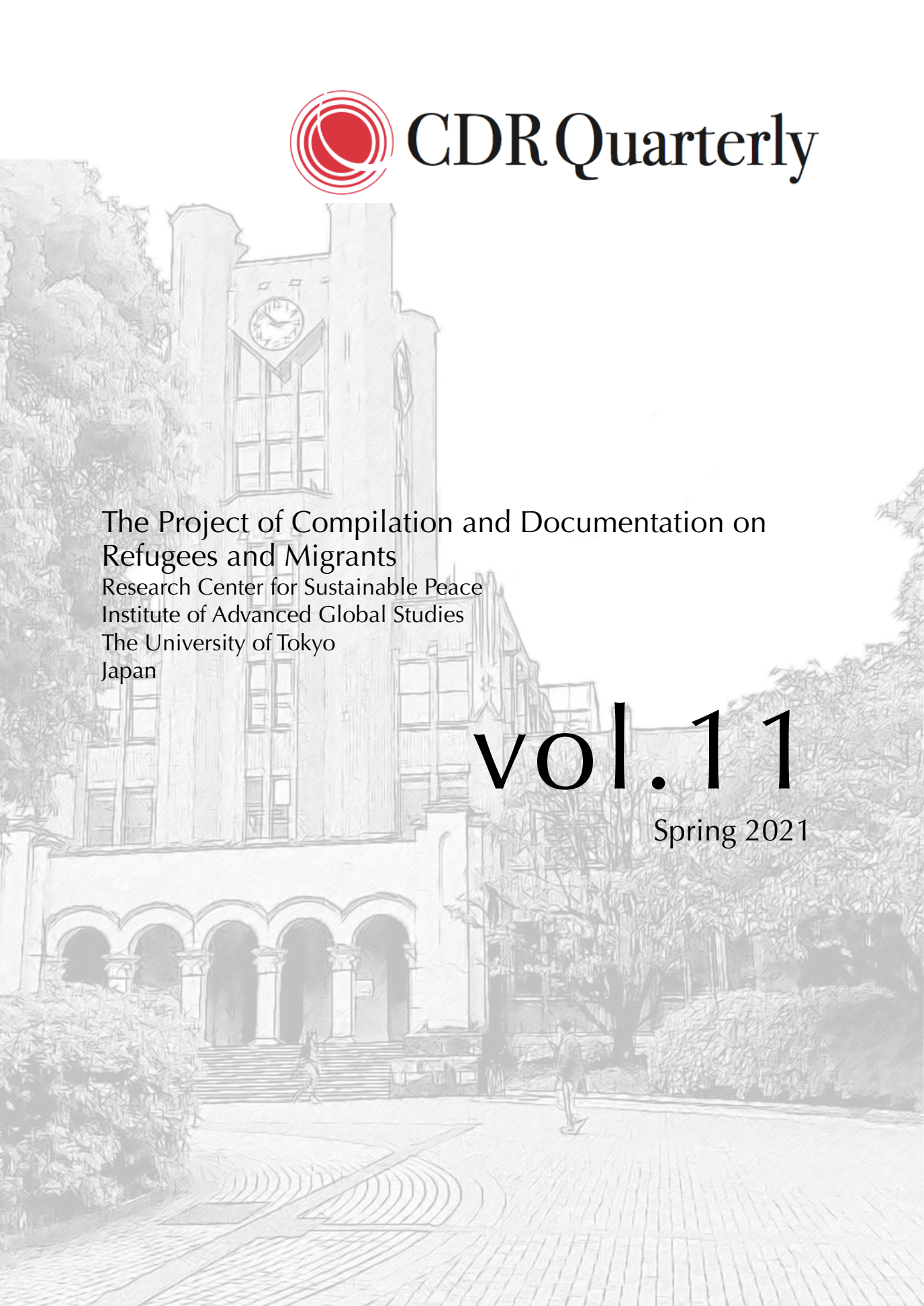

CDR Quarterly

The Project of Compilation and Documentation on Refugees and Migrants
Research Center for Sustainable Peace
Institute of Advanced Global Studies
The University of Tokyo
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REMARKS FROM DIRECTOR

It is truly an honour for us to publish an independent journal concerning the issues relating to the movement of people. Until now in Japan there have been no journals or magazines focused specifically on the issues of the movement of people, and which utilise a multidisciplinary approach through which to view these issues. Moreover, there have been no journals published in English, in this field in Japan. The CDRQ is the first of its kind in Japan. Although the level of discourse in Japan has developed to a point, the situation and activities in Japan have not been made well known to the rest of the world. The CDRQ will act as a doorway by which to pass through the language barrier and open the discussion in Japan to the rest of the world.

Japanese society is now facing serious decreasing of population and aging society. While it is recognised that these issues should be tackled from a multidisciplinary perspective, there has been an insufficient platform for networking and discussion until now. Discussion across disciplines and interactive information exchange connecting different fields of professionals is important not only to benefit academia, but also to make research contribute to society. The academic world should be more aware of facilitating engagement to the real world, as long as it tries to handle social issues. In this sense, I hope CDRQ to be one of the attempts to open a new frontier in discourse.

It is challenging to keep a balance between setting up an open platform for discussion and establishing an authoritative academic journal. However, I hope many of us might contribute to advancing the discussion and finding new solutions. Especially I expect those among the younger generations will propose to undertake unconventional styles of research, even though these new approaches may not be immediately complete. I strongly believe that we can improve our approach day by day, as long as we continue to try.

Yasunobu SATO

CDR Director
Professor, Graduate School of Arts and Sciences,
The University of Tokyo

Spring 2021

REMARKS FROM Prof. MACKEY

It was a great pleasure for me to be asked again by Prof Sato to carry out the role of visiting Professor at Todai, Komaba in late 2019. The aim of the course was to give HSP postgraduate students, as well as lawyers and government representatives, a reasonably full overview of international refugee and protection law.

To make it relevant, in the Japanese, context Prof Sato, Martin Treadwell and I decided to make as many comparatives, as we could, between established international refugee and migration law and some relevant recent decisions of the Japanese courts. With the excellent assistance of Prof Sato, and his team at the CDR Komaba, we were able to do this mainly by reference to the cases in this publication. Without this excellent assistance, the work of the CDR team, and devoted translators we feel the course would have been far less topical, useful and interesting.

It is axiomatic that all legal proceeding, relating to international refugee, protection and migration issues must always have an international dimension. Thus logically, around the world, all decision-makers, judges, lawyers and legislators working in these fields can always be greatly assisted and guided by reference to established *jus cogens,* and well-established principles and procedures of international law on these subjects. The greatest challenge then is, of course, getting translations that safely allow sound comparisons to be made. This is well explained in the remarks by Soojin Lee and Yukari Ando in their contributions. Martin and I therefore recognise the task of translation is a complex one. (Indeed in the work of a refugee judge we are met with this challenge in almost every case we hear.) Thus we apologise if we have at times misunderstood the true meaning intended by the Japanese judges in these cases, we used for our comparisons.

It is unfortunately often noted by UN agencies, and many domestic and international commentators that Japanese refugee and migration law and practices, are often widely disparate from international refugee law on these subjects as widely applied in other parts of the world. The result of these differing approaches contributes adversely on claimants and indeed can lead to poor outcomes, serious backlogs, abuses and inefficiencies in the Japanese determination processes, treatment of claimants/ refugees and for the Japanese taxpayers.

The difficulty, we note, in reaching really sound conclusions, on the reasoning used by Japanese judges, using ostensibly sound, if perhaps literal translations ,is illustrated by a brief look at Sri Lankan Cessation case of Tokyo High Court*, Heisei 30 Gyo- Ko No. 228 of 5 December 2018*.

We consider this case appears to make extremely important and internationally valid conclusions. Indeed, if we are right, it could be the first stepping stone towards Japanese jurisprudence and decision making that is far more consistent with established international *jus cogens* of *non refoulement* and wider refugee and protection law and procedures.

First, a small but important point with this case is that this is a "Cessation "case not "Termination" case. The word "termination" is not in the RC51, but is used several times in the translation. Simply put for any correct application of the "Cessation clause in RC51 Art 1C" Cessation means just that: cessation, as defined in Article 1C and NOT "termination" or any other synonyms derived elsewhere. It has thus been wrongly, and potentially misleadingly, used in either the Japanese decision itself or the translation on many occasions. "Termination", is not a refugee law term as it can have a far greater coverage than Article 1C "Cessation" (e.g. . . Including "cancellation" on the grounds of fraud, "expulsion", etc.).

The actual wording of the RC51 should thus be carefully used and follow the definitions in the Convention itself and further should not be reinterpreted by short reference back phrases found elsewhere in the RC51. (Such as Articles 31(1) and 33(1) which refer to "refugees"- i.e.as already defined in Art 1A (2).

Next, and importantly, subject to our possible confusion and thus understanding as to what is actually intended by the Court, we note the conclusions of the Court are that the MOJ **must** follow the actual terms of Art 1C of the RC51 itself and that the MOJ was wrong, in Japanese law, to make up and apply their own rules on when and how Cessation can be applied. The Court thus rules the MOJ approach is flawed and inconsistent with the terms of Art 1C itself which sets out the only correct way Cessation is to be applied.

If we are correct in this then logically, and as is a probable peremptory norm (*jus cogens)* or well established customary international law, all interpretation of the terms of RC51, including the so called "Inclusion clause" Art 1A (2) (and "Exclusion "Art 1D, E, F, "Expulsion" provisos as well) must **be directly applied in the same way.** Thus the MOJ and/or the Japanese Courts cannot make up their own purely domestic interpretations inclusion rules which are often seriously inconsistent with established international refugee law which applies the actual and intended terms of the RC51.

As examples of this, and indeed constitute some of the core problems with Japanese refugee jurisprudence, are the seriously flawed interpretations, applied by MOJ and Courts, to:

- the term "being persecuted "from Art 1A (2),
- using a domestically derived standard of proof that appears to be beyond international criminal standards of *" beyond all reasonable doubt'* to assess prospective risk on return and not at the much lower real chance or real risk on return, that is consistent with the RC51 and international refugee law itself,
- and the Japanese Courts in determining appeals somehow (often many years later) assessing refugee status retrospectively, instead of the core task of RSD which is **prospectively**, assessing risk and at times even without firstly finding material errors of law or procedures in the primary MOJ decisions."

If this is a valid understanding by us of this Sri Lankan Cessation judgement, then optimistically, this important reasoning by the Tokyo High Court will be used as important guidance to Japanese judges, the MOJ, lawyers, academics and claimants as to correct interpretation of

the “Inclusion” (and “Exclusion”) clauses as well as “Cessation.”

The whole intensive course is available in video recorded format from UTokyo On line Education.

Please refer to the following link:

Refugees and Migrants - International and Japanese Comparisons (7)
https://ocw.u-tokyo.ac.jp/lecture_1871/

INTERNATIONAL REFUGEE LAW
https://ocw.u-tokyo.ac.jp/lecture_1872/

Allan MACKEY

Upper Tribunal Judge UK and Tribunal Chair NZ
former President, International Association of Refugee and Migration Judges
and Visiting Professor at the University of Tokyo

Editor's Remarks

It's been my pleasure to join this translation project, which started out as a class material to Jdg. Allan Mackey's intensive course in the Fall semester 2019, then became a single project to introduce Japan's Refugee Case law to the world as a special edition of the CDRQ vol. 11.

I must admit that it was not easy to proofread the English version of the Japanese court cases since the legal term and the concept is quite different as well as the structure of the language. This is not a unique trouble you find only in Japan, but is a quite common issue when it comes to translate something to another language. I had a very similar experience while I was still working at UNHCR Seoul office before joining the Ph.D. programme at the Univ. of Tokyo.

Throughout the Refugee status determination (RSD) process and in court appeals, I would say translation and Interpretation of language is one of the most important issues for both the refugee status applicants and the RSD authority. Not just to give statement and submit supporting evidence, but also to fully understand the result of their application such as decision paper and court papers. Moreover, the significance of the case law translation for academic and research purpose is needless to say.

Therefore, I'd like to take this chance to say that this language barrier should not be an excuse for miscomprehension and/or misrepresentation of the purpose and the philosophy of international instruments for protection of refugees and asylum seekers, but should be taken as a challenge to overcome, and as an opportunity to exchange and discuss common issues and concerns (the reason why I introduced a few case laws from Korea). To that end, I hope this case law translation would be utilized as a practical source for those who are interested in refugee protection.

Lastly, I'd like to express my most sincere gratitude to everyone who participated in this project.

Soojin LEE

Editor of CDRQ vol. 11
Ph.D. candidate, Graduate School of Arts and Science,
The University of Tokyo

CONTENTS

REFUGEE CASE LAW

Introduction to the Translation project in 2019 of Japanese case law on Refugee and Asylum seekers
—How we prepared case law materials-

Wakaba HARA[1]

In the school year of 2019 at Tokyo University, Komaba campus, the biggest event at Research Center of Sustainable Peace (RCSP) was to welcome Judge Allan Mackey as the principal lecturer of the Intensive Course in the fall semester. Preparation of this intensive course was initiated in late April by Judge Mackey and distinguished contributors, such as Yukari ANDO of Osaka University, and Attorney Masako SUZUKI. Judge Mackey showed a great interest in case analysis and it was decided that the last 4 sessions of the Intensive Course should be devoted to the analysis of recent court cases.

I was a project researcher for RCSP at Komaba that year and engaged in this translation project as an extension of my involvement in access to justice initiatives including pro-bono coordination of corporate lawyers.

At first, a list of 7 cases attached was shared by Yukari Ando, of which the English translations were available in the Japanese Yearbook of International Law, published by the International Law Association Japan Branch. However, it was obvious that we needed more cases. Our team therefore intended to provide more comprehensive materials that reflect real as well as the latest court practices in Japan. To that end, the outcome of the Intensive Course would be more interesting in an academic context and was envisioned to aid the improvement of Japan's refugee law practice which has often been criticized as insufficient for the real protection of refugees.

In mid-May, I had visited the office of Attorney Shogo Watanabe and Masako Suzuki, the leading practitioners in the area of refugee law, and received a photocopy of a few case decisions which would be a fit for the Judge Mackey's analysis. Yukari added some to this, and finally, as shown in the attached table, this effort resulted in 5 District Court decisions, 2 High Court decisions and 1 official notice issued by Ministry of Justice. These set material, needed to be translated in English, for the Intensive Course. Translation work of all the materials was handled as *pro bono* and on a volunteer basis by lawyers and graduate students.

The Tokyo District Court decisions on February 23, 2018 (Myammer) and March 20, 2018 (Syria) were selected by Attorney Shogo Watanabe, as typical recent cases, where status of refugees were not recognized by the court.

Translation of the Tokyo District Court decision on May 31, 2018 is a contribution of Masako Suzuki. It was originally translated by her in collaboration with Judge Mackey. The High

1. Attorney at law, Project Researcher (2019) at Research Center for Sustainable Peace (RCSP), Institute for the Advanced Global Studies, Graduate School of Arts and Science of the University of Tokyo.

Court decision of November 2018 is newly translated in this project.

The Nagoya District Court's decision on the refugee's "right to a trial" was issued on July 17, 2019, when this translation project had just started. The original Japanese version of the decision was arranged and provided by Yukari Ando, together with an English translation elaborated by her in cooperation with a graduate student. A case summary by the chief of the defense team was also provided. (Later in January 2021, Nagoya High Court ruled a reverse affirmative decision. Refer to Yukari Ando's case report. A set of English translations of the High Court decision and its case summary is also included.)

Furthermore, in September 2019, when we were in the middle of translation work, the Tokyo District Court issued an affirmative ruling on the Iranian Muslim who converted to Christianity, which was added to the list.

Translation of the Tokyo High Court decision on December 5, 2018 and related governmental notice was demanding. Based on the observations of Judge Mackey, we have reviewed the translation after the course and completely modified the original version. (Refer to Judge Mackey's remarks on the revised translation.)

Although we tried our best, translation of court decision, given the nature of the work, cannot be 100 percent perfect, due to various differences language and judicial system. In this regard, it must be noted that Judge Mackey and Judge Treadwell have no responsibility in this translation project, especially with respect to the accuracy of the translation.

Finally, please let me forward my sincere gratitude to everyone who cooperated in this project, especially to Patrick Kongmalavong, Researcher at RCSP (2019) for his proof reading and Soojin Lee for her enormous and irreplaceable contribution as Research Assistant in charge of implementation of the Intensive Course of Judge Mackey.

Japanese court decisions on refugee cases 2018-2019

-Tokyo District Court 17 September 2019 (Iran) (Christian convert)

-Nagoya District Court 30 July 2019 (Sri Lanka) (Right to a fair trial)

-Tokyo High Court 5 December 2018 (Case in which Cessation of refugee status, Art. 1 (C) of the 1951 Convention was applied)

-Administrative contact by Ministry of Justice dated January 21, 2019

-Tokyo High Court 21 November 2018 (Ethiopia)

-Tokyo District Court 31 May 2018 (Ethiopia) (lower court decision of the above)

-Tokyo District Court 20 March 2018 (Syria)

-Tokyo District Court 23 February 2018 (Myanmar)

Cases cited in the Japanese Yearbook of International Law (Selected by Yukari Ando)

Nagoya High Court, Judgment, September 7, 2016 (Nepal) p.374, Volume 61 (2018)
Eligibility for Refugee Status - Burden and Degree of Proof - Situation in Nepal - Article 1 of the Convention Relating to the Status of Refugees - Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status

Osaka High Court, Judgment, November 27, 2015 (Iran) p.461,Volume 60 (2017)
Deportation Under the Immigration Control and Refugee Recognition Act - Validity of the Designation of the Destination of Deportation Distinct from Validity of the Written Deportation Order Itself - Elements to be Considered in Exercising Discretion in Designating the Deportation Destination - Risk of Death Penalty for reviously Sentenced and Served Crimes

Tokyo District Court, Judgment, February 17, 2016 (Sri Lanka) p.469, Volume 60(2017)
Eligibility for Refugee Status - Meaning of Persecution Under the ICRRA - Author of Persecution - Burden and Degree of Proof - Credibility and Reasonableness of Statement Made by Applicant - Discretion in Issuing a Special Permission to Stay - International Customary Law on Freedom of Immigration Control

Tokyo District Court, Judgment, August 28, 2015 (RDC) p.485, Volume 59 (2016)
Obligation of Minister of Justice to Provide for Refugee Recognition - Violation of the Immigration Control and Refugee Recognition Act - Article 1A(2) and Article 1F(b) of the Convention relating to the Status of Refugees

Tokyo District Court, Judgment, October 1, 2010 (Ethiopia) p.402, Volume 56 (2013)
Recognition of Refugee Status - Non-refoulement - Special Permission to Stay - Nullity of the Disposition of Issuance of a Written Deportation Order

Tokyo High Court, Judgment, May 27, 2009 (Myanmer) p506, Volume 54 (2011)
Definition of Refugee - Situation in Myanmar - The Effect of Activities of a Wife on the Issue Whether Her Husband Is Qualified as a Refugee

Tokyo District Court, Judgment, February 2, 2007(Bangladesh) p.544, Volume 51 (2008)
Article 1 A(2) of the Convention Relating to the Status of Refugees (1951) - Definition of the Term “being persecuted”- Persecution by Non-State Actors

REVOCATION OF THE IMMIGRATION'S NON-RECOGNITION DECISION AGAINST THE SECOND APPLICATION FOR REFUGEE STATUS MADE BY AN IRANIAN WHO CONVERTED TO CHRISTIANITY (Decision in favor for the refugee, final and established)
—2018(Gyo-U) No. 287[1]
Tokyo District Court, 17 September 2019 (Iran)

Translated by Koei Matsushita[2]

(Omitted)

Part III. Decision of this court

(Omitted)

3. Refugee Status of Plaintiff

(1) Participation in Demonstrations

(Omitted)

(2) On Converting from Islam to Christianity

A. Regarding the situation of Christian converts in Iran

(A) As mentioned in Found Facts (1) A and B, in Iran, there have been cases where a Christian pastor was found guilty for the crime of apostasy. In September 2008, a law was approved by the Iranian authorities to impose severe punishments, including the death penalty, on those who converted from Islam.

However, as mentioned in Found Facts (2) A, the 2009 UK Home Office Report (which was prepared in 2009) states

that the Iranian authority will monitor people when they carry out evangelical

1. 平成30年（行ウ）第287号　難民不認定処分取消等請求事件

2. Attorney at law (Japan), Mimura Komatsu & Yamagata Law firm

activities against Muslims, and the leaders of the Evangelical Church are in danger of physical restraint, etc., however

if ordinary believers keep a low profile, they can continue to believe and there will be no problem with the Iranian authority.

Therefore, the court denies that in Iran in 2009, there was a situation that those who converted from Islam to Christianity were highly likely to be arrested or prosecuted solely due to the conversion. It is assumed that the former judgment was based on these facts.

(B) However, as mentioned in Found Facts (2) B above, the 2013 UK Home Office Report (which was issued about 1 year after the Denial of Recognition of Refugee Status), unlike the 2009 UK Home Office Report mentioned in (A) above, states

that it became more common for Christians who had converted from Islam to Christianity to be accused,

that harassment and physical restraint had increased significantly in various cities throughout Iran since the beginning of 2012,

that the Iranian authority arrested hundreds of Christian and carried out a compulsory investigation against “House Churches” (the people’s homes repurposed as churches) and arrested 40 Christians in September of the same year, and

that [i] the courts considered participation in “illegal House Churches” as crime, [ii] a person who was detained for his/her conversion to Christianity were requested to sign document barring them from participating in Christian meetings by the Iranian authority, and [iii] detained Christians were requested to pay excessive bail to temporarily release them.

Also, as mentioned in Found Facts (2) E, the 2013 U.S. State Department Report (which was issued about 1 year after the Denial of Recognition of Refugee Status) states

that the Iranian authorities arrested Christians at a disproportionate rate to the population,

that the Iranian official report and the media defined the "Christian Family Church" (the people’s homes repurposed as churches) as an illegal network, and

that arrested members of the Family Church were often criticized for receiving assistance from enemy states.

Furthermore, as noted in Found Facts (2) C, the 2015 UK Home Office Report states that members of the Evangelical Church and the Family Church were exposed to a real risk of being persecuted in Iran.

According to the statements in the above reports, differently from 2009, those who converted from Islam to Christianity would often be arrested/prosecuted and detained by the Iranian authority should they gather in private houses and attend church services (i.e. the church of home); it is found to have highly increased the probability of persecution by the Iranian authority.

(C) In light of the above, as of October 25, 2012 (when the Denial of Recognition of Refugee Status was issued), it was not found that those who converted from Islam to Christianity in Iran would highly likely be arrested and prosecuted by the Iranian authority solely due to conversion; however, it is found that the converts who congregate in private houses and practice Christianity would highly likely be arrested and prosecuted by the Iranian authority even if they are not leaders of churches but just ordinary believers.

(D) (Omitted)[3]

B. About Plaintiff's activities as a Christian

(A) As mentioned in Found Facts from (6) C to E, Plaintiff, in Iran, had never been to a church and had only read the Bible. However, since he entered Japan, he has continued to attend church "B" for more than 11 years, he has participated in almost all worship services every Sunday and held volunteer activities and others, further, he was introduced a pastor "E" who can speak Persian and studied the Bible for a year, and he brought his friend to the Church "B"; therefore, it can be found that Plaintiff believed Christianity sincerely at the time of the Denial of Recognition of Refugee Status.

As mentioned above, based on the Plaintiff's long-term activities as a Christian at a church, etc., if he returns to Iran, he is expected not only to read the Bible at home but also to regularly participate in worships and meetings with other Christians in churches and private houses, as well as his Christian activities in Japan; on the premise of the situation of persecution against those who converted from Islam to Christianity by the Iranian authority as mentioned in (2) A (C) above, at the time of the Denial of Recognition of Refugee Status, it was highly likely that the Iranian authorities arrested or prosecuted Plaintiff for above activities.

(B) Defendant claims as follows:

(1) Plaintiff was, in Japan, only engaged in activities similar to those of other general Christians, and was not in a leader/director position, and was not involved in activities that were particularly interested and persecuted religiously by the Iranian authorities.

(2) Plaintiff is not likely to be known in the Iranian authorities about the fact that he converted to Christianity in Japan; therefore the fact that he converted from Islam to Christianity would not come under the individual and concrete reason to have fear of being persecuted.

However, even if the Iranian authority is not interested in the Plaintiff because he is not in a leader/director position in Japan and the Iranian authority is not aware of the fact that he has converted from Islam to Christianity, there is, as mentioned above (A), a high probability of being arrested or prosecuted, etc., by the Iranian authority upon the Plaintiff's return to Iran on the premise that he will continue to engage in activities similar to his Christian activities in Japan; therefore, there was an objective circumstance that a reasonable person will have fear of being persecuted if the person was in the position.

Consequently, Defendant's claims on this point are groundless.

(Omitted)

[End of document]

3. **Translator's comment:** In summary, Defendant rebutted against the decision above based on some information of the country which is disadvantageous to the Plaintiff; however, the court denies them.

RIGHT TO ACCESS TO COURT OF A REFUGEE STATUS APPLICANT (Reverse affirmative decision at Hight Court in January 2021)
—CASE REPORT: ACCESS TO JUSTICE FOR REFUGEE CLAIMANT
Nagoya High Court Judgment of 13th January 2021

Yukari ANDO[1]

Introduction

What is "Access to Justice" for refugee claimant?

Each of us might have a different image. One might think that a refugee claimant is an equal right to access to justice even though his/her legal status because a person has escaped from his/her own country. Another perhaps thinks that a refugee claimant is somehow limited access due to his/her legal status. These images are not wrong, however, not correct.

This paper focuses on the contemporary refugee problems, particularly, the access to justice for refugee claimant in Japan. Although there are many refugee claimants from all over the world (See Table 1. below), effective protection for refugee claimants has not been well-developed yet. One of the reasons is that the following issues are not discussed satisfactorily: What are contemporary refugee problems in Japan? How the solution can be found? To analyse the problematic issues, the recent Nagoya High Court judgment is utilised as a case study for this paper. This paper is organized as follows:

Section 1 explains the facts. In Section 2, judgments are explained. Section 3. Significance of the Judgement: Substantial opportunity to obtain judicial review, Section 4. Difference from Nagoya District Court, and finally Section5. Challenges which left behind, one of the most remarkable principles in international law is addressed to protect refugees and refugee claimants. That is the principle of *non-refoulement*, but in this case, the Courts did not seem to take it seriously.

1. Guest Associate Professor at Osaka School of International Public Policy, Osaka University.

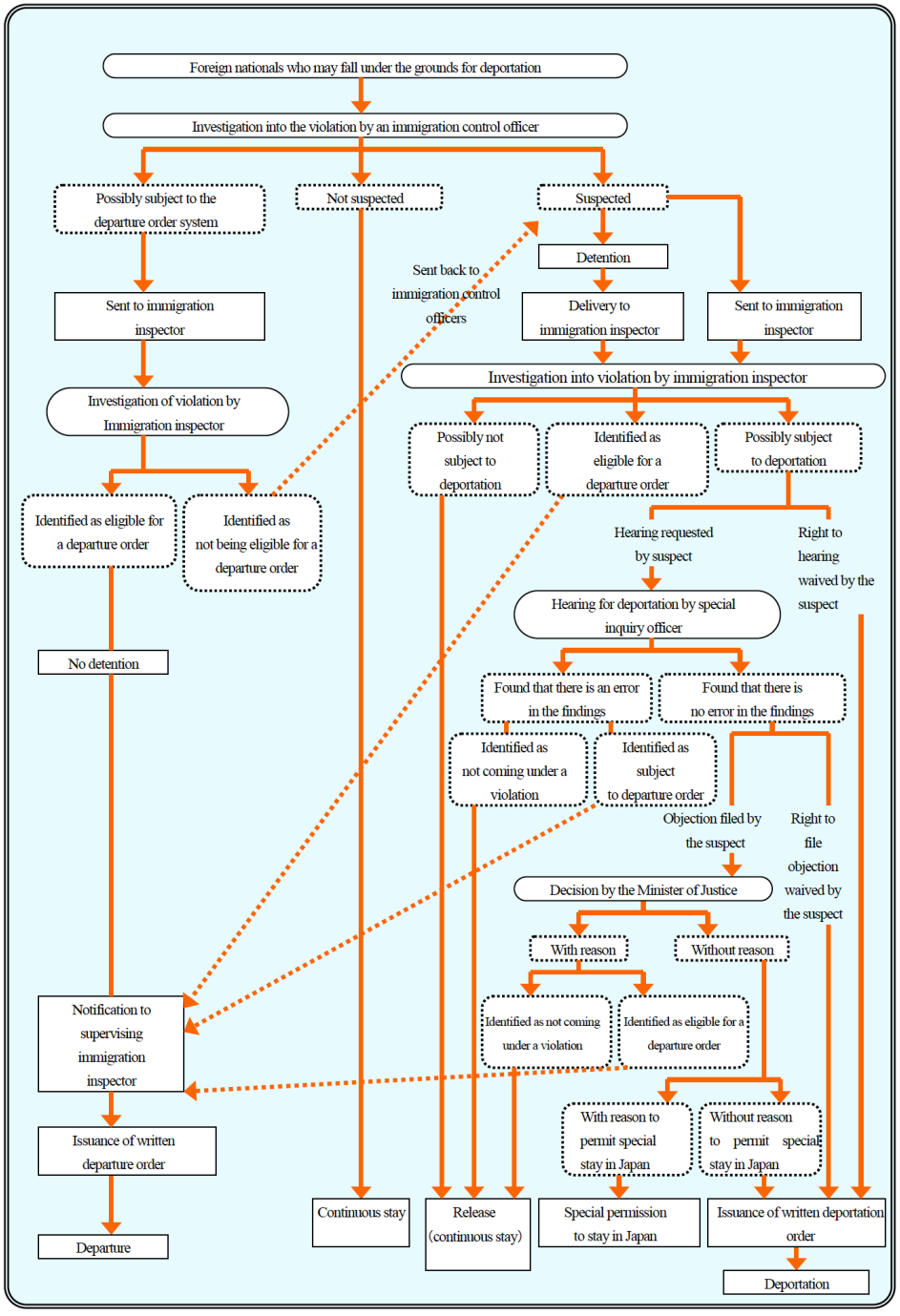
Table 1. Refugee Claimants in Japan (person)

Year	Refugee Application	Refugee Status	Other Form of Protection
2015	7,586	27	125
2016	10,901	28	143
2017	19,629	20	94
2018	10,493	42	104
2019	10,375	44	101
2020	3,936	47	91

Source: MoJ News Release http://www.moj.go.jp/isa/publications/press/07_00003.html (2021.4.30)

Deportation Procedures in Japan

Chart 4: Flow of deportation procedure and departure order procedure



Source: Immigration White Paper http://www.moj.go.jp/isa/content/930002956.pdf (2021.4.30)

1. The Facts

The appellant, a Sri Lankan national, challenged the respondent (the State) on whether he was arbitrarily deprived of his "right to access to the court" by collective deportation by charter flight. The appellant, who had indicated his intention to file a lawsuit for cancellation of the refugee denial decision, was selected as a target of the collective deportation, and the notice was “intentionally” delayed for more than a month (15th December 2014) from the decision to dismiss the refugee denial (7th November 2014).

The appellant clearly stated that “I would like to do trial”. However, a Nagoya immigration officer said, "Go back to Sri Lanka and do it there. The appellant claimed that the series of actions of the immigration officers, including the immigration guard, who falsely explained that he could file a lawsuit after returning to Sri Lanka, violated his right to access to the court, and demanded payment of damages based on Article 1(1) of the National Redress Act. The Nagoya District Court ruled that there was no provision to suspend the deportation except Article 61-2-6 of the Immigration Control and Refugee Recognition Act(hereinafter the *ICCRA*) that deportation shall be suspended until a decision is made on an objection to the disposition of non-refugee status in case the person has not obtained residence status.

The Nagoya District Court ruled that the wrong instruction that a lawsuit for revocation of the disposition of non-recognition of refugee status could be filed even after the deportation was illegal under the same paragraph, and allowed the appellant to be compensated 88,000 yen and its delay damages, but the appellant was not satisfied with the essential part of the lawsuit instead of partial won of the unintended part and appealed.

2. Nagoya High Court Judgement

Concerning the question of whether the series of acts by the immigration officials leading to the deportation violated the appellant's right to a trial (Article 32 of the Constitution) and/or the guarantee of due process (Article 31 of the Constitution).

The law states that "even before a decision is made on an objection to a disposition of non-recognition of refugee status, the appellant may separately file a suit for cancellation of the said disposition or file a lawsuit for cancellation of the issuance of a deportation order. Even before a decision is made on an objection to a disposition of non-recognition of refugee status, a separate lawsuit for cancellation of the disposition or a lawsuit for cancellation of the issuance of a deportation order is filed. The Constitution of Japan permits the selection of deported persons for collective deportation, and if the deportation is suspended until the expiration of the appeal period after the decision to dismiss the objection is made and the opportunity to be tried is not secured, it is not considered to be extremely unreasonable and practically a denial of trial, it is not lacking in procedural guarantees, and it does not violate Article 13 of the Constitution. Therefore, it cannot be said that the series of acts of the immigration officials leading up to this deportation violated the Constitutional right to a trial and the

guarantee of due process.

Concerning whether the *ICCRA*, which adopts the free choice principle and administrative measures are "illegal in terms of the application of Article 1, paragraph 1 of the National Rehabilitation Act about the Administrative Case Litigation Act which guarantees the opportunity for judicial review," the court stated that "there is no provision that stipulates that the deportation should be suspended after the decision to dismiss the objection to the refugee denial. It is difficult to justify the deprivation of the opportunity for judicial review of the refugee status of an applicant for refugee status because there is no provision stating that deportation should be suspended after a decision to dismiss an objection to a disposition of non-recognition of refugee status is made, or because Article 52(3) of the *ICCRA* stipulates that a deported person should be promptly deported. In the UN Human Rights Treaty Bodies (Human Rights Committee, Committee against Torture), the Government has also taken measures to ensure that applicants for refugee status have the opportunity for judicial review based on the obligation to provide information as stipulated in the Administrative Case Litigation Act. It is also inconsistent with the external representations of the Government that it takes measures to ensure the opportunity for judicial review of applicants for refugee status, based on the obligation to provide information as stipulated in the Administrative Case Litigation Law and that it gives consideration to the right to access to the court by confirming whether or not the deportee has the intention to file a lawsuit against the refugee status denial. This series of acts by the immigration officials deprived the appellant of the opportunity for effective judicial review of his refugee status.

In other words, (1) the Constitutional right to access to the court, the guarantee of due process, Article 2(3), Article 14(1) of the ICCPR, and Article 16 of the Refugee Convention provide legal remedy not being substantially deprived of the opportunity for judicial review of refugee status. (2) Article 14(1) of the ICCPR guarantees everyone the right to a public hearing by an independent and impartial tribunal on disputes. (3) Article 14(1) of the ICCPR and the Administrative Case Litigation Act do not allow a person who has indicated an intention to file a revocation suit after the decision to dismiss the objection to be effectively deprived of the opportunity for judicial review of his refugee status because he has been subjected to collective deportation. Therefore, the judgment is affirmed to the extent that the State is required to pay a compensation fee, attorney's fees of 440,000 yen and delay damages, and the remainder is dismissed, and the original judgment is modified.

3. Significance of the Judgement: Substantial opportunity to obtain judicial review

The issue, in this case, is the obligation to notify the time limit for filing an appeal and the time difference between the dismissal of an objection decision and its notification. Concerning this time difference, the respondent argued that "it is normal for the notice of the decision to dismiss the opposition to take about one month because of the need to consider the privacy of refugee status applicants and to secure interpreters, and there was no delay in the notice of the decision to dismiss the opposition in this case. The decision to dismiss the opposition was indeed made on November 7, 2014, and according to the "Guidelines for Hand-

ling Refugee Objections", Section 2, Notice of Decision, Paragraph 1, Notice to Appear No. 1, "Upon receiving notification of the result of the decision from the Director-General of the Immigration Bureau of the Ministry of Justice, a notice to appear shall be promptly sent to the claimant about the decision by registered mail or by telephone. In addition to the above, there is also a provision that states, "When the Director of the Immigration Bureau of the Ministry of Justice notifies the applicant of the result of the determination, the Director of the Immigration Bureau of the Ministry of Justice shall promptly send a notice of appearance to the applicant by registered mail or notify the applicant to appear by telephone. It is thought that the fact that the appellant did not respond to the court's request for clarification and did not explain the reasonable reason why it was not able to give notice affected the judgment.

4. Difference from Nagoya District Court

In this case, it is significant that the Nagoya High Court corrected the precedent and recognised "effective remedy" under Article 2(3) of the ICCPR in conjunction with "All persons shall be equal before the courts and tribunals." under Article 14(1) of the ICCPR and Article 16(1) of the Refugee Convention. Effective remedy is an ancillary right that is recognised in conjunction with other rights. The Human Rights Committee made it clear in its General Comment 32 that the right to access to justice does not change depending on the residence status. In this case, the right to access the court under the ICCPR was combined with an effective remedy to allow the undocumented person the opportunity for substantive judicial review. It is noteworthy that the Japanese court has fully recognised that the opportunity for substantive judicial review for refugee claimants based on International Human Rights Treaties. Therefore, this is a landmark case. Furthermore, the fact that the Court pointed out the discrepancy with the government's statement in the UN treaty review is also an unprecedented decision. As an effect of this decision, it is significant that the judiciary has clarified that those who are denied refugee status at the administrative stage but wish to pursue judicial proceedings for cancellation of refugee status will not be deported.

What is puzzling in this case, however, is that while the "effective remedy" in the ICCPR and the Refugee Convention, in conjunction with the "right to access to the court" under the ICCPR and the Refugee Convention, allowed substantial access to justice, it did not recognise the right to access to the court and due process under the Constitution of Japan.

5. Challenges in Japan

The right to seek and enjoy asylum has not yet crystallised. However, at least the minimum standard of protection has become a recognised right not only to refugees but also a potential refugee, in a way, to refugee claimant. Very few provisions under the Refugee Convention protect a person who does not have yet have refugee status. Martin states that the Refugee Convention is a treaty about the status of persons already accepted in the territory, not based on a treaty about the admission of entry or asylum procedure. Most of the provi-

sions of the Refugee Convention deal with a person who had already been provided refugee status in the country of asylum. It is true because it is still left to the State's will to determine refugee status. This decides which international refugee law must face the dilemma between State sovereignty and human rights protection. There are only a few provisions of rights for refugee claimants such as Article 31, 32 and 33 under the Refugee Convention. The provisions which are relevant to protect refugee claimants are Article 31(1) non-penalization of illegal entry or illegal presence, Article 32 prohibition of expulsion and Article 33 *non-refoulement*, the other provisions are relevant to a person who already has refugee status in the country of refuge. Why does the Refugee Convention only partly protect a refugee claimant? This comes as a rather surprising fact. As a victim of human rights abuse, why is there no international instrument to protect these people? The answer is found in the reality that there is still a struggle between national sovereignty and international protection of human rights. A State which is a party to the Refugee Convention has wide discretion on how to protect a refugee. The author contends that international refugee law should also protect refugee claimants, namely the presumption of a refugee should be addressed more carefully. The current mechanism seems inadequate to take into account the presumption of refugee. Though it is a big challenge to develop a world concept of international refugee law, state sovereignty should be compromised to some extent to emphasise international solidarity and burden-sharing. International refugee law calls upon development as was seen in the progress of human rights. Nobody predicted the development of human rights in the past decades when the UHDR was adopted in1948 after World War II. Human rights concepts, however, have considerably spread outside the field of international refugee law. One of the reasons why international refugee law was left behind was that the political will was not prepared to link human rights and refugees. Refugee issues tended to be considered humanitarian issues. It is argued that such a State has a responsibility not to expel and return the person in danger under the principle of *non-refoulement*. The principle of *non-refoulement* is also a provision that can protect a refugee claimant. The principle of *non-refoulement* is one of the safeguards that protect refugee claimant as expanded in the Refugee Convention. This principle is stipulated under Article 33 of the said Convention:

No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Contemporary international human rights law enlarges to protect all human beings regardless of the person's legal status, in particular, the protection from torture and inhuman degrading treatment. The European Court of Human Rights and the Committee against Torture continuously state that the protection from torture under the European Convention on Human Rights and the United Nations. Convention against Torture is "absolute", in its protection, therefore, is wider than the principle of *non-refoulement* under the Refugee Convention.

Whilst the Refugee Convention established the principle of *non-refoulement*, it was predominantly based upon Western concepts of refugees. If the principle of *non-refoulement* is not practised, the refugee claimant is likely to have neither rights nor legal safeguards.

Although most of the provisions of the Refugee Convention do not indicate State obligations, the principle of *non-refoulement* very clearly indicates "prohibition of expulsion or return ('*refoulement*')." This provision does not allow reservation.

Since this Convention came into force, this provision has been debated and interpreted in different ways by the representatives of States and scholars. *Non-refoulement* is generally interpreted as "the prohibition of the expulsion and return of refugees to the frontiers of territories where their lives or freedom may be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion." The principle of *non-refoulement* is the most significant provision under Article 33 of the Refugee Convention. It can be recognised as a fundamental right. Guy Goodwin-Gill argued that Article 33 imposes a clear and binding obligation upon the contracting States to the Refugee Convention to follow this principle. And he also argued that the principle is also recognised as customary international law. The UNHCR stated that the principle of *non-refoulement* is now almost universally respected. There is also an argument that the principle of *non-refoulement* can be regarded as *jus cogens*. For instance, paragraph 5 of the 1984 Cartagena Declaration on Refugees states that "the principle of *non-refoulement* should be acknowledged and observed as *jus cogens*."

Until 1951, there had not been a single provision to protect refugee claimants' right except Article 33, "the principle of *non-refoulement*". There had neither been mechanisms to implement the standard procedure concerning refugees. The drafters of the Refugee Convention intended to include *non-refoulement* as an absolute right without any exceptions. However, States were not ready to accept this idea. As a consequence of some States opposition, Article 33(2) exclusion clause was amended at the end of its drafting process. The UNHCR Executive Committee states that the fundamental principle of *non-refoulement* has found expression in various international instruments adopted at the universal and regional levels and is generally accepted. In the thirty-third Session it was recognised that "this basic principle is progressively acquiring the character of a peremptory norm of international law." In 1989, the High Commissioner for Refugees recognised that the principle of *non-refoulement*" can be regarded as *jus cogens*". From these views, it can be seen that the principle of *non-refoulement* is universally accepted. Is it possible to impose responsibility upon States, which have not ratified international human rights instruments but yet accept a considerable number of refugees such as Pakistan and Thailand? How is the principle of *non-refoulement* applicable to the States which do not ratify the Refugee Convention? In general, those countries also have obligations to follow the principle of *non-refoulement* from the point of customary international law and general principles of law. Human Rights Watch annual report said "Thailand's obligations in refugee law terms stem from the acceptance of *non-refoulement* as a part of customary international law as well as from international human rights treaties that it has ratified. Various conclusions of the UNHCR Executive Committee reaffirms that the principle of *non-refoulement* forms part of the obligations owed to refugees by the entire international community."

The UNHCR Executive Committee repeatedly emphasizes the principle of *non-refoulement*. Its forty-ninth session states "One essential component of the institution of asylum is the principle of *non-refoulement*. This principle, embodied in Article 33 of the Refugee Convention, prohibits the expulsion and return of refugees in any manner whatsoever to the frontiers of territories where their lives or freedom may be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. *Refoulement* can take several forms, including non-admission at the frontier and interdiction at sea." They recognise the need for further examination of the principle to implement it effectively. "The *non-refoulement* principle as it is being interpreted and applied in the human rights in-

struments is, however, somewhat different in scope from the *non-refoulement* refugee protection. The areas of complementarily, as well as of difference, need further examination."

The principle of *non-refoulement* is stipulated in Article 53(3) of the *ICCRA*.

In Nagoya District Court, the State argued that since administrative organs naturally make decisions based on laws and regulations when they take administrative measures, the principle of the rule of law is applicable at that point and the court's review is unnecessary. It does not matter whether the plaintiff is recognised as a "refugee" or not, the *Non-refoulement* principle is violated only when the plaintiff is assumed to be in a "territory where life or liberty may be threatened," and "the fact that the plaintiff is deported within the time limit for appealing does not mean that the principle is immediately violated. The appellant, on the other hand, argued that the plaintiffs' deportation was not a violation of the principle because the plaintiffs were repatriated within the time limit for appeal. On the other hand, the appellant argued in the original trial that "if administrative organs make decisions based on laws and regulations, the rule of law extends to them, and court review is unnecessary, then the time limit for filing a suit under the Administrative Case Litigation Act (six months from the date of knowledge of the disposition or decision in a suit for cancellation) is unnecessary, and the administrative division of the court is unnecessary. This is equivalent to saying that the Administrative Division of the court is unnecessary. The Nagoya High Court followed the original judgment, although it added "the *non-refoulement* principle prohibits deportation to countries where there is a risk of political persecution, and judicial review in Japan is also required to determine whether deportation is permissible based on the provisions of Article 53(3) of the *ICCRA*, which cites Article 33(1) of the Refugee Convention(2) The Principle of *Non-refoulement*.

In this case, the principle of *non-refoulement* was judged separately from the guarantee of the opportunity to receive a judicial review. In this regard, the case commentary of the original judgement criticised that "the Principle of *Non-refoulement* and the guarantee of an effective remedy in Article 2(3) of the ICCPR can be considered in connection with each other, and (omitted) a revocation suit must be able to be filed. In addition, the Committee against Torture's General Comment 4 (2017), para. 18(e), clarified that "an order of deportation guarantees the right to file a cease-and-desist challenge to the enforcement of such order before an independent administrative and/or judicial body within a reasonable period after notification of such order. Furthermore, the UNHCR Executive Committee stated that "(6) (vii) Refugee claimants should be allowed to remain in the country during the appeal to a higher administrative body or court. (6) (vii) Applicants for refugee status should be allowed to remain in the country during the appeal to a higher administrative body or court. The presence or absence of a potential violation of the Principle of *non-refoulement* is required to be examined by an independent judicial or administrative body separate from the body conducting the refugee screening procedure. This is because, if the effect of the suspension of deportation does not work, the opportunity for the substantive judicial review at issue, in this case, is deprived, and irreparable damage may occur.

The UN Special Rapporteurs issued a joint statement on the bill to amend the *ICCRA* and warned against the idea of not allowing the suspension of deportation for applicants who have applied for refugee status for the third time or more in principle.

The UNHCR also stated concerns. The statements of these UN agencies should be respected and watched seriously.

—Reiwa 1(2019) (Ne)No. 664[1]
Nagoya High Court Court, 13 January 2021 (Sri Lanka)

Translated by Haruka Jifuku[2] & Yukari Ando[3]

Judgment

The Plaintiff:
The Attorney for Plaintiff: Esq. Chiharu Yaguchi,
The Assistant Attorneys for the Plaintiff: Esq. Yoshihiro Sorano, Esq. Satoshi Ogawa, and others

The Defendant: The Japanese Government
The Representative, the Minister of Justice: A
Attorneys for Defendant: B, other two people and more

The Main Text of Judgment

1. The original judgment shall be changed as below.

A.The defendant shall pay the plaintiff a sum of 440,000 yen together with an amount thereon at the rate of 5% per annum from December 18, 2014, until full payment of such sum shall have been made;

B. The plaintiff's other claims shall be dismissed;

2. The litigation expenses for the first instance to the second shall be divided into fifteen, and the two will be paid by the defendant and the plaintiff will bear the remaining;

1. 令和3年1月13日判決言渡　令和1(ネ)第664号 損害賠償請求控訴事件（原審・名古屋地方裁判所平成28年（ワ）第3483号）

2. Currently interning at the NGO Foreigners's Assistance KOBE (GQ net) from September 2019. Graduated from the International Relations Department, Kobe City University of Foreign Studies in March 2021. The former student intern at the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA), November 2019 - 2020 March.

3. Guest Associate Professor at Osaka School of International Public Policy, Osaka University.

Facts and Reasons

1. Claims

A. The part in the original judgement against the plaintiff shall be removed.

B. The defendant shall pay another 3,212,000 yen together with an amount thereon at the rate of 5% per annum from December 18, 2014, until full payment of such sum shall have been made.

2. Outline of the Facts (the abbreviation is based on the example of the original judgment unless other than specified separately. The same is below in this judgment.)

A. The appellant with the nationality of the Democratic Socialist Republic of Sri Lanka illegally entered Japan in 2005 using a forged passport in the name of another person. In June 2010, he received a deportation order based on Article 24, No. 4 of the ICCRA (illegal immigration), and his application for refugee recognition was dismissed by the Minister of Justice (the Refugee Recognition Application) in June 2011. On November 7, 2014, the Minister of Justice decided to dismiss the objection to the disposition (decision to dismiss the objection), but the appellant was notified of it on December 17, 2014. On the following day, June 18, he was deported to Sri Lanka by mass deportation (the deportation).

In this case, the appellant has sued the appellee by claiming as following: the Immigration Services Agency of Japan (hereinafter referred to as "immigration bureau") staff selected the appellant as a target of group deportation through the appellant intended to file a case for cancellation of the refugee recognition disapproval; the bureau intentionally delayed notifying him that the objection against the decision on the refugee recognition application was dismissed up to 40 days after the selection to prevent the proceedings from being filed, the notice of the above decision was, and fended him off contacting his lawyer after the notice; the bureau violated the appellant's right of access to the court by carrying out the deportation stating that the appellant could file a revocation case after going back to Sri Lanka. The appellant demanded the appellee pay 3,300,000 yen (3,000,000 yen for compensation and 300,000 for a legal fee) based on the State Redress Act Article 1, item 1, with an amount thereon at the rate of 5% per annum from December 18, 2014 (the day when the deportation was carried out), until full payment of such sum shall have been made as the Civil Code regulates (Before amendment by Law No. 44 (2017)).

The original judgment reviewed that the Immigration Control and Refugee Recognition Act(hereinafter *ICCRA*) does not regulate that deportation of foreign nationals who have not obtained a status of residence should be stopped, except for the provision that deportation will be suspended until there is a decision on opposition to the disposition of refugee disqualification (Article 61-2-6, Paragraph 3). In the case of the deportation target, the deportation cannot be legally cancelled unless the court decides, and immigration officials are not obliged to pose a deportation process unless those conditions are fulfilled. The judgment concluded that It could not be said that

there is an illegality in the application of Article 1, item 1 of the State Redress Act for not cancelling the deportation by selecting the appellant who has been decided to dismiss the objection and has not obtained the decision to cancel the deportation.

The court also decided that it was illegal to apply the same item to make a false explanation as if the appellant could sue for revocation of the refugee disqualification even after the appellant was deported. Thus, the original judgment partly accepted the appellant's request as A total of 88,000 yen (compensation 80,000 yen, legal fee equivalent amount 8,000 yen) and the extent of the payment of late charges and dismissed the rest of the claims. Later, the appellant appealed for the lost part as a complaint.

1) "The deportation order" on page 3, line 23 and 25 and page 4, line 7 of the original judgment shall be changed to "the written deportation order", and "(Hereinafter, simply referred to as" immigration officer")" shall be added after "the immigration control officers of Nagoya Regional Immigration Bureau" on page 3, line 25. Besides, "...on December 15, 2014… though the plaintiff was allowed to extend the period of provisional release" shall be modified as "the appellant was allowed to extend the provisional release period, and on the 17th of the same month after the decision to dismiss the objection made on November 7, 2014, as B (d) explains below, he appeared in the Nagoya Regional Immigration Bureau and gained permission to extend the provisional release period by the chief examiner. However, the appellant appeared at the Nagoya Immigration Bureau on December 15, 2014, and applied for permission to extend the provisional release period on the grounds of making a trial."

2) At the end of page 4, line 13 of the original judgment, "the appellant had never applied for refugee recognition before making this refugee recognition application" shall be added, and the statement that "notified the plaintiff" on page 6, line 7, shall be modified as "notified the appellant on the same day who was detained in Nagoya Regional Immigration Bureau as the deportation order was enforced."

3) The original judgment, page 7, lines 16 to 24, shall be amended as follows. "The immigration officer announced the decision to dismiss the objection to the appellant who was detained in the Nagoya Regional Immigration Bureau at around 3 pm on December 17, 2014, and taught about the revocation suit against the decision using instruction. Furthermore, at around 3:37 pm on the same day, the Immigration officer notified the appellant that he would be repatriated to Sri Lanka by enforcing the deportation order at the Great Interrogation Office of the First Investigation Division. In response, the appellant expressed his intention to oppose the deportation and stated, "I can file a suit on this for the next six months.", and "I will do my trial." Otherwise, the immigration officer said, "You got me not to recognize you as a refugee", and "Go back to Sri Lanka." Later, the appellant was taken to the Investigation Department No. 1 of the First Investigation Division, but he said, "I can try this in 6 months," "I will die after returning to the country", "show me the documents that the immigration bureau is responsible for my safety" to the immigration officer and others for more than 30 minutes while holding instruction 2. However, the immigration of-

ficer said, "the discussion on your refugee recognition application is over," "you can do it after going back to your home", "you can file a trial without yourself." (X1, 2, 3-11, 3-12, X5, 6, Y31) ."

4) A line break shall be added at the end of the 7th line on page 8 of the original judgment and "D. On March 23, 2015, after the deportation of the case, the appellant married a Japanese national in Sri Lanka by the Sri Lankan method. (Y32, 33) " shall be added.

5) The following content shall be added after a line break at the end of the 15th line on page 8 of the original judgment.

"D. Article 53

a. Item 1

Any person subject to deportation shall be deported to a country of which he/she is a national or citizen.

b. Item 3

The countries outlined in the preceding two paragraphs shall not include any of the following countries.

(i) The territories of countries prescribed in the Refugee Convention, Article 33, paragraph (1) (except for cases in which the Minister of Justice finds it significantly detrimental to the interests and public security of Japan)

(ii) Countries prescribed in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3, paragraph (1) (Omitted below).

6) The heading symbols B to F on page 8 to 9 of the original judgment shall be moved down to C to G, and "Article 61-2-4, paragraph 1" on page 9, line 2 shall be revised as "Article 61-2-24, Paragraph 1 first sentence", and added the following after a line break at the end of the 24th line.

"I Article 61-2-9, Item 1

If a foreign national has an objection to any of the following dispositions, he/she may file an objection with the Minister of Justice by submitting a document that states the matters provided by the Ordinance of the Ministry of Justice.

(i) Denial of recognition of refugee status (Omitted Below).

(4) Regulations by the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR")

A. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (Omitted below).

B. Article 14, Item 1
All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (Omitted below).

(5) Regulations by the Convention Relating to the Status of Refugees (hereinafter referred to as “Refugee Convention”)
A Article 16
1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters about access to the Courts, including legal assistance and exemption from cautio judicatum solvi (omitted below).
B. Article 33
No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(6) Regulations by the Regulations by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “CAT”)
Article 3
1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. to determine whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

7) "If the deportation is illegal under the State Redress Act" on page 9, line 26 and page 10, line 3 of the original judgment, shall be changed to "If the deportation is illegal under the application of Article 1, Paragraph 1 of the State Redress Act." Also, "ICCPR" on the 5th and 6th lines shall be revised as "ICCPR", and "(hereinafter referred to as "the Refugee Convention")" on the 15th and 16th lines shall be changed into "(the Refugee Convention)". Along with, "CAT" on the 17th line shall be revised as "CAT" and "immigration control guards" on the 23rd line shall be revised as "immigration control officers including immigration guards".

Furthermore, on page 11, line 10, "and so on" shall be added after "Article 31 violation," and "Osaka Regional Immigration Bureau" on line 20 shall be changed to "Osaka Immigration Bureau." Besides, "he submitted a petition to request" on line 21 to "the defendant could fully get it" on the 23rd line should be changed to "he submitted the request, and wrote "I want to try a case" in the reason column of the applica-

tion for permission to extend the provisional release period submitted on December 15, 2014. Therefore, if the opposition was dismissed, he indicated that he would file a revocation suit, and the Immigration Bureau also was aware of the appellant's intentions as it put the explanations on the reason for the application was "preparation for litigation (objection against refugee disapproval)" in the written decision on the application."

The "defendant" on the 23rd line, 12th page, shall be revised as "immigration officials including immigration control guards" in 3rd line and 5th line, and the "after notification of dismissal of objection" on page 11, 26th line, shall be changed to "After the announcement of the decision on dismissal of objection." Also, after "Article 31 of the Constitution)" on page 12, line 18, "and so on" should be added.

8) "Being dismissed for taking" on page 13, line 3 of the original judgment, shall be modified to "dismisses him to take" and "disposition for issuing deportation order" in line 24, page 14, lines 7, 8, and 10 shall be changed to "disposition for issuing the written deportation order."

On page 15, line 5, "decision to dismiss the objection" shall be changed to "decision to dismiss the petition of the objection," and line 8 "from the date of the conclusion of rejection of the objection to that of the announcement to the representative" shall be modified as "Since it is required to consider the privacy of the person and secure an interpreter in practice, from the date of the conclusion of rejection of the objection to that of the announcement to the representative."

9) At the end of page 15, line 9 of the original judgment, "also, in the case of group deportation, to repatriate a large number of deportees at once using a charter plane at the national expense, and the target person are not to be notified in advance of the decision to dismiss the opposition and target are not allowed contact with third parties after the notification in principle. This rule is made to prevent the target person and related parties from interfering with the deportation after the notification and is a necessary and rational measure to achieve the administrative purpose of safely and surely repatriating those who are subject to mass deportation" shall be added. Also, in line 19 and 20, "the immigration control guards" shall be replaced with "immigration officers including immigration control guards".

THE COURT DECISION

1. Regarding the immigration officials' series of acts leading to the deportation, the court decides that the appellee has substantially deprived the appellant, who had indicated his intention to file a revocation suit over the disapproval of the case, from the judicial review. Thus, there is an illegality in the application of the State Redress Act Article 1-1. Among the appellant's request, the court admits the payment of 440,000 yen and the delay charges from December 18, 2014 (the date of the deportation) at a rate of 5 minutes per year for the following reasons.

2. Points at Issue

(1) (if the deportation is illegal in the application of the State Redress Act Article 1-1)

(1) Of the issues (1), the judgment criteria for the illegality of Article 1, Paragraph 1 of the State Redress Act, the violation of Article 14, Paragraph 1 of the International Covenant on Civil Liberties, and the judgment of the non-refoulement principle are amended as follows. Others are described in the original judgment "Facts and Reasons'' No.3-1 (1) to (3) and quoted.

A. The "immigration control guards" on page 16 and line 12 of the original judgment shall be revised as "immigration officer including immigration control guards", and the "plaintiff who was a target to be deported" on line 25 shall be changed to "the appellant who was a target of the written deportation order enforcement, and able to file a revocation suit and so on separately from the objection as described below."

B. "Immediately" shall be put after "the principle itself" on page 17, line 9 of the original judgment and "by the principle of the rule of law" in line 10, and after "hence" in line 13, "non-refoulement prohibits deportation to a country where there is a risk of political persecution, and when to judge if the implementation possibility of deportation is possible, it is required to consider it based on the provisions of Article 53, Paragraph 3 of the ICCRA, which cites Article 33, Paragraph 1 of the 1951 Convention in Japan's judicial review. However, crossing over it," shall be also added. Also, "the plaintiff is also" on the 15th line to "difficult to say" on the 21st line shall be deleted, and "therefore" in the 21st and 22nd lines" shall be changed to "thus."

(2) Violations of Article 32, 13, 31 of the Constitution

A. Regarding the series of actions leading to the deportation of immigration officials, the appellant separates it into two: selecting the appellant for group deportation using a chartered plane though he has indicated his intention to file a revocation suit after receiving a refusal of the objection; and the timing and method of notifying the appellant of the decision to dismiss the objection. The appellant claims that each act has violated his right to a trial (Articles 32 and 13 of the Constitution) and protection of due process of law (Article 31 of the Constitution) and so on, and appeals that it is illegal in the application of Article 1, Paragraph 1 of the State Redress Act.

However, in terms of the mass deportation, the appellee has admitted that it does not provide in-advance notification of the dismissal of the refugee disqualification objection to the target person and allow them to contact outsiders to realize the safe and reliable deportation of the deportation evader. Regarding the deportation target whose objection has been decided to be dismissed, as it can be said that the selection of the persons to be repatriated and the announcement of the decision is made as a series, the illegality of the immigration officer's acts leading to the deportation shall be considered under Article 1, Paragraph 1 of the State Redress Act.

B. First, the court examines whether the immigration officials' series of acts leading to the deportation violated the right to a trial of the appellant (Article 32 of the Constitution) or protection of due process of law (Article 31 of the Constitution).

For foreign nationals who have applied for refugee status and have not obtained a status of stay, the provision that the deportation will be suspended until the Minister of Justice decides to dismiss the objection or makes a decision on the refusal (Article 61-2-6, Paragraph 3), but there is no statutory provision to suspend deportation other than this regulation.

However, in the first place, the ICCRA and related regulations adopt the so-called free-choice principle in which objection/revocation suits proceedings or both of them can be taken as an appeal against refugee disqualification (Article 61-2-9 of the ICCRA, and Article 8 of the Administrative Case Litigation Law). Thus, refugee status applicants can file a revocation suit simultaneously as/or separately from the objection on the refugee disqualification. Practically, the proceedings are concluded, the deportation of the applicant is postponed (X7). Additionally, Article 52, Paragraph 3 of the ICCRA stipulates that deportees should be deported promptly, but a ruling and deportation order relating to an objection based on Article 49, Paragraph 1 of the Act enables to file a revocation suit and so on. Together with the filing of the revocation suit on the issuance disposition and a court decision based on the petition, the deportee can pose the deportation process based on the written deportation order. (Administrative Case Litigation Act, Article 25, Paragraph 2). In this way, a deportee who has applied for refugee status determination may separately file a revocation suit against the disposition and issue a deportation order even before the decision on the opposition to the disposition of refugee disapproval and have the opportunity to be tried for the refugee disqualification by obtaining a court decision on the deportation cancellation together with the filing of a revocation suit against the disposition, and so on. The Japanese laws and regulations consider the right to a trial guaranteed by the Constitution for foreign residents, as well as reviewing the disciplinary power of administrative disposition regarding deportation reasons, the status of residence such as the existence of the same reason, and the effects application for refugee status determination gives to the relations with the home country. The legal aspects can be evaluated to secure the opportunity to receive a trial and harmonize with the residence system of Japan. Then, even if the deportee whose objection to the refugee disqualification has been decided to be dismissed has indicated in advance an intention to cancel the disposition, It cannot be said that it is not permissible for the immigration officers to select the deportee as a target for group deportation.

Moreover, it cannot be admitted that not posing the deportation process until the period for filing the complaint expires after the refusal of the objection was decided or not securing an opportunity to make a trial are significantly unfair and cannot be perceived as the refusal of the trial. Also, even if the above-mentioned procedural guarantee is not secured, it cannot be admitted that there was a lack of procedural protections of the deportee and cannot be said to be contrary to the provisions of Article 13 of the Constitution. Therefore, the court does not admit that the series of acts leading to the deportation of the immigration officials infringed the appellant's constitutional right of access to the court and the guarantee of due process.

C. As described above, in the case of the deportee whose objection against the refugee disqualification has been decided to be dismissed, even though the selection of the person as a mass deportation subject and not posing the deportation process by the complaint period expired is not enough to confirm the violation of the right of access to the court and protection of due process of law, the deportee was not notified of the objection refusal after being selected as a group deportation subject.

As the bureau does not allow the deportee to contact the third party after the notification, it becomes practically impossible to file a revocation suit against the refugee disqualification. The court considers if the series of the immigration officer's acts on this point shall be illegal in the application of Article 1-1 of the State Redress Act concerning the Immigration Act, which adopts the free-choice principle for appeals against the disposition, and the Administrative Case Litigation Act, which seeks to guarantee the opportunity to undergo judicial review for administrative dispositions.

(a) The Immigration Act limits refugee status applicants to foreign residents in Japan (Article 61-2, Paragraph 1), and if the foreigner leaves Japan by enforcing a deportation order, he/she will be disqualified as a refugee, as it is understood that the benefits of the action for revocation of the above will be lost (Supreme Court 1993 (Gyotsu) No. 159, July 12, 1988, Second Small Court Judgment, Refugee No. 179, p. 563). Therefore, if the bureau selects a deportee whose objection on the refugee disqualification has been decided to be dismissed, as a target for mass deportation, the deportee will lose its judicial review opportunities related to the refugee qualification unless it files a revocation in advance separately from the objection, assuming the operation mentioned above of the immigration authorities.

However, as mentioned in section B above, the ICCRA adopts the so-called free-choice principle, enabling people to take measures such as objection and/or revocation lawsuits against the refugee disqualification. It entrusts the person with the choice of administrative appeal examination by filing an objection or judicial examination by cancellation lawsuit and adopts a mechanism to guarantee the opportunity to guarantee the fairness of the disposition. Besides, Article 46-1 of the Administrative Act Litigation Act stipulates the instructing obligation of the administrative agency and intends to guarantee the disposition subject the opportunity to undergo a judicial examination from the viewpoint of relief of rights and interests. It is equally valid in the decision to dismiss the objection to the case, and in fact, the period for filing the revocation proceeding is also taught in each notification of the refugee disqualification and the decision on the objection dismissal (instruction 2, issued at the time of the notification of the objection dismissal, was directly instructing the period for filing the revocation suit against the dismissal of the objection, but the issued instruction 1, which was provided at the time of the notification of the refugee disqualification, illustrates the period for filing a revocation suit against the disposition of disapproval, and the period for filing the action is the same.)

Furthermore, Article 14-3 regulates that the period for filing a revocation suit will not start until a decision is made against it if an administrative appeal examination request is made, and enables to file a revocation suit after the objection on the refugee disqualification was dismissed. Regarding the above-mentioned objecting system on the refugee

disqualification (free choice principle) and the Administrative Case Litigation Act regulations, which attempts to substantially guarantee the opportunity to undergo a judicial examination from the perspective of the mechanism for effective relief of rights, it is admitted that the rules seek to enable to file a revocation suit over refugee qualification and even after the decision to dismiss the objection on the refugee disqualification is made, and guarantee the opportunity to undergo a judicial examination (the administrative appeal examination by opposition guarantees the opportunity for the Minister of Justice, which is the disposition administrative agency, to correct the illegal and unjustified disposition, while the judicial examination to correct illegality in the disposition by the court independent of the disposition administrative agency. The administrative appeal examination cannot be equated with the judicial examination in the first place.) Also, according to the above provisions, due to the absence of the regulations stipulating that the deportation shall be cancelled after the decision to dismiss the objection on refugee disqualification is made and the existence of Article 52-3 of the ICCRA, which stipulates that deported persons should be promptly deported, it cannot be justified that the opportunity for judicial review on refugee qualification can be substantially deprived. Furthermore, as mentioned in section B above, if a lawsuit against refugee disqualification has been filed, the immigration bureau generally considers the right to a trial of the person who filed the lawsuit and will suspend the deporting operation until the lawsuit is concluded. As well as in the Universal Periodic Review (on ICCPR and the United Nations Convention against Torture), it is proved that the bureau secures opportunities for judicial examination of refugee recognition applicants based on the teaching obligations stipulated in the Administrative Case Litigation Law, and checks if the deportee is willing to file a proceeding against refugee disposition and decides if it proceeds the deportation operation based on the response, with the consideration on their right of access to the court (X13 and 14).

Then, the above operation shall be considered in the case of a revocation proceeding against refugee disqualification is merely a de facto treatment at its discretion, even if it does not impose a legal obligation on the immigration bureau. In light of the above-mentioned operational rights, It is unacceptable that the deportee who filed an objection to the refugee disqualification has indicated that he intends to file a revocation suit over the objection refusal, was not be notified of the decision to dismiss the opposition at an appropriate time and will be substantially deprived of the opportunity for judicial review regarding refugee eligibility with the reason of becoming a group deportation subject, and it is inconsistent with the statement mentioned above. Regarding the content mentioned above, except the case when the objecting procedure is abusive used, it is reasonable to understand that the deportee who has filed an objection to the refugee disqualification have legally protected interests in not being substantially deprived of the opportunity for judicial review by filing a revocation suit after the decision to dismiss objection is made. This interpretation shall be consistent and appropriate along with the stipulations of the right of access to the court in the Constitution and protection of due process of law in various human rights treaties (Article 2.3, Article 14, Paragraph 1 of ICCPR, Article 16 of the Refugee Convention).

Practically, if this is not the case, it is the immigration authorities that selects the persons to be repatriated unless the deportee has filed a separate lawsuit to revoke the

refugee disqualification, the immigration bureau's decision will determine whether there is an opportunity for a judicial examination regarding the refugee qualification of a deported person who intends to sue for revocation after the decision to dismiss the objection is made. This operation is not consistent with the fact that the act adopts a free-choice principle for appeals against refugee disqualification, Article 14-1 of ICCPR guarantees everyone to have the right to a public hearing by an independent and impartial court on disputes over civil rights and obligations, and the above provisions of the Administrative Case Litigation Act, which seeks to guarantee the opportunity to undergo judicial examination for administrative dispositions.

(b) Based on the above, the deportation staff defined the deportee, who had indicated his intention to file a revocation suit and so on after the decision to dismiss the opposition was made, as a group deportation target and delayed the notification of the objection refusal to him until just before the deportation was carried out. Also, if the person is deported to his / her home country without being allowed to contact the third party after the notification, it can be said that these series substantially deprived the appellant's opportunities of getting a judicial review of acts related to the exercise of public authority. Thus, the following actions shall be illegal to apply Article 1, Paragraph 1 of the State Redress Act, unless there are special reasons that prove that the person appealed the objections abusively.

On the other hand, the appellee claims that its action was not illegal in the application of the State Redress Act Article 1-1, as there are no regulations that the deportation should be cancelled after the decision on the objection to the disqualification of refugees is made, and the deportation operation that subjects to the mass deportation do not receive in-advance notification and not to be allowed to contact with a third party after the notification is necessary to safely and reliably achieve the administrative purpose of repatriating a large number of repatriated refugees at once using a charter aircraft at national expense.

However, even if a certain degree of rationality is recognized in light of the administrative purpose for measures to cut the communication between the deportee and outsiders for group deportation and its reliable and smooth implementation, it cannot be tolerated that deportees are substantially deprived a person that indicated his intentions to file a revocation trial after the objection was dismissed, of the opportunity for judicial review of refugee qualification because they have been subject to mass deportation, as the ICCRA and related legal system has applied a free-choice principle on the objection against refugee disqualification and in the presence of Article 14 (1) of the ICCPR and the provisions mentioned above of the Administrative Case Litigation Act. Thus, the court does not take the above-mentioned appellee's claims.

(c) Considering this case on that matter, as stated in Premise Facts (2) A and C, the appellant had never applied for refugee status determination before the application for refugee status determination, and on November 7, 2014, the Minister of Justice decided to dismiss the objection to the disqualification. However, on December 17, 2014, 40 days later than the decision was made, the appellant was notified of the refusal and repatriated to Sri Lanka by the method of mass deportation on the following day. When he ap-

peared in the Nagoya Regional Immigration Bureau on the 15th before the announcement, he indicated his intention to make a trial for revocation of the disqualification, but the written deportation order was taken into practice and he was detained in the Nagoya Regional Immigration Bureau.

Furthermore, since the appellant was selected as a target of group deportation to Sri Lanka, the decision to dismiss the objection was not announced to him until the day before the deportation, and it seems that he was not allowed to contact the third party until the case was repatriated although he repeatedly expressed his intentions for filing a revocation suit against the refugee disqualification decision. In that case, it cannot be said that the appellant has made an abusive opposition to the decision on refugee disqualification, and he could not gain the opportunity for making a revocation trial due to not being notified of the decision at an appropriate time. Thus, it shall be said that the series of actions of these immigration officials substantially deprived the appellant of the opportunity for judicial review regarding the appellant's refugee qualification.

Besides, the appellate is required to consider the privacy protection of the refugee status applicant and secure an interpreter when notifying the decision to dismiss the objection, so it usually takes about one month to take it into practice. The appellee argues that it has never delayed the notification practice even in this case, but even if it takes such a considerable amount of time for the above notification, over a month has passed since the decision to dismiss the opposition in this case, and any rational reasons for not announcing the decision to the appellant when he was detained in the Nagoya Regional Immigration Bureau as of December 15, 2016, can be hardly found. Instead, the announcement was made on the 17th of the same month, the day before the deportation, to ensure and smooth the mass deportation; the appellee's allegations above do not influence the above judgment and is deemed to have been due to such implementation.

(d) Considering the contents written above, a series of actions leading to the deportation of the immigration officials led the appellant not to be notified of the decision on the objection at an appropriate time as a person subject to group deportation, and the appellant was deprived of opportunities for judicial review regarding refugee qualification. Premising the provisions of Article 52, Paragraph 3 of the ICCRA and comparing with the mechanism for appealing refugee disqualification under the ICCRA and the provisions of the Administrative Case Litigation Act and so on, Immigration officials shall be perceived that they have violated the duty of care that they should do in their duties in performing the above acts, so the above acts of immigration officials shall be illegal in the application of Article 1, Paragraph 1 of the State Redress Act.

3. Point at Issue (2) (The Amount of the Damage)

As mentioned in section 2 above, the appellant was substantially deprived of the opportunity for judicial review regarding refugee qualification due to the series of actions leading up to the deportation of the immigration officer, and they caused the appellant's distress suffered by the appellant. It is reasonable to set the compensation fee to 400,000 yen, and the legal fee, which has a significant causal relationship with the damage, shall be set to 40,000 yen, which is 10% of the damages.

Considering the conversation between the immigration officers at the Nagoya Immigration Bureau and the appellant while the announcement of the deportation to Sri Lanka (premise facts (2) c (a)) was announced, it is reasonable to admit that the immigration officer made a false explanation that the appellant could proceed could make a trial even after being repatriated to Sri Lanka. Since this act can be counted as a part of the above-stated behaviours substantially deprived the appellant of the opportunity of having judicial review regarding the refugee qualification, it should not be regarded as an illegal act that requires further compensation fee.

Therefore, the appellant's request is partly accepted because there is a reason for requesting payment of 440,000 yen and delay charges at a rate of 5 minutes per year from December 18, 2014, until full payment of such sum shall have been made. The rest of the claim shall be dismissed as a lack of reasoning, but the original judgment, which was different from this one, is partially unjustified. Thus, since there are some reasons for this appeal, the court decided to change the original judgment and not to attach the provisional execution declaration since it is not appropriate.

Conclusion

For those mentioned above, the defendant shall pay the plaintiff a sum of 88,000 yen together with an amount thereon at the rate of 5% per annum from December 18, 2014, the date when the defendant gave the false instruction until full payment of such sum shall have been made as the Civil Code regulates, and the rest of the consolation money that the plaintiff claims shall be dismissed because there are no decent reasons. Additionally, referring to the cost of the lawsuit, it is decent that the plaintiff should charge all costs in comparison with the amount of damage as mentioned above. Also, because there are no decent reasons, the declaration of provisional execution shall not be added.

Accordingly, this court decides as in the Formal Judgments.

Civil Affairs Division II, Nagoya High Court
The Chief Justice: Osamu Hagimoto
Justice: Mikikazu Sueyoshi, Tomohiro Hioki

— Case Summary by Atty. Satoshi Ogawa re. Reiwa 1(2019) (Ne)No. 664[1]

Translated by Haruka Jifuku[2] & Yukari Ando[3]

A case concerning the State redress claim was granted for deporting a refugee claimant and depriving him of the opportunity to sue for revocation of refugee disqualification.

(Nagoya High Court, January 13th, 2021/ Won)

1. Summary of the Judgement

A. The objectors on the refugee recognition refusal have a legal interest that they are "not substantially deprived of the opportunity to receive judicial review" for the refugee applicability.

B. In this case, it is illegal under the State Redress Act (1947) to deport a refugee claimant who has been willing to file a revocation suit as a subject to mass deportation (with notice of disposition and initiation of deportation at the same time) and deprive them of the opportunity to file the suit.

2. About the Case

The client was provisionally released, awaiting the refugee objection result (current "examination request"), and was preparing a revocation suit in the case when the current decision on the disqualification would be maintained. He claimed that his political activities in his country of origin would put him at risk of life if he returned.

Otherwise, before the examination result was revealed, the Immigration Bureau has selected the client as the target of collective deportation by charter flight. Even after the examination was concluded, the authority never told the result to him to deprive him of time to file a revocation of administrative dispositions against the denial of refugee status. When the client appeared on the renewal date of the provisional release, he was suddenly detained and got notification of the dismissal and put in the deportation process on the following day.

When he was notified of the dismissal of the objection from the bureau, an immig-

1．令和3年1月13日判決言渡　令和1(ネ)第664号 損害賠償請求控訴事件（原審・名古屋地方裁判所平成28年（ワ）第3483号）

2. Currently interning at the NGO Foreigners's Assistance KOBE (GQ net) from September 2019. Graduated from the International Relations Department, Kobe City University of Foreign Studies in March 2021. The former student intern at the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA), November 2019 - 2020 March.

3. Guest Associate Professor at Osaka School of International Public Policy, Osaka University.

ration officer told him that "it was possible to file an appeal in six months." When the client said, "I want to file a lawsuit for reasserting," the immigration guard made a false explanation that he could still file a trial even after returning to his country of origin.

As the client physically left Japan for deportation, he no longer met the legal requirements of "refugees." The lawsuit for revocation of the refugee recognition refusal lacked the benefit of the complaint, and the revocation suit was impossible to be filed (the fact that the benefit of the complaint disappears by deportation is different from the lawsuit for revocation of the deportation order).

3. Significance of this Judgement

(1) Interpretation of the mechanism, conjecture of the report to the United Nations, interpretation of treaty conformity

The judges interpreted the Immigration Control and Refugee Recognition Act (hereinafter *ICCRA*) and the mechanism of administrative case litigation. In other words, they concluded that the *ICCRA* adopts a free choice principle to "guarantee opportunities for correction to dispositions," and the Administrative Case Litigation Act has confirmed the administrative agency's teaching obligations (Article 46 Paragraph 1) and the appeal period (Article 14,3) are for "substantially guaranteeing the opportunity to receive a judicial review from the viewpoint of effective rights relief," and affirmed the legal benefits of judicial review opportunities.

In response to the state's objections, the judge pointed out the differences between the contents of reports submitted by the government to the United Nations (such as confirmation of intentions of filing a revocation and having a considerable time to guarantee opportunities for judicial review), and found that "it is unacceptable that the opportunity for judicial review was lost for being a subject to the mass deportation."

Furthermore, the judgment clearly stated that the interpretation affirming the legal interests of the opportunity for judicial review that "conforms to the provisions of various human rights treaties (the International Covenant on Civil and Political Rights(hereinafter ICCPR), Article 2 - Paragraph 3, and Article 14, and Article 16 of the Refugee Convention) guarantees the right to trial and due process as stipulated in the Constitution", and referred to the International Covenant on Economic, Social and Cultural Rights.

In terms of the claims that the authority's activity was a constitutional violation, additionally, the judge concluded that the behaviour did not violate Article 32 of the or Article 31 of the Constitution since it was allowed to have a judicial examination even during the revocation process and it did not fall under the refusal of a trial.

(2) Differences with the Original Trial (LNF Newsletter No23 Case Report (2))

The original judgment was based on the premise that foreigners do not have freedom of residence, and their deportation was not restricted by the ICCRA regulations and considered the case putting the duty conduct standard theory at the centre. Following that, the judges examined the duties of the immigration officer who carried out the deportation and partly admitted the officer's behaviour as illegal on the point that they made a false explanation that they could try even after returning home.

Thus, the judge concluded that the client's infringed profits as the right to receive accurate instruction" and allowed compensation of 88,000 yen.

In response, this judgment considers a series of acts as a whole, from selecting the client as subject to group deportation to carrying out the deportation, and judged the illegality of the infringed profit as "an opportunity to receive a judicial review for refugee status," and granted damages of 440,000 yen.

(3) Impact on the Practical Immigration Control

Since it is illegal to deprive refugee claimants of the opportunity to file a revocation suit, this judgment would significantly impact the immigration administration in general. At the very least, the deportation will be overhauled to avoid violating judicial review opportunities.

It is also a valuable case of the "right to access to the courts," which has a little precedent, and I think it is also of great significance as a court case for interpreting international treaties conformity.

Satoshi Ogawa (Attorney at Law, Nara Bar Association)

—Heisei 28 (2016) (Wa) No. 3483[1]
Nagoya District Court, 30th July 2019 (Sri Lanka)

Translated by Haruka Jifuku[2] & Yukari Ando[3]

JUDGMENT

The Plaintiff:
Attorneys for Plaintiff: Esq. Chiharu Yaguchi,
Esq. Yoshihiro Sorano,
Esq. Satoshi Ogawa,
Esq. Keigo Baba
Assistant Attorneys for Plaintiff: Esq. Sachiko Wadatani,
Esq. Koichi Kodama

The Defendant:
The Japanese Government
The representative, the Minister of Justice: Takashi Yamashita,
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Esq. Akiyoshi Ono,
Esq. Humiharu Hori,
Esq. Takaaki Ito,
Esq. Takako Saito,
Esq. Tatsuo Haneda,
Esq. Hideo Sachi,
Esq. Masayuki Yamada,
Esq. Naruomi Tanaka

1. 令和元年7月30日判決言渡、平成28年(ワ)第３４８３号損害賠償請求事件

2. Currently interning at the NGO Foreigners's Assistance KOBE (GQ net) from September 2019. Graduated from the International Relations Department, Kobe City University of Foreign Studies in March 2021. The former student intern at the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA), November 2019 - 2020 March.

3. Guest Associate Professor at Osaka School of International Public Policy, Osaka University.

The Main Text of Judgment

4. The defendant Japanese government shall pay the plaintiff a sum of 88,000 yen together with the amount thereon at the rate of 5% per annum from December 18, 2014, until full payment of such sum shall have been made;
5. The plaintiff's other claims shall be dismissed;
6. The plaintiff shall bear litigation expenses;

Facts and Reasons

1. Claims

The plaintiff demands judgment that the defendant pays the plaintiff a sum of 3,300,000 yen together with the amount thereon at the rate of 5% per annum from December 18, 2014, until full payment of such sum shall have been made.

2. Outline of the Facts

iv) The plaintiff, a national of the Democratic Socialist Republic of Sri Lanka (hereinafter, Sri Lanka), who entered Japan with a forged passport issued under another's name was refused refguee status on July 5, 2011, after receiving a dismissal order. Although the plaintiff protested against the refusal on July 5, 2011, (based on the previous *Immigration Control and Refugee Recognition Act*, which is the one before revised by Act No. 69 in 2014 (hereinafter, "*Immigration Act*"), and indicated a willingness to act for revocation of administrative dispositions against the denial of refugee status if his claim was dismissed. The immigration control officers deliberately postponed the announcement of the dismissal decision on December 17 of the same year in order to prevent the plaintiff from bringing a revocation case against the disqualification of the refugee status after the decision on the refusal of the opposition. The plaintiff had already been detained from December 15, and he could not contact a lawyer after the decision to dismiss. The plaintiff charged the Japanese government with paying the plaintiff a sum of 3,300,000 yen (3,000,000 yen for consoling his mental damages and 300,000 yen for hiring attorneys) together with an interest thereon at the rate of 5% per annum counting from December 18, 2014, until full payment of such sum shall have been made as compensation for damages based on Article 1-1 of State Redress Act. This claim was led by the immigration control officers who gave the plaintiff a false explanation that he could file a suit after going back to Sri Lanka then deported him to his country of origin on July 18, which is an illegal use of public authority.

v) Fact Premise (each proof of filing (if there is a branch number unless otherwise specified, the branch number includes the branch number, the same shall apply here-

inafter) and the fact that is easily recognized by the whole purpose of the argument, which show whether if there are conflicts between the parties or not

(1) Plaintiff

The plaintiff is a male, Sri Lankan national who was born in Sri Lanka on OO OO, 1978.

(2) The deportation procedure

A. The condition of the deportation procedure

(a) Although the plaintiff entered Japan using a forged passport issued under the name of another on July 4, 2005, he was detected for suspicion of Immigration Act Article 24-4 (b) (illegal residence) on June 15, 2010 and was detained in Nagoya Regional Immigration Bureau after investigated by the immigration control officers of Osaka Regional Immigration Bureau on the same day. (Y2 and Y6) for the violation.

(b) When Nagoya Regional Immigration Bureau conducted a violation investigation to the plaintiff on June 16 to 22, 2010 and informed that he was identified as a violator of Immigration Act Article 24-4 (b) (illegal residue), the plaintiff said "I renounce the oral hearing because I want to go back to Sri Lanka soon.", and signed and affixed his fingerprint on the oral hearing renouncement. The bureau published a deportation order to the plaintiff, falling under the *Immigration Act* Article 24-4 (b) on the same day (which determines the destination as Sri Lanka. Hereinafter referred to as “the deportation order”) and informed him about a suit for revocation of the deportation order. The immigration control officers of the Nagoya Regional Immigration Bureau enforced the deportation order on the same day and continued detaining him in the bureau. Later, the plaintiff was relocated to Immigration Detention Centre, West Japan Immigration Centre (hereinafter to, “West Japan Immigration Centre”) on September 29 of the same year. The plaintiff did not bring a suit for the revocation of the deportation order. (Y7 and Y12).

(c) On June 2, 2011, the plaintiff received a provisional release and came out of West Japan Immigration Centre. Later, the supervising immigration specter of Nagoya Regional Immigration Bureau rejected the application to extend the period of temporary freedom that the plaintiff applied for on December 15, 2014, and enforced the deportation order on the same day and detained him in Nagoya Regional Immigration Bureau although the plaintiff was allowed to extend the period of provisional release. (X3, Y12, and Y14).

B. The condition of the refugee status determination

(a) The plaintiff submitted an application for the refugee status determination(hereinafter referred to as "RSD application") at West Japan Immigration Centre on December 12, 2010, and Osaka Regional Immigration Bureau accepted the application (furthermore, the provisional stay for this RSD application was rejected under the *Immigration Act* Article 61-2-4 paragraph1 item8).

(b) The Minister of Justice disqualified this RSD application (hereinafter referred to as "the refugee status disqualification decision") on June 3, 2011, and notified the plaintiff on July 5 of the same year. Moreover, the minister informed the plaintiff about a suit for revocation of the refugee status disqualification decision on the same day. The document that the minister issued to the plaintiff at that time had the following descriptions (hereinafter referred to as "Instruction 1"). (Y19).

"As you can bring a suit for revocation of disqualification of the RSD application(the refugee status disqualification decision), we stipulate herein who is an eligible defendant of the suit and the deadline for filing such action based on the *Administrative Case Litigation Act* Article 46.

1. The eligibility for bringing a legal action for revocation of the disqualification of the RSD application

The Japanese government

2. The time limit for filing a legal action for revocation

(1) Within six months, from the day the disqualification of the RSD application (this decision of the disqualification as a refugee) was informed. However, it is not limited if there are any justifications.

(2) It is not possible to bring a suit for the disqualification of the RSD application (this decision of the disqualification as a refugee) when it was passed one year from the day the disqualification was determined even if it is still within the period stated in (1). However, it is not limited if there are any justifications.

(3) In the case where the petitioner objects to the disqualification of the RSD application(this decision of the disqualification as a refugee) based on the I*mmigration Act* Article 61-2-9, the time limit for such action is within 6 months from the day you were informed of the division against the objection, despite the period stated in (1) and (2). However, it is not limited if there are any justifications.

(4) It is not possible to bring a suit against the disqualification of the RSD application (this decision of the disqualification as a refugee) if one year or more has passed from the day the division against the objection was determined. However, it is not limited if there are any justifications."

(c) On June 20, 2011, the chief of Osaka Regional Immigration Bureau determined not to give the plaintiff a Special Permission to Stay based on the

Immigration Act Article 61-2-2 paragraph 2 (hereinafter referred to as "this disapproval of special permission to stay") and informed the plaintiff as such, also, informed him about a suit for revocation of disapproval of special permission to stay on July 5, 2011. (Y20).

(d) The plaintiff raised an objection against the Minister of Justice for the disqualification of the RSD application and submitted an oral opinion statement to Nagoya Regional Immigration Bureau minister on July 5, 2011. On August 12 of the same year, the plaintiff filed a statement of objection. (Y21 and Y23)

On February 9, 2014, the plaintiff submitted a form to request to the Osaka Regional Immigration Bureau to execute an interrogation concerning the objection made at Osaka Regional Immigration Bureau. On February 14, the legal representative of the plaintiff, Ms. Chiharu Yaguchi (hereinafter referred to as "Atty. Yaguchi") submitted the petition of the same contents as the plaintiff to Osaka Regional Immigration Bureau. Later, Atty. Yaguchi submitted written statements about the objection and related documents to Osaka Regional Immigration Bureau on February 6 and March 10, 2014. Furthermore, the oral opinion statements and the interrogation of the plaintiff were carried out at Osaka Regional Immigration Bureau on the same days. (Y24 and Y29).

(e) The Minister of Justice decided to reject the disqualification objection (hereinafter referred to as "the rejection decision") on November 7, 2014, and informed it the plaintiff with instruction for filing a legal action for revocation of the rejection decision on December 17, 2014. Besides, the document that the minister issued to the plaintiff at that time had the following descriptions (hereinafter referred to as "Instruction 2"). (X1, X2, Y29, and Y30).

> "As you can move to revoke the rejection decision on your RSD application disqualification, the eligibility and the time limitation for filing such legal action is advised based on the Administrative Case Litigation Act Article 46.
>
> The eligibility for bringing a legal action for revocation of the RSD application disqualification
>
> The Japanese government
>
> 1. The time limitation for filing an action for cancellation
>
> (1) Within six months, from the day when the decision on the objection against the RSD application disqualification was informed. However, it is not limited if there are any justifications.
>
> (2) It is not possible to bring a suit to this decision of the objection about disqualifying as a refugee when it was passed one year from the day this decision was determined even if it is still within the period shown in (1). However, it is not limited if there are any justifications."

C. The background of the procedure of deportation

(a) Mass deportation via charter flight enforced by the defendant

It is a fact that there are individuals who evade deportation, refusing repatriation to their countries of origin including a handful of cases in which plane companies refuse to board said individuals, thus rendering it impossible to enforce individual deportations using the national budget. As such, since 2013, the immigration control authority has been enforcing group deportations with the intention of ensuring safe and secure travel and has been deporting multiple people who evade deportation via charter flight all at once. The selection of peoples under this mass deportation scheme is determined upon considering their circumstances. That is whether they have been deported from Japan; the defendant also takes into account the circumstances of individuals who were expelled from Japan, such as whether if there is an ongoing administrative lawsuit concerning the said individual, or if there is an application for refugee status determination under the process along with its progress. Considering the progress of the above and such, the persons in the process of objecting to the decision of disqualification as a refugee would include those who are likely to complete the process by the date of deportation.

Although the plaintiff was in the process of objecting to the decision, he was selected as the target person because he did not bring a suit for revocation of the deportation order and the process was likely to be completed by the date of deportation.

(b) The announcement about this decision of rejection of the complaint to the plaintiff and his reaction to it

The immigration control officers of Nagoya Regional Immigration Bureau informed the plaintiff about the deportation to Sri Lanka, at 3:36 pm on December 17, 2014. After the announcement, the plaintiff stated, "I can bring a suit for this within six months." "I, I will bring a suit[sic]." "Will the immigration bureau take responsibility for this?" "Please have this written form and notarised." To this, the immigration control officer responded, "You can bring a suit for this even after returning to your country." Also, when the plaintiff was taken to interrogation room 1 of the survey division 1 at 3:46 pm on the same day, he said, "If you make me get on a plane, I will bite myself. I will evacuate my bowels." (X3.11, X5, X6, Y31).

Although the immigration control officers of Nagoya Regional Immigration Bureau told the plaintiff to pack up his belongings around 4:51 pm on the same day, the plaintiff did not comply, as such the officers packed up his belongings instead.

Around 5:58 pm of the same day, the immigration control officers of Nagoya Regional Immigration Bureau made the plaintiff ride a minibus and escorted him to Haneda Airport. At that time, the plaintiff walked by himself and did not resist.

At 5:43 pm on December 18, the plaintiff was deported to Sri Lanka by a charter plane (hereinafter referred to as “this deportation”). Accordingly, the

plaintiff lost the benefit of the suit for revocation of this disqualification of the application of RSD.

(3) Provisions of the *Immigration Act*

A. Article 52-3

In enforcing a deportation order, an immigration control officer (including a police official or coast guard officer who administers a written deportation order under the provisions of the preceding paragraph; hereinafter the same shall apply in this Article) shall show the deportation order or its copy to the alien subject to deportation and have him/her deported promptly to the destination provided for in the following Article. However, the immigration control officer shall deliver him/her to the carrier if the alien is to be sent back by the carrier under the provisions of Article 59.

B. Article 61-2, paragraph (1)

The Minister of Justice may, if an alien in Japan applies following the procedures provided for by a Ministry of Justice ordinance, recognizes such person as a refugee (hereinafter referred to as "RSD") based on the data submitted.

C. Article 61-2-2 paragraph (1)

The Minister of Justice shall, when he/she recognizes an alien as a refugee pursuant to the provisions of paragraph (1) of the preceding Article and the alien who has filed the application set forth in the same paragraph falls under the category of an alien without a status of residence (aliens other than those who are staying in Japan under a status of residence listed in the left-hand column of Appendix Table I and Appendix Table II, those who have been granted permission for landing for temporary refuge and have not stayed in Japan beyond the period stated in the permit, and special permanent residents; the same shall apply hereinafter), permit the alien to acquire the status of residence of "Long-Term Resident", unless the alien falls under any of the following items:

D. Article 61-2-4 paragraph (1)

The Minister of Justice shall, when an alien without a status of residence files the application outlined in Article 61-2, paragraph (1), permit the alien to provisionally stay in Japan unless he/she falls under any of the following.

E. Article 61-2-4 paragraph (5)

When an alien with the permission set forth in paragraph (1) subsequently comes to fall under any of the following items, the period of provisional stay granted to the alien (including the period of temporary stay extended pursuant to the provisions of the preceding paragraph; the same shall apply hereinafter) shall be deemed to have terminated at the time he/she comes to fall under the item.

(i) The objection outlined in Article 61-2-9, paragraph (1) has not been filed against denial of recognition of refugee status, and the period described in para-

graph (2) of the same Article has passed.

(ii) The objection outlined in Article 61-2-9, paragraph (1) has been filed against denial of recognition of refugee status, but the complaint has been withdrawn, or a decision has been made to deny or dismiss the objection.

F. Article 61-2-6 paragraph 3

When the procedures for deportation provided for in Chapter V are carried out, removal pursuant to the provisions of Article 52, paragraph (3) (including delivery in accordance with the clause of the same item and deportation in accordance with the provisions of Article 59) shall be suspended with respect to an alien without a status of residence who has filed the application set forth in Article 61-2, paragraph (1) and has not been granted the permission set forth in Article 61-2-4, paragraph (1) or whose period of provisional stay pertaining to the consent has passed (except for those who fall under items (i) to (iii) and item (v) of paragraph (5) of the same Article), until the alien falls under any of the cases listed in items (i) to (iii) of paragraph (5) of the same Article.

3. Points at Issue

(1) Whether the deportation, in this case, is illegal under the *State Redress Act*

(2) The consolidation compensation

4. Allegations

(1) Point at Issue (1) (Whether this deportation is illegal under the *State Redress Act*)

(Allegation by the plaintiff)

A. About the violation of Article 14-1 of International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR")

Article 14-1 of the *ICCPR* obligates that everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law in the determination of his rights and obligations in a suit at law. Additionally, on the related "General Comments" from United Nations Human Rights Committee (hereinafter referred to as "HRC") (hereinafter referred as "General Comments"), incumbent on the Member States shall protect the right regardless of the national legal traditions nor its domestic law and recognizes the situation that individuals are systemically, legally and practically barred from accessing to authoritative coats as a conflict with Article 14-1. Furthermore, the

state ratified not only *ICCPR* but also *Convention Relating to the Status of Refugees* (hereinafter referred as "*Refugee Convention"*) and *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. On this occasion, the plaintiff was in Japanese territory and fell under the jurisdiction of Japan when he was informed about the decision to refuse his appeal, therefore it would stand he have the right not to be deported as well as to stand trial which is guaranteed by Article 14-1 of the *ICCPR*, at least within the reasonable period until he would bring a suit for revocation to said refusal.

The deportation of the plaintiff, the immigrant control officers, enforced, was illegal thus infringing the aforementioned rights of the plaintiff.

B. Violation of the Principle of *Non-refoulement*

As Article 33-1 of *Refugee Convention* stipulates that "Contracting State shall NOT expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion", which is known as the Principle of *Non-refoulement*, an examination by a court is needed as well as decisions by an administrative organ in an examination of *Non-refoulement*, following the principle of the rule of law. However, the administrative procedure did not recognize the plaintiff as a refugee, and he was deported to Sri Lanka (this deportation) without any guarantee of a reasonable period until he would bring a suit for revocation of this decision of rejection of the objection. For these reasons, the deportation, in this case, violates the Principle of *Non-refoulement*.

C. Violation of Article 13, Article 32, Article 31 of the Japanese Constitution

(a) The selection of target persons for the group deportations

It is hugely highly probable to violate the human rights of individual target persons because they will be accommodated by surprise and deported to detain all the deported targets. Therefore, as due diligence regulated in Article 31 of the Constitution, the selection of target persons by the defendant should not be arbitrary, and the defendant has the responsibility to carefully consider whether the deportation can violate the human rights of the targeted individuals. The intention toward bringing a suit for revocation of a RSD disqualification decision is an essential and considerable fact for the selection of target persons. Considering the plaintiff was in the procedure of raising an objection for the 1st RSD application when this deportation was enforced, and he submitted a petition to request that interrogation about the complaint would be done at Osaka Regional Immigration Bureau to the Osaka Regional Immigration Bureau and written statements about the objection through his attorney, he could bring a suit for the revocation when the defendant rejects the complaint, and the defendant could fully get it. Other-

wise, the defendant selected the plaintiff as the target person for group deportation, which means violating the responsibility as mentioned above.

In addition, because it was evident that the plaintiff had an intention to bring an action as he claimed: "I will bring a suit" for many times after the announcement of the rejection of the objection, and this phase objectively reveals that the right to a trial could be deprived should the group deportation be enforced, the defendant had the responsibility to stop the expulsion procedure of the plaintiff. However, the defendant deported the plaintiff and violated the obligation as mentioned above.

(b) The time and measures of the announcement

Even though the plaintiff received the announcement that the objection was rejected, around 3 pm on December 17, 2014 (the day before this deportation), he had not enough time to challenge the rejection under the detained situation, then deported the next day of receiving such decision. In addition, although he claimed, as "I want to bring a suit", therefore indicating his wish to make the petition, the plaintiff was forbidden from meeting his attorney barring his intention to bring a legal action to seek revocation. The plaintiff was given a fake explanation that he could bring a legal suit to seek the cancellation of the disqualification decision through an attorney even after the deportation.

The aforementioned announcement mediums aimed to deprive the plaintiff's time to bring a suit away, and the timing, as well as the medium of communication, were arbitrarily controlled by the administrative agency that ordered the disposition. This infringes the right to a trial (Constitution Article 32, Article 13) and the right to due process (Constitution Article 31).

(The claim from the defendant)

A. Violation of Article 14-1 of the *ICCPR*

In accordance with customary international law, to begin with, a given state does not have the duty to accept foreigners but has the right to freely decide whether it agrees to let foreigners into its territory and what kind of conditions to propose upon reception. Under the Japanese constitution, aliens are not guaranteed the right to enter Japan, the right to stay nor the right to request the extension of staying in Japan. Moreover, there is no provision to proscribe these principles of the customary international law in the *ICCPR*, and it is accepted to legally take the procedure for deportation to even legal residing foreigners based on Article 13 of the *ICCPR*. Considering those facts, it is thought that *ICCPR* places the written above customary international law as the apparent premise and it cannot be said that the benefit exceeded what *ICCPR* protects and the protection of human rights regulated by the Constitution.

Thus, even though the plaintiff lost the right to bring a suit for revocation of a decision of disqualification as a refugee because of this deportation, there are no reasons behind the plaintiff's argument because it does not necessarily mean that it violates the plaintiff's right to a trial nor it infringes Article 14 of the *ICCPR*.

B. Violation of the Principle of *Non-refoulement*

Since administrative organs make a decision based on legal imperatives when they take administrative dispositions, they seem to follow the principles of rules of law and the plaintiff's claim that examination by a court is needed does not make any sense.

Additionally, *non-refoulment* is the principle that no one should be expelled nor returned to a country where they would face torture, cruel, inhuman, or degrading treatment or punishment, and other irreparable harm. Following this principle, it can be defined as the violation of *non-refoulment* if there is a premise that Sri Lanka is a place where the plaintiff would come under the fear toward of life and freedom, but it cannot be defined as the violation just because the defendant deported plaintiff to Sri Lanka during the stature of limitations of filing an action for revocation of a decision of disqualification as a refugee.

C. Violation of Article 32, Article 13, Article 31 of the Japanese Constitution

(a) The selection of target persons for the group deportations

Referring to target persons for deportation, even if the person brings an action for revocation of the deportation order, and there is a request for a stay of execution, the deportation would be exercised as long as there are no issues of a stay of execution from the court, except the case that the deportation is stopped based on the Article 61-2-6 paragraph 3 of Immigration Act because the person is in the procedure of RSD. Furthermore, immigration control officers are regulated to immediately send the target persons for deportation back to their native country by the *Immigration Act*, and they do not have a legal obligation to withhold deporting during the statute of limitations of filing an action for revocation if the target person for deportation shows its willingness to bring a suit when the officer confirm the person about the intention for bringing a lawsuit.

Additionally, referring to the way of treating target persons for deportation by immigration bureau, the bureau evades deporting the person with considerations about his/her rights to a trial when they bring an action for revocation of a deportation order, including the case that there is an issue of a stay of execution from court. However, even though the bureau avoids deporting because the person brings a suit for revocation of the deportation order, it does not necessarily mean that the bureau has a legal obligation to stop deporting nor to evade deporting just because the person shows an intention to bring a suit though he/she

does not bring an action.

In the administrative procedural system, having a representative for objecting to a decision is not related to bringing a suit for revocation of adverse decisions after receiving a decision through the procedure. Thus, the plaintiff should not be regarded as he had a high possibility to bring a suit for revocation of this decision of disqualification as a refugee after receiving the announcement of this decision of rejection of the objection based on the facts that Esq. Yaguchi was appointed as a representative to oppose the decision in this procedure of filing a complaint, that he submitted the petition and related documents and he attended the date for the plaintiff's oral statement of opinions and interrogation. Additionally, even though the plaintiff was in the situation that he could bring any actions against the state, not limited to the suit for revocation of this decision of disqualification as a refugee and the rejection of objection, he just claimed as "I will bring a suit" without any details after receiving the announcement that the defendant dismissed the complainant. Thus, it should not be regarded as he clearly showed his intention to bring a suit for revocation of this decision of disqualification as a refugee and this decision of rejection of the objection with such an unspecific intention indicator.

(b) The time and measures of the announcement

To begin with, it is not illegal that the announcement of this decision of rejection of objection was informed to the plaintiff a month later from the date of creation of the written decision because the *Immigration Act* does not regulate the time of the announcement of a decision of rejection of objection regarding a disqualification as a refugee to a representative. Additionally, in practice, it is accepted that it takes a month from the date of the conclusion of rejection of the objection to that of the announcement to the representative and there are no facts that prove the time of the announcement was arbitrarily delayed. Furthermore, in terms of the remark by the immigration control officers of Nagoya Regional Immigration Bureau, as "you can bring a suit after going back to your country", it is evident that the remark was not for telling a falsehood on the purpose of preventing the plaintiff from bringing a suit for the revocation because the statement was not only for this decision of rejection of the objection and disqualification as a refugee but for any kinds of lawsuits against the government.

(2) Point at Issue (2) (The amount of damage)

(Allegation by the plaintiff)

A. Regarding the compensation

Although it is extremely highly possible for the plaintiff, who is an applicant for refugee recognition, to stand trial on the decision about his eligibility as a

refugee made by the Minister of Justice, his right to a trial was arbitrary violated by immigration control officers. As a result, he suffered from losing the opportunity to be tried on the decision of Minister of Justice, which is difficult to restore, and he received significant mental stress. To redress the psychological damages he endured, he needs a payment of more than 3,000,000 yen

B. About the attorney fees

To bring this suit, the plaintiff needed to entrust the tasks related to this suit to many attorneys. Thus, the defendant should pay the plaintiff at least 10% of the amount of the compensation (300,000 yen) as the attorney fee.

(Allegation by the defendant)

Contest every point.

THE COURT DECISION

1. The point at issue (1) (Whether this deportation is illegal under the *State Redress Act*)

(1) Introduction

The unlawful action regulated in Article 1-1 of the *State Redress Act* is that a government or public officers, who are regarded as the exercises of public authority, traduce the legal obligations that they are in charge with for individual citizens, and it shall be defined as traduction against written-above legal obligations if there is a fact that public officers take an act of transgressing without adequately performing their duties that they should have done. (ref. The judgment of the Supreme Court of Japan, 1st Petty Bench, March 11, 1993, 47-4 Saikosaibansho Minji Hanreishu ("Minshu") p.2863). With the interpretations outlined above, the court will consider whether there was an illegal action by the immigration control officers.

(2) Violation of Article 14-1 of the *ICCPR*

The plaintiff claims that he had the right to be not deported until he would bring a suit for revocation of this decision of disqualification as a refugee when he got the announcement about this decision of rejection of objection because he had the right to a trial protected in the Article 14-1 of the *ICCPR* and its General Comments.

However, following the customary international law, the State does not have the obligation to accept foreigners, and the *ICCPR* stipulates that foreigners could be expelled from the applicable territory through a legal decision. Because of this, it shall be interpreted that *ICCPR* places the written-above customary international law as the apparent premise. Besides, the HRC General Comments does not have a

legally binding force against its Member States. Thus, it is not admitted that the plaintiff, who was in the position to be deported, was ensured to have the specific right not to be deported until the statute of limitations of filing an action for revocation of this decision disqualification as a refugee because the right to a trial stipulated in Article 14-1 of the *ICCPR*.

For these reasons, the court dismisses the claim from the plaintiff on this point.

(3) Violation of the Principle of *Non-refoulement*

The plaintiff claims that this deportation is illegal because it was taken without examinations by a court even though the court needs to conduct investigations in consideration of *non-refoulment* following the principles of rule of law.

Otherwise, the contents of non-refoulment shall only be admitted under the principle to prohibit states from expelling or returning a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened, not as the reason for demanding the examinations by a court. Additionally, the rules of law do not directly protect the specific rights of the plaintiff, and his claim may have a leap in logic.

Thus, following the principles of non-refoulment and the rules of law, it shall not be said that those principles protect the right to bring an action for revocation of the RSD application disqualification and the right to a trial. Also, the plaintiff, who was deported back to Sri Lank under the deportation order, himself did not challenge the deportation order even though he had the opportunity to do so. Besides, no facts indicate that his life or freedom was threatened after he was sent back to Sri Lank as a result of executing the deportation order. Therefore, it is difficult to prove that the decision to disqualify the plaintiff's RSD application and executing the deportation order were illegal, and the claim by the plaintiff shall not be adopted.

(4) Violation of Article 32, Article 13, Article 31 of the Japanese Constitution

A. The selection of target persons for the group deportations

The plaintiff claims that the state has the responsibility to avoid selecting the persons who are likely to bring a suit for revocation of the RSD application disqualification decision and those who show its willingness to bring an action as target persons for group deportations, and if he/she shows a willingness to bring a legal action in the course of the deportation process, the state has a duty to stop the deportation procedure even if the person was already selected to be deported.

However, in the case where a foreigner without the status of residence file an objection against the RSD disqualification decision, the *Immigration Act* stipulates that the State shall stop a deportation procedure of a person who received a deportation order until the state rejects the objection or the decision of rejection would be made (Article 61-2-6, paragraph 3), and there are no regulations

to stop deportation besides this paragraph. Moreover, in terms of target persons for deportation, the deportation would not be stopped as long as a court does not decide stay of execution (Article 25, paragraph 1 of the *Administrative Case Litigation Act*). Thus, following the regulations of the *Immigration Act*, it is needed to immediately deport the persons to the destination without the cases that regulated in Article 61-2-6, paragraph 3 or that the target brings a suit for revocation of the deportation order or a lawsuit for confirmation of invalid, and a court makes a decision of stay of execution (Article 52, paragraph 3). It cannot be said that there would be a duty to stop deportation besides in the cases mentioned above.

As the *Immigration Act* limits the applicants only to aliens who are in Japan (Article 61-2, paragraph 1), it should be understood that the alien would lose his/her benefit from bringing a suit for revocation of a decision of disqualification as a refugee if the person leaves Japan because of the deportation order (ref. The judgment of the Supreme Court of Japan, 2nd Petty Bench, July 12, 1996, 43-9 Syoumugeppou p.2339). Following the above-mentioned regulations in the Immigration Act, in the case that an alien who is in Japan applies for recognition of refugee status after receiving the deportation order, he /she would lose the right to bring a suit for revocation of decision disqualification as a refugee after the objection against the decision disqualification would be dismissed or the decision of rejection would be made, regardless whether if there is a willingness for bringing an action or not because there is a possibility to be deported from Japan due to the exercise of the deportation order. Thus, it is impossible to find the evidence to limit the exercise of deportation order just because the person would lose his/her right to a trial against a decision disqualification as a refugee. Furthermore, the aliens need to bring a suit for revocation of the deportation order or a lawsuit for confirmation of invalid and get the conclusion of the decision of stay of execution to enable bringing a revocation for decision disqualification as a refugee.

Moreover, according to the evidence (X7), in the case that the alien brings a suit for revocation for decision disqualification as a refugee, it can be admitted that the state tries to reconsider the deportation of him/her until the lawsuit ends. However, this is just practically operated at the Minister of Justice's discretion, and it does not necessarily mean that the state has the legal obligation to take this operation.

Thus, unlike the plaintiff's claim, it is not admitted that the defendant has the duty and it is not regarded as the violation of the duty of the public officers generally have, that the state selected the plaintiff as the target person and did not stop the deportation. Additionally, the plaintiff claims that even if he had brought a suit for revocation of the deportation order or a lawsuit for a confirmation of invalid to stop the exercise of this deportation order, the request would have been highly possible to be dismissed because "there are no urgent needs," and he would have had no legal procedure to stop the exercise of this order. Otherwise, according to the evidence (Y37), there is a precedence that the deportation order was executed on the part of deportation even though the de-

portation was stopped because the alien was in the procedure of requesting an investigation against the decision disqualification as a refugee. Thus, the plaintiff, who has already conducted the oral statements of opinion and interrogations related to his filings of the objection, could not take the measure to stop the exercise of this order.

B. The time and measures of the announcement

(a) The time of the announcement

In terms of the point that the defendant announced this decision of rejection of the objection on December 17, 2014, over a month later from the date when the defendant made the decision, the plaintiff claims that the administrative agency ordering the disposition arbitrary controlled the time and specific measures to take the time to bring a suit from the plaintiff and recognizes this action is unlawful constitutionally and legally. However, the reason why the plaintiff did not bring a suit for revocation of the decision of rejection of objection is not that the defendant delayed the time of announcement of the decision, but is the defendant selected the plaintiff as the target person for this deportation. For this, the plaintiff's claim is regarded as the same as claiming the selection of the plaintiff for this deportation is unlawful constitutionally and illegally. On this point, as mentioned in section A, the defendant would not be admitted as infringing of the legal obligations that public officers need to follow, and the claim from the plaintiff will not be adopted.

(b) The measure of the announcement

According to the fact premise (2), C-b, the plaintiff stated as "I can bring a suit for this within six months" and "I, I will bring a suit" when he received the announcement of this decision of rejection of the objection, holding the Instruction 2. Also, referring to the pieces of evidence (X5 and X6), it is seen that the immigration control officers stated to the plaintiff before the statements he made "You were informed that you had not been recognized as a refugee, correct?". In that case, knowing the contents of the Instruction 2, which informs that the stature of limitations of filing an action for revocation is set as within six months, from the day when you were informed about the disqualification of application of recognition of refugee status (this decision of the disqualification as a refugee), the claim from the plaintiff shall be regarded as the meaning that he wanted to bring a suit for revocation of the decision of disqualification as a refugee and the rejection of objection. Indeed, the lawsuit that he mentioned clearly means the lawsuit for revocation of the decision of disqualification as a refugee or the rejection of objection (Also, because Instruction 2 is for informing the stature of limitations of filing an action for revocation, it is not difficult to expect that the instruction reminded the plaintiff about the lawsuit for revocation of the decision of disqualification as a refugee. Additionally, the statute of limitations of filing an

action for revocation of the decision of disqualification as a refugee in Instruction 1 and the statutes of limitations for bringing a suit is the same). Given these circumstances, it can be said that it was sufficient for the immigration control officers to realize the plaintiff's intentions through his statements (The defendant claims that the immigration control officers meant any lawsuits against the state by their statements, but the claim shall be dismissed because it is unnatural in comparison with the background as above mentioned).

Furthermore, even though the plaintiff would lose the right to bring an action for the revocation of the decision of disqualification as a refugee if the defendant deports him to Sri Lanka, the immigration control officers stated, "You can bring a suit for this of course, but you do not have to be here as long as you have an attorney because he can do that. You do not have to be here." They also stated, "Do it after going back to your country." Considering the statements, the court admits that they gave false instructions to the effect that the plaintiff could bring an action for the revocation.

As mentioned in A of this section, because it is difficult to define this deportation as illegal, receiving a false instruction does not seem to violate the plaintiff's right to a trial because he was deported to Sri Lanka no matter whether the instruction was correct or not. However, considering Article 46 of the *Administrative Case Litigation Act*, which regulates that the state shall instruct the point at issues related to bringing an action for revocation, the purpose is to correctly inform citizens about the opportunity for a remedy for violation of the right. Like the premise, it is evident that the state shall articulate instructions, and the citizen has the right to receive the correct instruction from the state. However, the fact that the immigration control officers gave the false instruction as mentioned above should be understood as they failed to perform their legal obligations as public officers, as such the court recognizes it as illegal pursuant of the *State Redress Act*.

Moreover, in Instruction 1 and 2, there are no explanations that it is impossible to bring a suit for revocation of the decision of disqualification as a refugee nor the rejection of objection if the person would be deported due to the deportation order. Thus, it is extremely difficult for aliens who receive the instructions to understand that they cannot bring an action for the revocation of the decision of disqualification as a refugee nor the rejection of objection if they would be deported, even though they were told that they could bring a suit for the revocation within six months. Thus, although it cannot be said that the information in Instruction 1 and 2 are illegal, it is doubtful whether they provide the appropriate instruction.

A. Point at issue (2) (The amount of consolation compensation)

As mentioned in section 1, even though it is difficult to admit that the defendant violated the plaintiff's right to a trial, it is recognized that the defendant violated the plaintiff's right to receive the correct instruction from the state. Thus, the decent amount of consolation compensation for the damage shall be 80,000 yen.

Indeed, considering the contents of the violated right of the plaintiff and the amount of consolation compensation that should be withheld, the decent attorney fee shall be 8,000 yen.

Conclusion

For those mentioned above, the defendant shall pay the plaintiff a sum of 88,000 yen together with an interest rate of 5% per annum counting from December 18, 2014, the date when the defendant gave the plaintiff the false instruction until full payment of such sum shall have been made as the Civil Code stipulates, and the rest of the consolation compensation that the plaintiff claims shall be dismissed because there are no substantive reasons. Additionally, referring to the cost of the lawsuit, it is reasonable that the plaintiff should charge all costs in comparison with the amount of consolidation compensation as mentioned above. Also, because there are no substantive reasons, the declaration of provisional execution shall not be added.

Accordingly, this court decides as in the Formal Judgments.

Civil Section 7, Nagoya Distinct Court

The Chief Justice: Ikukatu Maeda
Justice: Yukihira Terada
Syohei Mochida

— Case Summary by Atty. Satoshi Ogawa re. Heisei 28 (2016) (Wa) No. 3483[1]

Translated by Haruka Jifuku[2]&Yukari Ando[3]

On July 30, 2019, the Nagoya District Court decided concerning a case wherein national compensation was made to a refugee applicant who was deported. Although the court accepted partially the plaintiff's claims, we decided to appeal to the court because the judgment was problematic.

Background

1. The state notified the plaintiff of the decision to refuse his appeal while the plaintiff was detained. The aforementioned plaintiff had shown an intention to bring a suit to revoke the decision to disqualify the refugee application. Until the deportation of him to Sri Lanka was enforced, contact with his attorney was disallowed. Even though the state took the plaintiff's right to bring a suit towards the revocation, the deportation would not be assumed as illegal under the *State Redress Act.* (the Duty Standard Theory).

2. Although the plaintiff would lose his benefit to bring a suit for the revocation after the deportation, the immigration control officers provided false instructions that he could bring an action even after repatriating to Sri Lanka. Considering the statement, it shall be admitted as a violation of the plaintiff's " right to be given accurate instructions" and illegal under the *Statement Redress Act.* (the Duty Standard Theory).

Fact

1. The state detained the plaintiff without any explanations on the day when he applied

1. 令和元年7月30日判決言渡、平成28年(ワ)第３４８３号損害賠償請求事件

2. Currently interning at the NGO Foreigners's Assistance KOBE (GQ net) from September 2019. Graduated from the International Relations Department, Kobe City University of Foreign Studies in March 2021. The former student intern at the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA), November 2019 - 2020 March.

3. Guest Associate Professor at Osaka School of International Public Policy, Osaka University.

for an Extension of Provisional Release.

2. The next day, the plaintiff was “notified” of the decision to refuse his appeal and received “instructions” that he could bring a suit for the revocation within six months, during his detention.

3. After providing the “announcement” to the plaintiff, the state commenced procedures to deport him. The immigration control officers continually stated to the plaintiff, “...bring the suit for the revocation after going back to the country”.

4. The state did not allow the plaintiff to contact his attorneys and people outside, and it deported him on the next day against his will.

5. The plaintiff lost the right to bring a suit for the revocation because he was removed from Japan proper, thus rendering him ineligible per the legal requirements to seek “refugee status” .

Point at Issue

1. Whether the state violated Article 32 of the Japanese Constitution "the right to a trial," Article 14-1 of ***International Covenant on Civil and Political Rights*** **(***ICCPR)* and the principle of *Non-refoulement* by deporting the plaintiff and depriving him the opportunity to bring an action for the revocation from him.

2. Whether the state violated Article 32, Article 13 and Article 31 of the Japanese Constitution by selecting a refugee applicant for mass deportation, despite him showing an intention for filing a lawsuit, and arbitrarily controlling the time to inform the decision on the purpose of depriving his time for filing a lawsuit.

Decision by the Court

1. The Article 14-1 of ICCPR does not guarantee the specific right not to be deported during a reasonable period for filing a lawsuit.

2. The principle of *Non-refoulement* does not demand an investigation by a court.

3. As long as a court does not make “a decision to stay of the execution," the defendant does not have a legal obligation to withhold deporting.

4. The Minister of Justice tries to avoid deporting the person who takes the procedure of bringing a suit at their discretion. However, it does not necessarily mean that the state has a legal obligation to consider this operation.

5. Even though the state gave false instructions to the plaintiff, he would be deported regardless of the contents of the instruction. Thus, this shall not be deemed as directly violating "the right to a trial."

6. Because the plaintiff has the right to be given accurate instruction, giving the false instruction to the plaintiff shall be assumed as illegal under the Duty Standard Theory.

CESSATION OF REFUGEE STATUS by Art. 1(C) of the 1951 Refugee Convention
—Heisei 30 (2016) (Gyo-Ko) No. 228[1] Tokyo High Court, 5th December 2018 (Sri Lanka)

Translated by Erika Tanaka[2], Ryoko Koike[3], Koei Matsushita[4]

Judgment

Appellantthe State
Appellee X

Main Text

1. The Appeal is dismissed.
2. The costs of an appeal to the court of second instance shall be borne by the Appellant.

1. 平成30年12月5日判決言渡、平成30年(行コ)第２２８号難民不認定処分無効確認等請求控訴事件（原審・東京地方裁判所平成27年（行ウ）第524号）
2. Student volunteer (The Graduate School of Law and Politics, The University of Tokyo)
3. Student volunteer (The Graduate School of Law and Politics, The University of Tokyo)
4. Attorney at law (Japan), Mimura Komatsu & Yamagata Law firm

Facts and Reasons

Part I. Purpose of the Appeal

1 The original judgment shall be revoked.

2 Among the claims of the Appellee, the mandamus action seeking an order to recognize the Appellee as the refugee shall be dismissed, and all other claims of the Appellee shall be rejected.

Part II. Outline of the case

(The abbreviations below are same as the judgement of first instance)

1 In this case, the Appellee, who is a man of the nationality of the Democratic Socialist Republic of Sri Lanka (hereinafter "Sri Lanka"), submitted an application for recognition of refugee status (hereinafter referred to as the "Application of Recognition of Refugee Status") under the Article 61-2(1) of the Immigration Control and Refugee Recognition Act (hereinafter the "ICRRA"); however, the Minister of Justice disposed a non-recognition decision of refugee status to him (hereinafter referred to as the "Previous Non-Recognition Decision") on 9, November 2006; he filed a sue seeking a revocation of the decision and others; then, Osaka district court judged that the Previous Non-Recognition Decision should be revoked (hereinafter referred to as the "Previous Judgement") and the Previous Judgement became final and binding.

The Previous Judgement was based on the fact that he was recognized as a person who has a well-founded fear of being persecuted (Article 1A (2) of the Convention of Refugee Status (the Refugee Convention)) on the grounds

that he was a member of a specific social group of the Tamil and

that he was a member of a specific social group; in other words, he is a supporter of the Tamil Tigers of the Liberation of Tamil Eelam (LTTE).

However, on December 5, 2011, after the judgment on the previous case became final and binding, the Minister of Justice again rendered the Appellee a non-recognition decision of refugee status (hereinafter referred to as "re-Non-Recognition Decision") on the grounds that the situation in his home country had improved since the Previous Non-Recognition Decision, and subsequently also rendered a decision to dismiss the objection pertaining to the re-Non-Recognition Decision (hereinafter referred to as the "Decision to Dismiss the Objection".)

In this case, the Appellee claims that,

1) in the Previous Judgment, because the eligibility of refugee status at the time of the Previous Non-Recognition Decision was accepted, in order to render a re-non-recognition decision, it should be construed that it is necessary that [the foreign national] falls under Article 1 C (5) (the termination clause), "he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality," and

2) it is not found that the Appellee falls under above, thus

3) the Previous re-Non Recognition Decision is illegal.

Therefore, the Appellee requests against the Appellant that the Previous re-Non-Recognition Decision should be revoked, the Decision to Dismiss the Objection should be confirmed as invalid and mandamus of recognition of refugee status.

(Omitted)

Part III. Decision of this court

1 In light of the fact that the Previous Judgment (of the revocation of the Previous Non-Recognition Decision) has become final and binding on the grounds that the Appellee falls under the category of refugees, this court also decides that

in order for the Minister of Justice to render a re-non recognition decision to the Appellee, it is necessary that [the Appellee] falls under the termination clause;

at the time of the re-Non Recognition Decision or present, it is not found that [the Appellee] falls under the termination clause and he falls under the refugee;

therefore, among the claims of the Appellee, the part for the revocation of the re-Non Recognition Decision and the part for mandamus seeking an order for recognition of refugee status are reasonable, but the action regarding a claim for confirmation of invalidity of the Decision to Dismiss the Objection are dismissed because it lacks the benefit of the claim.

(Omitted)

2. The Parties' Argument in this instance

(1) Issue(1) (legality of the re-Non-Recognition Decision)

A. With regard to foreign nationals for whose judgment of revocation of the non-recognition decision of refugee status has become final and binding on the grounds that they fall under the category of refugees, whether or not they need to fall under the termination clause when they are subject to another non-recognition decision of refugee status

(A) The Appellant argues that the termination clause of the Refugee Convention applies to "persons recognized as refugee" in the legal system of Japan , and that in order to be recognized as a "refugee" under the Refugee Convention in our country, it is necessary to go through the procedures prescribed by the Minister of Justice, and that the binding force of the judgment of revocation is not found to have had the same effect as the recognition of refugee

status under the procedures prescribed by the Minister of Justice.

However, the term "refugee" in the Immigration Control Act of Japan means a refugee who is subject to the Refugee Convention pursuant to the provisions of Article 1 of the Refugee Convention or the provisions of Article 1 of the Refugee Protocol (Article 2, Item 3-2 of the Immigration Control Act); and the provisions of Article 1A (2) of the Refugee Convention and Article 1 of the Refugee Protocol stipulate that the Refugee Convention shall be applied if the person satisfies the substantive requirements prescribed in Article 1A (2) of the Refugee Convention without the refugee recognition procedures in the contracting countries. Therefore, the Appellant's assertion that the person needs to undergo the refugee recognition based on the prescribed procedures by the Minister of Justice in order to be a refugee under the Refugee Convention in our country is inconsistent with the explicit provisions of the Immigration Control Act. Thus, under the legal system of Japan, in the case of a foreign national whose judgement of revocation of the non-recognition decision of refugee status has become final and binding on the grounds that they fall under the category of refugees,

the foreign national has been officially recognized as a refugee (without a recognition decision of refugee status by the Minister of Justice) that is eligible for the Refugee Convention at the time of the said non-recognition decision;

and the Minister of Justice would also be restricted by above;

therefore, when the Minister of Justice intends to decide a non-recognition decision of refugee status at the second time because of a change in circumstances after the said non-recognition decision, it is necessary to decide whether or not the application of the Refugee Convention will be terminated pursuant to the provision of termination clause. In addition, the fact (that refugee recognition by the Minister of Justice is not a requirement for the application of the termination clause) is supported by

1) the termination clause is provided in Article 1 of the Refugee Convention together with the positive requirements (Article 1A of the Refugee Convention) and the negative requirements (Articles D through F of the Refugee Convention) for refugees who are clearly not required to be recognized as refugees in the Member States

2) The provisions of "This convention shall cease to apply to any person falling under the terms of section A if;" in main paragraph and "because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist" in (5) of the Pillar of the termination clause stipulate that the termination clause applies to a person who falls under the requirements prescribed in Article 1A (2) of the Refugee Convention or a person who has been recognized as a refugee at some point in the past, but don't stipulate the termination clause applies to a person who has been recognized as a refugee by a Member State.

It is considered that

it is also understood in other Member States that a recognition of refugee status by a Member State shall not be required in order to be subject of the termination clause of the Refugee Convention. (Exhibit A 33, pages 227, "The Law of Refugee Status" by James C. Hathaway in 2008).

(B) In response to above, the Appellant points out that

1) the fact that the termination clause does not explicitly require the refugee status of the host country is only a natural consequence of the fact that the termination clause establishes the substantive requirements for refugees,

2) in Japan, [a person] is officially recognized and confirmed as a refugee under the Refugee Convention only after the refugee recognition procedure (Article 61 Section 2 of the Immigration Control Act) is processed by the Minister of Justice and protected as refugee, and

Article 61 (2) -7 of the Immigration Control Act, which embodies the termination clause, provides that only persons who have been recognized as refugees by the Minister of Justice are subject to the termination clause on the premise that it applies to persons recognized as refugees,

3) While the recognition of refugee status by the Minister of Justice itself grants a foreign national a legal status that allows him/her to receive various protective measures, a judgement to revoke a non-recognition decision of refugee status only retroactively lapses the non-recognition decision of refugee status, and its binding force does not result in the effect that an application for recognition of refugee status should be granted,

4) according to the logic of the judgment of the original instance court, in the procedure of recognition of refugee status, it is inevitable to decide whether or not the applicants for recognition of refugee status are applicable for refugee status at the any time of past; and with the eligibility in the past, to decide whether or not the termination clause would be applied to the applicants. In other words, this is same as applying the termination clause to the procedure of recognition of refugee status and ignoring the provisions of the Immigration Control Act.

However, as for 1), even if the State party to the Refugee Convention entrusts the determination of the refugee recognition procedures to the legislative discretion of each State party, if the purpose of the Refugee Convention is to limit the application of the termination clause to persons who have been recognized as refugees in the State party, it is possible to stipulate to this effect in the termination clause, and as the termination clause does not require the recognition of refugee status by the country of stay; therefore, there is no reason to construe it in a limited way.

In addition, as for 2), In Japan, with regard to the fact that a refugee status under the Refugee Convention can be confirmed with a prerogative only after the refugee status has been recognized by the Minister of Justice, the judgment of revocation of the non-recognition decision of refugee status on the grounds that the foreign national falls under the Refugee Convention does not change in that the foreign national is officially recognized as a refugee status at the time of the decision; and the Minister of Justice would also be restricted by the determination of the judgement of revocation of non-recognition decision; it could be pointed out that [the foreign national] is prerogatively confirmed as a refugee under the Refugee Convention; it could not be admitted that [the foreign national] would be granted protections as a refugee only after being recognized as a refugee by the Minister of Justice because [the claim] is inconsistent to an opinion of the prosecutor of the Civil Affairs Bureau of the Ministry of Justice at the time of accession to the Refugee Convention (Exhibit A6 and A7) and the Appellant's own claims on past refugee cases (Exhibit A 35, pages from 44 through 49). In addition, since Article 61-2-7 of the Immigration Control Act (revocation of recognition of refugee status) provides for the revocation of refugee status granted by the Minister of Justice in the past, it is only a natural consequence that the provision is limited to those who have been granted refugee status by the Minister of Justice; as discussed in (A) above, the applica-

tion of the termination clause is also an issue in recognition procedure of refugee status, and the fact that the termination clause is applied in revocation procedures of refugee status is not a reason for the application of the termination clause to be limited under Article 61-2-7 of the Immigration Control Act.

Furthermore, regarding 3), as mentioned above, a judgment of revocation of a non-recognition decision of refugee status on the grounds of eligibility of refugee status is still recognition and determination by public authority that the foreign national is a refugee under the Refugee Convention at the time of the decision, and subsequent procedures should be naturally carried out in accordance with the decision of judgment of revocation; if the circumstances change thereafter, the Minister of Justice may, on the premise that a judicial judgment on recognition of refugee status has been made by a judiciary, decide whether or not the termination clause is applicable and then reissue a non-recognition decision of refugee status. This does not restrict the administrative agency's right to make a primary decision.

Also, as for 4), in this case, in the previous judgment of revocation of the non-recognition decision of refugee status, the judiciary made an official decision that [the foreign national] falls under the category of refugee status, and the Minister of Justice is bound by the judgment; therefore, the court held that the conditions of the termination clause apply to the second procedures for recognition of refugee status. On the other hand, in general procedures for recognition of refugee status without such a premise, the applicability of the termination clause is usually not a problem.

A foreign national who has already been confirmed in the past (at the time of the preceding non-recognition decision) as a refugee and
falls under the termination clause and whose application of the Refugee Convention is terminated
is not considered as a refugee subject to the Refugee Convention; therefore, in recognition procedures of refugee status, it is natural to assume that the termination clause is applicable under the Immigration Control Act; thus, it cannot be said that the provisions of the Immigration Control Act are ignored.

(C) Based on the above considerations, it is appropriate to construe that a foreign national whose judgement of revocation of the non-recognition decision of refugee status has become final and binding on the grounds that he or she falls under the refugee status needs to fall under the termination clause if he or she is to be non-recognition decision of refugee status again. There are no other grounds to influence the above decision after considering what the Appellant asserts.

B. The eligibility of the provision of the termination clause at the time of the re-Non Recognition Decision

(A) The Appellant claims that
at the time of the Non-Recognition Decision, the Sri Lankan authorities' enforcement and

other actions against persons suspected of involvement in the terrorist organization LTTE cannot be immediately evaluated as "persecution," and

that the Appellee is not persons who fall under the risk profile set forth by the UNHCR in 2012, and based on other circumstances, it cannot be said that the Appellee is likely to be detained or tortured by the Sri Lankan authorities after his return.

However, it is unreasonable in the first place that the above claim does not presume the application of the termination clause. Nevertheless, even after the end of the civil war in Sri Lanka, the fact that arbitrary detention, torture, and ill-treatment are implemented by the military, police, and intelligence services, which are not merely crackdowns, has been mentioned by several reports including the views of UNHCR (pages 20 to 33 of the original judgment); therefore, it cannot be said that such acts of the Sri Lankan government authorities cannot be regarded as persecution immediately.

In addition, the risk profile set forth by the UNHCR in 2012 merely requires a particularly careful examination of the potential risks faced by such individuals, and clearly states that it is not exhaustive (Exhibit B 16: translations, page 4 and page 25); it cannot be said that the risk profile is intended to limit the persons who are persecuted.

The Appellant argues

that the second and third categories of risk profiles do not list all members of the LTTE or those who have engaged in cooperative activities, such as those involved in the operation of the LTTE, but only include former combatants or core executives of the LTTE; and

therefore, that the risk profile assumes those who are more closely related to the LTTE than the general (non-core executives) members of the LTTE.

However, this claim is inconsistent with the fact that the fourth category in the risk profile includes former LTTE supporters who have only been involved in cooperative activities such as transferring LTTE personnel and others.

Further, the Appellant criticized [the judgement of first instance] on the ground that, despite the improvement in the general situation in Sri Lanka between July 5, 2010 (the publication date of the 2010 UNHCR opinion) and December 21, 2012 (the publication date of the 2012 UNHCR opinion), the court of the first instance made an incorrect evaluation that there was no significant change in the meantime.

However, while recognizing the fact that the general situation in Sri Lanka has improved since the end of the civil war (the judgment of the first instance, pages 15 to 17 and pages 33 to 34), the first instance court judged the situation at the time of the re-Non-Recognition Decision on the basis of the circumstances of announcement of the 2012 UNHCR opinion (for instance, timing of publication of reports (written after the announcement of the 2010 UNHCR opinion) by Denmark, the UK, and the FfT (Exhibit B7, B8 and A11, including the Human Rights Watch report cited in the UK report and others.) and specific references of the contents of the reports in the 2012 UNHCR opinion, etc.; thus, it can not be said that the first instance court overlooked the change of general situation in Sri Lanka.

After all, the Appellant's argument is that, given an overly limited understanding of the risk profile, the Appellee is not at risk of being detained or tortured by the Sri Lankan authorities after his return. This shall not be adopted.

In addition, the Appellant claims that

even if the possibility of the need for protection is not ruled out for those who do not fall under the risk profile, those who may have the need for protection do not include those who simply talked to or exchanged information with LTTE members and that

it is unlikely that the Appellees who had little connection with the LTTE would need protection.

However, the Appellant's claim above is also questionable in its premise of understanding regarding risk profile and does not distinguish between the actual degree of association with the LTTE and the degree of recognition from the Sri Lankan authorities or their supporters.

The Appellee was interrogated by the LTTE when he visited Jaffna around September 2004 and were asked for cooperation and provided information on the company he run; he was subsequently questioned by the police about his visit to Jaffna; after the Appellee left Japan, members of the "White Bang", which is said to have been supported by the Sri Lankan government authorities, visited the Appellees' home and company several times to persistently ask about his whereabouts. Based on these facts, there is a specific possibility that the Appellees was suspected by the Sri Lankan authorities as collaborators with the LTTE; therefore, the Appellant's argument that the Appellee has merely conversed with or exchanged information with LTTE members shall not be adopted.

(B) The Appellant asserts that even if the termination clause is applicable, the Appellee falls under the termination clause (5)

because the evaluation basis facts on which the Appellee was evaluated as a refugee at the time of the Non-Recognition Decision do not raise the risk of persecution against the Appellee as a result of the dramatic improvement in the general situation in Sri Lanka; in other words, fundamental changes have been made to eliminate the conditions that had caused the fear of persecution.

However, according to the risk profile of the 2012 UNHCR opinion published approximately 1 year after the time of the re-Non-Recognition Decision, persons suspected of having a relationship with the LTTE may be persecuted; as has already been discussed, it cannot be denied that there is an objective circumstance that the Appellee may be persecuted even at the time of the re-Non-Recognition Decision regardless of the improvement in the general situation in Sri Lanka after the end of the civil war. Therefore, the Appellant's claim that termination clause (5) applies [to the Appellee] shall not be adopted.

(C) As mentioned above, arbitrary detention, torture and ill-treatment by Sri Lankan authorities have been reported even after the end of the civil war in Sri Lanka; the Appellee, who has specific possibility of being suspected by the Sri Lankan government authorities to be a collaborator of the LTTE, cannot be deemed to fall under the termination clause at the time of the re-Non-Recognition Decision, and still falls under the refugee category. Therefore, the re-Non-Recognition Decision in which the Appellee was deemed not to be a refugee is illegal, and the part of the Appellee's requests for the revocation of the re-Non-Recognition Decision is reasonable.

(2) Issue (2) (The eligibility of fulfilment of requirement of merits for the Mandamus action)

The Appellant asserts, in this instance, that the requirement of merits is not fulfilled because

the situation surrounding Tamils, who are suspected to be former members of the LTTE and related persons, has been irreversibly improved after the re-Non-Recognition Decision; therefore, it cannot be said at this time that the Appellees who had only a weak relationship with the LTTE are at risk of being detained or tortured on the basis of treatment of former LTTE personnel in Sri Lanka after the re-Non-Recognition Decision, UK Home Office Report (Exhibit B59 and B60), opinions of the report by the Australian Department of Foreign Affairs and Trade (Exhibit B53) and others.

The eligibility of the termination clause at this time is a problem for the fulfillment of the requirement of merits for the Mandamus action. It is pointed out that, in determining the eligibility of the termination clause,

it is necessary to carefully evaluate the fundamental nature of the change in the foreign national's home country and confirm in an objective and verifiable manner that the situation that justifies the granting of the status of refugee has ceased to exist and

it is necessary to evaluate whether the change has fundamental, stable and persistent nature or not on the basis of information obtained from relevant professional bodies, including UNHCR (refer to Exhibit A4, A8 and Exhibit C3).

In this case, more than 9 years have passed since the end of the conflict between the government forces and the LTTE in May 2009, and more than 6 years have passed since the re-Non-Recognition Decision in December 2011; in the meantime, the political situation in Sri Lanka and the general treatment of former LTTE members have improved, as the Appellant pointed out; the report of the Department of the UKL home office (Exhibit B59 and B60) and the report of the Department of Foreign Affairs and Trade of Australia (Exhibit B53), both of which are invoked by the Appellant, also report the changes in the circumstances after the re-Non-Recognition Decision.

However, according to the 2012 UNHCR opinion published approximately 1 year after the time of the re-Non-Recognition Decision, there is a risk profile that persons suspected of having a relationship with the LTTE may be persecuted, and there is no evidence to suggest that the 2012 UNHCR opinion has been changed. Also, the report "Disgraced Peace: Torture in Sri Lanka since May 2009" published by the FfT in August 2015 (Exhibit A14) studied forensic evidence-based cases of 148 people who had been tortured in Sri Lanka between May 2009 and September 2013, with 142 of them having been linked to the LTTE by the Sri Lankan authorities; the report also reports that the FfT has information on more recent cases of torture, including 2014 and 2015.

In addition, the "Concluding Observations on the 5th Periodic Report of Sri Lanka" issued by the UN Committee against Torture on January 27, 2017 noted that in addition to the investigations by the UN High Commissioner for Human Rights from 2002 to 2011, in non-governmental organizations, 48 points were identified as locations that were reported as torture sites or were used as transit points to torture sites; and [the report] reveals that they got information that numerous individuals suspected of having any connection with the LTTE have been subjected to barbaric torture, often including sexual assault, by the military and police in places of detention not generally known (Exhibit A37).

In addition, the report of the Department of Foreign Affairs and Trade of Australia dated

January 24, 2017 (Exhibit B53), that the Appellant invokes, mentions that

the Sri Lankan authorities are still sensitive throughout the country to the possibility of the re-emergence of the LTTE; the Sri Lankan authorities collect information and conduct sophisticated espionage activities, including “stop” and “watch” electronic databases, on former LTTE members and supporters; the “interdiction” list contains names of individuals who have received a current court order, warrant of arrest or order to confiscate the Sri Lankan passport; the “lookout” list contains names of separatists and individuals of interest to the Sri Lankan security forces because of criminal activity and others; although the persons on the “lookout” list are not likely to be detained (based on Provisional translation by the Ministry of Justice Immigration Bureau, the original text is” Those on a watch list are not likely to be detained,”.), there were media reports that travelers from the United Kingdom (mostly Tamil) had been detained (page 15 of the original text and page 20 of the translated text).

As described above, in Sri Lanka, there is information on recent cases of torture, including 2015, and is a report that Tamils returned to Sri Lanka was detained upon arrival at the airport; considering the political situation in Sri Lanka and the improvement in the general treatment of former LTTE persons, etc. up to the present time (October 15, 2018), it cannot be said that it has been confirmed by objective and verifiable means that the risk of persecution has fundamentally, stably and persistently disappeared for the Appellee who has specific possibility of being suspected as LTTE collaborators by the Sri Lankan government authorities, etc.; and the Appellees cannot be deemed to fall under the termination clause even after taking into account all other relevant evidence. Therefore, the Appellee still falls under the category of refugee under the Refugee Convention, and it is clear from the provision of Article 61-2 of the Immigration Control Act that the Minister of Justice should recognize him as a refugee; consequently, the part of the Appellee's requests for the mandamus of recognition of refugee status is also reasonable.

According to the above, the part of the Appellee's request seeking the revocation of the re-Non-Recognition Decision and the obligatory recognition of refugee status is well-grounded, and the action pertaining to the request for the declaration of nullity of the decision of dismissal of objection should be dismissed because it lacks the benefit of the action. The judgment of the second instance to the same effect is appropriate and the appeal of the case is groundless. Therefore, the judgment of the second instance is rendered as in the main text to dismiss the action.

Therefore, among the claims of the Appellee, the part for the revocation of the re-Non-Recognition Decision and the part for mandamus seeking an order for recognition of refugee status are reasonable, but the action regarding a claim for confirmation of invalidity of the Decision to Dismiss the Objection are dismissed because it lacks the benefit of the claim; the judgement of first instance is reasonable because it is same as above; the appeal of this case is groundless and therefore the judgment of the second instance is rendered as in the main text to dismiss the appeal.

(omitted)

(end of document)

—Administrative contact by the Ministry of Justice dated 21 January 2019[1](Notification)

Translated by Koei Matsushita[2]

Notification
21th January 2019

Dear

Director General of Regional Immigration Bureau (in charge of refugee inquiry) and
Director General of Branch of Regional Immigration Bureau (in charge of refugee inquiry)

General Affairs Division, Immigration Bureau, Ministry of Justice
Yoshiko Gonda, Assistant to the Office of Refugee Recognition

Evaluation of the eligibility of refugee status to foreign nationals whose judgment of revocation of the non-recognition decision of refugee status has become final and binding on the grounds that they fall under the category of refugees (notification)

Recently, the *** court filed a judgment against the State (hereinafter referred to as the "Judgment") for the appeal of the revocation of the non-recognition decision of refugee status (regarding ***), etc., and the Judgment became final and binding.

The Judgement has different contents from the interpretations of the past in terms of evaluation, for the second time, of the eligibility of refugee status to foreign nationals whose judgment of revocation of the non-recognition decision of refugee status has become final and binding on the grounds that they fall under the category of refugees.

In the interpretations of the past, it was understood that in order to be regarded as a "refugee" of the Convention on the Status of Refugees in Japan (hereinafter referred to as the "Refugee Convention"), it was necessary to obtain refugee status through the procedures prescribed by the Minister of Justice

1. 平成31年1月21日付法務省入国管理局総務課難民認定室補佐官事務連絡「難民に該当することを理由に難民不認定処分取消判決が確定している外国人に係る難民該当性の評価について（通知）」

2. Attorney at law (Japan), Mimura Komatsu & Yamagata Law firm

including foreign nationals whose judgment of revocation of non-recognition of refugee status has become final and binding on the grounds that they fall under the category of refugees. However, it is stated in the Judgement that, under the legal system of Japan, in the case of a foreign national whose judgement of revocation of the non-recognition decision of refugee status has become final and binding on the grounds that they fall under the category of refugees,

the foreign national has been officially recognized as a refugee (without a recognition decision of refugee status by the Minister of Justice) that is eligible for the Refugee Convention at the time of the said non-recognition decision;

and the Minister of Justice would also be restricted by above;

therefore, when the Minister of Justice intends to decide a non-recognition decision of refugee status at the second time because of a change in circumstances after the said non-recognition decision, it is necessary to decide whether or not the application of the Refugee Convention will be terminated pursuant to the provision of Article 1 C (Termination Clause) of the Refugee Convention(See 1 below).

I hereby notify you that it will be implemented as described in 2 below upon the arrival of this notification.

After, please notify the manager of the local branch office under your jurisdiction.

NOTE

1. Outline of the Judgment

(1) Outline of the case

In this case, although the applicant applied for recognition of refugee status in ***, the applicant was denied recognition of refugee status (hereinafter referred to as the "Previous Decision of Non-Recognition") by ***, and therefore filed a suit to seek revocation of it (hereinafter referred to as the "Previous Suit"); then, the court rendered a judgment to revoke the Previous Decision of Non-Recognition, and the judgment of the Previous Suit became final and binding.

In *** after the judgement of the Previous Suit was final and binding, the applicant was again decided as non-recognition of refugee status for the reason of *** and others; then, the applicant objected this and requested the revocation of the non-recognition decision of refugee status (hereinafter referred to as "the re-Non-Recognition Decision") and mandamus of recognition decision of refugee status (hereinafter referred to as the “Mandamus ”).

(2) Summary of the Judgment on the legality of the re-Non-Recognition Decision

A. Judgment on the necessity of applying the termination clause regarding the re-Non-Recognition Decision

The State claimed that

> under the legal system of Japan, the termination clause of the Refugee Convention is applicable to "persons recognized as refugees;"
> and it should be construed that in order to be recognized as refugees in Japan under the Refugee Convention, it is necessary to obtain recognition of refugee status through the procedures prescribed by the Minister of Justice;
> it is not recognized that the eligibility of the termination clause of the Refugee Convention would have been problematic in this case because it is not deemed that the binding force of the judgement of revocation has the same effect as the recognition of refugee status based on the prescribed procedures by the Minister of Justice.

On the other hand, the Judgement stated,

> "Under the legal system of Japan, in the case of a foreign national whose judgement of revocation of the non-recognition decision of refugee status has become final and binding on the grounds that they fall under the category of refugees, the foreign national has been officially recognized (without a recognition decision of refugee status by the Minister of Justice) as a refugee that is eligible for the Refugee Convention at the time of the said non-recognition decision; and the Minister of Justice would also be restricted by above; therefore, when the Minister of Justice intends to decide a non-recognition decision of refugee status at the second time because of a change in circumstances after the said non-recognition decision, it is necessary to decide whether or not the application of the Refugee Convention will be terminated pursuant to the provision of termination clause."

B. Conclusion on the eligibility of the Appellee's refugee status (non- eligibility of the termination clause) at the time of the re-Non-Recognition Decision

The Judgement stated, "***, regarding the Appellee, it is not possible to recognize that the Appellee fall under the category of termination clause at the time of the re-Non-Recognition Decision; and thus, he/she fall under the category of refugee."

C. Evaluation of the likelihood of persecution against the Appellee at the time of the re-Non-Recognition Decision

The State claimed that, at the time of the re-Non-Recognition Decision, ***. [The Judgement stated,] "***; it is not found that it is immediately impossible to evaluate as persecution."

Furthermore, the Judgment stated, "Even at the time of the re-Non-Recognition Decision, it cannot be denied that there is an objective circumstance in which there is a likelihood of persecution." And the Judgement denied the State's claim that, even if the termination clause would apply, the Appellee has fall under the termination clause.

(3) Summary of the Judgment regarding the evaluation of the eligibility of refugee status of the Appellee after the re-Non-Recognition Decision

Regarding the eligibility of refugee status of the Appellee after the re-Non-Recognition Decision, concerning the Mandamus, the Judgment stated, "The eligibility, at present, of the termination clause is an issue. In determining the eligibility of the termination clause, the essential nature of the change in the country of origin must be carefully evaluated, and it must be objectively and provably ensured that the circumstances justifying the granting of refugee status have ceased to exist; and whether the change is fundamental, stable and durable, in particular ***. Regarding the Appellee, it is not found that it is objectively and provably ensured that the possibility of persecution was fundamentally, stably and durably ceased to exist; it is impossible to recognize the eligibility of termination clause to the Appellee even with the use of all other exhibits of this case." And then, the Judgement stated that the Appellee fall under the refugee status of the Refugee Convention at the present time (i.e. at the date of conclusion of oral argument).

(4) A part indicating clearly that the termination clause does not need to be applied in general refugee recognition procedures

Regarding the application of the termination clause for the re-Non-Recognition Decision (mentioned (2) A above), the State stated, "According to the logic of the judgment of the original instance court, in the procedure of recognition of refugee status, it is inevitable to decide whether or not the applicants for recognition of refugee status are applicable for refugee status at the any time of past; and with the eligibility in the past, to decide whether or not the termination clause would be applied to the applicants. In other words, this is same as applying the termination clause to the procedure of recognition of refugee status."

In response to the claim above, the Judgement stated, "Regarding this case, in the antecedent judgement of revocation of non-recognition decision, the eligibility of the refugee status was officially recognized by administration of justice; and the Minister of Justice would also be restricted by above; therefore the judgement stated that the provision of termination clause shall be applied in the procedure of recognition of refugee status at the second time. In the general procedures of recognition of refugee status without the premise like above, the eligibility of the termination clause would not be an issue usually."

2 Evaluation of the eligibility for refugee status to foreign nationals whose judgment of revocation of the non-recognition decision of refugee status has become final and binding on the grounds that they fall under the category of refugees

If, in light of the content of the Judgment, the second recognition procedure of refugee status would be implemented to foreign nationals whose judgement of revocation of the non-recognition decision of refugee status has become final and binding,

with the final and binding of the said judgement, on the assumption that the foreign nationals' eligibility for refugee status (refugees who fall under Article 1 A (2) of the Refugee Convention) at the time of the decision has already been officially confirmed,

it is requested

to decide whether or not [the foreign nationals] fall under Article 1 C of the Refugee Convention (the terminal clause); and
to recognize immediately [the foreign nationals] as refugees when they don't fall under the termination clause. (At the time of the second decision, it is unnecessary to examine again that [the foreign nationals] fall under the Article A (2).)

On the other hand, in the general recognition procedure of refugee status, which lacks the premise that a judgment of revocation of the non-recognition decision of refugee status has become final and binding on the grounds that [foreign nationals] fall under the category of refugee status, it is permissible to judge the eligibility of refugee status based on the confirmation of whether or not [foreign nationals] fall under Article 1 A (2) of the Refugee Convention. (It is unnecessary to examine whether or not [they] fall under Article 1 C of the Refugee Convention (termination clause)).

[end of document]

DENIAL OF CLAIM FOR REVOCATION OF THE IMMIGRATION'S NON-RECOGNITION DECISION AGAINST AN APPLICANT, WHO HAD BEEN RAPED DURING HER CUSTODY AT POLICE DUE TO HER POLITICAL ACTIVITIES (decision in favor of the immigration)

—Heisei 30 (2018) (Gyo-Ko)No. 197[1]

Tokyo High Court, 21st November 2018

(Ethiopia)

Translated by Koei Matsushita[2]

Judgment

Appellant: X

Appellee: the State

The Main Text of Judgment

1. The appeal is dismissed
2. The cost of an appeal to the court of the second instance shall be borne by the appellant

(Omitted)

Part II. Outline of the second case

(Omitted)

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1. 平成30年11月21日判決言渡、平成28年(行コ)第197号難民不認定処分無効確認等請求控訴事件（原審・東京地方裁判所平成28年（行ウ）第299号）

2. Attorney at law (Japan), Mimura Komatsu & Yamagata Law firm

3. The Appellant's claims in this appeal

(1) Eligibility for Refugee Status

A. It is clear that "well-founded fear of being persecuted" is found even if it is based only on facts found by the judgment of the first instance court, that is,

i) the Appellant was arrested on the grounds of her political opinions and raped by 3 police officers;
ii) she gave birth 9 months later;
iii) she is suffering from PTSD;
iv) in Ethiopia, from the time mentioned in (1) above to the time of the Denial of Recognition, the EPRDF control continued; in the 2010 election, 2450 seats out of 2453 seats were won by EPRDF; and in the 2015 elections, all seats were won by EPRDF; and
v) it is reported that several opposition leaders insisted
1. that, two years before the 2010 election, the condition for the free and fair election was not ensured,
that the EPRDF restricted political activities of opposition parties and their members, and
that the arrest and detention of supporters of opposition parties were intensifying in Amhara and other states,

and

it is decided by the standard of the reasonable person adopted in the judgment of the first instance.

B. According to the Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, although the "fear" in "well-founded fear of being persecuted" is a subjective feeling, it requires objective support. Said handbook explains that in individual cases, the importance of these two factors can differ, and even if the objective support is not sufficient, it can be considered that "well-founded fear" is proven only for the individual in light of the background, beliefs, and activities of the individual (even if others do not think so in same objective circumstances). In this case, the judgment of the first instance recognized that the Appellant had PTSD and did not consider the existence of "well-founded fear"; however, judging from the fact that there is no evidence to suggest that there were other incidents which caused PTSD, it is considered that [the PTSD] was caused by torture by police officers, and from the facts mentioned in (4) and (5) above, there are objective circumstances that would make an ordinary person fear persecution.

It is clear that the Appellant has the reasonable ground, reasonable possibility and reasonable likelihood and others of fear of being persecuted based on the facts

that "Ad Hoc Committee on Stateless and Related Issues" states in its final report that "well-founded fears" refers to cases in which the individual can establish "reasonable grounds" that the person is afraid of being persecuted (A 71),

that the above handbook states that there should be a sufficient reason for the applicant's fear of persecution when "[the applicant] can prove, to a reasonable degree, that staying in the country of origin is intolerable " (A 65), and

that in the United States an indicator of "reasonable possibility" is adopted and in the United Kingdom it is sufficient if [the person] proves less possibility such as “reasonable likelihood," "substantial reason to think so" and "grave possibility" A 71).

C. In Ethiopia in 2010, the ruling party, the EPRDF, no longer allowed the people to express their political views freely, continued its vigilance, and carried out thorough oppression; as a result, the EPRDF monopolized parliamentary seats in the same year's elections.

A Human Rights Watch report also confirmed that rape by persons in Ethiopian government officials continued after the Appellant was raped by police officers, who were against women with anti-government views.

Therefore, even at the time of the Denial of Recognition, it is more obvious that the Appellant is found to have a "well-founded fear of being persecuted".

(2) About the degree of proof and others

A. As the judgment of the first instance pointed out, even if proof of "to the degree that no reasonable doubt is admitted" is required as to the degree of proof for refugee status, the object is to have a "well-founded fear of being persecuted"; the proof of "to be persecuted" itself is not required. In this case, the Appellant is not required to prove “the fact that [she] will be persecuted, such as being detained or raped, when [she] returns to the home country” itself "to the degree that no reasonable doubt is admitted", but it is enough [for the Appellant] to prove “the fact that [she] is a person who has a well-founded fear of being persecuted, such as being detained or raped, when [she] returns to the home country” "to the degree that no reasonable doubt is admitted.” And this is proven as (1) above.

B. The judgment of the first instance seems to take the approach of examining whether each of the indirect facts is proved "to the degree that no reasonable

doubt is admitted" and not deciding based on the facts without that kind of proof; however, such an approach is not consistent with the generally and internationally adopted approach as a method of deciding refugee status, and it cannot be said that such approach is always used in civil suits as well. It is important to consider [the facts] not as indirect individual facts but as "a set of facts"; because, generally, the objects are not proven by subjective evidence (for the reason the facts provided in this case concerns future, and happened overseas).

C. From the standpoint mentioned in B above, the first instance judgment was inappropriate not finding facts concerning the situation in 2010 immediately before the Appellant left the country, that is, (1) the Appellant was under threat of surveillance by the government authorities, and (2) the circumstances that led to the closing of the cafe that she had been running, despite the Appellant's statements.

Rather, these facts should be recognized as described in (1) above, and from this, it is clear that objective facts supporting subjective fear exist.

(3) Premature Decision[3]

The judgment of the first instance is a premature decision because

A. it is not clear whether the judgment found the facts on the arguments that the Appellant was threatened or monitored by the person concerned with the government or supporter at the time of the 4th national election in 2010; if the first instance judgment did not find the facts, although [the facts] are important in deciding the existence of "well-founded fear of being persecuted," the reasons for not finding the facts were not clear, and

B. although [the first instance court] found the fact that the Appellant had suffered PTSD and received treatment, it did consider the facts to decide the existence or non-existence of "well-founded fear of being persecuted."

PART III. THE DECISION OF THIS COURT

(Omitted)

3. **Translator's comment:** It means "Shinri Fujin (審理不尽)" in Japanese

2. The decision on Appellant's arguments in this instance

(1) The Appellant claims as described in Part II. 3 (1) A above.

However, concerning 'i', even if the possibility (that the Appellant was arrested for opposing the EPRDF or for supporting the CUD and was in custody at a police station) could not be denied, it cannot be found that the Appellant was raped by three police officers while in custody [based on that the possibility is not denied].

Concerning 'ii', it is not clear in the evidence whether the Appellant's child was born due to rape by the three police officers or not.

Concerning 'iii', considering that the Appellant had opened a cafe in Addis Ababa City, where the police station (in that the Appellant was detained) was located, for approximately two years after being raped by three police officers, and had been in business for approximately two years, it is not found that the Appellant had developed PTSD during at least the period before she arrived in Japan in November 2010, and more than five years had passed after the rape before the arrival in Japan; although a doctor in Japan diagnosed that the Appellant had developed PTSD, it is impossible to conclude that the PTSD was caused by the damage sustained by rape.

Furthermore, even assuming (4) and (5), there is no evidence to suggest that the opposition party supporters were widely detained by the EPRDF administration at the time of the national election in May 2010 as they were after the election in 2005; the details of the threats that the Appellant claimed to have received at the national election in May 2010 and the circumstances surrounding them are not clear. And even based on the Appellant's statement, the reason the café in Addis Ababa was forced to close around 2009 is unclear, as per the first instance judgment. Consequently, based on the facts found in 'a' to 'e', it is impossible to say that there is a "well-founded fear of being persecuted" by the standard of a reasonable person.

Therefore, the Appellant's claims cannot be accepted.

(2) The Appellant claims as described in Part II. 3 (1) B above.

However, as subtitled, the Handbook of Criteria for the Recognition of Refugee(A 19) is merely a "guide" relating to the criteria and procedures for the recognition of refugee status, and as stated in the preface of its revised edition, it cannot be legally binding as a guideline to the interpretation of the Refugee Convention; thus, it is justified and approved that the judgment of the first instance decided that there must be an objective circumstance about the person's subjective fear of being persecuted that would cause a reasonable person to feel the same fear when placed in the person's position.

In this case, as described in (1) above, after two years passed from the rape by three police officers while she was in custody, the Appellant opened a cafe in Addis

Ababa City and ran the business for 2 years, where the police station (at which she was detained) was located; also, according to the statement of the Appellant, she told café patrons that she had been raped and asked them not to vote for the EPRDF at the 4th national election in 2010; considering this, it is impossible to find that she developed PTSD at least before she arrived in Japan; thus, even if a doctor diagnosed that she has developed PTSD in Japan, it is impossible to find that the rape by three police officers caused PTSD. In addition, considering the fact that the EPRDF and its supporting parties won almost all the seats of the People's Congress (lower house) in the national election in 2010 and all the seats in the subsequent national election in 2015 (Prerequisite Facts (5) C (D) and (E)), it is impossible to find that she was raped due to her expression of opposition against the EPRDF as also described in (1) above. Therefore, even if the indicators of foreign countries that the Appellant insisted were adopted, it is impossible to find that there are objective facts to recognize "having a well-founded fear of being persecuted."

Consequently, the Appellant's claim cannot be accepted.

(3) The Appellant claims as described in Part II. 3 (1) C.

However, reviewing the reports produced by Human Rights Watch on which the Appellant points as the basis for her argument, indeed, the March 2010 (A 66) case and January 2011 (A 67) case were subject to the Ethiopian government's monitoring and pressure on the public to ensure a vote on the ruling party EPRDF in the run-up to the national elections in May 2005; it suggests that there was a difficult situation in publicizing opposition to the EPRDF. However, it is not found that the supporters of opposition parties were arrested and detained [at the time] as well as the national election in 2005. In addition, in the June 2008 case (A 68), the Ethiopian government forces were reported to have detained and raped ordinary citizens, but this case was reported only as an incident in the conflict with the *Ogaden* National Liberation Front, a rebel group, in *Ogaden*, Somali. In the August 2012 case (A 69), violence and rape by the Ethiopian government forces were reported, but this case was reported only as an incident happened in search of rebel armies by the Ethiopian government after the attack on commercial agricultural land in the *Gambella* region; it cannot be judged that the Ethiopian government was trying to find and arrest, *i.e.* suppress, opponents of the EPRDF.

Looking at the individual circumstances of the Appellant, as mentioned in (2) above, even based on the Appellant's statement, the Appellant states that she acted in opposition to the EPRDF in the 2010 national election, but even so, it cannot be deduced that she was detained again or was about to be raped.

Considering these facts, even at the time of the Denial of Recognition, it is not found that the Appellant has a "well-founded fear of being persecuted".

Therefore, the Appellant's claim above cannot be accepted.

(4) The Appellant claims as described in Part II. 3 (2) A above.

However, according to instructions above, even if considered from the position that the Appellant claims, it should be said that the Appellant's having a "well-founded fear of being persecuted" is not sufficiently established.

Therefore, the Appellant's claim above cannot be accepted.

(5) The Appellant claims as described in Part II. 3 (2) B above.

However, in civil proceedings even if indirect individual facts leave a reasonable doubt as to its existence, such fact cannot be found; it is reasonable to construe that it is not permissible to find major facts using such fact. There is no legal basis to consider, premising the existence of the indirect fact, the existence of a major fact by considering generally with other indirect facts when a reasonable doubt remains only in the case of the determination of refugee status.

Therefore, the Appellant's claim above cannot be accepted.

(6) The Appellant claims as described in Part II. 3 (2) C.

However, it cannot be denied that the statements concerning (a) and (b) pointed out by the Appellant are ambiguous in themselves. As mentioned above, premising the statements of the Appellant, it is not strange even if she had been detained or about to be detained again by police under thorough monitor and suppression, because she was not acting ways which the government could not find such as opening a café after about 2 years have passed since she was raped by 3 police officers, asking her customers to vote for the opposition CUD, and taking part in a stone-laying protest in the national election in 2010; however, evidence of them are not found. Thus, it should be concluded that the statement of the Appellant concerning (i) and (ii) above cannot be relied upon as it is.

In addition, from the fact that the facts mentioned in (i) and (ii) above are not found, it cannot be said that the existence of objective facts that supports the subjective fear is clear.

Therefore, the Appellant's claim above cannot be accepted.

(7) The Appellant claims as described in Part II. 3(3).

However, regarding (i), even if the statement of the Appellant is taken as a precondition, the details of the threats and monitoring that the Appellant received and the circumstances of such threats and monitoring are not clear, and it is not clear whether such threats and monitoring were carried out under the direction or intention of the Ethiopian government authorities, as described in the judgment of the first instance; that is, it should be understood that it is impossible to find (i) based on Appellant's statement.

Regarding (ii), the judgment of the first instance did not make an explicit judgment indeed; but as mentioned in (1) above, just because the appellant is currently

suffering from PTSD and receiving treatment, it cannot be found that the cause of PTSD was the rape by 3 police officers and that the reason of rape was the Appellant's opposition to EPRDF; thus, it is impossible to find that she has a "well-founded fear of being persecuted".

Therefore, the Appellant's claim above cannot be accepted.

Conclusion

According to the above, this appeal is groundless and shall be dismissed, and the judgment shall be rendered as stated in the main text.

(Omitted)

—Excerpt from the lower court's ruling of the above case

Heisei 28 (2016) (Gyo-U)No. 299[1]

Tokyo District Court 31st May 2018

Translated by Masako Suzuki[2]

(1) Definition of Refugees and Burden of Proof

A. Definition of Refugees

(a) As defined under the Provisions of Article 2(1)-2 of the Immigration Control and Refugee Recognition Act (hereinafter called "the Immigration Act,") the term "refugee" means a refugee who falls under the provisions of Article 1 of the Convention relating to the Status of Refugees (hereinafter referred to as the "Refugee Convention") or the provisions of Article 1 of the Protocol relating to the Status of Refugees (hereinafter referred to as "the Protocol.") And according to the definition under the Refugee Convention and the Protocol, a "refugee" for the purpose of the Immigration Control and Refugee Recognition Act (hereinafter called "the Immigration Act",) "owning to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and its unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return it." Thus, it is reasonable to construe that the above-mentioned "persecution" means assault or oppression causing such sufferings as an ordinary person cannot endure, which is a deprivation or oppression against life or physical freedom.

The Plaintiff contend that in light of "persecution" in the usual sense, the arrangement of sections, purpose and intentions of the draftsmen of the Refugee Convention, the meaning of "persecution" in the Refugee Convention is not limited to a deprivation of life and physical freedom but includes other serious human rights violations.

Nevertheless, Article 31 (1) provides that, "the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization…," and Article 33 (1) provides that, "No Contracting State shall expel or return ("refouler") a refugee in any

1. 平成30年5月31日判決言渡、東京地方裁判所平成28年（行ウ）第299号難民不認定処分無効確認等請求事件

2. Izumibashi Law Office, Attorney at Law (admitted to practice in Japan, Tokyo Bar Association), Committee member of Japan Lawyers Network for Refugees, Co-representative of Lawyers Network for Foreigners

manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion,"

Therefore, it is reasonable to construe that the "persecution" for the purpose of the Refugee Convention is a deprivation of or oppression against "life or freedom." Considering, however, that this "freedom" is apposed with "life," and that it is deemed that to be a "refugee" is in such situations that a person "has a fear" when he/she faces at risk of being persecuted (see Article 1 A (2) of the Refugee Convention,) it is reasonable to construe that this "freedom" means freedom pertaining to life (survival) activities, namely the freedom of physical activities. In addition, in light of the fact that how the Contracting States control the economic activities of refugees in their territory depends on their domestic legal systems, it is construed that the above-mentioned "freedom" does not include freedoms of economic activities, etc.

(b) Next, it is construed that, in order to be considered to have a "well-founded fear of being persecuted," there need be not only subjective elements that the concerned person have such fear, but also objective elements that an ordinary person would have a fear of being persecuted when he/she were placed in the same position.

B. Burden of Proof and other matters

(a) Neither the Refugee Convention nor the Protocol defines the burden of proof in refugee claims, thus it is construed that where the burden of proof is placed is determined in accordance with the legislative policy of the Contracting States, and there are no provisions on of the burden of proof in refugee claims under the laws and regulations in Japan.

Considering that the provisions of Article 61-2(1) of the Immigration Act and Article 55-1 of the Immigration Control Act Enforcement Regulations require any foreign national who seeks to apply for recognition of refugee status to submit materials proving that he/she qualifies for refugee status, it is reasonable to construe that with regards to the objective elements that clearly demonstrates the basis for the eligibility for refugee status, the burden of proof shall be placed on the Plaintiff who is the applicant in the case, and thus in cases of revocation of denial of recognition of refugee status, a decision shall be revoked when it is proven that the Plaintiff qualifies for refugee status.

(b) Next, with regards to the standard of proof in refugee claims, in administrative cases, the provisions of Article 7 of the Administrative Case Litigation Act set out that any matters concerning administrative case litigation which are not provided for in this Act shall be governed by the provisions on civil actions, but there are no particular provisions for to the standard of proof in this Act.

And in civil cases, a high degree of probability beyond reasonable doubt is required to prove the existence or nonexistence of a fact, and the claim of that applicant must be convincing enough so that the average person would not cast any doubt on its truthfulness, but this is sufficient and nothing more is required.

Also, there are no particular provisions for to the standard of proof in refugee claims in either the Refugee Convention or the Protocol thus it is construed that what standard of proof the Contracting States apply in refugee claims is determined in ac-

cordance with the legislative policy of the Contracting States, but there are no provisions under the laws and regulations in Japan which allow a lower standard of proof to be applied in refugee claims and subsequent legal proceedings.

Therefore, it is reasonable to construe that, as in ordinary civil cases, the degree of proof necessary before a refugee claim should be accepted should be proven to a high degree of probability beyond reasonable doubt.

(2) Given the above premises, the court shall determine the Plaintiff's eligibility for refugee status.

(b) The Plaintiff claims that i) she belongs to the Amhara, ii) the Amhara people continue to suffer hardships from discrimination in Ethiopia, and iii) this provides a basis for eligibility for refugee status. considering that i) Amharic is an official language spoken in Ethiopia (Defendant's Exhibit 15,) ii) a political party, the Amhara National Democratic Movement (ANDM,) which represents ethnic Amhara and governs the region, is affiliated with the Ethiopian People's Revolutionary Democratic Front (EPRDF) (Defendant's Exhibit 17,) and iii) 6 out of the 25 members of the Council of Ministers, which is the cabinet of the Government of Ethiopia established after the fourth national elections, were former members of the ANDM (Defendant's Exhibit 22), the court find it difficult to consider the fact that the Plaintiff belongs to the Amhara provides a basis for eligibility for refugee status.

(c) The Plaintiff points out that i) her father had been imprisoned for about 10 years after the Mengistu regime was overthrown because he was a high-ranking military officer during the regime, ii) her senior sister was imprisoned after the regime was overthrown because she had been a military commander during the regime, iii) it is not known whether she is alive and iv) this provides a basis for eligibility for refugee status. even when we assume that the Plaintiff is correct in saying that all her family members including herself had been under surveillance as well as in her statements which back up her claim (Defendant's Exhibit 4&5,) the court doesn't see that the Plaintiff herself has actually been subjected to infringement of her rights or oppressive treatment by the Ethiopian authorities for her father and senior sister's past. Rather, it finds from the Plaintiff's statements that her father has lived in piece for a long time after he was released (Defendant's Exhibit 4&5.) Thus, the court find it difficult to consider that even though they are related, her father and senior sister's past provides a basis for eligibility for refugee status. Also, the Plaintiff claims that there was an incident that her father was attacked by unknown perpetrators after she left the country. even when we assume that the Plaintiff is correct in her statements (Plaintiff's Exhibit 50, Defendant's Exhibit 12, and the Plaintiff herself,) the court find it difficult to consider that the occurrence of the incident provides a basis for eligibility for refugee status because the identities of the perpetrators as well as the reasons of the attack are not determined.

In addition, the Plaintiff claims that her younger brother has been expelled from work. even when we assume that the Plaintiff is correct in her statements (the Plaintiff herself), the court find it difficult to consider that it provides a basis for eligibility for refugee status, because the circumstances and reasons of her younger brother's expulsion

from work are not determined.

(d) Next, the Plaintiff claims that i) she has been supporting The Coalition for Unity and Democracy (CUD,) ii) she has been participating in demonstrations as a CUD supporter, iii) she has been involved in political activities, such as calling upon her friends and acquaintances to support CUD and iv) this provides a basis for eligibility for refugee status.

In this regard, even when we assume that the Plaintiff is correct in her statements (Plaintiff's Exhibit 50, Defendant's Exhibit 5&12, and the Plaintiff herself,) and in her claims that i) she is only a supporter who is not affiliated to CUD, ii) she has only been participating in demonstrations as a CUD supporter and iii) she has been involved in political activities, such as calling upon her friends and acquaintances to support CUD, as stated in the findings, it is found that the Plaintiff was arrested in September 2005 after the third national elections was held in the same year and subjected to rape by three police officers while in custody. These findings match the reports, which state that the Ethiopian authorities have arrested a significant number of CUD members around the same time the Plaintiff was arrested , and this fact implies that at that point of time, the Plaintiff was arrested for her being a member of a certain social group or having a political opinion.

The Plaintiff also claims that she had been subjected to intimidation and surveillance by affiliates and supporters of EPRDF during the fourth national elections held in 2010. Based on the Plaintiff's terrifying experiences after the third national elections, it is easy to infer that as a CUD support, the Plaintiff had a subjective fear of being persecuted.

With regards to the fourth national elections, the EU election observation mission has reported that the elections were largely peaceful and free od violence, while many opposition leaders have reported that there was a steep increase in the number of opposition party supporters who were arrested and detained after the elections. However. there is not any strong evidence that suggests that a large number of opposition party supporters were arrested and detained as it happened after the third national elections. In addition, with regards to the Plaintiff's individual circumstances, in addition to the fact that at the time of the fourth national elections, it had been four years since the Plaintiff was raped while in custody, even when we assume that the Plaintiff is correct in her statements which match the above claims (Plaintiff's Exhibit 50, Defendant's Exhibit 5 and the Plaintiff herself,) there is no clear evidence about the details and circumstances of the intimidation and surveillances to which the Plaintiff claimed to have been subjected around the time of the fourth national elections, as well as it is not clear whether such intimidation and surveillance were carried out under the direction of the Ethiopian government. Considering these circumstances, the court does not find that with regards to the Plaintiff who was a mare CUD supporter as noted above, there were objective circumstances that confirmed the Plaintiff's subjective circumstances after the fourth national elections up to the time of the denial of recognition of refugee status in this case.

Also, the Plaintiff stated that the EPRDF and its affiliates obstructed the business of the café she had opened, and, in the end, they sealed and closed down the café in question (Plaintiff's Exhibit 50, Defendant's Exhibit 5 and the Plaintiff herself.) However, even when we assume that the Plaintiff is correct in her statements, it is not clear in what position the EPRDF and its affiliates obstructed the business of her café, and how they have obstructed the business other than by telling the Plaintiff face-to- face that she won't be

operating the café. Similarly, the circumstances of the closure of the café are not clear, including on what legal basis the EPRDF and its affiliates sealed the café. Thus, the court finds it difficult to acknowledge the fact that the EPRDF and its affiliates obstructed the business of the café she was operating for her being a member of a certain social group or having a political opinion. And therefore, the court does not consider these circumstances provide a basis for eligibility for refugee status.

(e) The Plaintiff claims that i) after she entered Japan, she joined anti-government groups X and Y, ii) she has been actively taking part in their activities to oppose the policies of the Ethiopian government and iii) this provides a basis for eligibility for refugee status. Even when we assume that the Plaintiff is correct in her statements (Plaintiff's Exhibit 50 and Defendant's Exhibit 12,) her involvement in X's activities is limited to being given some information from the leaders of X and passing it to other people involved, as well as her involvement in Y's activities is also limited to talking to other members on the phone. Therefore, the court finds it difficult to acknowledge the fact that such activities would be particularly noted by the Ethiopian government. In addition, as stated in the findings, although it is found that the Plaintiff has participated in demonstrations to oppose the policies by the Ethiopian government, there are no specific circumstances to suggest that the Ethiopian government is aware of and paying a particular attention to the Plaintiff's activities. Therefore, the court does not consider her activities in Japan described above provide a basis for eligibility for refugee status.

II. As above stated, the court find it difficult to consider that the Plaintiff met the criteria of the refugee definition as it does not find that she cannot be protected in her country of origin, owing to a well-rounded fear of being persecuted for being a member of a certain social group, or for having a political opinion at the time of the denial of recognition of refugee status in this case. Therefore, the court does not find any ground for nullity in the denial of recognition of refugee status in this case, and also it dismisses the Plaintiff's action for the declaration of nullity of this case as unlawful.

3. About the issue 1 (the legality of the mandamus action in this case.)

The purpose of the mandamus action in this case is to try and compel the court to recognize the Plaintiff as a refugee, so it is understood that this is a mandamus action to appeal pursuant to the provisions of Article 3, paragraph 6, item 2 of the Administrative Case Litigation Act, but as stated above, the court finds no grounds for the Plaintiff's action for the declaration of nullity of this case. Therefore, the mandamus action for this case is illegitimate and to be dismissed because it does not comply with the procedural requirements in the provisions of Article 37-3, paragraph 1, item 2 of the Administrative Case Litigation Act.

CONCLUSION

From the forgoing, the portion of the Plaintiff's action in this case which relate to the

mandamus action to compel the Minister of Justice to recognize the Plaintiff as a refugee shall be dismissed because it is unlawful, and the Plaintiff's other claims shall be dismissed because they are unfounded. Accordingly, the judgment is unanimously rendered as described in the main text.

DENIAL OF THE REFUGEE STATUS BASED ON COI ANALYSIS OF AN FORMER DIPLOMAT INSTEAD OF THAT OF THE INTERNATIONAL ORGANIZATION
—Heisei 27 (2016) (Gyo-U) No. 158, 163, 164, 165[1]
Tokyo District Court, 20th March 2018 (Syria)

Translated by Koei Matsushita[2]

JUDGMENT

(Omitted)

Plaintiff of Third case and Fifth case	Plaintiff P3

(Omitted)

Defendant	The State

(Omitted)

THE MAIN TEXT OF JUDGMENT

(Omitted)

1. 平成30年3月20日判決言渡、平成27年(行ウ)第１５８号シリア難民不認定処分無効確認等請求事件（第１事件）、平成27年(行ウ)第１６３号シリア難民不認定処分無効確認等請求事件（第２事件）、平成27年(行ウ)第１６４号シリア難民不認定処分無効確認等請求事件（第３事件）、平成27年(行ウ)第１６５号シリア難民不認定処分無効確認等請求事件（第４事件）

2. Attorney at law (Japan), Mimura Komatsu & Yamagata Law firm

2. Among the Actions in these cases filed by Plaintiff P3 and Plaintiff P4, the party requesting the mandatory recognition of refugee status shall be dismissed.

3. The remaining claims of Plaintiff P3 and Plaintiff P4 shall be dismissed.

4. The plaintiffs shall bear the court costs.

(Omitted)

FACTS AND REASONS

PART I. JUDICIAL DECISION REQUESTED BY THE PARTIES

1. Object of Claims

(Omitted)

(3) Claim of Plaintiff P3 (Third case and Fifth case)

A. The denial of recognition of refugee status on Plaintiff P3 by the administrative agency reaching disposition on February 26, 2013 shall be revoked (Fifth case).

B. The administrative agency reaching disposition shall recognize the Plaintiff P3 as a refugee (Third case).

(Omitted)

2. Answer before the merits

Same as paragraphs 1 and 2 of the main text.

3. Answer to the merits

The same as paragraph 3 of the main text.

PART II. Outline of this case

In this case, the plaintiffs, who are foreign nationals of the Syrian Arab Republic (hereinafter referred to as "Syria" or "home country".), applied for recognition of refugee status in accordance with Article 61 - 2, Paragraph 1 of the Immigration Control and Refugee Recognition Act (hereinafter referred to as "Immigration Control Act".); however, they were denied recognition of refugee status by the administrative agency reaching the disposition. Therefore, Plaintiff P3 seeks revocation of the denial and mandates recognition of refugee status and the remaining plaintiffs request to confirm the invalidity of the denials and mandates recognition of refugee status.

(Omitted)

2. Prerequisite Facts (There is no dispute between the parties regarding the fact that no evidence is presented.)

(Omitted)

(4) Entry and Refugee Recognition Procedures for Plaintiff P3

A. Plaintiff P3 arrived at Narita Airport on August 21, 2012 and landed in Japan on October 19 of the same year after receiving landing permission for temporary refuge from an immigration inspector at Narita Airport Branch.

B. Although Plaintiff P3 filed an application for recognition of refugee status with the administrative agency reaching disposition on October 10, 2012, the administrative agency reaching disposition issued a denial of recognition of refugee status (hereinafter referred to as "Denial on P3 ".), and on March 18 of the same year notified thereof.

C. Plaintiff P3 filed an objection to the Denial on P3 on March 25, 2013, but the administrative agency reaching the disposition decided to dismiss the objection on May 11, 2015, and notified Plaintiff P3 thereof on July 9 of the same year.

D. P3's wife, P3's eldest daughter, and P3's eldest son (hereinafter referred to collectively as "P3's wife and others".) arrived at Narita Airport on January 23, 2015, and landed in Japan with special landing permission (B - *Ha* 24).

E. Plaintiff P3 and P3's wife gave birth to a second daughter, on ***** in 2017 (B–*Ha* 29).

(Omitted)

3. Issues

(Omitted)

(2) Whether Plaintiff P3 and Plaintiff P4 are refugees.

(3) Legality of mandamus action and appropriateness thereof.

Part III. Party's arguments on the issues

(Omitted)

2. On issue (2) (Eligibility for Refugee Status of Plaintiff P3 and Plaintiff P4)

<Claims of Plaintiff P3 and Plaintiff P4>

(Omitted)

(8) Plaintiff P3

A. Living situation in Syria

Plaintiff P3 belongs to the line of the family of the patriarch of the blood relative group of the Kurds, *Al-Abbas Sain*. *Al-Abbas Sain,* a leading figure in Syria, is a famous tribe in Iraq and Syria, possessing a vast landmass of 13 villages, a wealthy tribe, and having once occupied part of the Republic of Iraq (hereinafter referred to as "Iraq".) and Syria.

The patriarch of *Al-Abbas Sain* is in a position to provide assistance to people in need, to solve problems, and to maintain order inside and outside the tribe, and its influence is very large.

Plaintiff P3 attended an elementary school in *Tel Asafar* from 6 to 12 years old, and after graduating from elementary school, he worked on the farm and bakery which his father managed. Since his father died when Plaintiff P3 was 24 years old, Plaintiff P3 himself managed the farm and bakery and lived a stable life. Plaintiff P3's annual income in Syria was several million Syrian pounds, and his standard of living in Syria was well off to a considerable degree.

B. Participating in anti-government demonstrations

Plaintiff P3 participated in demonstrations held around *Al-Malikiyah* about 2 times a week from around January 2012. Around April or May of the same year in the demonstrations in *Al-Qamishli*, he saw with his own eyes that Syrian security forces opened fire on the demonstrators, killing parents with a girl around 2 years of age; as a result, he became strongly to wish to overthrow the government of Syria, to make [the government] liberal democratic nation and to liberate the people from genocide; he became to be a member of 3 *tansikiyas* (of *Al-Malikiyah, Tel ji alat,* and Kurdish young men's association) and to join anti-government demonstrations more actively.

Plaintiff P3 called for participation in demonstrations, guided demonstrations wearing special clothes, and distributed flyers; he began to appeal to participate in demonstration widely. Also, he arranged buses for people to take part in demonstrations. Since Plaintiff P3 belongs to the family line of the patriarch of *Al-Abbas Sain*, Plaintiff P3 participated in the demonstration, so that it was possible to lead many people into participating in the demonstration efficiently.

C. Departure from Syria and entry into Japan

On July 15, 2012, while Plaintiff P3 was away from his home, the security forces visited Plaintiff P3's home and beat Plaintiff P3's mother to find Plaintiff P3's whereabouts. Plaintiff P3 heard this from an acquaintance and found that he was being pursued by the security forces. Plaintiff P3 was convinced that an arrest warrant had been issued for him because the security forces had come to his house and because he had heard that the arrest warrant had been issued for P 14, the leader of *Tansikiya* to which Plaintiff P3 belonged. He thought that if he was arrested, he would certainly be killed. Plaintiff P3 then sensed his danger and hid in *Dundik* (*Tel Asafar*), and did not return home until August 20 of the same year when he left Syria.

Plaintiff P3 left Damascus Airport on the same day and heard from a broker that he was wanted. After entering Japan, Plaintiff P3 was informed by his family that he had received at his home a judgment stating that he would be sentenced to imprisonment.

D. Recognition of Refugee Status of Brothers

The second younger brother of Plaintiff P3 (hereinafter referred to as "P 15".) was descended from the family line of the patriarch of *Al-Abbas Sain* as well as

Plaintiff P3 and was engaged in anti-government activities in Syria and activities for the Kurds, so there was a risk of being persecuted. He was granted refugee status in the United Kingdom in March 2013.

The elder brother of Plaintiff P3, P 16, who, like Plaintiff P3, was descended from the patriarch of *Al-Abbas Sain* and worked to assist those wanted by the Syrian government, was at risk of being persecuted and was granted refugee status in the United Kingdom after living with his mother in a refugee camp in *Duhok*.

The third younger brother of Plaintiff P3 (hereinafter referred to as "P 17."), was descended from the patriarch of *Al-Abbas Sain* as well as Plaintiff P3, and as an actor, was performing a play on the theme of massacres by the Syrian government in 2012. Because of the risk of being persecuted, he was granted refugee status in the United Kingdom in August 2016.

E. Refugee Status

As mentioned in (4) above, in Syria, since at least the Arab Spring in early 2011, Kurds living in Kurdish areas of northern Syria who have left Syria and applied for refugee status in other countries are highly likely to fall under the category of refugees, and in particular, those who have participated in anti-government activities or are considered to be supporting anti-government groups should be considered to fall under the category of refugee.

Plaintiff P3, as described from A through C above, is a Kurd in the Kurdish area of northern Syria, has extensive land in Syria and Iraq, belongs to the family line of the patriarch of the affluent and famous kin group of the Kurds, *Al-Abbas Sain*, and played a leading role in the anti-government demonstrations.

In July 2012, the Syrian government issued an arrest warrant for Plaintiff P3. It is clear that the arrest warrant was issued for his active participation in anti-government demonstrations in consideration of information of the country (e.g. In Kurds areas, participants of anti-government demonstrations were detained, targeted for enforced disappearance, and tortured areas for their participation in the demonstrations.) and facts that many persons who participated in anti-government demonstrations, as well as Plaintiff P3, were detained by the Syrian government. Also, based on the Country of Origin Information, it is easily supposed that there would be a serious violation of human rights such as torture if Plaintiff P3 had been arrested.

As described above, Plaintiff P3 falls under a refugee. The fact that three brothers of Plaintiff P3 were recognized as refugees in the United Kingdom also underlies the refugee status of Plaintiff P3.

<Claims of Defendant>

(Omitted)

(2) Plaintiff P3

A. Participation in demonstration

(a) In Syria since March 2011, anti-government demonstrations had spread throughout the country and were frequent. Plaintiff P3 participated in the demonstrations only in one area around *Malikiya* City, *Hassaka* province, and there are no particular indications that the demonstrations in this area attracted attention at home and abroad, concerning the anti-government activities that were taking place throughout Syria at that time. Considering that the scale of the demonstration in major cities in Syria was reported to be 50,000 people but the scale of the demonstration in which Plaintiff P3 participated was only several hundred to 1000 people on the premise of the statement made by Plaintiff P3, that the Syrian authorities did not regulate the demonstration in such a way that it would be difficult to continue, and that the demonstration was continuously held for more than half a year, the demonstrations must have been regarded as small-scale demonstrations comparing with the large number of anti-government activities that took place in Syria since the same month, and it is difficult to say that the Syrian authorities paid particular attention to them.

Consequently, even in light of the general situation in Syria at the time, it is difficult to find that the Syrian government authorities had a need to individually identify the participants who were not even in a leadership position in response to demonstrations of the aforementioned nature and then subject them to persecution, and there are no circumstances to suggest that such a situation existed.

(b) Plaintiff P3 initially participated in the planned demonstrations as an individual citizen, not belonging to an organization. After becoming a member of an organization, Plaintiff P3 merely participated in the demonstrations or called for participation in the demonstrations, and these activities did not go beyond the scope of just a participant; therefore, it is difficult to recognize that Plaintiff P3 was in a position to lead anti-government activities.

Consequently, given the nature and scale of the demonstrations mentioned in 'a' above, it is highly unlikely that the Syrian government authorities will pay special attention to Plaintiff P3 as an object of persecution concerning the activities that Plaintiff P3 was conducting in the demonstrations.

B. About a line of the family of the patriarch of blood relative group, *Al-Abbas Sain*

(c) In the examination of Plaintiff P3, Plaintiff P3 stated

that Plaintiff P3 was in a line of the family of the patriarch of the blood relative group, *Al-Abbas sain*, and in a position that was possible to lead

many people to participate in the demonstration and

that many people become to participate in the demonstrations because Plaintiff P3 participated in the demonstrations;

however, there is an unnatural transition in Plaintiff P3's process of statement and it is difficult to find reasonable grounds for the transition; thus it has to be determined that there is no credibility in statements related to this point.

(d) Putting aside the point (A) above, Plaintiff P3 claims that his uncle is the patriarch of blood relative group, *Al-Abbas Sain*, however Plaintiff P3 itself is not in a special position such as the patriarch or others, merely in a line of the family of the patriarch, and the extent of its influence has not been concretely proved.

In addition, Plaintiff P3 stated that he participated in three groups to make a large demonstration. However, even on the premise of the statement of Plaintiff P3 of his examination, there is no specific reason to believe that there was any relationship between the related group to which Plaintiff P3 belonged and the blood relative group, *Al-Abbas Sain*; Plaintiff P3 was not given a special status in each group despite that he was in a line of the family of the patriarch of blood relative group, *Al-Abbas Sain*; therefore, it is quite difficult to find that Plaintiff P3 played an outstanding role in each group or between the groups even on the premise that Plaintiff P3 is in a line of the family of the patriarch of blood relative group, *Al-Abbas Sain*.

Furthermore, Plaintiff P3 has failed to provide any concrete explanation on the extent to which the number of participants in the group's demonstrations increased since Plaintiff P3 joined the group although Plaintiff P3 states that he encouraged participation in the demonstration.

From the above, it is difficult to conclude that Plaintiff P3 had a particular influence on the demonstration in which he participated because he belonged to the family line of the patriarch of the blood relative group, *Al-Abbas Sain*.

(e) In light of the above, the fact that Plaintiff P3 is descended from the patriarch of the blood relative group. *Al-Abbas Sain* does not increase the risk of being persecuted by the Syrian authorities in connection with the activities that Plaintiff P3 allegedly carried out in Syria.

C. About the claim that the security forces visited his home in July 2012

(f) There is no objective evidence to support Plaintiff P3's claim that the security forces visited Plaintiff P3's home and beat his mother to confirm the whereabouts of Plaintiff P3 on July 15, 2012. The only evidence in line with this is the statement of Plaintiff P3.

Based on the statement of Plaintiff P3, Plaintiff P3 did not know the reason why the security forces visited Plaintiff P3's house, and although the security forces (that Plaintiff P3 said they visited Plaintiff P3's house) did

not specifically refer to the activities of Plaintiff P3, such as participation in a demonstration; therefore, it is not clear for what purpose the security forces visited Plaintiff P3's house.

Furthermore, concerning the statement made by Plaintiff P3 to the incident that an arrest warrant was issued to him based on the above circumstances, the existence of the arrest warrant itself or its contents was not confirmed. He merely states his conjecture based on vague and uncertain information.

Plaintiff P3 left Syria on August 20 of the same year after the date when the arrest warrant was issued without any problem through regular departure procedures using his official passport. If the Syrian government paid attention to Plaintiff P3 as an anti-government activist, and if an arrest warrant was issued due to this, it would be difficult for the authorities of the Syrian government to easily permit Plaintiff P3 to leave the country. Therefore, Plaintiff P3's departure from the home country in regular procedure proves that the Syrian government does not pay attention to Plaintiff P3 as an anti-government activist and that no arrest warrant has been issued for Plaintiff P3.

(g) Concerning Plaintiff P3's claim that the judgment to impose a prison sentence on him was made after he departed from the home country, he states that the judgment document had been placed in the post or window of Plaintiff P3's home. If it is true that Plaintiff P3 was tried for engaging in anti-government activities and was found guilty in any way, it was unnatural as a subsequent response that the court merely placed the judgment document in the home post of Plaintiff P3 in Syria.

In addition, according to the statement of Plaintiff P3, Plaintiff P3 had the judgment document with him at least at the time when the examination of Plaintiff P3 was conducted, and the grounds of the judgment document were related to his participation in the demonstration; however, it was not submitted in either the proceeding of filling objection or the present case.

Therefore, even from such circumstances, the veracity of the judgment document itself was extremely doubtful, and it is quite difficult to find the fact that the court imposed a prison sentence on Plaintiff P3.

(h) On the other hand, even if the issuance of an arrest warrant, etc. to Plaintiff P3 was true, it is considered that it was not because Plaintiff P3 was engaged in anti-government activities but because [the authority] tried to make [Plaintiff P3] fulfill military service duty.

In this regard, Plaintiff P3 stated during questioning by the Immigration Inspector at Narita Airport Branch that "My brother was wanted by the government, and I was told to appear for military service." This statement should be deemed to have been made by Plaintiff P3 based on facts.

The issuance of arrest warrants, etc. in Syria because a person has evaded being imposed a military service duty or fulfilling a military service duty does not immediately constitute a risk of being persecuted under the

Refugee Convention.

D. Being Kurdish and belonging to its blood relative group.

Judging from the status of the settlement of Kurds in Syria, the content of the measures taken by the Syrian Government toward Kurds, the historical background of the Kurds in Syria, and the structure of conflict between each power after the civil war, it is not likely that, at the time of the administrative disposition on Plaintiff P3, the Syrian Government was unilaterally oppressing the Kurds in general on the grounds of their ethnic origin, rather, there was a conciliatory policy. Considering these circumstances, it is not found that the Kurds, in general, were in a situation where they were persecuted for their ethnic origin in Syria.

Thus, in connection with the activities which Plaintiff P3 allegedly carried out in Syria, the fact that Plaintiff P3 is Kurdish and is in the family line of the patriarch of the blood relative group, *Al-Abbas Sain*, does not increase the risk of being persecuted by the Syrian authorities.

E. Regarding the fact that his relative was being protected in foreign countries

In the first place, whether or not an applicant qualifies as a refugee should be determined for each applicant based on a comprehensive assessment of all the individual and general circumstances recognized by the applicant, and not based solely on the fact that the applicant belongs to a particular ethnic group or activities in a particular ethnic group. Putting aside this point, no objective evidence has been submitted to support the above statement made by Plaintiff P3 with regard to the eldest brother, and it is not clear from a perusal of the copies of the residence permits of Plaintiff P3's second and third brothers that the refugee status was granted to them for any reason (In the United Kingdom, a large number of Syrian applicants for refugee status have been granted refugee status. On the other hand, in European countries other than the United Kingdom, Syrian applicants for protection are granted non-refugee status rather than refugee status as protection. Plaintiff P3 has already been granted protection for humanitarian reasons in Japan.).

Consequently, the fact that the eldest brother of Plaintiff P3 and others was protected by another country cannot be the basis for Plaintiff P3's refugee status.

F. Facts denying the refugee status of Plaintiff P3.

As for Plaintiff P3, the facts

that Plaintiff P3 had been granted the right to leave the country with his passport issued,

that he did not seek protection immediately after leaving Syria and wished to go to the United Kingdom (where he wanted to reside), and

that the family of Plaintiff P3 was living in Syria without any particular

harm from the authorities of the government of Syria at the time of the Administrative Disposition on Plaintiff P3

were recognized; based on these activities of Plaintiff P3, etc., it is not found that Plaintiff P3 was in a circumstance where he had to feel a fear of being persecuted; these facts positively deny eligibility for refugee status of Plaintiff P3.

In addition, Plaintiff P3 states that he paid bribes to a "P 18" broker who [Plaintiff P3] had requested departure procedures for obtaining his passport May 13, 2012, when he was granted his passport; even before the security forces visited the home of Plaintiff P3 on July 15 of the same year and began to feel a real danger of harm to him, Plaintiff P3 already took concrete actions, such as contacting the broker, to leave Syria. In addition to the above, considering that Plaintiff P3 wanted to go to the United Kingdom, where he wanted to reside, after leaving Syria, and did not immediately seek protection, it is strongly inferred that Plaintiff P3's primary purpose of leaving his home country was not to escape from the impending persecution to Plaintiff P3, but rather to seek a better place to live by avoiding security risks and military service duty; according to this, it is difficult to find that Plaintiff P3 is a person having "well-founded fear of being persecuted".

G. Summary

Considering all facts above, it can be concluded that none of the circumstances claimed by Plaintiff P3 support his eligibility of refugee status and, on the contrary, some circumstances rather deny the eligibility of refugee status. Therefore, Plaintiff P3 cannot be regarded as a refugee.

(Omitted)

PART IV. DETERMINATION OF THIS COURT

(Omitted)

2. Meaning of Refugees, etc.

(1) Article 2 (3) -2 of the Immigration Control Act provides that "refugee" under the Immigration Control Act means refugees who are subject to the Refugee Convention according to the provisions of Article 1 of the Refugee Convention or Article 1 of the Refugee Protocol. According to the above provisions of the Refugee Convention and

the Refugee Protocol, "refugee" (However, stateless persons are excluded. Hereinafter simply referred to as "refugee.") under the Immigration Control Act means "A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." And it is appropriate to construe that the "being persecuted" referred to above means an attack or oppression that brings about intolerable pain in a reasonable person, which compose an infringement or suppression of life or body. In addition, it is reasonable to construe that having" well-founded fear of being persecuted " as mentioned above requires not only the existence of a subjective circumstance in which the person is afraid of being persecuted but also the existence of an objective circumstance in which a reasonable person would feel fear of being persecuted even if placed in the person's position.

(2) Concerning recognition of refugee status, Article 61 - 2, Paragraph 1 of the Immigration Control Act provides that the Minister of Justice may recognize an applicant as a refugee based on material submitted by the applicant for recognition of refugee status; it premises that the applicant for recognition of refugee status submits the material. In addition, since those who have been recognized as refugees are granted favorable legal status, such as being able to acquire the status of residence of a permanent resident according to Article 61- 2 -2, Paragraph 1 of the Immigration Control Act; therefore, recognition of refugee status is a so-called "profit-making disposition." In general, concerning a profit-making disposition, it is construed that the person subject to such disposition bears the burden of proof about a fulfillment of the requirements for the disposition outlined in the underlying laws. Based on the above, it is reasonable to construe that the refugee recognition applicant bears the burden of proof of eligibility for refugee status.

3. Found facts regarding the domestic situation in Syria

According to the following evidence and the entire purport of the oral argument, the following facts may be found (The number of pages of evidence indicates the number of pages of translations in the case of foreign languages and translations).

(1) General situation in Syria

A. Political circumstances before 2011

President Hafez al-Assad, who was inaugurated as the President by a national referendum in 1971, remained in power for a long time but died in June 2000, and his second son, Bashar Hafez al-Assad, assumed the presidency in July of the same year. In May 2014, the President (President Assad) received the confidence of the people in a referendum on his second term of office in May

2007, was reappointed, and was elected for the third term in June 2014. Both presidents are Alawite Muslims and Baathist parties. (A - All 2, B - All 7)

B. Arab Spring and Anti-Government Demonstrations (A-All 24, B-All 8)

(a) Influenced by democracy movements in various areas of the Middle East, "Arab Spring," a small-scale demonstration occurred in the capital city of Damascus on March 15, 2011, and on the 18th of the same month, an anti-government demonstration by several 1000 people occurred in the southern city of *Daraa*, spreading to various areas (B-All 5, All 9).

In April of the same year, President Assad issued a Presidential Decree repealing the Emergency Act which came into force in 1963 and had given strong powers to the security authorities (In addition, the Syrian government announced in March 2011 that it had prohibited security forces from firing at demonstrators. B-All 20 <p. 28>, All 75 <p. 35>.)

The Syrian government expressed its view that since the beginning of the protests the government had been the target of attacks by armed gangs and terrorists, and that some of the terrorists had received foreign funds. In the same month, President Assad expressed his understanding that what was happening in Syria was part of a conspiracy, by Israel at the apex and countries cooperating with Israel, to bring about sectarian hostilities with the help of some of the Syrian citizens(B-All 20 <p. 26>, All-75 <p. 35>).

On April 25 of the same year, the Syrian Army carried out its first large-scale military operation in *Daraa*, followed by large-scale military operations in various areas. In November of the same year, OHCHR (Office of the United Nations High Commissioner for Human Rights) estimated that at least 3500 civilians have been killed by government forces since March of the same year. It was also reported that several 1000 people were detained and tortured or ill-treated. (B-All 20 <p. 26>)

(b) President Assad issued a Cabinet Order on the right to participate in peaceful protests in April 2011 (B-All 20 <p. 26>). However, according to a report by the U.S. State Department, [1] the Cabinet Order issued in September of the same year gives the government broad authority over freedom of assembly, [2] it requires the permission of the Ministry of Home Affairs to hold demonstrations or public gatherings of three or more people, [3] violators are subject to imprisonment of up to one year and a fine of 5000 Syrian pounds., and [4] the Ministry of Home Affairs permitted only demonstrations by supporters of the government, etc. (A-All 1 <p. 46>, All 28 <p.12>). On May 31 of the same year, President Assad issued a presidential order granting pardons to all political prisoners (B-All 10.)

In June of the same year, the Syrian government announced that 120 members of the security forces were killed by armed gangs in the northwestern city of *Jisr ash-Shughur* (B-All 20 <p. 241>, All 75 < p.46 and 47). In the same month, President Assad stated that members of the military and security forces, as well as innocent people, were killed in subversive activit-

ies and terrorism, that the government would make efforts without sleep or rest to meet the needs of the nation, and that, among those calling for change, there were a few groups of criminals or radical religious groups, who had the aim to spread the crisis. The national broadcast station actively reported armed attacks against the government powers in each city.

On August 4 of the same year, President Assad issued a presidential order approving the Political Parties Law, which would lead to a multiparty system, and the law went into effect. However, the de facto one-party dictatorship by the Baath Party continued, and armed clashes between demonstrators and security forces also continued.

In the same month, President Barack Obama of the United States issued a statement calling for the resignation of President Assad because President Assad was continuing an armed crackdown on anti-government demonstrations.

(c) The report of November 2011 by the Independent International Commission of Inquiry established in the UNHRC (United Nations Human Rights Council.) mentions

> that since the town was closed and a curfew was issued, the citizens were directly subjected to violence,
>
> that Commission received many testimonies on how people who went out of their homes were shot by snipers,
>
> that many of the reported cases occurred in the town of *Daraa*, *Homs*, etc.,
>
> that an attorney in *Daraa* stated that the security forces established a base in the old city area of *Daraa* during the operation in April of the same year,
>
> that, when *Daraa* was attacked and closed, the armed forces and security forces disturbed residents in the city to obtain foods and other daily necessities, and
>
> that water tanks and pipes (that residents used) were intentionally crashed by the armed forces and security forces (A-All 50).

Amnesty International's report of the same year mentions

> that the armed forces and security forces mobilized snipers to shoot bullets into peaceful crowds and repeatedly deployed tanks and other armored fighting vehicles for military operations in residential areas, calling on continued and quite excessive use of force and
>
> that the security forces occasionally raided the area altogether, searched all homes and arrested all men over 15 years of age, or simply captured the street people indiscriminately (A-All 27 <p. 2>).

The same year's report by Human Rights Watch mentions

> that the Syrian security forces and militias supported by the

government, known locally as *Shabiha*, used force against demonstrators (Most of them was peaceful.) daily, often including lethal force,

that at least in several cases, members of security forces resulted in being shot by a stray bullet or fell a victim to intentional killing,

that in some cases, demonstrators supported by defectors (from the armed forces) resorted to violence and, in towns such as *Daraa*, the demonstrators set fire to government buildings, destroyed bronze statues of President Assad and President Hafez al-Assad, and burned several vehicles belonging to the security forces,

that, according to some eyewitnesses, some members of the security forces were killed by participants of demonstrations and the incident generally occurred after the members of security forces shot participants of demonstrations, and

that testimony of eyewitnesses, including defectors from the armed forces, participants of protest activities, and journalists indicates that the participants of protest activities were unarmed in the majority of cases recorded by Human Rights Watch and other human rights organizations (A-All 31 <p. 1 – 2>).

C. Formation of anti-government armed organization and holding of elections (A-All 24, B-All 8, All 11)

In September 2011, the anti-government side announced the formation of a coalition of activists called "Syrian National Council" (2011), and an armed organization called "Free Syrian Army" was formed by defectors from the government; the two powers agreed to cooperate in November of the same year (However, the Syrian National Council has become dysfunctional due to internal conflicts and lack of cooperation with domestic organizations. B-All20 <p. 101>).

The anti-government armed groups have looted military supplies from military bases and secretly provided arms and bullets from outside patrons across borders with neighboring countries (B-All 20 <Page 41>).

In November of the same year, the Syrian government agreed to a peace plan proposed by the Arab League, and based on the peace plan, released 1180 political prisoners arrested in connection with anti-government demonstrations (B-All 12, All 13).

On February 26, 2012, a national referendum to ask the propriety of the constitutional amendment was carried out, and the new constitution draft was approved by 89.4% of affirmative votes. The new constitution draft included the introduction of a multi-party system and the limitation of the term of office of the president; it deleted the de facto one-party rule of the Baath Party. However, the anti-government side called for a boycott.

On May 7 of the same year, an election for the People's Assembly was held

under a multi-party system for the first time in practice, but powerful anti-government forces did not take part, and the ruling coalition "National Progressive Front" won an overwhelming victory, winning about 70% of the votes.

D. Entering a civil war (A-All 24, B-All 7, B-All 11)

(a) President Assad accepted a ceasefire proposal by former UN Secretary-General Kofi Annan, who had been appointed as Ambassador Extraordinary of the United Nations and the League of Arab States, and the ceasefire came into effect on April 12, 2012; a UN observer mission to Syria entered Syria.

On June 16 of the same year, the mission suspended its activities due to the intensification of armed conflicts and was dissolved on August 19 of the same year.

The anti-government forces launched an attack on Damascus on July 15 of the same year, but the government intensified its offensive and almost brought down again the anti-government groups in about 10 days. In the northern city of *Aleppo*, anti-government forces launched an attack on May 20, and the government started a mop-up operation on May 28.

The International Committee of the Red Cross (ICRC) announced in July of the same year that it would recognize the conflict in Syria as a civil war[3](B-All 20 <p. 37>).

The Syrian government adopted the Anti-Terrorism Law in the same month and established the Anti-Terrorism Court in September of the same year. The Anti-Terrorism Act has also been described as binding on political activists and others for the vague charge of "act of terrorism". (A-All 28 <p. 9>, A-All 49 <p. 11>, B-All 20 <p. 35, 36, 85>.)

On November 11 of the same year, the Syrian National Coalition, a new unified organization including the Syrian National Council and internal and external organizations, was formed, and the Free Syrian Army joined it (B-All 20 <p. 99, 100>).

The UN announced that as of March 2013, 1 million Syrians had fled the country, and according to the UN, at least 70,000 people have died since the beginning of the anti-government demonstrations (B-All 14).

(b) UNHRC' s report dated February 5, 2013 mentions

that, because armed anti-government groups launched attacks from within residential areas where large numbers of civilians lived, civilians were exposed to artillery bombardment and forced to evacuate from their homes,

that the government forces used armed force to carry out military actions without distinction of citizens or those directly involved

3. **Translator's comment:** "a civil war" is a translation of "内戦" in Japanese. However, there is a word of "内線" in the original text. Both have same pronunciation, naisenn. From the context, I believe it is a mistake and choose "a civil war."

in hostilities,

that the Syrian government was characterized by indiscriminate and widespread artillery bombardment, frequent urban bombardment, a genocide, indiscriminate artillery bombardments against civilians, and attacks on civilian groups, and residents of areas where fell under the control of anti-government forces (B-All 20 <p. 48, 50>).

UNHRC's report dated June 4 of the same year mentions

that the government forces deprived of liberty as a means of war and did not stop collective punishment of areas that appeared to support anti-government armed forces,

that the government forces generally arrested and detained people for the crime of exercising their basic human rights and, in mid-January of the same year, the security forces made mass arrests in a peaceful protest in *Swider*,

that, in *Daraa*, the government forces and security forces arrested men on a large scale for only reason appropriate for military service., and

that the government forces made extensive arbitrary arrests in areas of increased control. (B-All 20 <p. 60>)

Human Rights Watch's report about 2012 mentions

that the security forces arbitrarily arrested, illegally detained, enforced disappearances, abuses and tortured tens of thousands of people using a huge network of detention facilities in whole Syria,

that many of detained people were young men in their 20s or 30s, but also children, women and older,

that arrested people were participants of peaceful protest activities, activists and journalists (who organized the protest activities, filmed and reported), humanitarian supporters and doctors, and

that in some cases, to urge the activists to give themselves up, the security forces detained their families including children (B-All 20 <69>).

The UN Human Rights Panel pointed out in September 2013 that a sharp increase in crime and ill-treatment was reported throughout northern Syria, and that it was caused by radical anti-government armed groups and foreign fighters (A-All 3<p. 7>).

The U.S. State Department stated that the Assad regime, to suppress protest activities against the government, continued to use lethal weapons indiscriminately, including military attacks on urban and residential areas across the country (A-All 49 <p. 10>)

(2) Kurds in Syria

A. The Kurds constitute about 9% of Syria's population, most of whom live in the North and East (A-All 5). The governments of President Hafez al-Assad and President Bashar al-Assad restricted the use and education of Kurdish, the publication of Kurdish books and other materials, and cultural expression in Kurdish. The Kurdish political party is illegal. (A-All 1 <p. 61>, A-All 35, A-All 48, A-All 57, B-All 20 <p. 32, 134>, B-All 76)

B. President Bashar al-Assad stepped up security operations in the Kurdish region after the passing of the Provisional Administrative Law in Iraq in 2004, under which the Kurds in Iraq gained autonomy (B-All 76). In March 2004, when a soccer match between a team mainly composed of Kurds and a team mainly composed of Arabs was held in *Al-Qamishli*, northeastern Syria, violent clashes occurred between supporters of both teams, and security forces fired 5 live ammunition, killing at least 7 Kurds. Subsequently, protest activities were held in Kurdish residential areas in northern and northeastern Syria, and Syrian forces invaded and suppressed them. (A-All 35, B-All 20 <p. 22>, B-All 76)

C. In addition to the preexisting Kurdish youth organizations, the Regional Coordination Committee (LCCs) was newly established, and anti-government activities by the Kurds began to be conducted mainly by this committee. The Regional Coordination Committee is a network of dozens of organizations called *Tansikiyas*. The Regional Coordinating Committee joined the Kurdish youth organization in late 2011 (2011), but soon broke up. (A-All 30, All 36, All 48, All 57, All 59, All 63)

D. In April 2011, President Assad issued an order to enable Kurds without nationality to apply for Syrian citizenship who had been registered as foreign citizens in the *Al-Hasakah* This resulted in approximately 51000 Kurds receiving identification documents that clearly stated their citizenship (A-All 1 <p. 62>, All-5 <p. 11, 12>, B-All 20 <p.141>).

It is reported that the government had used to be tolerant of Kurds but is arrested, detained, and tortured several Kurdish activists (B-All 20 <p. 132>).

It has also been reported

> that attacks by the authorities against anti-government forces in Kurdish areas are not necessarily more intense than in other areas and, and less violent and that the security forces are often restricted from attacking demonstrations in Kurdish towns (A-All 57 <p. 3>).

The 2014 Operational Guidelines Note issued by the UK Home Office men-

tions

that the Kurds in Syria have suffered discrimination and social alienation for tens of year under the Assad regime, and

that after the conflict began in March 2011, Syrian Kurds conducted their anti-government protest activities, but recently most of the fighting has been against Islamist anti-government armed organizations (A-All 49).

Human Rights Watch's 2014 report mentions

that many Kurdish youths joined the anti-government activities when violence erupted against the Syrian government in 2011, but that most of Syria's Kurdish political parties took a cautious approach because of government repression and distrust of Syrian Arab opposition parties, and

that the Syrian government suppressed Kurdish protest activities but on the other hand implemented its longstanding pledge to grant citizenship to stateless Kurdish registrants (Estimated 50,000 persons). (A-All 35)

The report of the Independent International Commission of Inquiry in August 2012 mentions that in March of the same year, the Syrian government used extremely excessive violence against demonstrators who had been exercising their right to peaceful protest activities in *Al-Qamishli* (A-All 58 <p. 4>)

E. The Syrian government withdrew its security forces from A*hlin, Ain al-Arab and Jazira* in 2012, except for Al-*Qamishli* and strategically important areas around it; after several months of coordination between the PYD (Syrian Kurdistan Democratic Party) and the Syrian government, it is appeared to tolerate their mutual activities; the Syrian government delegated most of its security and administrative authority in the region to the PYD (A-All 1 <p. 64>, All 35, All 57).

In the three northern states of Syria, a temporary government with a local government was established in January 2014 by an organization led by PYD, and a temporary constitution was introduced by PYD in the same month. Subsequently, 22 councils were established in each state to deal with security, justice, diplomacy, health, humanitarian issues, and other administrative issues, and a two-instance people's court system was also established (A-All 35, All 38 <p. 3, 4>).

There have been reports of human rights violations, including arbitrary arrests, abuse of pre-trial detention, and violations of due process, by YPG, a military organization of PYD, and *Asayish*, a police unit (A-All 19 <p. 8>).

On March 17, 2016, PYD and YPG declared the enforcement of the federal system in the whole northern area including three northern states which they

controlled effectively (B-All 77, All 78).

F. It has been reported that around 2013 the Kurds in northeastern Syria were often caught in a dilemma of armed groups, and were compelled by government forces or armed opposition groups to support one of them in the face of fierce fighting (A-All 49 <p. 8>).

Human Rights Watch's 2014 report mentions

> that civilians in areas (where the three Kurdish tribes are the majority) continued to suffer human rights and humanitarian law violations, and
>
> that particularly during and after the fighting in the north and northeast, [the civilians] suffered serious ill-treatment by non-state Islamic armed groups such as ISIS and the *Al-Nusra* Front, including indiscriminate bombardment in Kurdish areas, attacks targeting civilians, torture and killing (sometimes including beheading) of captured civilians or combatants (A-All 35).

As of the middle of 2014, ISIS had established control over northern and northeastern Syria (The establishment of the state was declared in June of the same year.), and the expansion of ISIS's area of control and its brutal treatment against its citizens were considered to be the causes of the significant displacement. The report of the Independent International Commission of Inquiry in February 2015 mentions that ISIS forcibly displaced Kurds from *Racca* in July 2013 and forcibly banished Kurds living in *Aleppo* in November 2014. (A-All 19 <p. 2-4>, All 25, All 38 <p. 3>, B-All 53>

(3) Situation in *Daraa*

A. The *Daraa* province is located in the southern part of Syria, bordering neighboring Jordan, and the cities in *Daraa* province were the strongholds of anti-government armed forces (B-All 9, All 20 <p. 47>, All 79).

B. Since March 2011, it has been reported that government forces and security forces have blockaded the city of *Daraa* and surrounding cities and villages one after another to prevent the acquisition of food and daily necessities, destroyed water tanks and pipes, and sniped at residents who had fled outside in breach of curfew (A-All 26, All 31, All 38, All 39).

The Independent International Commission of Inquiry's report in February 2013 mentions

> that government army and militias of the government army deliberately destroyed houses and shops suspected of being members or

supporters of the anti-government forces during the mopping-up operation, in addition, the destruction included arson, explosions, and massive destruction, and loot was frequently implemented before the destruction,

that these actions were implemented at several places in *Daraa* province in October 2012, and

that bombardment and subsequent ground sweeps by various government security forces and militia groups of government forces were carried out in *Tafas*, *Daraa* province, and it is estimated that between 260 and 350 artillery shells were fired into the urban area over many days, thus hundreds of people were killed or injured as many civilian targets were repeatedly attacked.

The same report also mentions, when several media reported the incident in *Harak*, a district in the *Daraa* governorate, in August of the same year,

that the government army regained control of the town after 18 days of fighting with the Free Syrian Army,

that the residents who returned to *Harak* found arson houses and bodies severely injured by shrapnel, gunfire from close range, and knives, and

that the bodies included women and children (B-All 20 <39>).

According to a U.S. State Department report of 2013, at a checkpoint in *Daraa*, government army and security forces arrested men simply because they were old enough to serve in the military (A-All 28 <p. 7>). A report by the UNHRC in June of the same year mentions that government forces made extensive arbitrary arrests in areas of increased control and that they carried out mass arrests in *Daraa* in mid-March of the same year (B-All 20 <p. 60>).

The report of the Independent International Commission of Inquiry in February 2014 mentions that the government army made arbitrary arrests during or immediately after the ground war, carried out arrest operations in *Daraa* province in September 2013, targeting adult men and young boys, but also detained children, women and the elderly (A-All 34 < p.2>). In this connection, in March of the same year, Syria's official news agency SANA reported

that some satellite broadcasting stations reported young men were forced to stop at checkpoints and serve in the military but this was not true, and

that such reports were completely false (B-All 20 <p. 77>).

During the period from March 2011 to around May 2012, there were several reports that the security forces shot demonstrators and others in *Al-Hara*, *Daraa* Province (A-*Ni* 7).

(4) Military service

In Syria, the National Military Service Act provides for the compulsory military service of males aged 18 to 40 excluding Kurds without nationality. As a retired reserve, it is obliged to reenlist for 5 years by the ages of 40 or 45. Conscientious objection to military service is not provided for by law, and punishment for evading the draft is imprisonment for a maximum of 5 years (It allows people who do not want to serve in the military to pay exemption fees to avoid this.). The UK Home Office's January Operational Guidelines Note in 2013 mentions that Syrian soldiers who escaped were forced to fire on unarmed civilians and opponents, including women and children, and that they were at risk of being shot if they refused to do so. (A-All 1 < p. 37>, All 5 <p. 17, 18>, B-All 20 < p. 73-78>)

In March of the same year, it was reported that the Syrian government declared its readiness to mobilize, summoned reservists up to the age of 35, and several students were arrested at a checkpoint and immediately transferred to the army to enlist (B-All 20 <p. 78>). *Al-Hayat*, an Arabic-language newspaper headquartered in London, reported in January of the same year that the Syrian authorities had created mother country defense forces separate from the regular army and that its personnel was targeted at a wide range of people, from civilians who had completed military service to those who had joined military service or were newly drafted into military service (B-All 82).

B. A report of Danish Immigration Service et al in May 2010 mentions

> that a man who evaded military service duty (for 21 months.) told
>
> that those who were abroad at the time of his convocation and did not comply with the convocation was immediately arrested by the military police upon his return, and sentenced to imprisonment for 2 to 3 months,
>
> that those who did not comply with the convocation and lived in Syria were arrested, and sentenced to imprisonment for 3 months,
>
> that those who did not comply with the convocation even after the imprisonment were sentenced to additional imprisonment for 6 months, and
>
> that, according to an information source that a joint investigation team contacted with, a punishment for those who did not comply with the convocation was [imprisonment] for from 2 months through 6 months but the imprisonment was not applied actually for the reason that President Assad announced an order granting amnesty every year (A-All 1 <p. 37, 38>, B-All 20 <p. 75>).

Syria's official news agency SANA reported in November 2011 that President Assad issued a legislative order granting amnesty to people of suitable age who failed to undergo conscription examinations or refused to join the army without

reasonable grounds (B-All 20 <p. 76, 77>)

C. A report of the Danish Immigration Bureau mentions

> that, in the early stages of the conflict, the Syrian government implemented conscription by sending troops to areas known to be anti-government, along with a list of names of those who had been summoned,
>
> that the security forces searched the relatives' homes of those who were the subject of conscription, demanded identification [of the subject], and sometimes examined regarding those who were not there,
>
> that in the areas controlled by the government, administrative organizations are still functioning and the authorities search for conscription subjects in various ways and, when necessary, go to the families of conscription subjects, conduct house search, issue draft cards, and have intelligence agencies search for those who evade the military service,
>
> that if those who evade the military service are arrested, he shall be detained in a security forces facility and subsequently taken to a military court in *Damascus*, and
>
> that there is a risk of torture and ill-treatment while in the custody of the security forces, and the OHCHR has reported cases of torture and ill-treatment in the Army and Air Force intelligence agencies (A-*Ni* 10).

(5) Views of international organizations

A. An Operational Guidelines Note issued by the UK Home Office in 2014 mentions that Syrians of Kurdish origin are subject to national, social and legal discrimination and discriminatory treatment on their ethnic basis; especially if a person is treated as stateless, has activist experience, or is regarded as a supporter of anti-government or anti-government armed groups, the case is likely to amount to state persecution and the person will usually be granted a refugee status. (A-All 49 <p. 9>).

In addition, the Operational Guidelines Note mentions

> that those regarded as anti-government supporters or activists are subject to the attention of the Syrian authorities and are at risk of being treated in a manner equivalent to persecution, thus they are refugees,
>
> that the government has not allowed any form of activities against the Assad regime, those who have not been regarded as political in particular, such as low-status activists, individuals who criticize the government including citizen journalists, and families of those who

are regarded as anti-government activists, are at risk of being persecuted or ill-treated,

that the Syrian government is oppressive towards those opposed to the government, the activities of the opposition are not allowed in the country, the level of atrocities by the government that have led to killings has gradually increased since March 2011, thousands of civilians have been killed in the streets, arbitrarily arrested and detained, and Syrian civilians have been targeted and shot by government snipers simply by recording demonstrations on mobile phones, and

that Refugee status should be granted if the applicant has previously participated in political activities of the anti-government, is likely to participate in such activities in the future because of his beliefs, or is regarded to have views against the government when he returns to Syria.

An Operational Guidelines Note issued by the UK Home Office in 2013 mentions that in light of the situation in Syria, it may be appropriate to allow protection if the applicant is found to be a deserter of the Syrian army or if there is a high likelihood of them being drafted if they are returned to the country since the Syrian authorities will consider them opponents to the regime (A-All 5 <p. 19>)

B. "The About the Need for International Protection of People Evacuating from the Syrian Arab Republic <Update 1>" by the UNHCR in December 2012 states that, regarding the large number of Syrians seeking international protection, it is determined that there is a high possibility that they will meet the requirements provided for in the definition of refugees in the Refugee Convention because their well-founded fears are related to one of the Convention reasons in many cases.

"The About the Need for International Protection of People Evacuating from the Syrian Arab Republic <Upgrade 2>" by the UNHCR in October 2013states

that it is considered that most Syrians seeking international protection are highly likely to meet the requirements for the definition of refugees under the Refugee Convention because they have a well-founded fear of being persecuted in connection with one of the grounds of the Convention, and

that when refugee recognition applications are determined on an individual basis, those who are in fact or are deemed to be opposed (This includes, but is not limited to, members of political opposition parties, human rights and civil society activists, protestors, citizens residing in cities, villages and towns opposed to the government (or those deemed to be so), defectors and deserters from the military, draft dodgers, and the families and associates of political opponents to the Syrian government (or a person deemed to be so), those who are op-

posed to armed groups in areas under the effective control of anti-government armed groups and Kurdistan armed groups (or those who deemed to be so), and Kurdish or any other minorities, etc., (including those who fall under some of above) are considered to be likely to require international protection referred to in the Refugee Convention (A-All 3 <p. 13, 15, 16>).

The About the Need for International Protection of People Evacuating from the Syrian Arab Republic <Update 3>" by UNHCR in October 2014 states

that since the publication of the above-mentioned Update 2, the situation in Syria has worsened further in terms of security, human rights, forced movement, and humanitarian needs, and

that the majority of Syrians seeking international protection have a well-founded fear of being persecuted in connection with one of the grounds of the Convention, and therefore they are likely to meet the requirements for the definition of a refugee under the Refugee Convention (A-All 19, <p. 1, 19>).

4. Consideration of the domestic situation in Syria

(1) Syria's response to anti-government activities

According to Found Fact 3 (1), it is recognized that Syria was in a state of civil war in 2012 and even ordinary civilians may be at risk of harm that they become involved in armed conflict between government forces and armed opposition groups.

However, concerning the Syrian government's use of force to suppress peaceful anti-government demonstrations or protest activities, there are some reports as Found Fact 3 (1) B (C), on the other hand, Ex-Ambassador Extraordinary and Plenipotentiary to Syria said about the anti-government activity on March 18, 2011, in *Daraa* Found Fact 3 (1) B (A), "As for the situation since the day, a scenario was drawn in which the government mobilized security forces to use force against a peaceful uprising of people, and a victim was born by the shooting. However, if we redraw the story by considering the testimonies of government officials, the scribbled children's case was not serious, and at least outside efforts were made to incite demonstrations. Considering the smuggling activities that have been continuously carried out in the tribes of *Daraa* for a long time and the strong tradition of arms possession in the tribal community, the previous understanding that the popular uprising in *Daraa* was a completely natural and peaceful demonstration needs to be reexamined from a new perspective and thoroughly. The Assad administration was wary of the popular uprisings in *Daraa*, saying that it could detect, through activities of officiating monk P 20 in Qatar, the existence of the Muslim Brotherhood at an early stage behind the popular uprisings." (B-All 75 <p. 34>)

In September of the same year, a cabinet order was issued, which is said to give

the government a broad range of power concerning freedom of assembly (Found Fact 3 (1) B (B)) and the Anti-Terrorism Law was adopted and an Anti-Terrorism Court was established in 2012 (Found Fact 3 (1) D (A)). On the other hand, the Emergency Situation Law was abolished in March 2011, pardons were granted to all political prisoners in May of the same year, a new constitution with a multi-party system and a presidential term limitation was approved by a national referendum in February 2012, and elections of people's council were held under a multi-party system (Found Fact 3 (1) B (A), C).

In June 2011, 120 members of the security forces were killed by armed gangs in the northwestern city of *Jisr ash-Shughur* (Found Fact 3 (1) B (B)), also the anti-government side had already formed an armed group from an early-stage (Found Facts 3 (1) C). The Syrian government pointed out attacks against the Syrian military and security forces from the beginning (Found Fact 3 (1) A (A), (B)). Therefore, it is necessary to carefully consider whether the Syrian government used forces against a mere peaceful anti-government demonstration or a protest activity.

Considering this point of view, there is room for doubt as to whether the reports of the Syrian Government's use of force to suppress peaceful anti-government demonstrations or protest activities can be immediately acknowledged as such. Particularly in areas other than those regarded as strongholds of anti-government armed forces and areas in conflict, it is necessary to examine concretely, based on the individual circumstances of applicants for recognition of refugee status, whether if the objective circumstances that could lead to fear of persecution can be recognized. The views of the UK Home Office and UNHCR as Found Fact 3 (5) cannot be construed to mean that applicants for recognition of refugee status are uniformly recognized as refugees regardless of their individual circumstances.

(2) The Syrian Government's Response to the Kurds

As pointed out in 3 (2) D, the Syrian government has been reported to have arrested, detained, and tortured several Kurdish activists since March 2011, but the specific attributes of the targeted activists are unknown. It has also been reported that attacks by the authorities against anti-government forces in Kurdish areas are not necessarily more violent than in other areas, and that the security forces are often restricted from attacking demonstrations in Kurdish towns.

As pointed out in Fact 3 (2) D, the report of the Independent International Commission of Inquiry states that the Syrian government used extremely excessive force against the demonstrators who were exercising their right to peaceful protest in March 2012 in *Al-Qamishli*. However, it is not clear whether the demonstration was truly peaceful, and what extremely excessive force specifically means.

In addition, as stated in 3 (2) E and F, the Syrian Government withdrew its security forces over several months in 2012, except for *Al-Qamishli* and strategic areas around that, and the PYD has come to be in charge of security and administration. Even if the Kurds in Northeast Syria are possible to be involved in armed conflict between government forces and anti-government armed groups, there is no evid-

ence to find that the Syrian government (or PYD) persecuted or attempted to persecute the Kurds who participated in peaceful anti-government demonstrations for only such a reason.

(3) The Syrian Government's Response to People from *Daraa* Province

According to Found Fact 3 (3), there is a district in *Daraa* province that serves as a base for anti-government armed groups, and since March 2011, there have been many armed clashes between government forces and anti-government armed groups; it can be seen that in the process, the government forces targeted civilians without distinguishing them. However, it cannot be found that the Syrian government has persecuted or attempted to persecute people from *Daraa* province or its residents in general. Therefore, it is necessary to examine concretely whether an applicant for recognition of refugee status from *Daraa* province has an objective reason to fear persecution in light of the individual circumstances.

5. Found Facts regarding Plaintiff P3

The facts mentioned in (1) to (5) below are possible to be found based on the following evidence and the purport of the oral argument.

(1) Life in Syria

A. Plaintiff P3 (Born in *** month, 1984.) belongs to the family line of the patriarch of the blood relative group of Kurds called *Al-Abb <p. 14>, Plaintiff P3as Sain*. *Al-Abbas Sain* is an influential tribe in the *Al-Malkiya* district of *Al-Hasakah* province in northeastern Syria. (A-*Ha* 2, Ha 4, B-*Ha* 15 <p. 14>, examination record of Plaintiff P3 <p. 1, 2>)

B. Plaintiff P3, after graduating from elementary school at the age of 12, worked in the farms and bakeries managed by his father and took over the management of the farms from the age of 18. When his father died at the age of 24, he also took over the management of the bakeries. Plaintiff P3 lived a stable life with an annual income of several million Syrian pounds. (A-*Ha* 2, *Ha* 7, B-*Ha* 11, *Ha* 13 <p. 11,12>, examination record of Plaintiff P3 <p. 6>)

C. Plaintiff P3 completed military service in July 2005 (A-*Ha* 2, *Ha* 3, B-*Ha* 13 <p.4>, examination record of Plaintiff P3 <p.6>).

(2) Participation in anti-government demonstrations

A. Plaintiff P3 has participated in demonstrations held around *Al-Malkiya* about 2 times a week since around January 2012. From several hundred to about 1000 persons participated in the demonstration in which Plaintiff P3 participated (A-*Ha* 1, *Ha* 2, B-*Ha* 19 <p. 8>, examination record of Plaintiff P3 <p. 3, 4>).

B. Plaintiff P3 witnessed that parents with an infant were shot to death when he was watching a demonstration in *Al-Qamishli*, *Al-Hasakah* province around May 201, examination record of Plaintiff P3 <p. 3>).

Plaintiff P3 then became a member of several *Tansikiyas*, calling for participation in the demonstrations, wearing special clothes to guide the demonstrations, distributing leaflets, and arranging buses to carry the demonstrators(A-*Ha* 2, B-*Ha* 15 <p. 5-7>, examination record of Plaintiff P3 <p. 3, 4, 10, 11>).

(3) Departure fro Syria

A. Plaintiff P3 was issued his passport on May 13, 2012 (B-*Ha* 3). Plaintiff P3 wanted to go to the United Kingdom, where his brother, P 15, was staying and paid money to a broker to arrange departure procedures (A-Ha 2, B-Ha 13 <p. 7, 8>, Ha 15 <p. 12>, examination record of Plaintiff P3 <p. 15>). Plaintiff P3 left Syria from Damascus Airport on August 20 of the same year, arrived at Narita Airport on the 21st of the same month, received a stamp of approval for landing from an immigration inspector at Narita Airport Branch Bureau stating his status of residence as "temporary stay" and the period of stay as "15 Days" and landed in Japan (B-*Ha* 2).

B. Plaintiff P3 left Japan for France on August 23, 2012. Plaintiff P3 was informed in France that he could not go to the United Kingdom and was asked whether or not he would apply for recognition of refugee status in France, and he did not apply for recognition of refugee status. Then, his entry into France was refused and he was sent back to Japan by an attendant of the French authorities, and he arrived at Narita Airport on May 31. (Plaintiff P3 did not have his passport when he arrived at Narita Airport. B-*Ha* 2, from *Ha* 5 to *Ha* 9, *Ha* 15 <p. 16, 17>, *Ha* 19 <p. 17, 18>)

C. On August 31, 2012, the immigration inspector at Narita Airport Branch interviewed Plaintiff P3 through an interpreter; Plaintiff P3 stated that his brother had been pursued by the government and that he had been told to appear for military service. He also stated that he had started to participate in anti-estab-

lishment meetings and that it became dangerous for him therefore he had decided to go to England where his brothers lived. (B-*Ha* 5.)

D. Plaintiff P3 submitted his application for landing permission for temporary protection to the Immigration Inspector General of Narita Airport Branch on September 4, 2012. The application stated that he had planned and participated in an anti-Syrian government demonstration, that he had been wanted by the government, that he had left the country to escape from it, that his brother had been wanted by Syria's Intelligence Department because his brother had left the military and refused to kill people of the country, and that Plaintiff P3 had also been wanted by Syria's Intelligence Department for planning and participating in an anti-Syrian government demonstration (B-*Ha* 6).

E. On September 5, 10, 12, and 19 2012, the Immigration Inspector and staff members of Narita Airport Branch interviewed Plaintiff P3 through an interpreter (B-*I* 9, from *Ha* 7 to 9). On October 19 of the same year, the Immigration Inspector of Narita Airport Branch permitted Plaintiff P3 to land for temporary protection (Prerequisite Facts (4) A).

(4) Status of Residence in Japan

A. Plaintiff P3 received permission to acquire the status of residence on February 1, 2013, with the status of residence of "Specific activity.", the period of stay of "Six months", and designated activities of "Routine activities conducted by a person staying in Japan who is applying for recognition of refugee status or filing an objection (Excluding activities related to the management of business involving income or activities for which the person receives a reward)." (B-*Ha* 2).

B. Plaintiff P3 applied for permission to change the status of residence on March 18, 2013, and on the same day received permission to change the status of residence, with the status of residence of “Specific activity.”, the period of stay of “One year.”, and designated activities of “Activities by which a person staying in Japan, for the time being, is employed at a public or private organization in Japan and receives a reward due to special circumstances arising in the country of the person’s nationality or the country where the person had a habitual residence. (Excluding activities for which a person receives a reward for engaging in the adult entertainment business stipulated in Article 2, Paragraph 1 of the Law on Control and Improvement of Amusement Business, or at a business establishment where a store-type adult entertainment business stipulated in Paragraph 6 of the same article is operated, or activities

for which a person engages in the non-store-type adult entertainment business stipulated in Paragraph 7 of the same article, the video-transmitting type adult entertainment business stipulated in Paragraph 8 of the same article, the store-type telephone introduction business stipulated in Paragraph 9 of the same article, or the non-store-type telephone introduction business stipulated in Paragraph 10 of the same article.)"

C. On February 26, 2014, March 18, 2015, March 16, 2016, and February 20, 2017, Plaintiff P3 received permissions for extension of the period of stay with the period of stay "One year." (B-*Ha* 2, *Ha* 28)

D. On July 13, 2017, Plaintiff P3 received permission to change the status of residence with the status of residence of "Permanent resident." and with the period of stay "One year. (B-*Ha* 28)"

(5) Condition of the Family

A. P3's wife and others received their passports on July 23, 2013 (from B-*Ha* 21 to 23).

P3's wife and others arrived at Narita Airport on January 23, 2015, after living in a refugee camp in Iraq. They landed in Japan with special landing permission (B-Ha 19 <p. 15>, Ha 25, Prerequisite facts (4) D).

B. Plaintiff P3's second younger brother, P15, was granted refugee status in the United Kingdom on March 15, 2013 (A-Ha 6-1, 6-2).

Plaintiff P3's third younger brother, P17, was granted refugee status in the United Kingdom in August 2016 (A-Ha 5-1, 5-2).

(6) Supplementary explanation on the above fact findings

A. A-1. Plaintiff P3 stated that on July 15, 2012, the security forces visited Plaintiff P3's home and beat the mother of Plaintiff P3 and asked for the whereabouts of Plaintiff P3 (A-Ha 2, examination record of Plaintiff P3 <p. 5>. Plaintiff P3 explained that the incident occurred on July 9 of the same year when the immigration inspector at Narita Airport Branch interviewed him on September 5 of the same year. B-*Ha* 7.).

A-2. However, there is no evidence to support the above statement made by Plaintiff P3, and the statement made by Plaintiff P3 lacks concreteness. The statement made by Plaintiff P3 does not clarify the grounds that the person who

visited his home was a member of the security forces, and it is not clear why the security forces visited Plaintiff P3's home.

Plaintiff P3, in an investigation by the refugee inquirer, stated

that he was sheltered in the house of an acquaintance because he could not return home, and

that the acquaintance's son heard that the police told Plaintiff P3's family that the police would arrest Plaintiff P3 no matter where he was hiding when the acquaintance's son checked Plaintiff P3's house (B-*Ha* 15 <p. 9, 10>).

However, it is not clear from whom the son of the acquaintance above heard what story and the reason why the police intended to arrest Plaintiff P3. Plaintiff P3 stated

that he had taken the children of the village to his home and

that he heard that the reason was that Plaintiff P3 had participated in the demonstration (examination record of Plaintiff P3, <p. 15>); however, it is not clear when Plaintiff P3 was talking about, and it is also not clear from whom the children of the village heard what story, and it can be considered that the reason (*i.e.* Because Plaintiff P3 participated in the demonstration.) was just an understanding of his family.

Plaintiff P3 further stated that although he had not seen the arrest warrant issued for him, the security forces would not have come to his home unless an arrest warrant had been issued and that the arrest warrant should have been issued, but he only stated his guess.

A-3. According to the above statement (a) made by Plaintiff P3 cannot be accepted, and the fact that, in July 2012, the security forces visited Plaintiff P3's home and beat Plaintiff P3's mother to find Plaintiff P3 cannot be found.

B. Plaintiff P3 states

that he was told by the broker who requested departure procedures that since Plaintiff P3 was wanted, he was needed a bribe of US $5000 by a government official and

that after arriving at Narita Airport on August 21, 2012, he telephoned his second brother, P15, and heard that Plaintiff P3 was wanted (A-*Ha* 2, examination record of Plaintiff P3 <p. 15>).

However, it is not clear how the broker above and P15 came to know that Plaintiff P3 was wanted; therefore it cannot be found that Plaintiff P3 was wanted based on the above statement of Plaintiff P3.

C. Plaintiff P3 states that after Plaintiff P3 left Syria, a judgment document stating that Plaintiff P3 shall be sentenced to imprisonment was placed in a mailbox of his home (examination record of Plaintiff P3<p. 13>). Plaintiff P3, however, stated that the content of the judgment was confirmed by the uncle

of Plaintiff P3 and that the judgment document was in the hands of Plaintiff P3 at the time of the examination, but his counsel decided not to submit it to the court. If the judgment document as stated by Plaintiff P3 is at his hand, there is no reason not to submit it as evidence; therefore, at least, it cannot be found that Plaintiff P3 was sentenced to imprisonment for participating in the demonstration.

D. Regarding the finding of (3) C above, Plaintiff P3 stated that he did not tell the immigration inspector that he had been told to appear for military service, etc. (examination record of Plaintiff P3<p. 19>); however, the interview record (B-*Ha* 5) prepared at that time states that Plaintiff P3 came to participate in an anti-establishment meeting, sensed the danger of his own life and escaped from Syria in line with Plaintiff P3's assertion in this case; it is difficult to consider that contents which Plaintiff P3 did not say were recorded, even taking into consideration the fact that interpretation was used. The above statement of Plaintiff P3 cannot be accepted.

6. Whether or not Plaintiff P3 is a refugee

(1) Participation in Anti-Government Protest Activities

A. As Found Facts 5 (2), from around January 2012, it is found that Plaintiff P3 participated in demonstrations held in the vicinity of *Malkiya* about 2 times a week and became members of several *Tansikiya*s, calling for participation in demonstrations, guiding demonstrations in special clothes, and distributing flyers.

However, as stated in 4 (1) above, there is room for doubt as to whether the report that the Syrian Government used force to suppress peaceful anti-government demonstrations or protest activities is immediately acknowledged as such, and concrete consideration should be given to the specific circumstances of Plaintiff P3.

The anti-government demonstration in which Plaintiff P3 participated was held in a region in the northeastern part of Syria, around *Malkiya*, *Hasaka* province. There is no evidence to prove that this region was a key place for anti-government activities, and the scale of the demonstration ranged from several hundred to about 1000 people. There is no evidence that the demonstration was controlled by the Syrian government. Plaintiff P3 participated in this demonstration for approximately half a year.

As stated in Found Facts 5 (2) B, it is found that Plaintiff witnessed the shooting of parents with an infant at a demonstration in *Al-Qamishli*, the same province. However, Plaintiff P3 did not participate in the demonstration itself,

and there is no evidence to prove how the demonstration was held.

B. Plaintiff P3 belongs to the family line of the patriarch of the blood relative group *Al-Abbas Sain*. Plaintiff P3 states that it was possible to invite many people to participate in demonstrations by participating in demonstrations by Plaintiff P3 himself and calling for participation(A-Ha 2, examination record of Plaintiff P3 <p. 2, 9>), and he states that the leader of the *Malkiya* organization told that if more than one organization cooperates, a large demonstration can be made thus Plaintiff P3 belonged to more than one *Tansikiyas* and intended to hold a large demonstration (B-Ha 19,p. 6>, the examination of Plaintiff P3 <p. 18, 19>); however, there is no adequate evidence to show how many the participation of Plaintiff P3 increased the number of participants. In addition, Plaintiff P3 states that P14 was killed (B-*Ha* 15 <p. 7>, examination record of Plaintiff P3 <p. 18, 19>); but the statement is uncertain because it is based on rumors that P14 was killed, and Plaintiff P3 does not state the specific processes and circumstances of the murder, thus it is impossible to accept such a fact.

(2) The fact that the security forces visited his home

A. As stated in 5 (6) above, the fact that the security forces visited the home of Plaintiff P3 and beat the mother of Plaintiff P3 in July 2012 to ask where Plaintiff P3 was located cannot be found, nor can the fact that Plaintiff P3 was sentenced to imprisonment for participating in the demonstration be found.

B. Even if it was true that the security forces visited the residence of Plaintiff P3, according to the fact that Plaintiff P3 stated to the immigration inspector that he had been asked to appear for the military service as mentioned in 5 (3) C, it can be considered that the security forces visited the residence of Plaintiff P3 for conscription or that he was sentenced to imprisonment for evading military service (Plaintiff P3 completed his military service in July 2005 mentioned as Found Facts 5 (1) C. However, as Found in Facts 3 (4) A, it cannot be denied that he might have been drafted as a reserve duty after retirement.).

As mentioned in 3 (4) A, there is a possibility that a person may be sentenced to imprisonment for evading military service in Syria; however, since the mandatory military service by the state itself cannot be denied, excluding the case that the punishment is arbitrary or excessive, it cannot be regarded as persecution in itself.

In addition, in light of the fact that President Assad has granted a general amnesty to draft dodgers even after March 2011 (Found Facts 3 (4) A.), there is no sufficient evidence to show that arbitrary punishment or excessive punish-

ment is being imposed on draft dodgers in Syria.

As mentioned in 3 (3) B, there are reports that the government and security forces made arbitrary arrests; however, the details of these arbitrary arrests are unclear even based on these reports. The plaintiffs point out the treatment of soldiers who refuse to attack civilians, but this does not mean that draft dodgers are generally at risk of persecution.

(3) Regarding the fact that they are Kurds and others

A. As mentioned in 4 (2) above, there is no evidence that the Syrian government has persecuted or attempted to persecute Kurds who participated in peaceful anti-government demonstrations for such reasons.

B. As mentioned in 5 (5) B, the second and third brothers of Plaintiff P3 have been granted refugee status in the United Kingdom. However, it is not clear what specific circumstances were used to grant refugee status to both of them, and this does not provide a basis for Plaintiff P3's refugee status.

(4) Summary

According to the above discussion, even if the found facts are taken together, it is impossible to recognize the objective circumstances in which Plaintiff P3 fears persecution, and it is impossible to recognize Plaintiff P3 as a refugee. Therefore, the administrative disposition on P3 disposition is legal.

PART V. CONCLUSION

As described above, since the filings of Plaintiff P1 and Plaintiff P2 and the mandamus actions of Plaintiff P3 and Plaintiff P4 are unlawful, both of them shall be dismissed. Since the other claims of Plaintiff P3 and Plaintiff P4 are groundless, both of them shall be dismissed. The judgment shall be rendered as stated in the main text.

(Omitted)

[end of document]

DENIAL OF THE REFUGEE STATUS OF A BURMESE ACTIVIST FOR DEMOCRATIZATION BY DEMANDING STRICT LEVEL OF BURDEN OF PROOF ON HIS ACTIVITIES, ETC (Decision in favor of the immigration)
—Heisei 26 (2015) (Gyo-u) No. 73[1]
Tokyo District Court, 23th February 2018 (Myanmar)

Translated by Koei Matsushita[2]

JUDGMENT

Plaintiff Z1

Attorney for the same, Mr. Hironori Kondo, Mr. Shotaro Ogawa, Mr. Shogo Watanabe, Mr. Yusuke Ogasawara, and others, as shown in the attached list of attorneys 1.

Defendant The State

The representative and the administrative agency concerned Minister of Justice Z2

Designated attorneys Z3 and others, as shown in the attached list of attorneys 2.

THE MAIN TEXT OF JUDGMENT

1. The Plaintiff's claims shall be dismissed.

2. The Plaintiff's shall bear the court costs.

1. 平成30年2月23日判決言渡、平成27年(行ウ)第73号　難民の認定をしない処分取消請求事件

2. Attorney at law (Japan), Mimura Komatsu & Yamagata Law firm

FACTS AND REASONS

PART I. CLAIM

The administrative deposition of November 5, 2010, not to recognize the Plaintiff as a refugee by the Minister of Justice shall be revoked.

PART II. OUTLINE OF THIS CASE

In this case, the Plaintiff, who is a man of the nationality of the Federal Republic of Myanmar (hereinafter referred to as "Myanmar".), applied to the Minister of Justice for recognition of refugee status for the second time on September 1, 2009, as a refugee with sufficient reason that the Plaintiff was likely to be persecuted on the grounds of his political opinion. The Minister of Justice (the administrative agency responsible for the disposition) rejected the Plaintiff's recognition as a refugee on November 5, 2010 (hereinafter referred to as the "Denial of Recognition of Refugee Status".). The Plaintiff appealed this and requested the defendant state to which the administrative agency belongs to revoke the denial of recognition of refugee status.

4. Prerequisite Facts (that are found easily by following shreds of evidence or there is no dispute between the parties.)

(1) Origin of the Plaintiff

A Plaintiff is a man of Myanmar nationality who was born on ***** in 1967.

(2) The Plaintiff's entry, overstay, and the first application for recognition of refugee status

A. The Plaintiff arrived in Japan from the Republic of Korea (hereinafter referred to as "South Korea".) on October 2, 1998, and entered Japan with permission to land with a "temporary stay." as to the status of residence and a period of stay of 15 days. However, without obtaining an extension or change of period of stay, he stayed in Japan beyond the period of stay after October 17.

B. On October 20, 2004, the Plaintiff was arrested by a police officer on suspicion of violating the Immigration Control and Refugee Recognition Act (Hereinafter simply referred to as "the Law") (illegal overstay.). The Immigration Inspector of the Tokyo Immigration Bureau (hereinafter referred to as "Tokyo Immigration Bureau".) found on the 28th of the same month that the Plaintiff came under an illegal alien stipulated in Article 24, item 4 (b) of the Law. On the same day, Plaintiff requested an oral hearing.

C. The Plaintiff filed an application for recognition of refugee status with the Minister of Justice on October 29, 2004 (hereinafter referred to as "First Refugee Recognition Application.").

D. On November 15, 2004, the Special Inquiry Officer of the Tokyo Immigration Bureau judged, after the oral hearing, that there was no error in the findings of the immigration inspector mentioned in B above. The Plaintiff filed an objection on the same day.

E. Concerning the Plaintiff's first application for recognition of refugee status, the Minister of Justice decided not to recognize the Plaintiff as a refugee of December 16, 2004 (hereinafter referred to as "The first denial of refugee status."), and also decided that the Plaintiff's objection mentioned in D above was groundless. The Tokyo Immigration Bureau Chief Examiner issued a deportation order (hereinafter referred to as "the deportation order".) to the Plaintiff on the following day, December 17.

On March 15, 2005, the Plaintiff filed an action with the Tokyo District Court for the revocation of the aforesaid determination and the deportation order.

F. On the other hand, the Plaintiff filed an objection with the Minister of Justice on December 21, 2004, based on Article 61, 2-9, Paragraph 1, Item 1 of the Act before the revision by Act No. 69 of 2014 (hereinafter referred to as "the first objection.") against the first denial of refugee status. The Minister of Justice, on April 8, 2005, decided to dismiss the first objection (hereinafter referred to as "the decision of the first objection".) and notified the Plaintiff of it on May 14.

On October 7 of the same year, the Plaintiff filed an action with the Tokyo District Court for revocation of the first denial of refugee status.

G. After the arrest of the offender referred to in B above, the Plaintiff was [handed over to the Tokyo Immigration Control Officer on the same day and] detained at the Tokyo Immigration Detention House by the officer under a detention order, and then continued to be detained there until he was granted a

provisional release and discharged on June 29, 2005 (hereinafter referred to as "Provisional release in this case.").

H. The Tokyo District Court consolidated the oral arguments of both actions in E and G above, and rendered a judgment on July 27, 2007, dismissing the claims of Plaintiff (Exhibit A1. hereinafter referred to as " the Judgment of prior suit.".).

The Plaintiff appealed against the Judgment of the prior suit and the Tokyo High Court dismissed the appeal On March 6, 2008. The Plaintiff further filed a final appeal and a petition for acceptance of final appeal on March 26, 2009; the Supreme Court dismissed the final appeal and decided not to accept [the petition] as the final appellate court, thereby finalizing the Judgment of prior suit (Exhibit A2 and 3).

(3) The Plaintiff's second application for refugee status

A. The Plaintiff filed a second application for recognition as refugee status with the Minister of Justice on September 1, 2009 (hereinafter referred to as "the application for recognition of refugee status".). In response, the Minister of Justice decided not to recognize the refugee status on November 5, 2010 (the denial of recognition of refugee status) and notified the Plaintiff of the decision on the 18th of the same month. On the 25th of the same month, Plaintiff filed an objection to the denial of recognition of refugee status (hereinafter referred to as “the objection”, Plaintiff’s Exhibits A from 1 through 4 and Defendant’s Exhibits A 5, 8 and 9.).

B. When the Minister of Justice heard the opinions of the refugee examination counselors on the objection, 2 of the 3 refugee examination counselors stated their opinion that the Plaintiff came under would fall under the definition of a refugee (hereinafter referred to as "the majority opinion of the Counselors".); however, by adopting the opinion of the other refugee examination counselor who stated that the Plaintiff did not come under failed to meet the definition of a refugee, the Minister decided to dismiss the objection on August 22 (hereinafter referred to as "the Decision on the objection".) and notified the Plaintiff of this on June 20, 2014 (Plaintiff’s Exhibit A5 and Defendant’s Exhibit A12).

C. On February 18, 2015, the Plaintiff filed the action seeking revocation of the denial of recognition of refugee status (an obvious fact).

(Omitted)

Part iii. The decision of this court

1. Found facts

According to the preamble facts and the following evidence, etc., the following facts are found, and evidence against them cannot be relied upon.

(1) General situation in Myanmar

A. The Establishment of the Military Government and the Political Situation under the Military Government

(c) After Burma gained 1948 independence from the United Kingdom in 1948, the civil government was overthrown by a Coup d'etat led by General Z4 in 1962. The Burma Socialist Planning Party was formed in July of the same year to pursue a socialist system; however, since the economy deteriorated to the point where Burma was recognized as one of the least developed countries by the United Nations, anti-government demonstrations led by students had expanded in Yangon from March 1988, resulting in clashes with police and military forces. On August 8 of the same year, so-called general strikes by students and citizens were held throughout Burma (hereinafter referred to as "8888 General strikes"); then, [the movement] became a democratic movement by a leading position of Z5. However, on September 18 of the same year, the military forces of Coup d'etat, SLORC, took full control and established a military junta. (Paragraph 3.02 of Plaintiff's Exhibit C 17, Defendant's Exhibit B3, and the entire import of the oral argument)

(d) On July 20, 1989, SLORC placed Z5 under house arrest for violation of the National Destruction Law and prohibited political activities and held a general election with the participation of multiple parties on May 27, 1990. The NLD under Z5 won an overwhelming victory with 392 seats, more than 80% of the total 485 seats; then, the NUP (as the ruling party) stopped as a result to win 10 seats. SLORC nullified the election, refused to transfer their political power, and imprisoned dozens of NLD members including Z5, saying that a strong Constitution was necessary for the transition to a civilian government.

From January 1993, the National Congress, which deliberates the basic principles of the new Constitution, was held intermittently. The military government appointed 701 members of the congress, but only 99 were elected in the general election in 1990. In November 1995, the NLD boycotted the National Congress; as a countermeasure, SLORC deprived of the membership of all 86 members belonging to the NLD. (On the whole, paragraph 3.02 of Plaintiff's Exhibit 17 and the entire import of the oral ar-

gument.)

(e) SLORC reorganized itself into SPDC on November 15, 1997, beginning a dialogue with Z5 from around 2000 and indicated that it would ease regulations on the NLD around the middle of 2002. However, hardliners in the military government became dissatisfied with this policy, and on May 30, an armed group of SPDC orchestrated a surprising attack on a motorcade of NLD parades in *Dipaynn*, near the city of *Monywa* in the north [of the country]; several leaders and supporters resulted in injury or death; this resulted in the injury or death of several leaders and supporters. Z5 whilst on the campaign was arrested and imprisoned to the Insane asylum; and political activists, journalists, and students were arrested (The *Dipaynn* affair. Plaintiff's Exhibit C6, 7, Paragraph 3.02 of Plaintiff's Exhibit C17 and Defendant's Exhibit B3). However, many of those detained in the incident were released sequentially by mid-June of the same year, Z5 was transferred to his home and placed under house arrest. (The entire import of the oral argument)

(f) In 2007, fuel prices increased by 5 times, triggering protests in Yangon and other regions in August of the same year; on August 19, a demonstration led by a group of 1988 generation student leaders, including Z 17, took place, and they were detained on August 21. The Buddhist monks also took part in the protests (Saffron Revolution); on September 25 of the same year, the military government imposed a curfew in Yangon and Mandalay from 9 PM to 5 AM, ordering strict observance of the prohibition of assemblies of no more than 5 people, which had been in force since 1988; on the 26th, the security forces and the military launched an armed suppression of the demonstrations, leading to their murder and arrest. Until then, Buddhism had been encouraged in comparison with other religions; however, monitoring of the Buddhist community and others continued until at least 2010, and many arrested monks were not released from physical restraint. (From page 8 and 9 of translation of Plaintiff's Exhibit C2, Plaintiff's Exhibit C4, 15, paragraphs 3.02 and 19.02, Defendant's Exhibit B3, and the entire import of the oral argument)

(g) The draft of the Constitution (which was drafted before the Saffron Revolution) was released to the public in a limited number of publications in March 2008 and was approved and enacted (the 2008 Constitution) in a referendum held on May 10 of the same year and 2 weeks later in the cyclone-affected areas. The 2008 Constitution allowed the Supreme Commander of the Armed Forces to appoint 1/4 of the seats in the lower house and the upper house, as well as a wide range of powers including the control of key ministers for the military. In the 2010 general election held on November 7, 2010, based on the 2008 Constitution, the USDP won by winning 259 seats out of 330 seats in the People's Congress (Constant 440.), the lower house, and 129 seats out of 168 seats in the National Congress (Constant 224.), the upper house, respectively (Defendant's Exhibits

B3 and 12-2). (Paragraphs 3.03, 4.04, 4.05, 4.17, 5.01, 6.03 and 6.04 of Plaintiff's Exhibits C17)

The NLD boycotted both the referendum on the 2008 Constitution and the 2010 general election (the entire import of the oral argument).

(h) Although house arrest on Z5 was lifted on May 13, immediately after the 2010 general election, an appeal against the NLD's decision to dissolve the party, which had been ordered around that time, was not accepted by the Supreme Court at the end of the month (Paragraphs 4.13, 4.15, 7.02, 7.03, of Plaintiff's Exhibits C17, and Defendant's Exhibit B3).

B. The political situation after the 2010 general election

(a) On January 31, 2011, parliament convened and, on February 4 of the same year, elected 3 Vice-Presidents; on March 30 of the same year, former Prime Minister Z 32 of the 3 Vice-Presidents became President (Paragraphs 4.16, 4.19 and of Plaintiff's Exhibit C17, Defendant's Exhibit B3 and the entire import of the oral argument).

(b) The Z 32 administration had implemented pardons since May 17, 2011, and released more than 1200 prisoners including political prisoners such as Z 17, on January 1 and 13, 2012 (Defendant's Exhibits B13-1, 13-2 and the entire import of the oral argument).

(c) During this period, the NLD applied to the Federal Election Commission for the establishment and registration of a political party on November 25, 2012, and the establishment of a political party was approved on December 12 of the same year. In the parliamentary by-election held on April 1, 2011, the NLD won 43 seats out of 45 seats. (The entire import of the oral argument.)

(d) President Z32 pardoned all political prisoners on December 30, 2013, (Defendant's Exhibit B13-3, 13-4, and the entire import of the oral argument.)

(2) Plaintiff's actions up to the decision regarding the first objection.

A. Acting in Myanmar (Includes the Burmese era)

(e) The Plaintiff was born in Yangon on *****,1967, and he met Z33 (Z11 after. Hereinafter referred to as "Z11" before or after he was named Z11.) who was also born in Yangon on the 9th of the same month. They were junior high school classmates at the age of 13 in 1980. Both of them advanced to Yangon University through the same high school. (Prerequisite facts (1), page 1 of Plaintiff's Exhibit A70, page 1 of Plaintiff's Exhibit A74, page 28 of Defendant's Exhibit A1, pages 1, 23, 25, 45, 47 and 48 of [deposition of] witness Z11.)

(f) In 1987, when the government of Burma abolished the currency system and banned its use, Declining Currency Order, students at the University of Yangon protested which then turned into anti-government political activities, and eventually the university was closed down. Z11 joined this movement and became the central executive member of the All-Burma Federation of Student's Unions (ABFSU) which was formed by students on August 28, 1988, after 8888 general strikes ((1) A (A) above); by this time, Z11 was used as the name for political activities (Plaintiff's Exhibit A68, pages from 1 through 5, 23, 24, 26, 45, 47 and 48 of [deposition of] witness Z11). On the other hand, although the Plaintiff had distributed protest flyers after the abolition of the currency, he consulted with his relatives who belonged to the Navy due to the arrest of his friend who had acted with him, taking a leave of absence from the University of Yangon in his second year in December 1987 and thereafter joined the Navy as the lowest grade sailor on January 19 of the following year at the discretion of his relatives (Defendant's Exhibit A5). (Pages 3 and 4 of Plaintiff's Exhibit A70, page 1 of Plaintiff's Exhibit A74, pages 28 and 29 of Defendant's Exhibit A1, pages 45 and 46 [of deposition] of the Plaintiff.)

(g) The Plaintiff was eventually accused of neglect of duty thus violating the military regulations; on May 12, 1991, he was imprisoned in Insein Prison, lost his military register, and was discharged (Defendant's Exhibit A5.). The Plaintiff was released from the prison in December of the same year and returned to Yangon University that was opened again; however, he was not directly involved in political activities while in the university. The mother of the Plaintiff, who had been a public servant, recommended that the Plaintiff go abroad, and the Plaintiff applied for the passport twice in 1992 and 1993; however, they were not approved. (Page 1 of Plaintiff's Exhibit A74, page 30 of Defendant's Exhibit A1 and pages from 46 through 48 of [deposition of] the Plaintiff)

Z11 was arrested and detained for about 1 and a half months from April 1989 and for about 2 and a half months from August 1989. He was also arrested on April 17 of the same year for giving a speech to students in the auditorium of Yangon university, after the announcement of Z5′s winning the Nobel Peace Prize in December 1991. As the central executive officer of ABFSU, requestsed to respect a conclusion of the 1990 general election, he was detained in the *Insane* asylum and imprisoned in *Myingyan* prison by sentence of 15 years in prison; therefore, after return to the university, the Plaintiff had not met with Z11 (pages from 1 through 3 of Plaintiff's Exhibit A70, pages 1 and 2 of Plaintiff's Exhibit A74 and pages from 4 through 7 of [deposition of] Z11).

(h) After dropping out of Yangon University in the 4th grade in 1994, he spent his time without any particular job. In 1997, before his mother died in September, she made efforts to obtain a passport of the Plaintiff and arranged for him to go to a language school in Korea. In May of the follow-

ing year, 1998, when he was able to obtain a passport and a visa for studying in Korea for three months, he left for Korea on June 10 of the same year (Pages 30 and 31 of Defendant's Exhibit A1 and pages from 47 to 51 of [the deposition of] the Plaintiff).

B. Activities in Japan

(a) When the validity deadline of his visa approached after entering South Korea, Plaintiff applied to renew said visa, but it was not easily accepted. Even so, Despite this, the visa was renewed once, it was expected that he would not be able to renew [the visa] for the second time and become an illegal overstayer. Therefore, Plaintiff obtained a visa for sightseeing in Japan and participated in a sightseeing tour with a friend from Myanmar. He entered Japan on October 2, 1998, with the status of residence "temporary stay," and the period of sojourn was 15 days (Prerequisite fact (2) A, pages 31 and 32 of Defendant's Exhibit A1 and pages 50 [of deposition] of Plaintiff)

(b) After entering Japan, the Plaintiff stayed in Japan beyond the period of sojourn without obtaining an extension or change of period of sojourn. From around March 1999 at the latest, he moved from job to job and worked illegally (Prerequisite fact (2) A, pages 31 and 32 of [deposition of] the Plaintiff).

(c) The Plaintiff, in the meantime, contributed to 2 magazines, *Shujoser* and *Ahara*, about those imprisoned by the military government, under the pen name Z34 (page 33 of Defendant's Exhibit A1 and pages 28 and 29 of [deposition of] the Plaintiff).

(d) On October 20, 2004, after being arrested by police officers on suspicion of overstaying, the Plaintiff applied to the Minister of Justice for the first refugee recognition application on the 29th of the same month, however, the Minister of Justice issued the first denial of recognition of refugee status on December 16, 2004. The Plaintiff filed the first objection on the 21st of the same month, but the Minister of Justice issued the decision regarding the first objection to dismissing the first objection on April 8, 2005, and notified the Plaintiff of the decision on the 14th of the same month. During this period, a Deportation Order was issued on December 17, 2004, to order the Plaintiff to leave Japan; then, on March 15, 2005, the Plaintiff filed an action for revocation. that and so on. (Prerequisite facts (2) from B through F)

(3) Plaintiff's actions after the Decision regarding the regarding the first objection

A. Launch of a revolutionary magazine

The Plaintiff had been detained in the Tokyo Immigration Detention Center until the Provisional release on June 29, 2005 (Prerequisite Facts (2)). Around April of the same year when the Decision on the objection was made, Plaintiff consulted with Z9 who was held at the detention center about issuance of a magazine criticizing the military government. On June 14 of the same year, the inaugural issue of a revolutionary magazine named Tuetis, meaning "fresh blood" in Burmese, was published, which included the names of co-representatives (Z10, the Plaintiff, and Z9) as editorial staff and contact information, as well as a poem titled "*****" which criticized dictatorship with the real name of the Plaintiff (Plaintiff's Exhibit A6). The inaugural issue of the revolutionary magazine was introduced to a reporter from BBC radio station Z35 through his wife Z9. In an interview with this reporter, Z9 stated that [1] they decided to fight with the pen because they could only write while they were unable to engage in democratization activities freely, [2] 10 or 15 people in detention wrote together, completed with the support of their colleagues [out of the detention center], [3] they published 150 copies for the first issue, [4] read parts of "*****" part, and [5] would do their best for issuance every month; these were radio-broadcasted by the radio station in Burmese (Plaintiff's Exhibit A18 and 48). (Plaintiff's Exhibit A40, pages from 2 through 4 of Plaintiff's Exhibit A65, pages from 10 through 12 of Defendant's Exhibit A6, and pages from 1 through 4, 34, 51 and 52 of [deposition of] the Plaintiff.)

B. Communication with the home country

(a) On July 7, 2005, immediately after the Provisional Release of the Plaintiff, the military government granted a pardon to release many leaders 1988 generation students and others. While the names of those released were reported on the Internet, Plaintiff found the cousin of Plaintiff's mother (Z 36 (page 16 of Defendant's Exhibit A11)), and his son (Z13, one of the 1988 generation student leaders, 2 years older than the Plaintiff, and whom the Plaintiff studied directly under when the Plaintiff was a university student); the Plaintiff made a telephone call to his brother in the home country and asked whether it was possible to contact with Z13.

Z37 was a friend of Z 11's brother, and just then Z37 and Z22 (the husband of and the Plaintiff's cousin) visited Z 11's brother whom he was also close to. Then, there was also Z11 who had been released from *Myingyan* Prison on October 10, 1999, and Z22 and Z11, who were classmates in junior high school, referred to the Plaintiff who was also a classmate. Z 22, who had been working for a Japanese company, had come to Japan for business around 2000, and had known the Plaintiff's telephone number by talking with the Plaintiff by telephone; therefore, Z22 informed Z11 of the Plaintiff's telephone number and made an international telephone to the Plaintiff from his cellular phone. After Z 22 spoke with the Plaintiff, Z 11 took over the telephone call and Z 11 and Plaintiff exchanged their experiences from their school days. (Page from 7 through 9 of Plaintiff's Exhibit

A65, page 4 of Plaintiff's Exhibit A70, page 2 of Plaintiff's Exhibit A74, page 15 of Defendant's Exhibit A6, pages 8, 9, 26, 27, from 29 through 31 and from 49 through 52 of [the deposition of] witness Z11, pages 8,9, 16, 17, from 36 through 39, 53 and 54 of [the deposition of] the Plaintiff)..

(b) After that, the Plaintiff and Z 11 began to contact each other at a reasonable frequency in a manner that did not fix phones at the opportunity provided by the Z 11 on the Myanmar side to use a cellular phone (which was unlikely to be wiretapped) (page 4 of Plaintiff's Exhibit A70, page 2 of Plaintiff's Exhibit A74, and pages 44 and 45 of [the deposition of] witness Z11).

In such communication, Plaintiff informed Z11 that Z11 should contact Z22 and accept money for any urgent need. At that time, the Z11 planned to acquire a mobile phone, however, this did not materialize because it would cost about USD $2000. (Pages 11 of [the deposition of] witness Z11, pages 11, 41, and 42 of [the deposition] of the Plaintiff.)

(c) Around this time, Z11 began to gather frequently with political activists such as Z17 and Z19 at the house of Z18 (who was famous as one of the 1988 generation student leaders released under the pardon above (a) (pages 4 and 5 of Plaintiff's Exhibit A70, page 2 of Plaintiff's Exhibit A74, page 17 of Defendant's Exhibit A6, pages 7, 8, 28, 19, from 33 through 35 [of the deposition] of witness Z11, pages 9 and 10 [of the deposition] of the Plaintiff).

In coordination with these political activists, Z11 consulted with Plaintiff about entrusting acquaintances (who did not have political backgrounds and was not expected to undergo rigorous baggage checks) with electronic data and transporting it to Plaintiff on the occasion of their travels between Myanmar and Japan to spread information about the inside and the anti-government activities of Myanmar on the Internet; around October 2005, the Plaintiff told Z11 that a woman suitable for a transporter would visit Myanmar in a few days. On the 31st of the same month, Z11 prepared a document on paper to be sent to the Plaintiff for spreading information; he tried to go to a partner who had a personal computer to burn it on a CD and digitize. On the way, the bag (in which the document was stored) was torn and the document was stolen. Z11 decided to leave the country after consulting with Z18 and others because he thought that he was endangered. Following the advice of Plaintiff, Z11 asked Z22 to provide 500,000 kyat funds (Refer to Defendant's Exhibit B3 for the currency rate.); in early November of the same year, Z11 evacuated to Thailand, and since then, they have been based there. Plaintiff later paid Z22 the equivalent of 500,000 kyats above. (p. 9 ~ 10 of Plaintiff's Exhibit A65, p. 6 ~ 8 of Plaintiff's Exhibit A70, p. 3 ~ 4 of Plaintiff's Exhibit A74, p. 16 of Defendant's Exhibit A6, p. 10 ~ 13, p. 20, p. 32 ~ 37, p. 41 ~ 42, p. 54 of [the deposition of] witness Z11, and p. 11 ~ 12, 54. p. 41 of [the deposition] of the Plaintiff.)

The movement of the Z 11 and Z 2007 to Thailand was later reported in the *Chaemonian* newspaper in Myanmar on August 25, 2007, quoting a newspaper report in another newspaper on July 5 of the same year, that the 1988 generation student leaders dispatched both people from Myanmar to Thailand in the latter half of 2005 to successfully carry out terrorist violence activities by communicating with anti-government organizations operating outside the country. The *Chaemonian* newspaper on September 9, 2007, reported the same purport (Plaintiff's Exhibit A25, 66, 67).

C. Relationship with Z11's activities (From around 2005 to around 2007)

(a) The Z11 increased the frequency of contact with the Plaintiff because the communication environment improved and the risk of interception of information exchange on telephones or the internet decreased outside Myanmar when he moved the base to Thailand (p. 8 of Plaintiff's Exhibit A70 and p. 14 [of the deposition] of witness Z11).

The first issue of the revolution magazine was published in Japan in June 2005, followed by the second issue published in July of the same year and continued publications as well as Z9 sent the magazines to the Chiang Mai office of ABSDF and consulted on the design and others; since the 7th issue published in December of the same year, Z11 had contributed articles to each issue (Plaintiff's Exhibit A6 ~ 17 (including brunch numbers), p.4 of Plaintiff's Exhibit A74, p. 18 and 19 of [the deposition of] witnes11, p.9, 51~ 55 of [the deposition of] the Plaintiff).

(b) Around this time, with the cooperation of Z 38, a former member of ABFSU and a female correspondent in Mae sot of the media called Voice of America, the Plaintiff began to provide funds for Z11 in a way that the Plaintiff handed over his bank's cash card and sent 20,000 or 30,000 yen every month to the account, then Z38 withdraw the money in Thai baht by the cash card and hand over the money to Z11 when Z39, Burmese person in Japan, visited Method (p. 9 of Plaintiff's Exhibit A70, p. 4 of Plaintiff's Exhibit A74, p. 18 and 21 of Defendant's Exhibit A6, p. 20 ~ 22 of [the deposition of] witness Z11 and p. 14 ~ 15, p. 11 of [the deposition of] the Plaintiff).

(c) Encouraged by former ABSDF leader Z40, Z11 formed the Burma Political Prisoner's Union (hereinafter referred to as "BPPU.") in January 2006 at Method to ensure the safety of former political prisoners who had fled from the crackdown by SPDC and to continue their political activities and assumed the post of its first secretary (p. 10 of Plaintiff's Exhibit A70, p. 18 of [the deposition of] witness Z 11)

(d) On the other hand, in June of the same year, Z11, together with Z19 and others who were based in the same refugee camp in Mae sot, organized the Association for Refugee Social Welfare (hereinafter referred to as "SWAR". Refer to Plaintiff's Exhibit A17-3), which was different from BPPU in that it

focused on supporting refugees from Myanmar, including ethnic minorities, without limiting to political prisoners. However, it changed its name from SWAR to Refugees Burma in September of the same year because [SWAR] was similar to Safe Action for Women, SAW (another group that carried out activities in the field), and it was difficult to distinguish them (p. 10 of Plaintiff's Exhibit A65, p. 16 ~ 17, p. 40, p. 55 of the deposition of witness Z11.). However, by around the same month, the Thai government began to relocate people living in refugee camps by distributing them to multiple camps; therefore, the members of the organization were dispersed. As a result, the activities in Mae sot were reduced. Z11 moved to the other refugee camp in October of the same year, and from around 11 of the same year; he concentrated on activities to ensure educational opportunities for displaced people, and was distanced from the activities of Refugees Burma (p. 4 of Plaintiff's Exhibit A74 and p. 22 of the deposition of witness Z11). (P. 8 ~ 10 of Plaintiff's Exhibit A70.) Plaintiff has recorded messages (that was telephoned by Z11 and colleagues close to Z11 in Mae sot) and partially uploaded them to the website set up by the *Tuetit* Revolutionary Group (p. 9 of Plaintiff's Exhibit A70, p. 4 ~ 6 of Plaintiff's Exhibit A74, p. 19 ~ 20 of the deposition of Witness Z11).

(e) Z 11 was recognized as a political refugee by the UNHCR in 2008; he left Thailand on September 9 of the same year together with friends of BPPU and Refugees Burma who were also recognized [as political refugees], and he moved to the United States in Z 11. As a result, Refugees Burma was dissolved (p. 11 of Plaintiff's Exhibit A65, p. 20 of Defendant's Exhibit A6, p. 17 of Plaintiff's Exhibit A11, p. 22 ~ 23, p. 37 ~ 38 of the deposition of Witness Z 11, p. 42 of the deposition of the Plaintiff.). Z11 later acquired US permanent residency (Plaintiff's Exhibit A 71, 72).

D. Plaintiff's actions in Japan during the period mentioned in C above

(a) Publication of revolutionary magazines

The revolutionary magazine was continued to publish (As described in C(A) above, articles written by Z11 have been contributed since Issue 7.) containing about 10 to 15 articles, proses, poems, and caricatures criticizing the military government in each issue, including many poems and proses written by the Plaintiff using several different pen names to improve appearance as well as his real name. Although 200 to 300 copies of each issue of the revolutionary magazine were printed, distributed free of charge at Myanmar-related restaurants and general stores in Japan, distributed at demonstrations and festivals, and uploaded as a PDF file on the website of the *Tuetit* Revolution Group (The documents were also sent to the Chiang Mai Office of ABSDF as described in C(a) above.), there is no evidence to confirm that the revolutionary magazine was published after issue 14 which published a statement issued by SWAR on August 8, 2006, to commemorate the 18th

anniversary of the 8888 general strikes. In the postscript of all issues up to No. 14, the real name of the Plaintiff was listed as the person in charge and the contact address; while Z9, who was one of the co-representatives at the time of the first issue, listed as the responsible person and the contact address up to No. 3, became the typist in the 4th issue (issued in September 2005) and was listed as 1 contact address again in the 5th issue, however, his name disappeared from the postscript after the 6th issue (issued in November of the same year). Also, Z9 obtained a status of residence in the same year. There were approximately 10 people who belonged to the *Tuetit* Revolutionary Group at the time the magazine was first published, however, they tended to move away from the activities including Z9 when they obtained a status of residence. (Plaintiff's Exhibits A6 ~ 17, p. 4, 6 ~ 7 of Plaintiff's Exhibit A65, p. 11 ~ 12, p. 2 ~ 3 Defendant's Exhibit A6, p. 2 ~ 3 of Defendant's Exhibit A7, p. 2 ~ 4, p. 29 ~ 31, p. 35 of the deposition of the Plaintiff.)

(b) Lectures

In 2005 or 2006 (2005), Plaintiff was present when Z14, a Myanmar writer and journalist residing in the United States, visited Japan and gave a lecture (Plaintiff's Exhibit A21).

(c) First Hunger Strike

In 2006, when the first president of ABSDF, the US-based political activist Z41 (also known as Z16), came to Japan before the September 18 (the day of military coup d`etat 18 years before), 5 members of the Tuetit Revolutionary Group went on hunger strike for 24 hours from the afternoon of September 17 of the same year to the afternoon of the 18th in front of the Myanmar Embassy in α × cho-me, Shinagawa Ward, Tokyo. Plaintiff declared at the scene that they would go on a hunger strike, but he did not participate in the hunger strike itself. Z16 visited the front of the Myanmar Embassy around noon on the 17th of the same year to encourage hunger strikers; at 3 PM when the hunger strike took place, he moved to the front of Takadanobaba Station and gave a speech; at night, he gave a speech at β in Kita-ku and flew to Seoul in South Korea on the morning of the 18th. In front of the Myanmar Embassy, security cameras are installed on the premises of the Embassy (Plaintiff's Exhibit C20). (Plaintiff's Exhibit A19, 21, p. 5 of Plaintiff's Exhibit A65, Plaintiff's Exhibit A75, p. 13 of Defendant's Exhibit A6, p. 5 ~ 7, p. 31 ~ 33 of the deposition of the Plaintiff.)

(d) Second Hunger Strike

From around 5 PM on September 16 to around 5 PM on the following day, 10 people, including members of the *Tuetit* Revolutionary Group, went on hunger strike in *Gotanda* Park (the last two hours were [implemented] in front of the Myanmar Embassy in Japan.) in 2007. The Plaintiff did not go on the hunger strike itself, but was involved in negotiations with the police,

and responded to media interviews at the scene. (Plaintiff's Exhibit A20, p. 6 of Plaintiff's Exhibit A65 and p. 13 ~ 15 of Defendant's Exhibit, p. 7 ~ 8, p. 32 ~ 34 of the deposition of the Plaintiff.) Before this, on the 14th of the same month, Z11 sent letters (which requested pro-democracy people living abroad to cooperate in holding protest demonstrations in front of the Myanmar Embassies around the world via email) stating that Myanmar's people were facing difficulties in food, clothing, housing, and transportation and that the standards of health, education, etc. were declining. (Plaintiff's Exhibit A23, p. 10 of Plaintiff's Exhibit A65, p. 8 of the deposition of the Plaintiff). Also, the 1988 generation student leaders sent a letter stating their views that they were highly satisfied with the *Tuetit* Revolutionary Group and Refugees Burma going on hunger strike in Tokyo on May 16 (Plaintiff's Exhibit A22).

The Plaintiff was interviewed by a BBC reporter, Z35, who was the same reporter who reported the story of the first issue of the Revolution Magazine; the Plaintiff answered [to the reporter] that the hunger strike against the military government was scheduled to take place in a park because the police did not permit in front of the Myanmar Embassy, and the hunger strike would be held standing without eating or drinking anything other than water (Plaintiff's Exhibit A20, 41). The BBC radio broadcast on the evening of the 16th of the same month was reported above.

Plaintiff was allowed to use the title of Director of Refugees Burma in Japan (p. 9 of Plaintiff's Exhibit A70, p. 4 of Plaintiff's Exhibit A74, p. 17, p. 37 of the deposition of witness Z11). Around September 18, 2007, in the proximity of the 2nd hunger strike, the statement of Refugees Burma was prepared in the joint names of the Plaintiff, Z 24, and Z 23. It stated that the number of refugees from Myanmar had been increasing year by year due to suppression and violence by a dictatorship, and that it would be brought to the attention of the UN Security Council, that all Myanmar nationals should be recognized as refugees, that all decisions made by the Constitutional National Assembly (*Nyaunghnapin*), ordered by the military government (*Na a a pa*), and that the results of the 1990 general election should be implemented. (Plaintiff's Exhibit A10, p. 10 of A65, p. 12 ~ 14, p. 40 ~ 41 of the deposition of the Plaintiff)

E. Activities related to ABFSU (Situation around 2009)

(a) The judgment of the previous suit which dismissed the Plaintiff's claim for revocation of the first denial of recognition of refugee status became fixed on March 26, 2009, when the final appeal was dismissed and the decision of non-acceptance was made in the Supreme court. (Prerequisite facts (2) F and G.). Plaintiff filed the Application for Recognition of Refugee Status on September 1 of the same year (Prerequisite Facts (3) A.).

(b) Before this, ABFSU was a student organization formed in 1988 under the leadership of Z17, but it was destroyed due to the arrest of the same person. In 2007, ABFSU was temporarily reformed under the leadership of Z42.

However, ABFSU did not form an organization because the same person was imprisoned during the Saffron Revolution in September of the same year and other members fled abroad. On the other hand, Z13 (See B (A) above.), one of the 88 generation student leaders, left Myanmar for Mae Sot in Thailand in late 2006 or around 2007 and had an intention to rebuild ABFSU. Plaintiff had heard about this in around 2008.

After that, according to what Plaintiff had heard from Z13, Z27 (an active student generation) had been involved in the reorganization of ABFSU in 2007, but around that time they evacuated to *Mae sot*. At that time, there were Z 13, Z 29, Z 27, and Z 28 as comrades aiming to rebuild ABFSU. Z 27 was scheduled to take charge of Org activities in lower Burma; Z 28 was scheduled to take charge of Org activities in upper Burma; they scheduled to reenter Myanmar, and ABFSU would be re-reorganized and its organization would be expanded. However, apart from Z27 and Z28, Plaintiff did not know the number or name of the younger generation engaged in activities related to the re-reorganization of ABFSU and had not seen either of them. (For (B) as a whole, p. 9 and 11 ~ 12 of Plaintiff's Exhibit A65, p. 23 ~ 25 of Plaintiff's Exhibit A6, and p. 16 ~ 19 and 54 of the deposition of the Plaintiff.)

(c) The Plaintiff states that he was involved in communicating with a person identified as Z27 or giving money and goods by using "G Talk" and "G Mail" (p. 13 of Plaintiff's Exhibit A65, p. 24 ~ 25 of Plaintiff's Exhibit A6, and p. 6 of Defendant's Exhibit A11). The documents submitted by Plaintiff as evidence to support this statement include the following.

a. Documents submitted to the Tokyo Immigration Bureau on September 15, 2009 (See the entry seal at the Tokyo Immigration Office, Plaintiff's Exhibit A26 ~ 34)

a-1. The contents of e-mails (dated July 26 and August 13 of the same year) that were sent July 26 and August 13 of the same year from"******@*****.com" (hereinafter referred to as "the Z27 Address ".) to "*****@*****.com" (hereinafter referred to as "the Address") " and that was forwarded to "*****@*****.com." (hereinafter referred to as "the Forwarded Address.") (Plaintiff's Exhibit A26, 27).

a-2. The contents of the chat that were between the Z27 Address and the Address from August 13 to September 2 of the same year and that were forwarded to the Forwarded address (Plaintiff's Exhibit A28 ~ 34).

b. Submitted in the present case

b-1. E-mails, dated September 8 and 29 of the same year, that was sent to the Address from the Z27 Address (Plaintiff's Exhibit A36, 42)

b-2. E-mails, dated September 12 and 14 of the same year from "*****@*****. com" (hereinafter referred to as "the Z27 Address", that

forwarded from the Z27 Address to the Address (Plaintiff's Exhibit A36, 42).

b-3. A chat between the Z27 address and the Address on September 14, 17, 18, and October 1 to 2 of the same year (Plaintiff's Exhibit A43 ~ 45, 50).

b-4. A chat of September 18 of the same year between the Z29 Address and the Address (Plaintiff's Exhibit A46).

b-5. The contents of the e-mail dated October 3 of the same year that was sent from the Z27 Address to the Z29 Address and to the Address and that was forwarded from the Address to the Forwarded address (Plaintiff's Exhibit A51-1).

b-6. An e-mail dated October 4 of the same year, addressed to the Z29 Address from the Address (Plaintiff's Exhibit A52-1)

b-7. An e-mail dated October 5 of the same year with the attachment of the image file of the flier from the Z27 Address to the Address, and an email dated the same day from the Z27 Address to the Z29 Address (Plaintiff's Exhibit A47)

b-8. E-mails dated October 8 and 10 of the same year, with photo image files showing the attachment of leaflets and statements, on the walls and pillars in urban areas, calling for democratization from the Z27 Address to the Z29 Address and the Address and so on (Plaintiff's Exhibit A54 ~ 57).

b-9. An email dated October 23 of the same year from "*****@*****.com"(hereinafter referred to as "the Z30 Address".) " to the Address and an email dated 24 of the same month from the Address to the Z30 Address in reply thereto (Plaintiff's Exhibit A59-1, 2)

b-10. An e-mail dated October 26 of the same year, with an attachment of a document file entitled "Proposed Plan for Urban Struggle from Regional Struggle", that was addressed to the Address from the Z30 Address, and that was forwarded from the Z29 Address to the Address and so on. (1 ~ 3 of A 60), and

an e-mail dated on the same day addressed to the Address from the Z30 Address (Plaintiff's Exhibit A61).
Near the end of the attachment file, Z 13, Z 29, Z 27, Z 28, etc., were mentioned and Plaintiff's name with the title of "ABFSU - Japan" was also mentioned as a temporary communication network. (Plaintiff's Exhibit A60-4)

b-11. An e-mail dated October 28 of the same year that was addressed from the Address to the Z 27, Z30 and Z29 Address, etc. (Plaintiff's Exhibit A 62)

b-12. An e-mail dated December 19 of the same year, from the Z29 Address to the Address, to which 2 other document files, in addition to the one entitled "Proposed Plan for Urban Struggle from Regional Struggle" identical to (j) above, were attached. (Plaintiff's Exhibit A63-1 ~ 4)

2. Consideration of the Plaintiff's refugee status

Based on the facts found in paragraph 1 above, consider whether the Plaintiff falls under the category of refugees, "a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country", who are subject to the Refugee Convention under Article 1 of the Refugee Convention or Article 1 of the Refugee Protocol as defined by the Act.

(1) About the Revolutionary Magazine

A. Spread as a movement

According to facts (3) A, B, and D (A), the revolutionary magazine was launched in June 2005 by the Plaintiff, Z9, and 1 other co-representative, and was subsequently published to issue No. 14 (Plaintiff's Exhibit A17), which seems to have been published around August 2006. However, the circulation of the magazine was only about 200 to 300 copies per issue, which was distributed mainly in Myanmar restaurants in Japan, and it does not appear that the anti-government movement spread throughout prominently via the magazine. Z9, who was one of the co-representatives at the time of publication, contacted a reporter of BBC radio station, Z 35, through his wife and was interviewed about the publication of the revolution magazine; it was broadcasted. However, his name disappeared from the postscript of the 6th issue published in November of the same year when he acquired the status of residence, and he stopped activities related to the magazine. In addition, it appears that the number of people who were involved in the publication of the revolution magazine and who belonged to the Tuetiti Revolutionary Group also tended to decrease.

B. The Political background of the Plaintiff

According to facts found in (2), there is no evidence that the Plaintiff had engaged in conspicuous political activities until the time when the denial regarding the first objection was made, and it seems that the Plaintiff had engaged in politically colored activities, at most,

(a) he was involved in the temporary distribution of protest flyers after the issuance of the Declining Currency Order in 1987 in his home country, and

(b) he contributed to 2 magazines in Japan in writing about the military government.

Concerning (a), after the arrest of a friend who distributed protest flyers together, he consulted with his relatives and took the opportunity to show his intention to submit to the government to join the Navy. Also, concerning [2], he only made two one-off contributions in his pen name; it is far from being accepted that both of them were acts to express a firm political opinion.

Consequently, there is no reason to believe that the Plaintiff, who had only taken such actions until then and had no chance to be motivated to raise his political orientation in particular, around April 2005, suddenly came up with the idea of launching the revolutionary magazine which contained a considerable number of articles criticizing the military government and, after it was published in June of the same year, becomes the person in charge of editing, publishing or his contact, or the producer of anti-government poetry and use his real name.

C. Summary

As described above, considering that

the revolutionary magazine in which the Plaintiff was involved in the publication and contribution was not widely published,

the number of its contributors was on the decrease,

the publication period was only a little more than 1 year from June 2005 to around August 2006, and

the Plaintiff himself had not been involved in any notable political activities before the publication of the revolutionary magazine,

it is difficult to think that the government would likely persecute Plaintiff for being involved temporarily in the publication and contribution of the revolutionary magazine at that time when the denial of recognition of refugee status was made 4 years after the magazine was stopped to issue.

(2) On activities related to Z11

A. Relationship with Z11

According to facts (2) A, (3) B and C, Plaintiff and Z 11 were acquaintances through junior high schools, high schools, and universities, and Z 11 committed himself to a student movement and served in prison until 1999. It is found that Plaintiff resumed communication with Z 11 in July 2005 and that Plaintiff talked over the phone about the activities of 88 generation student leaders including Z 10 in his home country. In addition, it is found that they

contacted more frequently and the Plaintiff provide 20000 yen or 30000 yen every month after Z11 evacuated to Mae Sot in Thailand in October of the same year.

B. Regarding the density of communication when the Z 11 was in the home country

Concerning the frequency of calls made between the Plaintiff and Z 11 after they became in contact, the Plaintiff and Z 11 state during their interrogation that they had made a telephone call to the Plaintiff on a fixed telephone line in a neighboring house of *Sweko* in their country of origin at a fixed time, almost every day. Moreover, they stated that the content of the conversation was political. (p. 9, 31 ~ 35, 52 ~ 53 of the deposition of witness Z 11, p. 9 of the deposition of Plaintiff)

However, the contents of these statements are inconsistent from the contents of the written statement that they used multiple telephones differently to prevent the government from discovering their communication (See facts found (3) B (B).), the statements have changed irrationally and cannot be trusted. The fact that the two persons communicated almost every day is contradictory to the fact that the frequency of communication increased after Z 11 moved to *Mae Sot* in Thai land; it is considered that these are obvious exaggerations, and it can be understood that the two persons communicated less frequently during this period.

C. Regarding the impact on the Saffron Revolution

It is conceivable that there was a certain dialogue on political actions between the two persons, and it cannot be denied that the Plaintiff might have made remarks that provided an idea of action to be taken at the time of the increase in fuel prices in his home country or contributed in some way to the development of such an idea.

However, regarding the Plaintiff's claim that the Plaintiff's idea resulted in civil action during the Saffron Revolution two years later, not only at the time of the investigation in the application for recognition of refugee status but also in this case, in July 2016, more than 1 year and 4 months after the filing of the files, the brief (3), in which the Plaintiff made additional arguments on the facts underlying the Plaintiff's refugee status, was not mentioned as the argument but was mentioned only in their statements of Z11 and the Plaintiff. It was the final brief dated November 24, 2017, that [the claim] was mentioned as the argument.

Considering these circumstances, at least until Z 11 pointed out after the filing of this case, the Plaintiff did not recognize that the conversation he had had with Z 11 had affected civil action during the Saffron Revolution, and it is difficult to recognize that he thought at the time of the Denial of Recognition of Refugee Status that he might have been persecuted for having done something

that had such an impact.

D. Theft incident that triggered the evacuation of Z 11 to Thailand

Plaintiff claims that when Z 11 met with a theft incident that led to its evacuation to Mae Sot in Thailand, some of the stolen materials included Z 11 and Plaintiff's name.

Even though the fact that the Z 11 met with a theft incident while carrying the documents to prepare the electronic data to be delivered to the Plaintiff in Japan in the period immediately before Z11 evacuated to the *Mae Sot* in Thailand is found (Found Fact (3) B (C); it seems not necessary to describe the baggage in such a way that the name of the addressee can be easily identifiable, or rather, harmful and no use when they would deliver the baggage hiding from the government, although the parties (concerned) already knew the purpose of the baggage delivery and delivery address. Because there is no reasonable explanation from Z 11 as to the reason why the address was stated (p.54 of the deposition of witness Z 11), we cannot help but doubt that some of the stolen materials contained Plaintiff's name.

The above also applies to the name of Z 11, the sender of the document. Even if the name of Z 11 was not mentioned in the stolen document, the possibility that the theft incident itself was targeted at Z 11 cannot be denied. Therefore, Z 11 can decide to evacuate that there was a risk that the Z 11 might be in danger based on the fact that he met the theft incident; thus, it is impossible to assume the fact that there was a document including the name in the stolen documents from the fact that Z 11 evacuated to Thailand after the theft incident.

E. About the report of the *Chemont* State Newspaper

Concerning the *Chemont* National Newspaper, dated August 25, 2007, that reported that the 88 student generation leaders were communicating with anti-government groups operating outside the country via Z 11 and Z 19 who had moved to Thailand (Plaintiff's Exhibit A 25), Plaintiff claims that the anti-government groups operating outside the country were Refugees Burma and the *Tuetit* Revolutionary Group, and he testifies the same (p.11 of Plaintiff's Exhibit A 65, p. 15 of the deposition of the Plaintiff).

However, in the context of this article, "anti-government groups operating outside" naturally means [the groups] in Thailand and it is difficult to construe that this means [the groups] in Japan as Z11 admits (p. 13 of the deposition of witness Z 11). It is not difficult to imagine that there are many other anti-government groups outside Myanmar; therefore, it is difficult to understand this article in the same way as the above Plaintiff's claim.

F. Summary

As described above, the Plaintiff contacted Z 11, who is considered to be

one of the 88 generation student leaders, had a certain conversation about political activities, and even after Z11 moved to Thailand, it is found that the Plaintiff provided some amount of funds. However, the extent to which the Plaintiff was found to have been involved in the action was limited to a certain period from July 2005 to 2006 or 2007. In addition, as described in (1) B above, considering the Plaintiff himself was found not to have been involved in the remarkable political actions before June 2005 and it is thought that the government of the home country would hardly recognize the fact that the Plaintiff was involved in Z 11's actions as above; at the time of the Application of the Denial of Recognition of Refugee Status, it is difficult to think that it was in a certain situation that the Government would likely persecute the Plaintiff for being involved in the Z 11's actions.

(3) About Lectures

Plaintiff claims that the *Tuetit* Revolutionary Group, including the lectures given in (3) E (B) above, hosted 2 lectures in 2005 and 2006 by inviting 2 Myanmar authors, and he deposed in line with the claim. However, there is no evidence to accurately identify the background and contents of these lectures.

(4) About hunger strikes

A. Content of the hunger strike

According to (3) D (C) and (D),

(a) on the occasion of the visit of Z 16, a political activist living in the United States and known as the first chairman of ABSDF, to Japan in September 2006, 5 members of the *Tuetit* Revolutionary Group went on the first hunger strike in front of the Myanmar Embassy, and the Plaintiff proclaimed the hunger strike at the scene.

(b) In September of the following year, 10 members of the *Tuetit* Revolutionary Group participated in the second hunger strike in mainly *Gotanda* park, and the Plaintiff negotiated with Police. In addition, the Plaintiff was interviewed by a reporter of BBC radio station, Z 35; and was broadcasted.

B. About Spreading of the movement

However, as can be seen from (3) D (C), even though it is seen that Z 16 visited to encourage demonstrators before the start of the demonstration at the first hunger strike, he left the site of the hunger strike at the time of the actual start, made every effort to give speeches and give lectures in another place, and then left Japan while the hunger strike was continuing. It is difficult to recognize that he was closely related to the hunger strike.

According to facts (3) D (D), it is highly likely that the second hunger strike was held at the request of the 88 generation student leaders including Z 11, and there is no accurate evidence to suggest that Plaintiff planned it, and the Plaintiff himself did not participate in the execution of the hunger strike. Therefore, it can be construed that Plaintiff only participated in the role of coordinating, moderating, and handling the media.

Also, only about 5 to 10 people participated in the execution of these hunger strikes (Found Fact (3) D (C) and (R)); those who belonged to the *Tuetit* Revolutionary Group, the main participant of these hunger strikes, tended to stay away from their activities after obtaining a status of residence (Found facts (3) D (A)).

C. Summary

As described above, while the hunger strike claimed by Plaintiff seems to have been linked to anti-government activities overseas to some extent,

it is not likely that Plaintiff took the initiative in carrying out these activities,

the scale of the project was small in light of the number of people who went on hunger strikes,

the status of the *Tuetit* Revolutionary Group, which was the main body of the participants, stopped its activities immediately after the second hunger strike in September 2007; the political spreading was lost, and it does not seem that [the activities] fixed as protest activities the following years, and

also, as described said (1) B, the Plaintiff himself had not been involved in any notable political activities before June 2006,

at the time of the decision not to recognize the Refugee in November 2010, more than 3 years after the 2nd hunger strike, it is hard to believe that the Government was in a situation where there was a risk of persecution of the Plaintiff based on the fact that the Plaintiff was once involved in these hunger strikes.

(5) Refugees Burma

Plaintiff also claims that Plaintiff's position as director of the Japanese branch of Refugees Burma, formed by Z 11 and others, is a fact that underlies his refugee status.

However, according to found facts (3) C (D), Refugees Burma was recognized as a reduction of its activities because the Thai government divided the refugee camps in which the parties concerned lived shortly after the change of the name from SWAR. In Thailand, the actual status of the activities after that is not clear, and re-

garding the activities in Japan, there is no specific evidence on its specific activities other than the declaration with the Plaintiff's real name (Found fact (3) D (D).). In addition, the declaration was stated once at the time close to the second hanger strike and it does not seem that the declaration themselves had big impacts on the anti-government activities; therefore, Plaintiff's claim above is not acceptable.

(6) About international conference calls

The Plaintiff also claims that he participated in an international conference call presided over by Z16 around 2007 with the leaders of the former ABSDF of each country as a fact that underlies his refugee status. However, in addition to the fact that the only evidence to support this is Plaintiff's own written statement (p. 4 ~ 5 of Plaintiff's Exhibit A 74), Plaintiff's claim was made for the first time in the brief (3) received on July 4, 2016, and it is difficult to think that the Plaintiff considered he was likely to be persecuted as a result of his participation at the time of the Denial of Application of Refugee Status; therefore, the Plaintiff's claim above is not acceptable.

(7) About ABFSU-related behaviors

Plaintiff claims that ABFSU was reorganized as a result of the exchange of information and opinions using the Address. However, according to found facts (3) E (B) and (C), the communications using the Address, found by the evidence submitted by the Plaintiff, were made after the reorganization of ABFSU in June 2009, thus it is not found that ABFSU was reorganized as a result of these communications in terms of the time.

A. About the user of the Address

(c) Nevertheless, according to (3) E (B), Z 27 is a person who is said to have been engaged in activities related to the ABFSU re-reorganization mentioned above in Myanmar; it is found that the Z 27 Address and the Address were communicated by email or chat at a time immediately after ABFSU re-reorganization. Plaintiff then claims that the Address was used by him and stated it accordingly (p. 13 of Plaintiff's Exhibit A65 and p. 43 of the deposition of the Plaintiff).

(d) However, to find that the Plaintiff was the person who exchanged mail or chat with the Z 27 Address, etc. using the Address, there must be a considerable number of doubtful points as follows. It cannot be denied that the Address was used by a third party related to Plaintiff at the time of the exchange.

a. All e-mails and chats from September 2 (hereinafter, the year of the same year is omitted in this section.) to July 26 were not communications between the Z27 Address and the Address, but were forwarded from the Address to the Forwarded Address (Found Facts (3) E (C) a). If Plaintiff used the Address to send these communications, it is considered that there is little need to prove them in such a roundabout manner. Also, the reason that the e-mails and chats are forwarded consistently to the Forwarded Address is unclear, even though the received history was deleted in the Address.

b. In a chat on September 14, [the comment from] the Address indicated that he also intended to enter Myanmar immediately (After 49 of Plaintiff's Exhibit A 43-10), but it is difficult to believe that Plaintiff intended to enter Myanmar at that time.

c. In a chat on September 17, the User of the Address commented on the state of the 88 Student Movement and commented on the relationship between *Bakata* and Z 43 (After 32 of Plaintiff's Exhibit A 44-10), but it is difficult to find that the Plaintiff was deeply involved in the 88 Student Movement, and there is a doubt as to whether he has the knowledge to make such comments.

d. In a chat on September 18 between the Address and the Z29 Address, a User of the Address offered to look up Z 28 (49 of Plaintiff's Exhibit A46-10), but it is unnatural for Plaintiff to offer such an offer as to Z 28, who had infiltrated upper Burma, far from Japan, and was not acquainted with the Plaintiff.

e. In a chat held from October 1 to the following 2,

> [1] a user of the Address states that the name he uses to receive money was Z 44 and that Z1 provide it from Japan, and it is premised that a user of the Address and the Plaintiff are different persons (After 27 of Plaintiff's Exhibit A 50-11),
>
> [2] comments from the sender, who was "△ △ △ △." (the original language is also spelled the same as the Plaintiff's "△ △ △ △") different from the Address (21 of same 12.), have been entered into the chat room at that time (around 38 of the same 12), and
>
> [3] it seems that a user of the Address transmits the result of the conversation with Z 13 as if Z 13 stays in close,

therefore, there is a possibility that the user of the Address was not the Plaintiff but the third party in *Mae Sot* in Thailand next to Myanmar. The telephone number (45 of the Same 12) that was returned in response to the question "My brother's phone number ?" from the Z 27 address of the chat would perhaps be that of the Plaintiff himself. However, "my brother" means not only the chat partner but also older men in general; there is a possibility that [the chat] was exchanged under the former chat

at the beginning("I heard that Z 1 sent it from Japan. I have to call tomorrow."(47 of the same 11)). Even if it was not so, from the point of view that the chat was finished in the mention that requested a call back for his going out, the user of the Address would not necessarily have answered the phone number above as his phone number. In addition, in the later e-mail dated October 24, the part which seems to be the phone number of a user of the Address User is kept secret (Plaintiff's Exhibit A 59-2).

f. On October 28, it was instructed to enter the e-mail address of the encrypted name "△ △ △ △" from the Address to the Z 27 Address and so on (Plaintiff's Exhibit A 62), but if the user of the Address was communicating continuously under the name of Z1, this instruction is incomprehensible.

(e) In addition to the points pointed out in (B) above, the Plaintiff is not acquainted with Z 27 in the first place, and considering that the relationship between the two was, if it occurred, at most, after June 2009, it is highly probable that the Plaintiff was not involved in all communications made using the Address by an account that is possible to be obtained without sufficient identification as so-called free e-mail.

B. The evidentiary value of the contents of communication using the Address

In addition, the U.S. State Department and other agencies reported on the human rights situation in Myanmar in 2007 and 2011, which state that the government is suspected of periodically blocking free e-mail and putting e-mail under surveillance (p. 21 of translation of Plaintiff's Exhibit C2, paragraph 16.07 ~ 16.15 of Plaintiff's Exhibit C 17.). During this period, it is difficult to understand rationally that the group who recognized the situation in the country and was still earnestly orchestrated to implement political activities that could be suppressed by the government, may not contact without protection,without encryption or secret language. Otherwise, it would possibly expose the contents of exchange to the government when they were involved in cross-border communications regarding political activities.

According to what had been actually communicated using the Address, at the beginning of the communication between the Address and the Z27 Address, [the user of] the Address requests Z 27 to send a photograph of the activities in Myanmar without warning (Plaintiff's Exhibit A43-9: 40), then Z 27 sends a photograph showing the results of the billposting (Plaintiff's Exhibit A 53 ~ 57), etc.; after that, the basic notes (for example, using addresses with encrypted names and not using real name and phone number for avoiding being traced), that should be told at the beginning, were exchanged; on the other hand, the real name of the Plaintiff, Z 1, were shown by himself as the sender of encrypted name and others regardless of the notes; that is, there was an incoherent situation.

C. Summary

As described above, it is impossible to find that Plaintiff is involved in all communications made using the Address, and even if there is a party involved, the value of evidence is questionable.

Plaintiff argues, based on the communication made using the Address, that Plaintiff actively supported the re-reorganization and activities of ABFSU in Myanmar, but in light of the facts insofar, it cannot be adopted.

(8) Comprehensive Judgment

In summary,

[1] The Plaintiff was, first of allis, a man born in 1967, who belongs to the so-called 88 generations. However, he did not engage in any conspicuous political activities in Myanmar or Japan until April 2005, when the Decision regarding the First Objection was made. It can be said that he was a person who grew older without participating in social protests in earnest.

[2] After the Decision regarding the First Objection, Z 11 formed the *Tuetit* Revolutionary Group and published the revolutionary magazine. And through Z 11, one of the 88 generation student leaders who was an old acquaintance with the Plaintiff, the Plaintiff provided a small number of funds for Z 11's activities and was involved in a hunger strike in front of the Myanmar Embassy. However, these activities were small or one-off, were not under the Plaintiff's firm resolve in leading political activities, and were limited for more than about 2 years from 5 years and 5 months before the Application for Recognition of Refugee Status, the activities were sporadic after 1 year and more; therefore, it is not found that these activities were continued consistently including the time after that.

According to the Opinion of the Counselor's Majority:

the Plaintiff objectively proves the existence of the Revolutionary Magazine which he published, edited and authored,

concerning the claims that he also led the hunger strike, communicated with the 88 generation student leaders, became the person in charge of the Japan Branch of Refugees Burma, and was served as a central executive member of the ABFSU re-grouped in his home country in June, the Plaintiff does not prove them objectively and directly, however, his statements are concrete, consistent in principle, without any contradictions, and consideration should be given to the difficulty of proof,

therefore, as a whole, the Plaintiff's activities include the continuity and

consistency of political beliefs and expressions of anti-government will, and the Plaintiff's initiative is found in part of activities,

thus, it is considerable to recognize the Plaintiff as refugee status (Plaintiff's Exhibit A 5). However, the actions of the Plaintiff with ABFSU, taken together with the shreds of evidence submitted after the filing of this case, must be evaluated as [3] above. Also, as mentioned as [2] above, the political activities that Plaintiff temporarily engaged in after the Decision regarding the First Objection were small and one-off and settled after a while. In addition to the background of the Plaintiff mentioned as [1] above, it is difficult to recognize that the evaluation of the political belief, continuity, and consistency and initiative of the political expression of the Plaintiff in the majority opinion of the Counselor is appropriate.

Taken together, even in light of the political situation prevailing by the military government in Myanmar at the time of the Denial of Recognition of Refugee Status (Found Facts in (1) A (E) and (F).), the Plaintiff cannot be recognized to be a person who owes a well-founded fear of being persecuted for political opinion.

Conclusion

Therefore, the Denial of Recognition of Refugee status which did not recognize the Plaintiff as a refugee is lawful; the Plaintiff's claims were groundless and shall be dismissed. Concerning the burden of court costs, Article 7 of the Administrative Case Litigation Act and Article 61 of the Code of Civil Procedure shall be applied, and the judgment shall be rendered as stated in the main text.

Tokyo District Court, Civil Affairs Division 38.

Chief Judge Yutaka Taniguchi, Judge Kaoru Hirayama, Judge Baba Jun

(The rest is omitted.)

COMPARATIVE CASE LAW

- Refugee Case law from the Republic of Korea -

REFUGEE STATUS CLAIM BASED ON RELIGIOUS CONVERSION —2017guhap67316[1] Suwon District Court, 13 February 2018 (Iran)

Summarized and Translated by Soojin Lee[2]

CASE SUMMARY

- The claimant is a national of the Islamic Republic of Iran(hereinafter referred to as Iran) who entered Korea under a C-3 visa (short-term visit), then overstayed for 13 years.
- The claimant received a deportation order and detained at Hwa-sung detention center where he lodged a refugee status application claiming that he has converted from Muslim to Christian during his stay in Korea, therefore he is in fear of being persecuted if returned to Iran.
- The chief of the detention center issued non-recognition decision against the claimant's claim. The claimant appealed to the minister of justice for a second instance review but was rejected.

However, the district court reasoned that:

1) Although the court suspects on the possibility of the claimant's purpose of lodging a refugee application was to extend the period of sojourn, the court also considers the circumstances that the claimant delayed applying for refugee due to possible persecution on himself and his family from the Iranian government for conversion, and to reduce any risk since the claimant was uncertain whether his refugee claim will be recognized. Therefore it is difficult to doubt the sincerity of the claimant's statement on conversion merely because the claimant failed to apply for refugee status in timely manner.
2) The fact that the claimant was baptized and have been actively practicing his religious belief by introducing Christianity to other Iranians and participated in street missionary activities;

1. 수원지방법원 2018. 2. 13. 선고 2017구합67316 판결 [난민불인정결정취소]

2. Ph.D. candidate at the University of Tokyo, RA at the Research Center for Sustainable Peace, and an Editor of the CDRQ vol. 11 - Special Issue. She worked as a Senior Protection Assistant at UNHCR representation in the Republic of Korea. She holds LLB from Soka University(Japan), and LLM from Temple University (PA, USA).

3) A national of Iran's involvement in such missionary activities beyond a mere conversion to Christianity can cause an arbitrary arrest and questioning with a possibility to mental and physical torture.

Therefore the court saw it is reasonable to consider that the claimant has a well-founded fear of being persecuted if returned to Iran for conversion to Christianity. The court decided that the claimant's refugee claim is recognized under the Refugee Act Art. 2 cla.1[3].

3. **Refugee Act of Korea(Act No. 14408, Dec. 20, 2016) Article 2 (Definitions) Art.2 cla. 1** The term "refugee" means a foreigner who is unable or does not desire to receive protection from the nation of his/her nationality in well-grounded fear that he/she is likely to be persecuted based on race, religion, nationality, the status of a member of a specific social group, or political opinion, or a stateless foreigner who is unable or does not desire to return to the nation in which he/she resided before entering the Republic of Korea (hereinafter referred to as "nation of settlement") in such fear;

Suwon District Court

The 5th Administration

Adjudication

Case	2017Guhap67316 "Appeal for the Cancellation of Denied Refugee Status Recognition"
Claimant	A Hwasung City Legal counsel *** Attorney ***
Defendant	Chief of the Hwasung Detention Center
Date of Hearing	30 January 2018
Date of Adjudication	13 February 2018

Order

1. The defendant is to be responsible for all related litigation fees.
2. The defendant's denial of the claimant's application for refugee recognition dated 15 February 2017 is cancelled.

Claims

Same as order.

Grounds

1. Proceedings of Defendant's Denial

A. The claimant is a national of the Islamic Republic of Iran (hereinafter referred to as Iran) who entered South Korea on 15 October 2000 with a short-term visa (C-3).

B. The claimant overstayed beyond the expiration date of sojourn period on 14 November 2000, then declared to the immigration office on 22 May 2002 during the grace period voluntary departure for illegal migrants, and received an exit order to leave Korea by 15 October 2003.

C. On 16 October 2003, the claimant was granted a Non-professional Employment visa (E-9) through the legalization measure for illegal migrant, then overstayed beyond the expiration date of sojourn period on 13 February 2005.

D. On 19 August 2016, the claimant was arrested for an illegal stay, then received a deportation order. While he was detained at the Hwasung Detention Center he applied for refugee status recognition with the defendant on 30 August 2016, claimed that he has converted to christianity during his stay in Korea, therefore he will receive religious persecution if returned to Iran.

E. On 15 February 2017, the defendant issued a non-recognition decision with a reason that the claimant doesn't have 'a well-founded fear of being persecuted'.

[Evidence] Kap-1

•The fact where the claimant applied for a refugee status only after being cracked down as an illegal immigrant although the claimant asserts that his conversion to Christianity was reported three times to the Iranian Embassy, the Iranian government, and his home town.

•The fact where the claimant, as a general believer, only participated in church activities such as worship and Bible study, but never actively and openly evangelized, and his family in his home country also recognizes the claimant's conversion to Christianity without asking for or opposing it.

•The fact that after the conversion, the claimant visited the Iranian Embassy to renew his passport, but there were no disadvantages or problems related to the conversion of Christianity.

•The fact that an acquaintance of the claimant who knows information about refugees or the church the claimant attends did not recommend or guide the claimant to apply for refugee status.

•The fact that the conversion of Christianity in Iran is subject to government suppression is true, but it is difficult to say that it is a serious violation of human rights that can be called persecution under the Refugee Convention, even if there is some discrimination in education and economic activities.

F. On 13 March 2017, the claimant appealed the non-recognition decision to the

minister of justice (appealed to the second instance review), then was rejected on 8 June 2017.

2. The legality of the ruling

A. Claims of the claimant

Considering the following circumstances, the claimant has "a well-founded fear that he will be persecuted" when he returns to Iran, therefore the defendant's decision on the case was established on different premises and is in violation of the law.

1) The claimant was running a supermarket with his father in Iran, then entered Korea on 15 October 2000 to purchase goods for his supermarket. He resided in Korea as a manual laborer knowing that his sojourn period had expired, he was baptized after learning about “C” church through his friend “B” while was hospitalized for a leg injury.

2) Later, “B” died on 26 January 2010 and was buried in Christian style but his family refused to receive his body because he was a Christian convert, and the embassy was aware of this fact so it was impossible to transport “B”s body to Iran. On the other hand, in the process of delivering “B”’s death insurance to his family (Evidence Kap-11, Kap-12), the claimant was rumored among the Iranians in Korea that he is attending “C” church, then his home in Iran was visited by an intelligence officer who monitors the religion (Evidence Eul-5).

3) The claimant was active in evangelizing, converted and baptized three Iranians, including “D” and “E”. “D” was forced to leave Iran after being baptized on 5 September 2019, and beaten to death by police authorities in Iran on 25 July 2015 (Evidence Kap-10). “E” and his spouse and daughter were baptized on 12 August 2012 then left to Iran on 17th, then the daughter fled to Turkey because she could not live a religious life (Evidence Kap-9), and “C” church is the one that the Iranian government is paying attention to and manages the information of Iranians entering.

4) The claimant renewed his passport twice at the Iranian Embassy in Korea, but the claimant did not apply for refugee status at the time, so the person in charge did not confirm further. “F” who informed the claimant’s family in Iran about the conversion of the claimant, and who had maintained a good cooperative relationship with the Iranian Embassy, and a good acquaintance of the claimant, has recently returned to Korea after going to Iran.

5) The claimant’s refugee claim was developed during his stay in Korea, and the claimant delayed applying for refugee status due to the possibility of the claimant's detention, an anticipation for the Iranian government's change in attitude toward Christianity, the impact on the claimant and his families. If the claimant is forcibly deported to Iran, the claimant is highly likely to be a subject of investigation from the moment he lands at the airport so he will be at a high risk of being persecuted. Even the country of origin information on the Iranian

government's persecution against Christian converts is evident in reports by international organizations and such.

B. Related Laws

Related laws are provided as an attachment.

C. Agreed Facts

1) The claimant's entry to Korea and application for refugee status

a) The claimant was born in "G" of Iran on 23 December 1963. His father, brother, and sister are currently living in Iran (mother deceased in January 2004).

b) The claimant was running a supermarket with his father in Iran, and borrowed 3,500,000 Toman to travel to Korea, then entered Korea on 15 Octbober 2000 with a short-term visa(C-3). The claimant stayed illegal for 13 years, then was arrested and received a deportation order, then applied for a refugee status recognition on 30 August 2016.

2) Iran's repression of Christianity

a) The 2016 Annual Report of the United States Commission on International Religious Freedom (Evidence Kap-13)on Iran's religious freedom, reported that 'The Iranian government's religious freedom situation continued to deteriorate, especially for Christian converts, and since 2010, more than 550 Christians have been arrested, and as of February 2016, about 90 Christians have been imprisoned or awaiting trial for religious beliefs and activities. particularly for Christian converts and others'[4].

b) The UK Home Office's 2014 Country Information and Guidance on Christians in Iran and conversion to Christianity (Evidence Eul-9, Eul-10) reported that 'Those who convert from Islam to Christianity are considered apostates and punished by criminal law in Iran, so those who actively preach the gospel and engage in conversion will be placed under the actual threat of persecution in Iran, and it will be appropriate to give them protection'[5].

c) According to the UNHCR (United Nations High Commissioner for Refugees)'s Response to the Factual Inquiry dated 3 July 2017 (Evidence Kap-20), the Islamic law(Sharia law) does not recognize the right to convert to Muslims, and if Christians who converted from Muslim engage in notable religious activities, they are threatened with persecution upon return, and when

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4. **Translator's comment**: This excerpt was once translated from English to Korean for court submission, then translated to English again for this paper. For more information on the COI, please refer to the following original COI report.
United States Commission on International Religious Freedom, *USCIRF Annual Report 2016 - Tier 1 CPCs designated by the State Department and recommended by USCIRF - Iran*, 2 May 2016, available at: https://www.refworld.org/docid/57307cf84.html [accessed 6 April 2021]

5. **Translator's comment**: This excerpt was once translated from English to Korean for court submission, then translated to English again for this paper. For more information on the COI, please refer to the following original COI report.
United Kingdom: Home Office, *Country Information and Guidance - Iran: Christians and Christian Converts*, December 2014, available at: https://www.refworld.org/docid/561f53164.html [accessed 6 April 2021]

a Christian returns to Iran and attend and evangelize Christian church services, there's a risk of arbitrary arrest and interrogation. During detention, it is common for those responsible to be exposed to physical and mental torture for information or confession, and at least 193 Christians are arrested or imprisoned in 2016.

d) The Ministry of Justice's 2013 Country Information Guide on Iran states that converting from Islam to Christianity can be disadvantaged in college admissions and passport issuance, but in reality, new religious life is allowed (such as attending weekly worship), however, active engagement to the public and evangelize can lead to serious oppression.

3) The claimant's activity in Korea

a) The claimant was introduced to "C" Church by his Iranian friend "B" and registered as a member of "C" Church on April 30, 2006, and was baptized by C Church on February 7, 2010.

b) The claimant actively engaged in religious activities by inviting Iranians in Korea to eat, introduce their faith, and bring a large number of Iranians to the "C" Church's Iran team through evangelical activities on the street, especially introduced "D" and "E" to church and baptized "D" on 5 September 2019, and "E" on 12 August 2012.

c) The "C" Church's 2017 Autumn Journal (Evidence Kap-24) contains interviews and photos related to Christian activities of the claimant, and photos of domestic volunteer activities.

d) "Lee **", a witness working as a deacon in the Department of Foreign Mission in the "C" Church, testified in this court as follows, and the same church members are also pleading for the authenticity of the claimant's Christian faith (Evidence Kap-23).

[Witness "Lee"'s testimony]**

Q: When did you get to know the claimant?

A: It was in autumn 2010 when I was doing volunteer work at the Iran team.

Q: Tell us the claimant's faith as you have seen

A: I've been doing volunteer work for 8 years for the Iran team now, and he's been keeping his unwavering faith, the faith that can be modeled after even by Koreans. In particular, the church is located in Dongdaemun, about two hours by bus from Hwasung but he never missed a weekly worship.

Q: Do you remember when the claimant told you or sent you about inviting or sharing with the Iranians about the christian doctrine?

A: I've often seen it since I served in Iran team, and I've been invited his home twice to talk to him.

Q: Can you explain to us what happened at that time?

A: We talked about life, religious life, and shared prayers.

Q: Are the Iranians who attended the meeting the claimant evangelized or came to church at the same time?

A: Some were the ones evangelized by him and some were the ones came to church at the same time.

Q: Have you seen or heard the claimant doing evangelical work on the street?

A: In the early days when the embassy's surveillance wasn't too much, he went together with other volunteers near the church, and refrained from doing so when the embassy's surveillance seems to be heavy. (omitted)

Q: Have you seen any Iranians introduced to the church from the evangelical work on the street?

A: Yes I have. Particularly a person named "xx" and "H", and another person named "I" recently, and "J" introduced two other people to the church.

Q: Do you think the claimant was enthusiastic in evangelic activities to the Iranians?

A: It could be a bit different depending on the standard, but I think he was very enthusiastic. In fact, it is not easy for Koreans to evangelize. I have been a believer for nearly 30 years, but it is shameful that I didn't do direct evangelism, but the fact that K has conducted several people directly can be seen as a great activity.

Q: Is it known to Iranians in Korea that the claimant converted to Christianity and worked hard on evangelism?

A: I think so.

Q: Why is that?

A: I think because he is doing a lot of evangelism, the Iranians can recognize it well.

Q: So that means, the people of the Iranian Embassy can fully learn if they intend to, the claimant's conversion to Christianity and he is living evangelism?

A: You can say that.

D. Judgment

1) Comprehensively considering the provisions of Articles 1, 2(1) of the Refugee Act, Article 1 of the 1951 Convention on the Status of Refugees (hereinafter referred to as the "Convention on Refugees") and Article 1 of the 1967 Protocol on the Status of Refugees; the Minister of Justice shall recognize a refugee as provided by the "Convention on Refugees" if there is an application from a foreigner who cannot be protected by the country of nationality or who does not

want to return to the country of dwelling before entering the Republic of Korea due to well-founded fear of being persecuted for race, religion, nationality, or political opinion, or for being a member of a particular social group.

At this time, the 'persecution' that a foreigner will receive is 'an act that causes grave infringement or discrimination against the essential dignity of human beings, including threats to life, body, or freedom.'

Furthermore, "well founded fear" of being persecuted should be proved by a foreigner who is applying for refugee status recognition, however, in consideration of the special circumstances of refugees, the foreigner in question shall not be required to prove the entire claim on objective evidence, and it can be said that the claim is proved if the statement is consistent and persuasive, and if it is reasonable to acknowledge the claim based on the credibility of the overall statement in light of the route of entry, the timeline of refugee application, the situation of the country of origin, subjective degree of fear, the political, social and cultural environment of the region where the applicant lived, and the the degree of fear, etc. felt by ordinary people in the area (*see*, *e.g.*, Supreme Court decision 2016-Du56080 decided 11 July 2017[6]; Supreme Court decision 2016Du42913 decided 5 December 2017[7]; Supreme Court decision 2007Du3930 decided 24 July 2007[8]).

And refugees can be recognized when there is a "well founded fear of being persecuted" as a result of actions such as expressing political opinions in the country of dwelling after leaving the country of nationality, and providing the cause for persecution in order to be protected as refugee is not something that should be considered differently (*see*, *e.g.*, Supreme Court decision 2013Du16852 decided 9 March 2017[9]; Supreme Court decision 2007Du19539 decided 24 July

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6. **Translator's comment**: (대법원 2017.7.11 선고 2016두56080 판결) This is the case where the court reasoned on the meaning of "specific social groups" defined in Article 2 subparagraph 1 of the Refugee Act and whether if sexual orientation of homosexuality falls within the category of "specific social groups"; the meaning of "persecution" that refugee applicant is at risk and the requirement for homosexuals to be recognized as refugees; and who has the burden of proof for "well founded fear" of being persecuted.

The court concluded that in the case of serious infringement or discrimination against the dignity of human beings, including threats to life, body, or freedom, beyond the general social criticism on the grounds of sexual orientation of refugee applicants; it can be considered as "being persecuted" as referred in the Refugee Convention. Therefore, in order for a homosexual to be recognized as a refugee, he/she must be who entered Korea because his/her sexual orientation was disclosed in his/her country of origin therefore was persecuted specifically, and has "well founded fear" of being persecuted by certain members of society or the government if they return to the country of origin. This "well founded fear" of being persecuted shall be proved by the refugee applicant.

7. **Translator's comment**: (대법원 2017.12.5 선고 2016두42913 판결) This case is discussed later in this section from pg. 163.

8. **Translator's comment**: (대법원 2007.7.24 선고 2007두3930 판결) This the first case in Korea where the refugee applicant was recognized as a refugee at the Supreme Court level. At the time of the decision, the Refugee Act as an independent law was yet to be adopted, relevant provisions for refugee and asylum seekers protection were provided under the Immigration Control Act. The definition of the term "refugee" was provided in the Art.2 Para.2(2) fo the Immigration Control Act, which was in accordance with the Art. 1(A)(2) of the 1951 Refugee Convention. However, 1951 Refugee Convention lacks a precise definition of the term "persecution", so did the Immigration Control Act. Against this backdrop, the court delivered for the first time the meaning of "persecution" as "an act which may cause serious infringement of, or discrimination against the dignity of human being, including any threat to life, physical integrity, and/or freedom. This is one of the leading case that presented certain criteria and direction point on applying and understanding unfamiliar international instrument such as the Refugee Convention.

9. **Translator's comment**: (대법원 2017.3.9 선고 2013두16852 판결) This case is discussed later in this section from pg. 173.

2008[10]).

2) According to the above and previous evidence, the claimant has "well founded fear" of being persecuted by the Iranian government for his conversion to Christianity if returned to Iran. Therefore, the claimant of this case falls within the category of refugee provided under Art. 2 subparagraph 1 of the Refugee Act, the defendant's disposition of this case against the claimant on this other premise is in violation of law.

(a) Although the claimant's sincerity for his refugee claim is doubtful as he applied for refugee status after he was detained and received deportation order for illegally staying for 13 years, the fact that the claimant is a refugee *sur place* due to his conversion to Christianity after he entered Korea should be considered. Also it is possible that the claimant delayed applying for refugee due to the Iranian government's oppression on him and his family because of conversion, and that he was uncertain whether his refugee claim would be recognized. Therefore it is difficult to deny the credibility of his statement regarding his conversion.

(b) Rather, the claimant was introduced to "C" church by his Iranian friend "B", and registered as a congregation on 30 April 2006, then baptized at "C" church on 7 February 2010. The claimant continued his religious life for a considerable period of time, and actively engaged in religious activities, such as inviting Iranians to his home to introduce Christianity or bringing a large number of Iranians to "C" church through a evangelism activity on the street.

(c) Also in the autumn 2017 issue of the "C" church's newsletter, an interview of the claimant on his christian activity including photos and volunteer works were introduced; the claimant seems to continue his religious activities even after the result of his refugee status determination; and church members such as "C" church's deacon Lee ** continue petition for the sincerity of the claimant's Christian faith. Considering all of the above circumstances, it seems that the claimant's religious life was announced objectively by actively engaging in religious activities externally.

(d) However, putting together the 2016 Annual Report of the United States Commission on International Religious Freedom, the UK Home Office's 2014 Country Information and Guidance on Christians in Iran and conversion to Christianity, the UNHCR's response to the Factual Inquiry, and the Ministry of Justice's 2013 Country Information Guide on Iran, an Iranian who go beyond a mere conversion to Christianity and actively conduct evangelism, it seems that the person will be at a risk of arbitrary arrest and interrogation by the Iranian government, and will be exposed to physical, metal torture.

(e) Determine to hide one's religious belief because of possible discrimination

10. **Translator's comment**: (대법원 2008.7.24 선고 2007두19539 판결) In this case, the court ruled 1) whether he/she can be recognized as a refugee even if he/she expresses his/her political opinion in the country of residence after leaving the country of nationality; and 2) the meaning of 'persecution' as a requirement to be recognized as a refugee, and the degree of burden of proof by a refugee applicant, and the whether there is a 'well founded fear' of being persecuted.

from the State if disclosed does not exactly falls under the term “persecution” described in the Refugee Convention (Seoul High Court decision 2017Nu74803 decided 18 January 2018), the claimant of this case was actively engaged in evangelic activities and such activities were significantly disclosed externally, the claimant expected to face the risk of being exposed to physical and mental harm if forcibly returned to Iran.

3. Conclusion

It follows from the foregoing that the claimant’s appeal is well-grounded and therefore the court accepts the claimant’s appeal and rules as stated in the order.

The presiding Judge ***

Judge ***

Judge ***

Related Laws

[The Refugee Act of Korea]

Article 1 (Purpose)

The purpose of this Act is to prescribe matters concerning the status, treatment, etc. of refugees in accordance with the 1951 Convention Relating to the Status of Refugees (hereinafter referred to as the "Refugee Convention") and the 1967 Protocol Relating to the Status of Refugees (hereinafter referred to as the "Refugee Protocol").

Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "refugee" means a foreigner who is unable or does not desire to receive protection from the nation of his/her nationality in well-grounded fear that he/she is likely to be persecuted based on race, religion, nationality, the status of a member of a specific social group, or political opinion, or a stateless foreigner who is unable or does not desire to return to the nation in which he/she resided before entering the Republic of Korea (hereinafter referred to as "nation of settlement") in such fear;

Article 5 (Application for Refugee Status)

(1) Any person who intends to obtain refugee status as a foreigner within the Republic of Korea may apply for refugee status with the Minister of Justice. In such cases, the foreigner shall submit a written application for refugee status to the head of the local immigration office or foreigner-related office. *<Amended by Act No. 12421, Mar. 18, 2014>*

(6) A refugee applicant may stay in the Republic of Korea until a decision of recognition or non-recognition of refugee status is made final and conclusive (where an administrative appeal or administrative litigation against a decision of non-recognition of refugee status is under way, until such procedures are complete).

(7) Matters necessary for detailed methods, procedures, etc. of application for refugee status other than those provided for in paragraphs (1) through (6) shall be prescribed by Ordinance of the Ministry of Justice.

Article 18 (Recognition, etc. of Refugee Status)

(1) Where the Minister of Justice deems that an application for refugee status is well-grounded, he/she shall decide that the refugee applicant is recognized as a refugee and issue a certificate of recognition of refugee status to the refugee applicant.

(2) Where the Minister of Justice makes a decision on an application for refugee status that the refugee applicant does not constitute a refugee, he/she shall deliver a notice of decision of non-recognition of refugee status to the refugee applicant by including the grounds therefor and the message that the refugee applicant may raise an objection within 30 days therein.

REFUGEE STATUS CLAIM BASED ON FGM —2016du42913[1] Supreme Court of Korea, 5 December 2017 (Liberia)

Summarized and Translated by Soojin Lee[2]

CASE SUMMARY

The petitioner is a national of the Republic of Liberia (hereinafter referred to as Liberia), 14 years old female who was born in the refugee camp in Ghana then entered Korea with her mother on 7 March 2012.

The The petitioner's mother applied for refugee status on behalf of the petitioner claiming that if the petitioner returns to her country of origin, she must join the 'Sande Bush School' and receive female genital mutilation.

The defendant did not recognize the petitioner's refugee status with a reason that 'the petitioner's mother's refugee status cannot be recognized; therefore, the petitioner cannot be recognized as well'.

The petitioner lost her case in the district court(Seoul Administrative Court Decision 2015gudan2331 decided 9 July 2015). The district court reasoned that the petitioner failed to prove her membership to particular social group, and she couldn't state specifics of the persecution she received from the 'Sande society', and the petitioner's mother spent 25 years outside of her country of origin without a threat by the 'Sande society'.

The petitioner lost her case in the appellate court(Seoul High Court Decision 2015nu55136 decided 31 May 2016), the court affirmed the original ruling.

The Supreme court reasoned that:

1) According to Article 76-2(3) to (4) of the former Immigration Act (amended by Act No. 11298, Feb. 10, 2012; hereinafter the same) and Article 88-2 of the former Enforcement Decree of the Immigration Act (amended by Presidential Decree No. 24628, Jun. 21, 2013; hereinafter the same), an administrative agency, upon receiving an application, shall determine refugee status after interviewing the applicant and investigating

1. 대법원 2017. 12. 5. 선고 2016두42913 판결 [난민불인정결정취소]

2. Ph.D. candidate at the University of Tokyo, RA at the Research Center for Sustainable Peace, and an Editor of the CDRQ vol. 11 - Special Issue. She worked as a Senior Protection Assistant at UNHCR representation in the Republic of Korea. She holds LLB from Soka University(Japan), and LLM from Temple University (PA, USA).

the facts. Upon deciding to deny refugee status, an administrative agency shall provide the applicant with a written notification stating the reason for its decision. The written notification is provided to ensure the administrative agency's issuance of a reasonable administrative disposition after careful investigation and determination of the requirements for recognition of refugee status; and to prove the basis for such disposition to the applicant so that he/she may conveniently file an appeal; and (iii) setting a clear scope of judicial review to uphold the trust and guarantee the procedural right of interested parties.

2) In full view of the language, structure, and legislative intent of Article 2 Subparag. 3 and Article 76-2(1), (3), and (4) of the former Immigration Act, Article 88-2 of the former Enforcement Decree, Article 1 of the 1951 Convention Relating to the Status of Refugees, and Article I of the 1967 Protocol Relating to the Status of Refugees, an administrative agency that received an application for recognition of refugee status, as a matter of principle, may decide whether to recognize refugee status by examining whether the applicant satisfies the requirements for recognition of refugee status prescribed under law, but may not deny refugee status by citing other reasons that are irrelevant to the requirements.

3) "Persecution due to membership in a particular social group" is the requirement for recognition of refugee status. Here, "a particular social group" refers to a group of individuals sharing an innate characteristic, an immutable shared history, or a characteristic or religious faith so fundamental to their individual identities or conscience that they ought not to be required to renounce it and who form a separate group which is perceived by the surrounding society as being distinct. Further, "persecution" to which a given foreigner is likely to be exposed means acts causing serious infringement of, or discrimination against, inherent human dignity, including threats to life, liberty, or security of a person.

4) "Female genital mutilation" refers to an act of partial or complete removal of or injury to a female reproductive organ for non-medical purposes, namely, traditional, cultural, and religious factors. Not only does it directly inflict excruciating pain on a woman's body but is also an infringement of human dignity, thereby constituting "persecution due to membership in a particular social group." Therefore, in a case where a female refugee status applicant is deported to her country of nationality, and the same applicant is deemed to be at risk of being forced against her will to undergo genital mutilation and cannot expect sufficient protection from her country of nationality, such instance falls under cases where refugees are unable to avail themselves of the protection of the country of their nationality owing to a well-founded fear of being persecuted. Moreover, the "risk of being forced to undergo female genital mutilation" goes beyond a general and abstract risk to mean cases where a refugee status applicant is exposed to an individual and specific risk, and whether such individual and specific risk of female genital mutilation exists should

be reasonably acknowledged based on objective evidence associated with the applicant's given condition, namely, familial, regional, and social factors.

Supreme Court of Korea

The 3rd Division

Adjudication

Case	2016Du42913 "Appeal for Revocation of Denial of Refugee Status"
Petitioner	A B the mother of A, on behalf of A who is a minor
Respondent	Head of the Seoul Immigration Office
Original Judgment	Seoul High Court decision 2015Nu55136 decided 31 May 2016
Date of Adjudication	5 December 2017

Disposition

1. The case is reversed and is remanded to the Seoul High Court.

Reasoning

1. The court examined the following *ex officio*.

A. In full view of Art. 2 Subparag. 3 and Art. 76-2(1) of the former Immigration Act (amended by Act No. 11298, Feb. 10, 2012), Art. 1 of the 1951 Convention Relating to the Status of Refugees, and Article I of the 1967 Protocol Relating to the Status of Refugees, any foreigner who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of the country of his/her nationality shall be recognized as a refugee

within the meaning of the Convention following a procedure for application of refugee status under the relevant law (*see, e.g.*, Supreme Court Decision 2016-Du56080 date 11 July 2017[3]).

According to Article 76-2(3) to (4) of the former Immigration Act (amended by Act No. 11298, Feb. 10, 2012) and Article 88-2 of the former Enforcement Decree of the Immigration Act (amended by Presidential Decree No. 24628, Jun. 21, 2013), an administrative agency where a refugee application is lodged, shall determine the applicant's refugee status by interviewing the applicant and investigating the facts. The applicant shall be provided with a written notification stating the reasons for the decision if the agency determines to deny the applicant's refugee claim. The purpose of the written notification is to ensure that the competent administrative agency issues a reasonable administrative disposition through a careful investigation and determination of the requirements for recognizing a refugee status; to provide the applicant the basis for such disposition so that the applicant may conveniently file an appeal; and to set a clear scope of judicial review to uphold the trust and guarantee the procedural right of interested parties.

In full view of the language, structure, and legislative intent of the statutory provisions as seen supra, an administrative agency that received a refugee status application may decide whether to recognize refugee status by examining whether the applicant satisfies the requirements to be recognized as a refugee prescribed under the law, but may not deny refugee status by only citing other reasons that are irrelevant to the requirements.

B. Meanwhile, "persecution due to membership in a particular social group" is the requirement for recognition of refugee status. Here, "a particular social group" refers to a group of individuals sharing an innate characteristic, immutably shared history, or a characteristic or religious faith so fundamental to their individual identities or conscience that they ought not to be required to renounce it and who form a separate group perceived as being distinct by the surrounding society. Further, "persecution" to which a given foreigner is likely to be exposed means acts causing serious infringement of, or discrimination against, inherent human dignity, including threats to life, liberty, or security of a person (see Supreme Court Decision decided 11 July 2017 2016Du56080).

"Female genital mutilation" refers to an act of partial or complete removal of or injury to a female reproductive organ for non-medical purposes, such as traditional, cultural, and religious factors. This is an act of direct harm that inflict excruciating pain on a woman's body, and infringement of human dignity, thereby constituting "persecution" due to membership in a particular social group. Therefore, in a case where a female refugee status applicant is deported to her country of nationality, and the same applicant is deemed to be at a risk of being forced to receive genital mutilation against her will and cannot expect sufficient protection from her country of origin, such instance falls under cases where refugees are unable to avail themselves

3. **Translator's comment:** (대법원 2017.7.11 선고 2016두56080 판결) see fn.6 of the case Suwon District Court decision 2017guhap67136 provided in this section from pg. 157.

protection of the country of their origin owing to a well-founded fear of being persecuted. Moreover, the "risk of being forced to receive female genital mutilation" goes beyond a general and abstract risk where a refugee status applicant is exposed to an individual and specific risk. The existence of such individual and specific risk of female genital mutilation should be reasonably acknowledged based on objective evidence associated with the applicant's given condition, namely, familial, regional, and social factors.

2. The reasoning of the lower court's judgment and the record reveals the following.

A. The Petitioner is a fourteen-year-old girl (date of birth omitted), a national of the Republic of Liberia (hereinafter "Liberia"). The Petitioner was born in a refugee camp in Ghana, then followed her mother, she entered the Republic of Korea on 7th March 2012.

B. The Petitioner's mother applied for the Petitioner's refugee status claiming that if the Petitioner returns to the country of nationality, the Petitioner would join "Sande Bush School" where she would then be forced to receive female genital mutilation.

C. However, without considering the possibility of the Petitioner being forced to receive female genital mutilation if she were to return to her country of nationality, the Respondent decided not to recognize the Petitioner's refugee claim on the ground: that "The Petitioner is not considered as a refugee given that the Petitioner's mother's refugee status is not recognized.

3. Examining these facts in light of the legal principles and statutory provisions as seen earlier, not recognizing the Petitioner as a refugee solely on the ground that the Petitioner's mother is not recognized as a refugee (hereinafter "instant disposition") can be deemed an unlawful disposition that was executed without any legal basis.

In addition, the relevant administrative agency responsible for determining the Petitioner's refugee claim and the competent court responsible for determining the disposition thereof should reasonably review objective evidence associated with the Petitioner's given familial, regional, and social surroundings, such as the Petitioner's age and upbringing, tribal origin, status of female genital mutilation taking place in the Petitioner's country of nationality, background on why the Petitioner's mother left her country of nationality, and whether that country's government is deemed to be making all practical efforts necessary to eradicate female genital mutilation; and examine whether there exist an individual and specific risk of the Petitioner being forced to receiver female genital mutilation if she were to return to her country of nationality.

4. Yet, based on its stated reasoning, the lower court determined that the instant disposition was lawful. By doing so, the lower court erred by misapprehending the legal principles on the interpretation and application of the requirements for refugee status recognition, specification of disposition grounds, etc., which led to the failure to exhaust all necessary deliberations, thereby adversely affecting the conclusion of the judgment.

5. Therefore, the lower judgment is reversed, and the case is remanded to the lower court for further proceedings consistent with this Opinion. It is so decided as per Disposition by the assent of all participating Justices on the bench.

Justices Lee Ki-taik (Presiding Justice)
Park Poe-young (Justice in charge)
Kim Chang-suk
Kim Jae-hyung

Related Laws

[Former Immigration Control Act (Amended by Act No. 11298, Feb. 10, 2012)]
Chapter VIII-2 Recognition, etc. of Refugees
Article 76-2 (Recognition of Refugees)(currently deleted)[4]

(1) When the Minister of Justice receives a request for recognition of refugee status from a foreigner staying in the Republic of Korea under the conditions as prescribed by the Presidential Decree, he may recognize the foreigner as a refugee.

(3) When the Minister of Justice has recognized a foreigner as a refugee under paragraph (1), he shall deliver a refugee recognition certificate to the foreigner, and if not, notify him of the reason in writing.

(4) The procedure of examination on a recognition of refugee under paragraph (1), and other necessary matters, shall be determined by the Presidential Decree.

[1951 Convention Relating to the Status of Refugees]
Article 1 (Definition of the Term "Refugee")

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February

4. **Translator's Comment:** At the time of the decision, legal provision regarding refugee and asylum seekers were provided under the Immigration Control Act. Any refugee relevant provision were deleted from the Immigration Control Act upon enactment of the Refugee Act in July 2013. Please see annex for the latest version of the Korean Refugee Act.

1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfill the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either:

(a) "events occurring in Europe before 1 January 1951"; or

(b) "events occurring in Europe or elsewhere before 1 January 1951," and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

[1967 Protocol Relating to the Status of Refugees]

Article I (General Provision)

1. The States Parties to the present Protocol undertaken to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and …" and the words … "as a result of such events," in article 1 A (2), were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

REFUGEE STATUS CLAIM BASED ON POLITICAL OPINION (use of forged ID for refugee status application)
—2013du16852[1]
Supreme Court of Korea, 9 March 2017 (Myanmar)

Summarized and Translated by Soojin Lee[2]

CASE SUMMARY

The Petitioner is a national of Republic of the Union of Myanmar (hereinafter referred to as Myanmar), a male who first entered Korea with a E-9 visa (trainee visa) using his own identity then returned to Myanmar after the traineeship was finished. The Petitioner re-entered Korea with E-9 visa using 'B''s name and 'B''s passport, then lodged refugee application using 'B''s name.

The Petitioner claimed that he is the chair of the Korean chapter of 'Karen National Union', where he is was actively involved and led political movement against Myanmar authority for persecuting minorities including Karen.

The Minister of Justice denied the Petitioner's refugee status after directly interviewed the Petitioner and looked into the relevant matter.

The district court ruled in favor of the Petitioner and reasoned that even though the Petitioner overstayed and used forged ID when applied for a refugee status, in full review of the Country of Origin Information along with the provided fact of the Petitioner's participation in anti-government activities, it is highly likely that the Petitioner has a well-founded fear of being persecuted by the Myanmar government if returned to Myanmar(Seoul Administrative Court Decision 2011Guhap38759 decided 26 July 2012).

The decision was affirmed at the appellate court(Seoul High Court Decision 2012Nu25745 decided 19 July 2013).

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1. 대법원 2017. 3. 9. 선고 2013두16852 판결 [난민불인정처분취소]

2. Ph.D. candidate at the University of Tokyo, RA at the Research Center for Sustainable Peace, and an Editor of the CDRQ vol. 11 - Special Issue. She worked as a Senior Protection Assistant at UNHCR representation in the Republic of Korea. She holds LLB from Soka University(Japan), and LLM from Temple University (PA, USA).

Supreme Court of Korea

The 1st Division

Adjudication

Case	2013Du16852 "Appeal for Revocation of Denial of Refugee Status"
Petitioner	A (Name in Alphabet and the Date of Birth omitted)
Respondent	The Minister of Justice
Original Judgment	Seoul High Court decision 2012Nu25745 decided 19 July 2013
Date of Adjudication	9 March 2017

Disposition

1. The final appeal is dismissed.
2. The cost of the final appeal is assessed against the Respondent

Reasoning

The grounds of appeal are examined.

1. Ground of appeal No. 1

According to the record, 'A' the Petitioner whose real name is 'XXXX' (Date of Birth omitted), entered the Republic of Korea on 29 May 2001 using a passport issued under the false name 'YYYY' (Date of Birth omitted). Then the Peti-

tioner applied for refugee status on 28 August 2009 by using such false identification.

On 17 June 2010, the Respondent directly interviewed the Petitioner who used such false name and investigated the relevant matter and rendered a disposition of non-recognition decision on the Petitioner's refugee status application on 25 May 2011 (hereinafter "the instant disposition").

If so, the party subject to the instant disposition is not a person who does not exist but is the Petitioner who used the false name 'YYYY', it is deemed appropriate that the Petitioner has considerable legal interest in seeking a cancellation of the instant disposition.

Moreover, there exists a legal interest for challenging a disposition is a matter of *ex officio* examination, and as such, a party's claim thereof merely serves as a purpose to invoke action *ex officio*. Therefore, a lower court's omission of judgment on the relevant matter cannot be deemed a lawful ground for appeal (see, e.g., Supreme Court Decision 96Da32706 decided 24 January 1997).

Therefore, the lower court did not err by either misapprehending the legal principle regarding legal interests in an appeal litigation or omitting judgment as to preliminary objection thereof.

2. Ground of appeal No.2, and 4

A person can be recognized as a refugee in the event of a 'well-founded fear of being persecuted' stemming from an act such as expression of a political opinion in a country of residence after leaving his/her country of nationality, and such conclusion does not change even if having provided a cause of persecution to receive refugee protection (see, e.g., Supreme Court Decision 2007Du19539 decided 24 July 2008[3]).

After finding the facts as delineated in its holding, the lower court found that the instant disposition was unlawful on the grounds that the Petitioner took an active interest supporting the Karen people (an ethnic group from Burma) in both Myanmar and in the Republic of Korea, and enhance their human rights,; that the Petitioner at the time of the instant disposition had a well founded fear of being persecuted by the Myanmar government for activities he carried out in the Republic of Korea; and the Petitioner did not appear to have applied for refugee status for merely an economic purpose.

The allegations in this part of the grounds of appeal are nothing more than finding fault with admission and exclusion of evidence and value judgments, which are the prerogatives of the lower court as a fact-finder. Furthermore, even if examining the reasoning of the lower judgment in light of the record, the lower court did not err by either misapprehending the legal principle on

3. **Translator's comment**: (대법원 2008.7.24 선고 2007두19539 판결) Although the SC in this case ruled in disfavor of the Petitioner who is a refugee applicant, the court reasoned that the refugee status can also be recognized even if 'a well founded fear of persecution' occurs as a result of actions such as expressing political opinions in the country of residence after leaving the country of origin, and providing the cause of persecution to be protected as a refugee does not mean otherwise. Furthermore, the court reasoned that the term 'persecution' is a requirement to be recognized as a refugee, and is an act that causes 'significant infringement or discrimination on human dignity including treats to life, body, or freedom'.

the recognition of refugee status or exceeding the bounds of the principle of free evaluation of evidence going against logical and empirical rules.

3. Conclusion

The final appeal is dismissed, and the cost of the appeal is assessed against the losing party. It is so decided as per Disposition by the assent of all participating Justices on the bench.

Justices Kim Yong-deok (Presiding Justice
Kim Shin
Kim So-young (Justice in charge)
Lee Ki-taik

Related Laws

[Former Immigration Control Act (Amended by Act No. 11298, Feb. 10, 2012)]

Chapter VIII-2 Recognition, etc. of Refugees

Article 76-2 (Recognition of Refugees)(currently deleted)[4]

(1) When the Minister of Justice receives a request for recognition of refugee status from a foreigner staying in the Republic of Korea under the conditions as prescribed by the Presidential Decree, he may recognize the foreigner as a refugee.

[Administrative Litigation Act]

Article 8 (Scope of Application)

(2) With respect to the matters not provided for in this Act concerning administrative suits, the provisions of the Court Organization Act, the Civil Procedure Act, and the Civil Execution Act shall apply mutatis mutandis. <Amended by Act No. 6627, Jan. 26, 2002>

Article 12 (Standing to Sue)

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4. **Translator's Comment:** At the time of the decision, legal provision regarding refugee and asylum seekers were provided under the Immigration Control Act. Any refugee relevant provision were deleted from the Immigration Control Act upon enactment of the Refugee Act in July 2013. Please see annex for the latest version of the Korean Refugee Act.

A revocation suit may be instituted by a person having legal interests to seek the revocation of a disposition, etc. The same shall also apply to a person with legal interests to be restored by the revocation of a disposition even after the effect of such a disposition, etc. expires upon the lapse of period, the execution of the disposition, etc. and other causes.

[Civil Procedure Act]

Article 423 (Grounds for Appeal to Supreme Court)

An appeal to the Supreme Court may be filed only when stating as the grounds therefor that there has been a violation of the Constitution, Acts, administrative decrees, or regulations, which has affected the judgment.

[1951 Convention Relating to the Status of Refugees]

Article 1 (Definition of the Term "Refugee")

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfill the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he

has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either:

(a) "events occurring in Europe before 1 January 1951"; or

(b) "events occurring in Europe or elsewhere before 1 January 1951," and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous

persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

[1967 Protocol Relating to the Status of Refugees]

Article I (General Provision)

1. The States Parties to the present Protocol undertaken to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and …” and the words … “as a result of such events,” in article 1 A (2), were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to

the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

ANNEX

A Structured Approach to the Decision Making Process in Refugee and Other International Protection Claim

- Flowchart recommended by Jdg. Mackey and IARMJ -

* The Flowchart is provided with permission by IARMJ for its use on this Journal.

A STRUCTURED APPROACH TO THE DECISION-MAKING PROCESS IN REFUGEE AND OTHER INTERNATIONAL PROTECTION CLAIMS

A Flowchart using Established Judicial Criteria and Guidance

OVERVIEW: The core issues are:
What the past and present facts are as found by the judge (i.e. "the accepted facts")?
Using these facts what is the nature of the predicament for the claimant on return and what is the degree of risk of it?
On the totality of the evidence do you recognise refugee or complementary protection status?

Step 1
PRELIMINARY ENQUIRIES

At the outset, the Judge may consider if the claim is so manifestly well-founded or manifestly unfounded (including clearly abusive claims), that a prompt decision can be reached (possibly without an interview) by accepting the credibility of the claim as it is presented. If the claim is:

a. Unfounded - do the facts establish, that the claimant simply does not meet the legal test and thus cannot be recognised for protection? If so, the appeal may be disposed of at this point. **Examples:** On all the facts, is the claimed risk merely remote and speculative? Is the presumption of state protection clearly not rebutted?

b. Well-founded – do the facts which can be said to be incontrovertible (and so do not need to be tested by oral evidence), establish that the person meets the legal test. **Example:** Noting the human rights violations in the claimant's country of origin, status may be recognised because of a particular nationality age, race or gender.

STEP 2
THE CREDIBILITY BOX

Issue 1 - Objectively assessed, what parts of the account are accepted as "credible"?

This assessment will require the judge to assess, with sound reasoning, which (***material***) parts of the claim, as presented, are accepted as credible, or rejected as not credible.

Guidance:

a. Follow the "*International Judicial Guidance of the Assessment of Credibility*" (see www.iarlj.org);
b. Consider documentary evidence (e.g. medical, psychiatric, travel documents) that either supports or tends to disprove the claimant's story;
c. Consider COI (noting guidelines on COI use, eg by IARLJ or UNHCR) to test the evidence;
d. Consider any expert evidence , including an assessment of the weight to be attached to it;
e. If needed apply the "benefit of doubt" principle, by which lingering uncertainty about the credibility of a claimant's evidence, or part of it, is resolved; and then, 'in the round'...
f. Determine & record the material "facts as found" of the claimant's (and other) evidence.

STEP 3
THE HARM BOX

Issue 2 - On the facts as found, does the claimant face serious harm arising from a sustained or systemic breach of internationally recognised human rights, demonstrative of a failure of state protection?

This requires consideration of the 'accepted facts/ profile' of the claimant, the relevant COI and established refugee law, in order to decide if the harm is serious and, if so, if it arises from a sustained or systemic breach of internationally recognised human rights.

Initially, in this assessment, the nature of available "home" state protection to the claimant can be relevant to the question whether there is serious harm. This recognises the most basic principle that refugee law is based on signatory countries to the RC and other IP Conventions agreeing to provide "surrogate protection" to those at risk of serious harm in their own country.

Guidance:

a. Consider relevant COI and other accepted evidence such as expert witnesses and relevant case law, together with other relevant assistance (like Country Guidance cases from the UK).
b. As to the nature of the harm, does it arise from a breach of an internationally recognised human right?
c. How serious is the harm, taking into account any accepted characteristics of the claimant?

STEP 4

THE RISK BOX

Issue 3 – Is the risk of harm on return "well-founded"? Noting the findings made on Issues 1 and 2, prospectively assessed, what is the degree of risk of persecution/serious harm to the claimant on return? The international test for this assessment is whether there is a "real risk/chance" (of being persecuted etc), as against a remote or speculative risk/chance. It is not "on the balance of probabilities", and definitely *not* a criminal standard of proof. This is well-accepted international law, with similar terminology applying the same "real" level of risk. (Thus: "real chance" (Australia and NZ), "reasonable likelihood" (UK), "reasonable possibility" (USA), "serious possibility" (Canada), "considerable probability" (Germany), and "real risk" (Ireland and widely in Europe and by the ECtHR).

Note: In CAT and other complementary protection assessments this level is, internationally, expressed as "a real risk" or being "in danger of". There is no practical difference between the levels of risk required under either status. The "reality of the risk" approach appropriately recognises the unique nature of Refugee law and all other forms of protection in their humanitarian context.

Guidance:

a. Conclusions must be based on the totality of the findings of fact and all the other evidence. The combination of the "accepted facts" from the claimant's account, together with all the other evidence including COI and other witnesses and documentary evidence, constitutes the "facts as found" upon which the risk assessment is made.

b. Ensure that expert evidence is assessed for probative weight.

c. Ensure that the COI is weighed in accordance with accepted COI guidelines (eg of IARLJ/UNHCR).

d. The claimant's subjective fear will almost always be part of their account but the test for the judge is an objective test only. The claimant's subjective fear is not determinative, and is only relevant when consistent with the objective evidence. In this way, the accepted subjective fear can, along with the accepted objective evidence, become part of the totality of the "facts as found".

STEP 5

THE REASONS BOX

Issue 4: If the answer to both Issues 2 and 3 are "yes" then decide:

1. Is the risk of being persecuted for reasons of one, or more, of the five Convention grounds? (*i.e. race, religion, nationality, membership of a particular social group or political opinion*); or

2. If not, can the claimant still qualify for some other form of complementary protection?

Guidance:

a. Use all relevant international and domestic protection-related legislation, UNHCR and other international guidance that relates to the issues of nexus and Convention reasons;

b. Consider relevant case law at the domestic and international level, and relevant academic guidance and commentary, all duly weighted and assessed.

STEP 6

THE DECISION BOX

The conclusion should record clearly, after sound, fair reasoning, that the claimant falls within or outside the inclusion provisions of Article 1A(2) of the Refugee Convention or, alternatively, qualifies, or does not qualify, for some form of complementary protection status.

NB: Note however that the domestic law of some states may allow the judge only to quash an earlier primary decision and require the claim to be re-assessed, in whole or in part.

STEP 7

EXCLUSION and CESSATION BOX

Issues 5 & 6: Determine any Exclusion or Cessation issues.

Even if the claimant falls within the Inclusion clause (Art 1A(2)) there may be *"serious reasons for considering"* possible exclusion of the claimant (as in Article 1E or 1F). Exclusion, particularly under Article 1F, is complex and requires reference to international case law, UNHCR's Handbook and Guidelines, as well as to IARLJ and academic commentaries.

The judge may also need to determine whether any cessation issues arise (as in Article 1C). This, too, is complex and similar resources must be consulted.

Caution must be exercised in applying the exclusion and cessation clauses.

STEP 8

WRITING THE DECISION

Good, sound decision-writing requires a succinct "issues-based" approach, addressing the core issues, with the totality of the relevant evidence and jurisprudence being taken into account. It must also recognise both that "justice must be seen to be done" and that, often, there will be "precedent" or "guidance" value within the decision. For this reason, a separate depersonalised (and, if necessary, redacted) version of the judgment should be made public.

NB. All first-instance decisions should ideally contain a detailed record of the evidence presented and fulsome reasoning should be recorded. First-instance decisions should not be made public.

難民及び他の国際的な保護の申請に関する認定手続の構造的アプローチ

確立した司法基準及び指針のフローチャート

概要:中核的論点:

裁判官・審判官は、過去及び現在のどのような事実を(すなわち「受け入れた事実」として)認定するか。
上記事実を前提として、申請者が帰国した場合、直面する困難の性質と危険性の程度はどの程度か。
証拠を総合して判断すると、難民の地位又は補完的保護を受ける者として認定するか。

第1段階

予備調査

最初に、裁判官・審判官は、申請が明らかに十分な理由がある、又は(明らかに濫用申請を含む)明らかに根拠がないとして、提出された主張の信憑性を認め、(時には聴聞なしで)速やかな判断が可能かどうか検討できる。もし申請が:

a.「主張に十分な根拠がない」-申請者が法定要件を単に満たしておらず、それゆえに保護が認められないことが事実により示されているか。もしそうであれば、異議はこの時点で棄却される。

【例】すべての事実を考慮しても、申請者から主張された迫害の危険性が、単に抽象的なもので推測に基づくものにとどまるか。国家による保護がある前提が明らかに否定されていないか。

b.「十分な理由がある」-(本人尋問や第三者の証人の聴取が必要ないほど)議論の余地がない明らかな事実によって、申請者本人が法定要件を満たしていることが立証されているか。

【例】申請者の出身国での人権侵害の状況に考慮し、特定の国籍、年齢、人種、ジェンダーを理由として、難民の地位を認めることができる。

第2段階

信憑性

ボックス

論点1 -客観的に評価して、供述のどの部分を「信憑性あり」と認定するか。

このボックスで求められている評価を行うために、裁判官・審判官は、申請者の供述に含まれる重要な事実のうち、信憑性があると認定される部分及び信憑性が否定される部分を整理し、そのような認定を行った十分な理由を示す必要がある。

指針:

a. 「信憑性評価についての国際的な司法上の指針 (*International Judicial Guidance of the Assessment of Credibility*) 」に従うこと(www.iarlj.org 参照)。

b. 申請者の供述を裏付けるか、それを否定するような書証(例えば、医師による身体的又は精神的状況を示す診断書、パスポート又は航空チケット等渡航文書等)を考慮すること。

c. 証拠を吟味する際に、出身国情報を検討すること。(但し、出身国情報を使用する際は、IARLJ 及び UNHCR 等の指針を参照すること)

d. 重みをもって評価することを含め、専門家の見解を考慮すること。

e. 申請者の提出した証拠又はその一部の信憑性に不明確な部分が残る場合、必要に応じて「灰色の利益」の原則を適用して解決に導き、「あらゆる角度から」信憑性を考慮すること。

f. 申請者(及びその他の者)が提出した証拠の重要な「認定事実」を、様々な角度から検討した上で決定し記録すること。

第3段階

危害

ボックス

論点2 -認定事実に鑑みて、申請者は国際的に認められた人権の継続的・組織的侵害により生じ、国家による保護の欠如を示す深刻な危害に直面しているか。

その危害が重大であるか、もしそうであれば、その危害は国際的に認められた人権の継続的・組織的な侵害から生じているかどうかを確定するため、申請者に関する「受入れた事実/経歴」、関連する出身国情報及び確立された難民法を検討する必要がある。

最初に、上の評価の際に、重大な危害が存在するかどうかは、申請者が「自国」でどのような保護を受けられるかに関係する。このことは、難民条約や補完的保護を与える根拠となる条約が、自国で重大な危害を受けるリスクのある者に対し、「自国に代わって保護」を与えるという最も基本的な原則となっている。

指針:

a. 関連する出身国情報及び専門家の見解や関連する判例等他の証拠(例えば、英国の国別指針判決)をその他の参考資料と共に検討すること。

b. 危害の性質については、国際的に認められた人権侵害から生じているかどうかを判断する。

c. 申請者に関して受け入れたあらゆる特徴を考慮し、危害はどの程度重大かを検討する。

第4段階
リスク
ボックス

論点3-帰国した場合の危害のリスクは「十分に理由がある」かどうか。論点1及び2の結果を考慮し、将来の危険性を評価すると、帰国した申請者に対する迫害/深刻な危害のリスクはどの程度か。

国際的に認められた検討基準は、抽象的又は推測に基づくリスク/可能性ではなく、(迫害を受ける等の)「現実的なリスク/可能性」が認められるかどうかである。これは「可能性を比較すること」ではなく、決して刑事事件の立証基準を求めるものでもない。また、十分に認められた国際法であり、同様の「現実的な」リスクの程度を示す様々な文言が使用されている。(オーストラリア及びニュージーランドでは「現実的な見込み (real chance)」、イギリスでは「合理的な可能性 (reasonable likelihood)」、アメリカでは「合理的な可能性 (reasonable possibility)」、カナダでは「重大な可能性 (serious possibility)」、ドイツでは「相当な蓋然性 (considerable probability)」、アイルランド、その他のヨーロッパ諸国、欧州人権裁判所では「現実的なリスク (real risk)」が使用されている。)

注)拷問等禁止条約及び他の補完的保護の検討では、この程度は国際的には「現実的なリスク (a real risk)」又は「危険性がある (being in danger of)」と表現されている。求められる危険性の程度について、両者間で事実上の差異はない。リスクの現実性 (reality of the risk) アプローチは、難民法及び補完的保護の人道的な文脈での特殊な性質を適切に現わしている。

指針:

a. 事実認定の全体像及び他の全ての証拠に基づき結論づけなければならない。申請者の説明により「受け入れた事実 (accepted facts)」は、出身国情報及び申請者以外の人の証言、書証といった他の全ての証拠を勘案して、リスク評価の根拠となる「認定事実 (facts as found)」を構成すること。

b. 専門家の見解は、適正に検討されるように確保すること。

c. (IARLJ 及び UNHCR のような)認められた出身国情報指針に従って出身国情報が重みを持って検討されるように確保すること。

d. 申請者の主観的な恐怖は、ほぼ常に申請者の主張の一部となるが、裁判官・審判官は客観的な恐怖のみを判断しなければならない。申請者の主観的な恐怖は、判断にとって決定的なものではなく、客観的証拠と整合する限りにおいて意味を持つ。このように、認められた主観的な恐怖は、認められた客観的証拠と合わせ、「認定事実 (facts as found)」の全体の一部となる。

第5段階
理由
ボックス

論点4 -論点2及び3の答えが「肯定的」である場合、以下について判断しなければならない。
1. 迫害を受けるリスクは、難民条約上の5つの根拠(*人種、宗教、国籍、特定の社会的集団の構成員であること又は政治的意見*)のうち、1つ、又は、2つ以上を理由とするか。
2. そうでない場合、申請者は、なお、いずれかの形態の補完的保護を受ける資格を有するか。

指針:

a. 全ての適切な国際法及び保護に関する国内法規、つながりの問題及び難民条約上の理由に関するUNHCR の指針及びその他の国際的指針を使用すること。

b. 国内裁判所及び国際裁判所の関連する判例法並びに適正に考慮され評価された関連する学術的な指針及びコメンタリーを検討すること。

第6段階
決定
ボックス

決定は、理にかない、公正な論拠に基づいており、申請者が難民条約1条 A 項(2)の規定に該当するかどうか、該当しない場合、補完的保護を受ける資格を有するかどうかを明確に示さなければならない。
注)いくつかの国の国内法では、裁判官・審判官は原審の全部又は一部の破棄・差戻しのみ許される点に注意しなければならない。

第7段階
除外条項
終止条項
ボックス

論点5及び6-除外条項・終止条項を判断する。

たとえ申請者が難民条約1条 A 項(2)の難民に該当しても、(1条 E 項、F 項の)適用除外を「*検討しなければならない深刻な理由*」が存在する場合がある。特に 1 条 F 項の除外条項は複雑であり、国際的な判例、UNHCR ハンドブック及び指針、IARLJ 並びに学術的なコメンタリーを参照する必要がある。

裁判官・審判官は(1条 C 項の)終止条項の問題が生ずるかどうかを判断する必要性もある場合がある。この問題も同様に複雑で、類似の文献を参照しなければならない。

除外条項及び終止条項の適用は、細心の注意を払って検討しなければならない。

第8段階
決定書の
作成

優れて理にかなった決定書は、関連する証拠及び判例全体を考慮し中核となる論点を取り上げた簡潔な「論点に基づく」アプローチが必要である。その決定書は、「正義は実現されたことが見えなければならない」し、「先例」的及び「指針」的価値があると認められるようにならなければならない。こうした理由から、個人が特定されない(必要であれば、マスキング等編集された)決定書が公開されるべきである。

注)全ての一次審査の決定は、提出された証拠の**詳細な記録を含むことが理想的であり**、判断にいたった理由についても記録されるべきである。一次審査の決定は公開されるべきではない。

REFUGEE ACT OF KOREA[1]

Act No. 11298, Feb. 10, 2012
Amended by Act No. 12421, Mar. 18, 2014
Act No. 14408, Dec. 20, 2016

Article 1 (Purpose)

The purpose of this Act is to prescribe matters concerning the status, treatment, etc. of refugees in accordance with the 1951 Convention Relating to the Status of Refugees (hereinafter referred to as the "Refugee Convention") and the 1967 Protocol Relating to the Status of Refugees (hereinafter referred to as the "Refugee Protocol").

Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "refugee" means a foreigner who is unable or does not desire to receive protection from the nation of his/her nationality in well-grounded fear that he/she is likely to be persecuted based on race, religion, nationality, the status of a member of a specific social group, or political opinion, or a stateless foreigner who is unable or does not desire to return to the nation in which he/she resided before entering the Republic of Korea (hereinafter referred to as "nation of settlement") in such fear;
2. The term "person recognized as a refugee" (hereinafter referred to as "recognized refugee") means a foreigner recognized as a refugee under this Act;
3. The term "person granted a humanitarian stay permit (hereinafter referred to as "humanitarian sojourner") means a foreigner granted a stay permit from the Minister of Justice as prescribed by Presidential Decree as a person who has rational grounds for recognizing that his/her life, personal liberty, etc. is very likely to be infringed by torture, other inhumane treatment or punishment or other events even though he/she does not fall under subparagraph 1;

1. This is an official English translation available at the Korea Legislation Research Institution (https://elaw.klri.re.kr/eng_service/main.do)

4. The term "person who has applied for refugee status" (hereinafter referred to as "refugee applicant") means a person who falls under any of the following as a foreigner who has applied for refugee status to the Republic of Korea:
   (a) A person whose application for refugee status is being screened;
   (b) A person for whom the period for raising an objection or the period for filing an administrative appeal or administrative litigation has not yet expired after being subject to a decision of non-recognition of refugee status or a decision of dismissal of an objection to a decision of non-recognition of refugee status;
   (c) A person for whom an administrative appeal or administration litigation against a decision of non-recognition of refugee status is under way;
5. The term "refugee desiring re-settlement" means a foreigner who desires to settle in the Republic of Korea among refugees outside the Republic of Korea;
6. The term "foreigner" means a person without the nationality of the Republic of Korea.

Article 3 (Prohibition of Compulsory Repatriation)

No recognized refugee, humanitarian sojourner, nor refugee applicant shall be repatriated compulsorily against his/her will under Article 39 of the Refugee Convention and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 4 (Application of Other Acts)

Except as otherwise provided for in this Act, the status and treatment of recognized refugees, humanitarian sojourners, and refugee applicants shall be governed by the Immigration Act.

Article 5 (Application for Refugee Status)

(1) Any person who intends to obtain refugee status as a foreigner within the Republic of Korea may apply for refugee status with the Minister of Justice. In such cases, the foreigner shall submit a written application for refugee status to the head of the local immigration office or foreigner-related office. *<Amended by Act No. 12421, Mar. 18, 2014>*

(2) Where filing an application under paragraph (1), the following documents shall be submitted:

1. A passport or a certificate of foreigner registration: Provided, That where it is impossible to present such, a written explanatory statement thereon;

2. Where there are materials, such as reference documents for refugee status screening, such materials.

(3) An application for refugee status shall be filed in writing: Provided, That where the applicant does not know how to write or is unable to complete an application form on the grounds of disabilities, etc., the public official who receives the application shall complete the application form and write down his/her name or affix his/her name and seal together with the applicant.

(4) An immigration control official shall positively help foreigners who inquire about applying for refugee status or express their will to apply therefor.

(5) Where the Minister of Justice receives an application for refugee status, he/she shall issue a certificate of receipt to the applicant immediately.

(6) A refugee applicant may stay in the Republic of Korea until a decision of recognition or non-recognition of refugee status is made final and conclusive (where an administrative appeal or administrative litigation against a decision of non-recognition of refugee status is under way, until such procedures are complete).

(7) Matters necessary for detailed methods, procedures, etc. of application for refugee status other than those provided for in paragraphs (1) through (6) shall be prescribed by Ordinance of the Ministry of Justice.

Article 6 (Application Filed at Ports of Entry and Departure)

(1) Where a foreigner intends to apply for refugee status when undergoing an entry inspection, he/she shall submit an application for refugee status to the head of the local immigration office or foreigner-related office having jurisdiction over the port of entry and departure prescribed by the Immigration Act. *<Amended by Act No. 12421, Mar. 18, 2014>*

(2) The head of a local immigration office or foreigner-related office may allow a person who has submitted an application for refugee status at the port of entry and departure under paragraph (1) at a specific place in the port of entry and departure within seven days. *<Amended by Act No. 12421, Mar. 18, 2014>*

(3) The Minister of Justice shall decide whether to refer to refugee status screening for a person who has submitted an application for refugee status under paragraph (1) within seven days from the date on which the application is submitted, and where he/she fails to decide within such period, he/she shall permit such applicant to enter.

(4) Basic food, clothing, and shelter shall be provided to refugee applicants at ports of entry and departure for the period prescribed in paragraph (2) as prescribed by Presidential Decree.

(5) Necessary matters, such as procedures for application for refugee status at ports of entry and departure, other than those provided for in paragraphs (1) through (4), shall be prescribed by Presidential Decree.

Article 7 (Posting of Matters Necessary for Application for Refugee Status)

(1) The heads of local immigration offices and foreigner-related offices shall keep documents necessary for application for refugee status at the local immigration offices, foreigner-related offices, and ports of entry and departure under their jurisdiction and post methods of receipt, rights of refugee applicants and other necessary matters prescribed by this Act (including posting by electronic methods, such as the Internet) to enable anyone to read such posting. *<Amended by Act No. 12421, Mar. 18, 2014>*

(2) Detailed methods for keeping documents and posting prescribed in paragraph (1) shall be prescribed by Ordinance of the Ministry of Justice.

Article 8 (Refugee Status Screening)

(1) The head of a local immigration office or foreigner-related office who has received an application for refugee status under Article 5 shall interview the refugee applicant and conduct a fact-finding investigation without delay, and shall report to the Minister of Justice by attaching the results thereof to the application for refugee status. *<Amended by Act No. 12421, Mar. 18, 2014>*

(2) Where requested by a refugee applicant, a public official having the same gender as that of the refugee applicant shall interview the refugee applicant.

(3) The head of a local immigration office or foreigner-related office may, if necessary, audio or video record interviews: Provided, That where requested by a refugee applicant, he/she shall not refuse to audio or video record. *<Amended by Act No. 12421, Mar. 18, 2014>*

(4) The Minister of Justice shall place refugee screening officers to take full charge of interview, fact-finding investigation, etc. at local immigration offices and foreigner-related offices. Matters concerning the qualifications of and duties conducted by refugee screening officers shall be prescribed by Presidential Decree. *<Amended by Act No. 12421, Mar. 18, 2014>*

(5) The Minister of Justice may omit part of the screening procedure prescribed in paragraph (1) for refugee applicants in any of the following cases:

1. Where a refugee applicant applies for refugee status while concealing facts, such as submitting fabricated documents or making a false statement;
2. Where a person who has failed to be recognized as a refugee or a person whose refugee status has been cancelled under Article 22 applies for refugee status again without grave circumstantial changes;
3. Where a foreigner who has resided in the Republic of Korea for at least one year applies for refugee status on the verge of the expiration of the period of stay or a foreigner subject to expulsion applies for refugee status for the purpose of postponing the execution thereof.

(6) A refugee applicant shall respond to refugee screening in good faith. Where a refugee applicant fails to appear at least three consecutive times in spite of a request for appearance for an interview, etc., the Minister of Justice may terminate the refugee status screening.

Article 9 (Collection of Materials Favorable to Refugee Applicants)

The Minister of Justice shall utilize materials even favorable to refugee applicants as materials for screening by actively collecting such materials.

Article 10 (Fact-Finding Investigation)

(1) The Minister of Justice may, if necessary to decide to recognize refugee status, or to cancel or withdraw refugee status prescribed in Article 22, have the public officials in charge of refugees of the Ministry of Justice or refugee screening officers of local immigration offices or foreigner-related offices investigate such fact. *<Amended by Act No. 12421, Mar. 18, 2014>*

(2) If necessary to conduct an investigation prescribed in paragraph (1), refugee applicants or other relevant persons may be requested to appear for questioning or to submit materials, such as documents.

(3) Where a public official in charge of refugees or a refugee screening officer completes a fact-finding investigation concerning the recognition of refugee status, cancellation and withdrawal of refugee status, etc. under paragraph (1), the head of the division in charge of refugees of the Ministry of Justice or the heads of local immigration offices or foreigner-related offices shall report the details thereof to the Minister of Justice without delay. *<Amended by Act No. 12421, Mar. 18, 2014>*

Article 11 (Cooperation of Relevant Administrative Agencies, etc.)

(1) The Minister of Justice may, if necessary for refugee status screening, request the heads of relevant administrative agencies or the heads of local governments (hereinafter referred to as the "heads of relevant agencies") or the heads of related organizations to render cooperation in terms of submission of materials, fact-finding investigation, etc.

(2) No head of any relevant agency nor the head of any related organization requested to render cooperation under paragraph (1) shall refuse such request without good cause.

Article 12 (Right to Receive Assistance from Attorneys-at-Law)

A refugee applicant shall have a right to receive assistance from attorneys-at-law.

Article 13 (Accompanied by Trusted Persons)

A refugee screening officer may, when requested by a refugee applicant, allow the refugee applicant to accompany trusted persons within the scope not impairing the fairness of the interview.

Article 14 (Interpretation)

Where a refugee applicant is unable to express his/her will in Korean sufficiently, the Minister of Justice may have an interpreter with a specific qualification prescribed by Presidential Decree interpret in the course of interview.

Article 15 (Confirmation of Refugee Interview Protocols)

Where a refugee applicant is unable to understand the matters written in a refugee interview protocol, the refugee screening officer shall provide the refugee applicant with interpretation and translation in a language the refugee applicant can understand after the refugee interview is terminated so as to enable the refugee applicant to confirm such matters.

Article 16 (Reading and Reproduction of Materials, etc.)

(1) A refugee applicant may request the reading or reproduction of the materials he/she has submitted and refugee interview protocols.

(2) Where there is a request for reading or reproduction prescribed in paragraph (1), the immigration control official shall comply therewith without delay: Provided, That he/she may restrict reading or reproduction where there are obvious reasons to recognize that the fairness of screening is likely to be substantially impaired.

(3) Detailed methods and procedures for reading and reproduction prescribed in paragraph (1) shall be prescribed by Presidential Decree.

Article 17 (Prohibition of Disclosure of Personal Information, etc.)

(1) No person shall disclose the addresses, names, ages, occupations, and appearances of a refugee applicant and of persons accompanying him/her at an interview under Article 13 and other personal information, pictures, etc. by which a refugee applicant, etc. is specifically identifiable, nor divulge such things to other persons: Provided, That cases where the person in question agrees shall be exceptional.

(2) No person shall publish the personal information, pictures, etc. of refugee applicants, etc. prescribed in paragraph (1) in publications nor release such things through broadcast media or information and communication networks without the consent of the refugee applicants, etc.

(3) No information on application for refugee status shall be provided to the home country of the applicant.

Article 18 (Recognition, etc. of Refugee Status)

(1) Where the Minister of Justice deems that an application for refugee status is well-grounded, he/she shall decide that the refugee applicant is recognized as a refugee and issue a certificate of recognition of refugee status to the refugee applicant.

(2) Where the Minister of Justice makes a decision on an application for refugee status that the refugee applicant does not constitute a refugee, he/she shall deliver a notice of decision of non-recognition of refugee status to the refugee applicant by including the grounds therefor and the message that the refugee applicant may raise an objection within 30 days therein.

(3) A notice of decision of non-recognition of refugee status prescribed in paragraph (2) shall include the grounds of the decision (including judgements on the factual and legal claims of refugee applicants), and deadline, methods, etc. for raising an objection.

(4) A decision of recognition of refugee status, etc. prescribed in paragraph (1) or (2) shall be rendered within six months from the date on which an application for refugee status is received: Provided, That under unavoidable circumstances, such period may be extended within the scope of six months.

(5) A period extended under the proviso to paragraph (4) shall be notified to the refugee applicant seven days before the former period ends.

(6) A certificate of recognition of refugee status prescribed in paragraph (1) and a notice of decision of non-recognition of refugee status prescribed in paragraph (2)

shall be issued to the refugee applicant or the proxy thereof through the head of the local immigration office or foreigner-related office, or served thereon under Article 14 of the Administrative Procedures Act. *<Amended by Act No. 12421, Mar. 18, 2014>*

Article 19 (Restriction on Recognition of Refugee Status)

Where the Minister of Justice has sufficient grounds to recognize that a refugee applicant falls under any of the following cases even in recognition that the refugee applicant constitutes a refugee, he/she may make a decision of non-recognition of refugee status, notwithstanding Article 18 (1):

1. Where a refugee applicant is currently provided with protection or aid by organizations or agencies of the United Nations other than the United Nations Refugee Agency: Provided, That cases where the provision of such protection or aids is suspended for some reason without the final resolution of the status of the person who currently receives such protection or aids in accordance with the relevant resolution adopted at a general assembly of the United Nations shall be excluded;
2. Where a refugee applicant has committed a crime against world peace, war crime, or crime against humanity prescribed by international treaties or generally-approved international regulations;
3. Where a refugee applicant has committed a grave non-political crime outside the Republic of Korea before entering the Republic of Korea;
4. Where a refugee applicant has committed an act against the objectives and principles of the United Nations.

Article 20 (Detention for Identification)

(1) Where it is obvious that a refugee applicant has intentionally damaged his/her identification card, such as a passport, or has exercised a false identification card in an attempt to obtain refugee status by concealing his/her identification, the immigration control official may detain such refugee applicant after obtaining a detention order from the head of the local immigration office or foreigner-related office under Article 51 of the Immigration Act for the confirmation of the identification of such refugee applicant. *<Amended by Act No. 12421, Mar. 18, 2014>*

(2) Where the identification of a person under detention under paragraph (1) is confirmed or the identification of such person is not confirmed within ten days, such detention shall be lifted immediately: Provided, That where confirmation of identifi-

cation is delayed due to unavoidable causes, the head of a local immigration office or foreigner-related office may extend the detention by up to ten days. *<Amended by Act No. 12421, Mar. 18, 2014>*

Article 21 (Objections)

(1) A person subject to a decision of non-recognition of refugee status under Article 18 (2) or 19 or a person whose refugee status is cancelled or withdrawn under Article 22 may raise an objection to the Minister of Justice within 30 days from the date on which he/she is notified thereof. In such cases, he/she shall submit an objection accompanied by materials explaining the grounds therefor to the head of the local immigration office or foreigner-related office. *<Amended by Act No. 12421, Mar. 18, 2014>*

(2) Where an objection is raised under paragraph (1), no administrative appeal prescribed by the Administrative Appeals Act shall be filed.

(3) Where the Minister of Justice receives an objection under paragraph (1), he/she shall refer to the Refugee Committee prescribed in Article 25 therefor without delay.

(4) The Refugee Committee prescribed in Article 25 may conduct a fact-finding investigation directly or through refugee investigators prescribed in Article 27.

(5) Detailed matters concerning procedures for deliberation by the Refugee Committee shall be prescribed by Presidential Decree.

(6) The Minister of Justice shall decide whether to recognize refugee status under Article 18 through deliberation by the Refugee Committee.

(7) The Minister of Justice shall make a decision on an objection within six months from the date of receipt of the objection: Provided, That where he/she is unable to make a decision on an objection within such period due to unavoidable causes, he/she may extend such period by up to six months.

(8) Where the period of deliberation on an objection is extended under the proviso to paragraph (7), it shall be notified to the refugee applicant at least seven days before the expiration of such period.

Article 22 (Cancellation, etc. of Decision to Recognize Refugee Status)

(1) Where a decision to recognize refugee status is found to have been made by submitting false documents, delivering false statements, or concealing facts, the Minister of Justice may cancel refugee status.

(2) Where a recognized refugee falls within any of the following cases, the Minister of Justice may withdraw the decision to recognize refugee status:

1. Where a refugee applicant receives protection from a nation of his/her nationality again;
2. Where a refugee applicant reinstates his/her nationality voluntarily after losing his/her nationality;
3. Where a refugee applicant is under the protection of a nation of the nationality he/she has newly acquired;
4. Where a refugee applicant resettles in the nation in which he/she resides of his/her free will after leaving such nation or staying outside such nation in fear of persecution;
5. Where a refugee applicant becomes unable to refuse protection from a nation of his/her nationality any more due to cessation of the causes which were the major grounds for the decision to recognize refugee status;
6. Where a refugee applicant is able to return to the former nation of his/her permanent settlement due to cessation of the cause of stateless person by which he/she became an eligible refugee.

(3) Where the Minister of Justice cancels or withdraws a decision to recognize refugee status under paragraph (1) or (2), he/she shall prepare a notice of cancellation of refugee status or a notice of withdrawal of refugee status including the grounds therefor and a message that an objection may be raised within 30 days therein. In such cases, Article 18 (6) shall apply mutatis mutandis to methods of notification.

Article 23 (Non-Disclosure of Deliberation)

The Refugee Committee or a court may, if necessary for the safety of a refuge applicant or for the family, etc. thereof, make a decision of non-disclosure of deliberation or review upon the request of the refugee applicant or by authority.

Article 24 (Accommodation of Refugees Desiring Resettlement)

(1) The Minister of Justice may permit the settlement of refugees desiring resettlement in Korea through the deliberation of the Foreigners' Policy Committee prescribed in Article 8 of the Framework Act on Treatment of Foreigners Residing in the Republic of Korea on the major matters of refugees desiring resettlement, such as accommodation or non-accommodation, size, and origin. In such cases, a settlement permit shall be deemed recognition of refugee status prescribed in Article 18 (1).

(2) Requirements, procedures, etc. for permission for settlement in Korea prescribed in paragraph (1) and other detailed matters shall be prescribed by Presidential Decree.

Article 25 (Establishment and Organization of Refugee Committee)

(1) In order to deliberate on objections prescribed in Article 21, the Refugee Committee shall be established in the Ministry of Justice (hereinafter referred to as the "Committee").

(2) The Committee shall be comprised of not more than 15 members, including one Chairperson.

(3) The Committee may have sub-committees.

Article 26 (Appointment of Members)

(1) The members of the Committee shall be appointed or commissioned by the Minister of Justice among persons who fall under any of the following:

1. A person qualified as an attorney-at-law;
2. A person who is or was in the position of at least associate professor teaching jurisprudence at school prescribed in subparagraph 1 or 3 of Article 2 of the Higher Education Act;
3. A person who is or was a public official of at least Grade IV in charge of refugee-related affairs;
4. A person with professional knowledge and experience with refugees.

(2) The Chairperson of the Committee shall be appointed by the Minister of Justice among the members of the Committee.

(3) The term of office of members shall be three years, and they may be re-appointed.

Article 27 (Refugee Investigators)

(1) The Committee shall appoint refugee investigators.

(2) A refugee investigator shall conduct investigations concerning objections and handle other administrative affairs of the Committee under the direction of the Chairperson.

Article 28 (Operation of Refugee Committee)

Matters necessary for the operation, etc. of the Committee other than those provided for in Articles 25 through 27 shall be prescribed by Ordinance of the Ministry of Justice.

Article 29 (Exchanges and Cooperation with UN Refugee Agency)

(1) Where the UN Refugee Agency requests statistical data and other materials on the following matters, the Minister of Justice shall cooperate:

1. The status of recognized refugees and refugee applicants;
2. The situation of implementation by the Refugee Convention and the Refugee Protocol;
3. Refugee-related statutes (including prior announcement of legislation).

(2) The Minister of Justice shall, when requested by the UN Refugee Agency or refugee applicants, cooperate to enable the UN Refugee Agency to conduct the following acts:

1. Interviewing refugee applicants;
2. Participating in the interviews of refugee applicants;
3. Presenting opinions on application for refugee status and objections.

(3) The Minister of Justice and the Refugee Committee shall provide the UN Refugee Agency with convenience so that it can smoothly conduct the duty to check the situation of implementation of the Refugee Convention and the Refugee Protocol.

Article 30 (Treatment of Recognized Refugees)

(1) Notwithstanding other Acts, a recognized refugee residing in the Republic of Korea shall be treated in accordance with the Refugee Convention.

(2) The State and local governments shall formulae and implement policies, adjust relevant statutes, support relevant ministries and offices, and take necessary measures for the treatment of refugees.

Article 31 (Social Security)

Notwithstanding Article 8 of the Framework Act on Social Security, etc., a foreigner staying in Korea after becoming a recognized refugee shall be covered by social security at the same level as that of the citizens of the Republic of Korea.

Article 32 (Basic Living Security)

Notwithstanding Article 5-2 of the National Basic Living Security Act, a foreigner staying in Korea after becoming a recognized refugee shall receive the protection prescribed in Articles 7 through 15 of the same Act upon the request of the relevant person.

Article 33 (Assurance of Education)

(1) Where a recognized refugee or his/her child is a minor under the Civil Act, he/she shall receive the same elementary education and secondary education as the Korean people.

(2) The Minister of Justice may support recognized refugees to receive necessary education in consideration of their age, learning ability, educational conditions, etc. as prescribed by Presidential Decree.

Article 34 (Social Adaptation Education, etc.)

(1) The Minister of Justice may implement social adaptation education, such as teaching the Korean language, for recognized refugees as prescribed by Presidential Decree.

(2) The Minister of Justice may, if desired by recognized refugees, support the recognized refugees to receive vocational training as prescribed by Presidential Decree.

Article 35 (Recognition of School Career)

A recognized refugee may obtain the recognition of a school career equivalent to the degree of school education he/she has completed in foreign nations as prescribed by Presidential Decree.

Article 36 (Recognition of Qualifications)

A recognized refugee may obtain recognition of a qualification equivalent to or part of the qualification he/she acquired in a foreign nation as prescribed by the relevant statutes.

Article 37 (Permission for Entry of Spouses, etc.)

(1) Where a spouse or a minor child of a recognized refugee applies for entry, the Minister of Justice shall permit such entry unless it falls under Article 11 of the Immigration Act.

(2) The scope of spouses and minors prescribed in paragraph (1) shall be governed by the Civil Act.

Article 38 (Exclusion from Application of Reciprocity for Recognized Refugees)

Notwithstanding other Acts, reciprocity shall not apply to recognized refugees.

Article 39 (Treatment of Humanitarian Sojourners)

The Minister of Justice may permit recruiting of humanitarian sojourners.

Article 40 (Subsidization of Living Costs, etc.)

(1) The Minister of Justice may subsidize the living costs, etc. of refugee applicants as prescribed by Presidential Decree.

(2) Where six moths have passed from the date on which refugee status is applied, the Minister of Justice may permit the refugee applicant to obtain a job as prescribed by Presidential Decree.

Article 41 (Provision of Residential Facilities)

(1) The Minister of Justice may install and operate residential facilities in which refugee applicants will reside as prescribed by Presidential Decree.

(2) Matters necessary for the operation, etc. of residential facilities prescribed in paragraph (1) shall be prescribed by Presidential Decree.

Article 42 (Provision of Medical Services)

The Minister of Justice may provide refugee applicants with medical services as prescribed by Presidential Decree.

Article 43 (Assurance of Education)

A refugee applicant and a minor foreigner of his/her family may receive the same level of elementary education and secondary education as that of the Korean people.

Article 44 (Restriction on Treatment of Specific Refugee Applicants)

In cases of refugee applicants who fall under Article 2 (4) (c) or 8 (5) 2 or 3, part of the treatment prescribed in Articles 40 (1) and 41 through 43 may be restricted as prescribed by Presidential Decree.

Article 45 (Operation, etc. of Refugee Support Facilities)

(1) In order to conduct the duties, etc. prescribed in Articles 34, 41, and 42 efficiently, the Minister of Justice may install and operate refugee support facilities.

(2) The Minister of Justice may, when necessary, entrust part of the duties prescribed in paragraph (1) to civilians.

(3) Matters necessary for persons eligible to use, operation and management, civil entrustment, etc. of refugee support facilities shall be prescribed by Presidential Decree.

Article 46 (Delegation of Authority)

The Minister of Justice may delegate part of the authority prescribed by this Act to the heads of local immigration offices and foreigner-related offices as prescribed by Presidential Decree. *<Amended by Act No. 12421, Mar. 18, 2014>*

Article 46-2 (Legal Fiction in Application of Penalty Provisions to Public Officials)

Members who are not public officials among the members of the Refugee Committee (including sub-committees) prescribed in Article 25 shall be considered as public officials in the application of Articles 127 and 129 through 132 of the Criminal Act.

Article 47 (Penalty Provisions)

A person who falls under any of the followings shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding ten million won:

1. A person who violates Article 17;
2. A person who becomes a recognized refugee or obtains a humanitarian stay permit after submitting false documents, making false statements, or concealing facts.

ADDENDA

Article 1 (Enforcement Date)

This Act shall enter into force on July 1, 2013.

Article 2 (Applicability)

This Act shall apply starting from the first application for refugee status filed after this Act enters into force.

Article 3 Omitted.

ADDENDA *<Act No. 12421, Mar. 18, 2014>*

Article 1 (Enforcement Date)

This Act shall enter into force three months after the date of its promulgation.

Articles 2 and 3 Omitted.

ADDENDUM *<Act No. 14408, Dec. 20, 2016>*

This Act shall enter into force on the date of its promulgation.

Last updated : 2018-06-27

ENFORCEMENT DECREE OF THE REFUGEE ACT[1]

Presidential Decree No. 24628, 21 June 2013
Amended by Presidential Decree No. 25354, 21 May 2014
Presidential Decree No. 28870, 8 May 2018

Article 1 (Purpose)

The purpose of this Decree is to prescribe matters delegated by the Refugee Act and matters necessary for the enforcement thereof.

Article 2 (Humanitarian Stay Permit)

(1) Where a person who has applied for refugee status (hereinafter referred to as "refugee applicant") falls under any of the following cases, the Minister of Justice may grant a humanitarian stay permit pursuant to subparagraph 3 of Article 2 of the Refugee Act (hereinafter referred to as the "Act"):

1. Where a decision that such person does not constitute a refugee is made pursuant to Article 18 (2) of the Act;
2. Where a decision of dismissal is made on an objection raised pursuant to Article 21 (1) of the Act, pursuant to Article 11 (1) of this Decree.

(2) Where granting a humanitarian stay permit pursuant to subparagraph 3 of Article 2 of the Act, and paragraph (1), the Minister of Justice shall notify the refugee applicant of the details thereof in writing. In such cases, the Minister may prepare such notice with a notice of decision of non-recognition of refugee status prescribed in Article 18 (2) of the Act or with a notice of decision of dismissal of objection prescribed in Article 11 (1) of this Decree, stating the will to grant a humanitarian stay permit.

(3) A person who has obtained a humanitarian stay permit (hereinafter referred to as "humanitarian sojourner") shall obtain the status of stay or obtain permission to change the status of stay or extension of period of stay pursuant to Articles 23 through 25 of the Immigration Act.

Article 3 (Application for Refugee Status at Ports of Entry and Departure)

1. This is an official English translation available at the Korea Legislation Research Institution (https://elaw.klri.re.kr/eng_service/main.do)

(1) A person who intends to apply for refugee status when undergoing an entry inspection pursuant to Article 6 (1) of the Act (hereinafter referred to as "refugee applicant at a port of entry and departure") shall submit an application for refugee status prescribed by Ordinance of the Ministry of Justice to the head of an Immigration Office (hereinafter referred to as the "head of an Immigration Office"), the head of an immigration office (hereinafter referred to as the “head of an office”), or to the head of a branch office of an Immigration Office or an office (hereinafter referred to as the "head of a branch office") having jurisdiction over the ports of entry and departure prescribed in the Immigration Act along with the documents prescribed in the subparagraphs of Article 5 (2) of the Act. *<Amended by Presidential Decree No. 28870, May 8, 2018>*

(2) The head of an Immigration Office, the head of an office, or the head of a branch office who has received an application for refugee status pursuant to paragraph (1) shall investigate the refugee applicant at the port of entry and departure without delay by means of interviewing, etc. and forward such application for refugee status to the Minister of Justice along with the results thereof. *<Amended by Presidential Decree No. 28870, May 8, 2018>*

(3) If necessary in the course of conducting an investigation prescribed in paragraph (2), the head of an Immigration Office, the head of the office, or the head of the branch office may ask the refugee applicant at the port of entry and departure about matters necessary to determine whether to refer the refugee applicant to refugee status screening, such as the name of the airplane, the name of the ship, personal information and reasons for applying, and request to present relevant materials. *<Amended by Presidential Decree No. 28870, May 8, 2018>*

(4) Article 5 (3) and (4) of the Act shall apply mutatis mutandis to the preparation of applications for refugee status of refugee applicants at ports of entry and departure.

Article 4 (Installation, etc. of Waiting Rooms at Ports of Entry and Departure)

(1) The head of an Immigration Office, the head of an office, or the head of a branch office having jurisdiction over the ports of entry and departure prescribed in the Immigration Act may install waiting rooms at ports of entry and departure so that refugee applicants can stay at ports of entry and departure for the period prescribed in Article 6 (2) of the Act. *<Amended by Presidential Decree No. 28870, May 8, 2018>*

(2) Food, clothing, and shelter provided to refugee applicants at ports of entry and departure pursuant to Article 6 (4) of the Act shall be provided in consideration of

the safety and hygiene of individuals, and custom, living culture, etc. of nations of one's nationality.

Article 5 (Referring Refugee Applicants at Ports of Entry and Departure to Refugee Status Screening)

(1) Where a refugee applicant at a port of entry and departure falls under any of the following cases, the Minister of Justice may not refer such applicant to refugee status screening:

1. Where there are substantial grounds to deem that a refugee applicant at a port of entry and departure is likely to harm the safety or social order of the Republic of Korea;
2. Where it is impossible to verify the identification of a refugee applicant at a port of entry and departure because the refugee applicant refuses to answer questions regarding his/her personal information, etc.;
3. Where a refugee applicant at a port of entry and departure intends to obtain refugee status by concealing the truth by means of submitting false documents, etc.: Provided, That cases where the person in question files a report on the truth voluntarily without delay shall be excluded;
4. Where a refugee applicant at a port of entry and departure is a native of a safe nation free of the possibility of persecution or is from a safe nation;
5. Where a person who has failed to obtain refugee status or a person whose refugee status has been cancelled intends to obtain refugee status again without major changes in circumstances;
6. Where there is are substantial grounds to deem that a refugee applicant at a port of entry and departure falls under any of the subparagraphs of Article 19 of the Act;
7. Where a refugee status application is incontestably groundless, such as applying for refugee status only for economic reasons.

(2) When a decision is made on whether to refer to refugee status screening pursuant to Article 6 (3) of the Act, the Minister of Justice shall notify the refugee applicant at the port of entry and departure of the results thereof without delay.

(3) The head of an Immigration Office, the head of an office, or the head of a branch office shall have a person for whom a decision is made on whether to refer to refugee status screening pursuant to paragraph (2) undergo an entry inspection pre-

scribed by the Immigration Act without delay. *<Amended by Presidential Decree No. 28870, May 8, 2018>*

(4) Entry permits prescribed in Article 12 of the Immigration Act or conditional entry permits prescribed in Article 13 shall be granted to persons for whom a decision to refer to refugee status screening is made, on condition that in cases of conditional entry permits, the period of permission may be determined within the extent of 90 days, notwithstanding Article 16 (1) of the Enforcement Decree of the Immigration Act.

(5) Where a person who has obtained a conditional entry permit pursuant to paragraph (4) fails to or is expected not to comply with the conditions within the period of such permission due to unavoidable causes, the head of an Immigration Office, the head of the office, or the head of the branch office may extend the period of permission. *<Amended by Presidential Decree No. 28870, May 8, 2018>*

(6) On the assumption that a person for whom a decision of referring to refugee status screening is made filed a refugee status application on the date of such decision, the Minister of Justice shall issue a certificate of receipt of refugee status application to such person and proceed with refugee status screening procedures.

Article 6 (Qualification of Refugee Screening Officers)

A refugee screening officer prescribed in Article 8 (4) of the Act (hereinafter referred to as "refugee screening officer") shall be a public official of at least Grade V who takes charge of immigration affairs and who has any of the following qualifications:

1. A refugee-related job career of at least two years;
2. Completion of refugee screening officers education courses the Minister of Justice determines.

Article 7 (Performance of Duties of Refugee Screening Officers, etc.)

(1) When a refugee screening officer or a public official of the Ministry of Justice in charge of refugees (hereinafter referred to as "refugee screening officer, etc.") requests a refugee applicant and other related persons to appear pursuant to Article 10 (2) of the Act, he/she shall issue a written request for appearance, stating the purpose of the request, date and time, and place for appearance, etc., and shall record the request for appearance in the register of requests for appearance, as prescribed by Ordinance of the Ministry of Justice: Provided, That he/she may make a request for appearance orally in an emergency.

(2) Where interviewing a refugee applicant, the refugee screening officer shall record the details thereof in the refugee interview protocol prescribed by Ordinance of the Ministry of Justice.

(3) A refugee screening officer shall read the refugee interview protocol recorded pursuant to paragraph (2) to the refugee applicant or have the refugee applicant read the refugee interview protocol and then ask the refugee applicant if there is anything wrong. In such cases, if the refugee applicant requests to add something to, delete or change any of the matters recorded in the refugee interview protocol, the refugee screening officer shall record the matters requested in the refugee interview protocol additionally.

(4) A refugee screening officer shall have the following persons write down their names on or affix their signs and seals to the refugee interview protocol recorded pursuant to paragraph (2): Provided, That when the refugee applicant is unable or refuses to write his/her name or affix his/her sign and seal, the refugee screening officer shall record such fact in the refugee interview protocol:

1. Refugee applicant;
2. Where there is a person who provided interpretation or translation services in the course of interviewing a refugee or after the completion of interviewing a refugee pursuant to Articles 14 and 15 of the Act, the person who provided interpretation or translation services.

Article 8 (Interpretation Services)

(1) The Minister of Justice shall have persons fluent in foreign languages and deemed suitable to conduct the duty to provide interpretation services to refugees and have completed the educational courses the Minister of Justice determines (hereinafter referred to as "interpreter dedicated to refugees") provide interpretation services in the course of interviewing refugee applicants.

(2) If requested by a refugee applicant, the Minister of Justice shall have an interpreter dedicated to refugees of the same sex as the refugee applicant.

(3) Notwithstanding paragraphs (1) and (2), where there is no available interpreter dedicated to refugees who is fluent in the language a refugee applicant speaks or in an emergency, interpretation services may be provided by the following methods:

1. First having the language used by a refugee applicant interpreted into another foreign language and then having an interpreter dedicated to refugees interpret the foreign language into Korean;
2. Having a person fluent in the language used by a refugee applicant provide interpretation services after providing the person with prior education on interpretation.

(4) The Minister of Justice may pay allowances to persons who provide interpretation services to refugee applicants as prescribed by the Minister of Justice.

Article 9 (Methods and Procedures for Reading and Reproduction)

(1) Where a refugee applicant intends to request reading or reproduction of the materials he/she presented or refugee interview protocols (hereinafter referred to as "interview protocol, etc.") pursuant to Article 16 (1) of the Act, he/she shall file an application for reading or reproduction delivery prescribed by Ordinance of the Ministry of Justice with immigration control officials, specifying the parts he/she wishes to read or reproduce.

(2) Where receiving a reading application pursuant to paragraph (1), the immigration control official shall determine the date, time and place of reading and notify the refugee applicant who filed the reading application thereof.

(3) Where receiving a reproduction delivery application pursuant to paragraph (1), the immigration control official shall reproduce the interview protocol, etc. requested and deliver the reproduction to the refugee applicant who filed the reproduction delivery application.

(4) An immigration control official shall take necessary measures to protect interview protocols, etc. from damage likely to be caused in the course of reading the interview protocols, etc., by being present in the course of reading, etc.

(5) A refugee applicant who intends to request the reading or reproduction of interview protocols, etc. shall pay fees prescribed by Ordinance of the Ministry of Justice.

Article 10 (Deliberation of Refugee Committee on Objections)

(1) The Refugee Committee prescribed in Article 25 of the Act (hereinafter referred to as the "Refugee Committee") shall make resolutions on agenda items at the presence of a majority of members registered and by the vote of a majority of members present.

(2) The Refugee Committee may, if necessary, have refugee applicants or other related persons appear to make statements at meetings, and listen to opinions of persons with abundant experience and knowledge in matters to be deliberated.

Article 11 (Decision, etc. on Objections)

(1) Where an objection is deemed to have grounds, the Minister of Justice shall make a decision of recognition of refugee status and issue a certificate of recognition of refugee status to the demurrant, and where an objection is deemed to be groundless, the Minister shall make a decision of dismissal of the objection and deliver a notice of decision of dismissal of objection to the demurrant.

(2) When making a decision pursuant to paragraph (1), the Minister of Justice shall respect the results of deliberation of the Refugee Committee on objections within the extent that it is not concerned to harm national security, maintenance of order, or public welfare.

(3) A certificate of recognition of refugee status and a notice of decision of dismissal of objection prescribed in paragraph (1) shall be delivered to the demurrant or the proxy thereof through the head of an Immigration Office, the head of an office, the head of a branch office, the head of an immigration detention center, etc. or served thereon pursuant to Article 14 of the Administrative Procedures Act. *<Amended by Presidential Decree No. 28870, May 8, 2018>*

Article 12 (Permission for Settlement in Korea of Refugees Desiring Resettlement)

(1) Requirements for permission for settlement in Korea for refugees desiring resettlement prescribed in Article 24 (2) of the Act are as follows:

1. Not having any ground for restriction on recognition of refugee status prescribed in Article 19 of the Act;
2. No risk of impairing the safety, social order, or public health of the Republic of Korea.

(2) If necessary to permit the settlement in Korea of refugees desiring resettlement, the Minister of Justice may receive recommendations of refugees desiring resettlement from the United Nations Refugee Agency.

(3) The Minister of Justice may dispatch refugee screening officers, etc. to local sites to investigate if refugees desiring resettlement comply with the requirements for permission for settlement in Korea prescribed in paragraph (1).

(4) Where intending to permit refugees desiring resettlement to settle in Korea, the Minister of Justice may implement medical examinations and basic adaptation education before permitting their settlement in Korea.

(5) The Minister of Justice shall permit refugees desiring resettlement to settle in Korea by undergoing the entry permission procedures prescribed in the Immigration Act.

(6) The Minister of Justice shall determine matters necessary to permit refugees desiring resettlement to settle in Korea other than those provided for in paragraphs (1) through (5).

Article 13 (Education-Related Support)

(1) Recognized refugees and their children may enter school prescribed in Article 2 of the Elementary and Secondary Education Act or apply for transfer admission by following standards and procedures prescribed by education-related statutes.

(2) Pursuant to Article 33 (2) of the Act, the Minister of Justice may recommend persons in need of subsidization of educational costs prescribed in Article 60-4 of the Elementary and Secondary Education Act to the Minister of Education as prescribed by Ordinance of the Ministry of Justice among recognized refugees and their children.

Article 14 (Social Adaptation Education)

The Minister of Justice may implement social integration programs prescribed in Article 39 of the Immigration Act as social adaptation education for recognized refugees pursuant to Article 34 (1) of the Act.

Article 15 (Vocational Training)

The Minister of Justice may recommend persons in need of vocational skills development and training prescribed in Article 12 of the Act on the Development of Vocational Skills of Workers to the Minister of Employment and Labor as prescribed by Ordinance of the Ministry of Justice among recognized refugees desiring vocational training.

Article 16 (Standards, etc. for Recognition of School Career)

The academic records achieved by recognized refugees in foreign nations shall be recognized in accordance with standards prescribed by education-related statutes.

Article 17 (Subsidization of Living Costs, etc.)

(1) The Minister of Justice may subsidize the living costs, etc. of refugee applicants for a period not exceeding six months from the date on which the refugee applicants file refugee status applications pursuant to Article 40 (1) of the Act: Provided, That under an unavoidable circumstance where continuing to subsidize living costs, etc. is necessary due to critical diseases, physical disabilities, etc., the period of subsidizing living costs, etc. may be extended by up to six months.

(2) The Minister of Justice shall determine the subsidization or non-subsidization of living costs, etc. prescribed in paragraph (1) and the amount of subsidization in consideration of refugee applicants' period of stay in Korea, working or not working, using or not using refugee support facilities, presence or non-presence of dependent family members, living conditions, etc.

(3) Matters necessary for applying for subsidization of living costs, etc. prescribed in paragraph (1) shall be prescribed by Ordinance of the Ministry of Justice.

Article 18 (Work Permits)

Work permits prescribed in Article 40 (2) of the Act shall be granted by the same method as for granting permission for activities not covered by status of stay prescribed in Article 20 of the Immigration Act.

Article 19 (Installation and Operation of Residential Facilities)

(1) The Minister of Justice may install and operate residential facilities in which refugee applicants, etc. can dwell in refugee support facilities prescribed in Article 45 (1) of the Act (hereinafter referred to as "refugee support facility"), pursuant to Article 41 (1) of the Act.

(2) The Minister of Justice may make refugee applicants at the ports of entry and departure and refugees desiring resettlement as persons eligible to preferentially use residential facilities pursuant to Article 41 (2) of the Act.

(3) The Minister of Justice may determine the period for using residential facilities up to six months: Provided, That where continuing to use refugee support facilities is inevitably necessary when considering the health conditions, dependent family members, etc., of the users of residential facilities, the period of using residential facilities may be extended.

(4) The Minister of Justice may restrict persons who impair or are likely to impair the safety and order of residential facilities from using residential facilities.

Article 20 (Medical Support)

(1) If deemed necessary to protect the health of a refugee applicant pursuant to Article 42 of the Act, the Minister of Justice may have the refugee applicant undergo medical examinations or subsidize the medical examination costs, etc. of the refugee applicant within budgetary limits.

(2) The Minister of Justice shall endeavor to provide refugee applicants with information on emergency medical services prescribed in the Emergency Medical Service Act and information on other medical services available to the refugee applicants.

(3) The head of a relevant Ministry or agency who intends to provide medical services to a refugee applicant may request the head of an Immigration Office, the head of the office, or the head of the branch office to verify the identification of the refugee applicant. In such cases, the head of an Immigration Office, the head of the office, or the head of the branch office shall verify if the person is a refugee applicant and inform the Ministry or agency requesting such verification of the results thereof without delay. *<Amended by Presidential Decree No. 28870, May 8, 2018>*

Article 21 (Restriction on Treatment of Specific Refugee Applicants)

The Minister of Justice shall not provide the following support to refugee applicants who fall under subparagraph 4 (c) of Article 2 of the Act or Article 8 (5) 2 and 3 pursuant to Article 44 of the Act: Provided, That the same shall not apply in an emergency or where such support is deemed necessary to be provided extraordinarily for humanitarian purposes:

1. Subsidization of living costs, etc. prescribed in Article 40 (1) of the Act;
2. Provision of residential facilities prescribed in Article 41 of the Act;
3. Provision of medical services prescribed in Article 20 (1).

Article 22 (Operation of Council for Treatment of Recognized Refugees, etc.)

If necessary for the treatment of recognized refugees, refugee applicants, etc., the Minister of Justice may organize and operate a council comprised of public officials of relevant agencies. *<Amended by Presidential Decree No. 25354, May 21, 2014>*

Article 23 (Refugee Support Facilities)

(1) For the efficient performance of duties to support recognized refugees, refugee applicants, etc., the Minister of Justice may establish residential facilities, food service facilities, educational facilities, medical facilities, athletic facilities, counselling rooms, etc. in refugee support facilities.

(2) The Minister of Justice may allow any of the following persons to use refugee support facilities: Provided, That the Minister of Justice may limit persons eligible to use refugee support facilities or determine persons eligible to preferentially use refugee support facilities in consideration of the type, size of accommodation, etc. of refugee support facilities:

1. Recognized refugees;
2. Refugee applicants;
3. Humanitarian sojourners;
4. Spouses and minor children of persons who fall under subparagraphs 1 through 3.

(3) The Minister of Justice may exclude persons who impair or are likely to impair the safety and order of refugee support facilities from persons eligible to use refugee support facilities or restrict them from using such facilities.

(4) The Minister of Justice may entrust part of affairs concerning meal services, education, medical services, etc. managed at refugee support facilities to corporations or organizations professionally providing the relevant services, pursuant to Article 45 (2) of the Act.

Article 24 (Delegation of Authority)

The Minister of Justice shall delegate the following authority to the head of the competent Immigration Office, the head of the competent office, the head of the competent branch office, or the head of the competent immigration detention center (in cases of the head of the competent immigration detention center, subparagraphs 3, 8, and 9 shall be excluded) pursuant to Article 46 of the Act: *<Amended by Presidential Decree No. 28870, May 8, 2018>*

1. Humanitarian stay permits prescribed in subparagraph 3 of Article 2 of the Act;
2. Issuance of certificates of receipt prescribed in Article 5 (5) of the Act and in Article 5 (6) of this Decree;
3. Decision of referring to refugee status screening and entry permits prescribed in Article 6 (3) of the Act;
4. Refugee status screening prescribed in Article 8 of the Act;
5. Requests for cooperation prescribed in Article 11 (1) of the Act (excluding requests for cooperation related to objections prescribed in Article 21 of the Act);

6. Matters concerning decision of recognition of refugee status prescribed in Article 18 of the Act;
7. Matters concerning the cancellation and withdrawal of decision of recognition of refugee status prescribed in Article 22 of the Act;
8. Permission of entry of spouses, etc. of recognized refugees prescribed in Article 37 of the Act;
9. Permission for recruiting activities prescribed in Article 39 of the Act and work permits prescribed in Article 40 (2);
10. Provision of medical services prescribed in Article 42 of the Act.

Article 25 (Processing of Sensitive Information and Personally Identifiable Information)

Where inevitable to perform the following duties, the Minister of Justice, the head of an Immigration Office, the head of an office, the head of a branch office, the head of an immigration detention center, or refugee screening officers, etc. may process data including information on ideology, belief and health prescribed in Article 23 of the Personal Information Protection Act, information falling into genetic information or criminal history records prescribed in subparagraph 1 or 2 of Article 18 of the Enforcement Decree of the said Act, and passport numbers or foreigner registration numbers prescribed in subparagraph 2 or 4 of Article 19 of the said Decree: *<Amended by Presidential Decree No. 28870, May 8, 2018>*

1. Administrative affairs concerning refugee status screening prescribed in Article 8 of the Act;
2. Administrative affairs concerning fact-finding investigations prescribed in Article 10 of the Act;
3. Administrative affairs concerning cooperation prescribed in Article 11 of the Act;
4. Administrative affairs concerning the reading and reproduction of materials, etc. prescribed in Article 16 of the Act;
5. Administrative affairs concerning recognition of refugee status, etc. prescribed in Article 18 of the Act;
6. Administrative affairs concerning protection for verifying identifications prescribed in Article 20 of the Act;
7. Administrative affairs concerning objections prescribed in Article 21 of the Act;

8. Administrative affairs concerning the cancellation of decision of recognition of refugee status prescribed in Article 22 of the Act;
9. Administrative affairs concerning the accommodation of refugees desiring re-settlement prescribed in Article 24 of the Act;
10. Administrative affairs concerning the guarantee of education prescribed in Article 33 of the Act;
11. Administrative affairs concerning social adaptation education, etc. prescribed in Article 34 of the Act;
12. Administrative affairs concerning the permission of entry of spouses, etc. prescribed in Article 37 of the Act;
13. Administrative affairs concerning permission for recruiting activities prescribed in Article 39 of the Act;
14. Administrative affairs concerning the subsidizations of living costs, etc. prescribed in Article 40 of the Act;
15. Administrative affairs concerning the provision of residential facilities prescribed in Article 41 of the Act;
16. Administrative affairs concerning the provision of medical services prescribed in Article 42 of the Act;
17. Administrative affairs concerning the operation of refugee support facilities prescribed in Article 45 of the Act.

ADDENDA

Article 1 (Enforcement Date)

This Decree Shall enter into force on July 1, 2013

Article 2 Omitted.

ADDENDUM *<Presidential Decree No. 25354, May 21, 2014>*

This Decree shall enter into force on the date of its promulgation.

ADDENDA *<Presidential Decree No. 28870, May 8, 2018>*

Article 1 (Enforcement Date)

This Decree shall enter into force on May 10, 2018.

Article 2 Omitted.

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CALL FOR CONTRIBUTIONS

CDRQ is an open journal published on a quarterly basis. The aim of the journal is to disseminate information collected from research activities of CDR and related partners. It also welcomes contributions not only from academics but also from practitioners who are facing real social problems. This journal primarily focuses on issues of movement of people. However the contents also include variety of related fields such as governance and conflict resolution and prevention, as these issues induce and escalate forced displacement and more longer-term movement of people. The purpose of the journal is to provide a crosscutting perspectives on refugee and migrant issues with comprehensive awareness of the issues of movement of people.

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