

Remedies for Environmental Damages in Japanese Laws

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I. The Role of Environmental Lawsuits for Damages

As we all know, the problem of environmental disruption has become so serious in many countries of the world, that we have to give closer attention and immediate effort to control the pollution.

Environmental protection today is a global problem and its solution is an important task to be tackled from an international standpoint and by an international cooperation.

For the research of law it is necessary to compare and evaluate the effectiveness of a variety of judicial and administrative methods which may be used by individuals, groups and government bodies to control pollution.

In Japan civil lawsuits by victims of the pollution particularly for damages have played relatively big and sometimes extraordinary important roles as a countermeasure against environmental contamination. Despite extensive legislation to control pollution and establish administrative bodies, it has been the traditional civil law action for damages, where some of the most significant and spectacular advances against the pollution offender have been made.

II. Environmental Lawsuits before World War II

The Meiji Government established in 1868 promoted policies to enrich and strengthen the country in order to become level with the great powers of the world, and vigorously protected and nurtured mining and heavy industries. A great deal of legislation and judicial dicta since the beginning of the industrial age has been expressly designed to foster the freest, most unrestrained pursuit

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of profit. Although many kinds of pollution were already inevitable, there was scarcely effective legal control at that time.

Under such circumstances, civil action by tort law seemed to be the only competent method to get remedies. Like most of Continental-European Civil Codes, Japanese tort law is constructed out of an inclusive unitary tort (unlawful act) centered in the general provision of Civil Code art. 790.⁽¹⁾

Among precedent in the field of tort law before World War II, the most famous one is so-called Osaka Alkali Case,⁽²⁾ in which many farmers claimed for the agricultural damages caused by air pollution. The main issue in this trial was, whether the defendant factory had fault (negligence) or not.

The Supreme Court at that time had expressed the opinion, that a chemical industry had no fault if it had a competent installation to prevent the harm arisen from the factory.

At the conclusion of whole affair, however, Osaka High Court had found its fault in not-building a high chimney.

The existence of a fault was also discussed in Hiroshima City Motor-Pump Case,⁽³⁾ where the city was claimed for the damage caused by noise and vibration from a motor-pump. From this period many authors have emphasized the necessity of establishing a non-fault compensation system for damages in the area of dangerous enterprises.⁽⁴⁾

III. Environmental Litigation after World War II

Since late 1950's, rapid industrialization and high economic growth has been resulted rapidly concentrating pollutions of the air, water and other natural resources. The number of environmental litigation was still small and most of the lawsuits were related to the small size nuisance in the neighbourhood or

(1) "A person, who, wilfully or negligently, has injured the right of another is liable to compensate him for the damage which has arisen therefrom."

(2) Supreme Court (Daishin-in) Dec. 22, 1916.

(3) Supreme Court May 24, 1919.

(4) See e.g. Okamatsu, On Liability without Fault, 1916.

concerning to damage in agriculture or fishery.⁽⁵⁾ In minor nuisance cases among citizens courts have developed the principle, that all the circumstances of both parties, such as (a) the nature and degree of damages, (b) locality, (c) access to the danger, (d) regulatory standards in administrative law, have to be reviewed and the balance of interests has to be considered. The social and economic usefulness of the polluter is other than in case of injunction, in lawsuits for damages principally neglected. Some jurists call this method of examining many different elements the test for the "limit of endurance".

From the late 1960's, many inhabitants of the polluted area, who had suffered serious personal damage in their health, and survivals of the killed victims, determined to raise civil action against the polluting companies. Four major environmental litigations are most famous and had influenced other lawsuits and citizens' movement.

1. Itai-itai Disease Case⁽⁶⁾

This tragic disease, a sort of osteomalacia due to cadmium, has occurred in the Jintsu River Basin, Toyama Prefecture. The decision of the first instance, Toyama District Court, applied responsibility without fault according to the Mining Law art. 109. The main issue in the trial was the causal relationship, which in the past was considered to be difficult to prove, because the source of pollution, a mining, was located on about 50km upper reaches of the river from the villages of patients.

The court has found it smoothly by epidemiological verification. The decision was sustained in the High Court.

2. Niigata Minamata Disease Case⁽⁷⁾

3. Kumamoto Minamata Disease Case⁽⁸⁾

Minamata disease is the disorders in central nervous system caused by fish and shellfishes polluted by waste water of a chemical factory, containing methyl

(5) In San-nogawa Case (Supr. C. Apr. 23, 1968), the waste water of a national alcohol factory has caused agricultural damage.

(6) Nagoya High Court Kanazawa Division Aug. 9, 1967.

(7) Niigata District Court Sept. 29, 1966.

(8) Kumamoto District Court March 20, 1973.

mercury. The conditions of patients were very miserable and the mortality was very high. The disease occurred in two areas, Minamata(Kumamoto) and Niigata.

In their decisions the courts have followed the rule of recognizing causation by epidemiological verification, which had established in Itai-itai Disease Case.

The duty of chemical enterprises to make sufficient investigation for preventing pollution, which was deemed as an inevitable premise of the negligence, was explained in detail.

4. Yokkaichi Asthma Case⁽⁹⁾

Since late 1950's huge plants of petrochemical industry had been built in Yokkaichi. An abnormal increase of occlusive pneumonic disease was found in the adjacent residential region. The plaintiffs, asthmatic patients, sued for damages asserting that the smoke exhausted continually from six factories, which contained sulfur oxides and so on, was the cause of outbreak and aggravation of the disease.

The existence of the causal relationship between smoke and disease was again in this litigation discussed, which was found in a court decision by an epidemiological method. According to art. 719 of the Civil Code (joint tort) a joint responsibility of six companies was determined.

In many major environmental litigation since 1970's, plaintiffs have placed their stress upon the injunctive relief. They sue often even the State, cities and public corporations. The most remarkable cases are Osaka Airport Case⁽¹⁰⁾ and New Tokaido Line of the National Railway.⁽¹¹⁾

IV. Some Legislations

The principle of "liability without fault" was established since 1972 for air and water pollution by legislative method, which we had already for mining and atomic plants.

Following to a temporary act on relief of personal injuries caused by environ-

(9) Tsu District Court July 24, 1972.

(10) Osaka High Court Nov. 27, 1975.

(11) Nagoya District Court Sept. 11, 1980.

mental pollution 1969, an Act on Compensation for personal damage caused by environmental pollution 1973 was enacted. In this system, based on the civil liability of the damages and has partially the character of social security, enterprises contribute to a fund to cover the cost of pollution.

“Who shall pay for pollution?” is a contentious issue. At civil law, the polluter pays, but under this administrative regime it can be argued that such a scheme forces nonpolluters to subsidize the polluters, thereby allowing enterprises to be lax in their control measures.

V. Future Role of the Environmental Litigation for Damages

Critics of the use of the civil law procedure argue that it narrows the problem too much and that action after the damage is inferior to any method which prevents the occurrence of damage. To be effective, damages need to be coupled with effective injunctive relief. While admitting the weight of these criticisms, the civil procedure does offer the victim certain advantages, such as a direct and personal vindication of rights, or it may act as a ground for promoting more effective administrative control in the future, and it squarely places the costs of pollution, even if belatedly, upon the polluter.

In the future, we may expect the damages action to be employed where other means have failed. It will probably continue to be the best remedy to control those minor cases of pollution, which we might term “nuisance”.

Whatever choice or combination of methods is used to control pollution, there is always the problem of how to compel a polluter to cease polluting. Enforcement of the injunction sought by the individual and of the direction from an administrative body both face this problem.