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Claims for Compensatory Damages, Publication of an Apology, Restoration of Honor-Korean Nationals Allegedly Murdered by the Japanese Military Police After World War II — Article 724 of Civil Code — Article 3 of the Hague Convention (1907) — International Customary Law Concerning the Rights of Victims to Damages

Tokyo District Court, Judgment, July 27, 1995; H.T. (89-4) 197 [1996]

X et al., v. the State

X et al. are Korean nationals whose brothers and fathers allegedly were arrested, transported and murdered by the Japanese military police and others on accusations of espionage soon after the closing of World War II in Karafuto (now Sakhalin, Russian territory).

The plaintiffs, *X et al.*, filed a claim against the State of Japan, to which the Japanese military police belonged, for compensatory damages, the publication of an apology and restoration of their honor. They based their claim on both the Civil Code and international law.

The Tokyo District Court first rejected the plaintiffs' claim based on the Civil Code. The Court explained that the relevant provision, the latter part of Article 724 of the Civil Code⁽¹⁾, which sets forth limitations on the cause of the action arising from the tort if twenty years have passed, is rightly to be interpreted as setting forth an exclusion period ("joseki-kikan"), which provides the uniform legal effect of excluding the right when a certain period of time (twenty years) has passed, and not as setting forth an extinctive prescription ("shōmetsu-jikkō"), which requires the parties' express manifestation to that effect.

As for the claim based on international law, the Court also rejected the plaintiffs' claim for the reasons explained below.

Held: "All of the plaintiffs' claims are dismissed."

"The cost of the action shall be borne by the plaintiffs."⁽²⁾

(1) Article 724 of the Civil Code reads: "The right to demand compensation for the damage which has arisen from an unlawful act shall lapse by prescription if not exercised within three years from the time when the injured party or his legal representative became aware of such damage and of the identity of the person who caused it, the same shall apply if twenty years have elapsed from the time when the unlawful act was committed."

(2) The plaintiffs appealed.

Upon the grounds stated below:

2. Concerning the Claim Based on International Law

(1) Admissibility of the claim based directly on international law

Article 3 of the Hague Convention Respecting the Laws and Customs of War on Land stipulates: "A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." Here it expressly lays down the responsibility of the belligerents to pay damages. This being so, the purpose of this provision can only be interpreted as to define the state's responsibility and cannot be interpreted to obligate the state to pay damages to each individual victim of the belligerent state.

Moreover, whereas both the Charter of the International Military Tribunal sitting at Nuremberg and the Charter of the International Military Tribunal for the Far East defined certain crimes as "crimes against humanity," and described their constituent elements, their legal effect is only to place international criminal responsibility upon the perpetrator and cannot be understood as laying down civil liability on the state to which the perpetrator belongs as one of its nationals.

Therefore, the plaintiffs' allegation that the defendant has the duty to pay damages based on the cited provisions is without grounds.

(2) Now, as customary international law should be understood as "international custom, as evidence of a general practice accepted as law" (Article 38 of the Statute of the International Court of Justice), it follows that in order to establish that there is a customary international law, it is necessary, first, that there be a certain international practice (a general practice) of the states as a result of the accumulation of the states' conduct, and secondly, that there are the convictions of the states (*opinio juris*) that they are legally obligated to do so.

Regarding the existence of international customary law as alleged by the plaintiffs, neither the general practice nor the conviction (*opinio juris*) that the state has a duty to pay damages to each individual when that state infringes its obligations under international human rights law or international humanitarian law can be said to exist.

As international customary law as alleged by the plaintiffs cannot be determined, therefore, the plaintiffs' claim based on international law is also without grounds.

Judge Yasushige Hagio (presiding)
Judge Arsutoshi Uraki
Judge Tomoko Ichikawa