Article 7 of the Okinawa Reversion Agreement, Japan provided that Japan would pay the amount of 320 million dollars to the U.S. without indicating its detailed contents, while Article 4 (3) stipulated that the U.S. would incur the costs to restore the military land used by U.S. forces into farmland and to redeploy the facilities of the Voice of America (VOA). However, the Documents 1 (1) and (2) show that the amount of 320 million dollars included the cost for the restoration and redeployment above and that Japan actually agreed with the U.S. to incur that cost without disclos-

ing that fact to Japanese people. Thus, the Court considers that Japan had to keep the existence of the documents and its contents secret.

Y asserted that the Documents 1 (1) and (2) did not constitute finalized agreements and were made just as records in progress during the negotiation process, because they did not have the official style that an agreement between States usually has, and their titles are merely “Summation of Discussion” and the “Memorandum” in which there were no provisions and words indicating or implying an understanding or agreement reached between the Japanese Government and the U.S. Government. The Court finds, however, that it is because the Japanese Government had to keep the existence and contents of these documents secret that they had different styles and titles from those of normal diplomatic documents, and thus cannot accept Y’s assertion.

The Document 2 (1) shows that Japan agreed with the U.S. to incur an extra cost to be paid to the U.S. beyond the financial burden that Article 7 of the Okinawa Reversion Agreement provided for without disclosing that fact to Japanese people. The Court finds, therefore, that Japan had to keep the existence and contents of the Document 2 (1) secret. Y also asserted that the Document 2 (1) did not constitute a finalized agreement and was made as a record in progress during the negotiation process on the basis of its style and title. However, an agreement was made between Yusuke Kashiwagi, then Deputy Vice-Minister for Financial Affairs of Japan, and Anthony Jurich, then Special Assistant to the United States Secretary of the Treasury, prior to the Sato-Nixon Joint Communiqué, to the effect that Japan would incur extra cost beyond the burden Article 7 of the Okinawa Reversion Agreement provided for. That is the reason why the Japanese Government had to keep the existence and contents of the document secret. From this fact, the Court considers that it was given a different style and title from those of normal diplomatic documents.

Editorial Note:

While the present case concerns the claim to disclose the so-called secret agreements the main issues of which relate to administrative law, what is very important from the perspective of international law is whether the documents made during the process of concluding a treaty also have the character of an agreement.

The Court firstly affirmed the existence of three documents in question which were involved in the financial and economic measures made during the negotiation process of the reversion of Okinawa to Japan. The Court then found that these documents constituted agreements in terms of international law to the effect that Japan had pledged to incur extra costs to be paid to the U.S. “without disclosing that fact to Japanese people.” The Documents 1 (1) and (2) did not explicitly mention the payment by Japan of the cost for the restoration of land and the redeployment of VOA. The Court, however, took account of the fact that these documents were made in the wake of a substantial agreement between Japan and the U.S. concerning the payment of extra costs.

In Article 2 (1) (a) of the Vienna Convention on the Law of Treaties, “treaty” is defined as “an international agreement concluded between States in written form and governed by international law.” However, it is not so clear what agreement is governed by international law. The International Court of Justice found that whether the relevant document does or does not have a binding effect depends on the nature of the document and the actual terms and the particular circumstances in which it was drawn up (Aegean Sea Continental Shelf Case, *I.C.J. Reports* 1978, p. 39, para. 96). Looking at the jurisprudence of international judiciaries, there may be a general tendency that the “actual terms” have been more weighed than the “particular circumstances.” In the light of this tendency, one may point out that the documents in the present case did not have any legal binding effect on Japan and the U.S..

The Court found that the documents in question had been given a different style and title from those of normal diplomatic documents just because the Japanese Government had to keep their existence and contents secret. It is undeniable, however, that various styles and titles characterize the documents of non-binding effect. It might be simplistic to arrive at the conclusion that having given unusual styles and titles to the documents suggests the intention of the Japanese Government to keep them secret. The Court should have elaborated the logic leading to its conclusion.

