

allege accepted the argument of the defendants that the latter paragraph of Article 724 of the Civil Code provided a disqualification period and rejected the claim based upon the Civil Code on the ground that more than 20 years had passed from the time of the incident to the time of the suit. Also, as to the allegation based on international law, such as the Hague Convention concerning Laws and Customs of War on Land, the court stated, 'In examining the existence of international customary law which the plaintiffs allege, the court does not observe that it has become a general practice of states that when a state acts in violation of international human rights law or humanitarian law, that state has direct responsibility over the individuals who were the victims to compensate them for the damages caused by the violations, and we cannot observe the existence of such *optinio juris*. Therefore, there is no evidence as the plaintiffs claim of the existence of such customary law, and no cause for the claims of the plaintiffs based upon international law,' and rejected the allegations of the plaintiffs.

This is the appellate case regarding the above judgment filed by X et al. This case proved to be the first High Court decision concerning wartime compensation, and almost without alteration upheld the judgment of the lower court and denied any responsibility by the state. However, the court amended the quoted finding to that of the lower court, and limited the non-existence of international customary law to the time of the wrongdoing.

Held: '1. The appeal of the appellants X et al. shall be dismissed.

2. The cost of litigation shall be borne by the appellants X et al.'

Upon the grounds stated below:

1. 'This court also judges that the complaint of the appellants cannot be sustained. The reason is the same as that of the lower court except for the amendments stated below.'

2. 'Regarding the existence of international customary law that the appellants allege, the reason that the Hague Convention cannot be the basis for the claim is as has been explained by the lower court. When the incident occurred, there was no evidence of any general practice, nor the existence of *optinio juris* that when a state acts in violation of the obligation of international human rights law or international humanitarian law, that state has the responsibility of compensating for the damages any individual who was a victim. Therefore, international customary law against which the appellants claim did not exist at the time of the incident, and

Existence of International Customary Law on the State's Responsibility for War Compensation toward Individuals — The Hague Convention Concerning Laws and Customs of War on Land

Tokyo High Court, Judgment, August 7, 1996

X et al. v. The State of Japan

The plaintiffs, X et al., are three Korean sisters who, on August 17, 1945, immediately after the end of the World War II, saw their father and brother arrested and executed by the Japanese military police in Karafuto (currently Sakhalin which belongs to Russia), on charges of spying. X et al., in the court below, claimed that the State, as the employer of the military police, must pay a solatium of 30 million yen per each and recover their honor through publishing an apology, based upon the Civil Code and also directly upon international law.

The judgment of the lower court (Tokyo District Court, July 7, 1995),⁽¹⁾ without considering substantive rights which the plaintiffs

(1) 39 JALZ 265 (1996)

there are no grounds for the allegation of the appellants based upon international law.'

Judge Kikuo Kamo (presiding)
Judge Motoaki Kitayama
Judge Micharu Hayashi
