

Rendition of Judgment: 1:20 pm, July 30, 2006 (in 526 Courtroom)

Case : (wa) No.26926,2003, the case of compensatory damages

Plaintiff: Japan Railway Welfare Association and Masao Sato (two plaintiffs)

Defendant: Government of Japan and Tokyo Metropolitan Government (two defendants)

Judges: Masami Ichikawa (Presiding Judge), Masaki Sugiura and Suguru Takashima

The Formal Adjudication

1. To the plaintiff Association, the defendant Tokyo Metropolitan Government must pay 60,000 yen with five percent annual interest from December 10, 2003 to the day of paying off.
2. For the plaintiff Association, the defendant Tokyo Metropolitan Government must scrap photocopies of seized items No.1 to 3, 5 and 6, and 21 to 23 listed in the appended table (1) of seized items, and No.1 to 3, 5 to 24, and 27 to 32 listed in the appended table (2) of seized items (however, as for the items No.1 to 3, 5 and 6 listed in the appended table (1), only the photocopies which were took during the period of seizure with the warrant of search and seizure issued by the judge of Tokyo Summary Court on June 10, 2003 must be scrapped.)
3. To the plaintiff Sato, the defendant Tokyo Metropolitan Government must pay 4,000 yen with five percent annual interest from December 10, 2003 to the day of paying off.
4. For the plaintiff Sato, the defendant Tokyo Metropolitan Government must scrap photocopies of items No.1,2 and 4 listed in the appended table (4) of seized items.
5. The claim of the plaintiff Association for returning seized items No.1 to 3, 5 to 8, and 30 listed in the appended table (1) of seized items, and the claim of the plaintiff Sato for returning those items listed in the appended table (3) to (5) of seized items to the defendant Tokyo Metropolitan Government are dismissed.
6. Rest of claims of the plaintiffs to the defendant Tokyo Metropolitan Government and the defendant Government of Japan are dismissed.
7. As for the cost of lawsuit between the plaintiffs and the defendant Government of Japan, the former bears all. As for the cost of lawsuit between the plaintiffs and the defendant Tokyo Metropolitan Government, the former bears the two thirds of expenses paid by the latter and the rest should be borne by each.

(Total amount of compensation: 64,000 yen by the Tokyo Metropolitan Government)

Facts and Reasons (Substance)

1. Points of the claim

- 1, (1) The defendant Tokyo Metropolitan Government must pay 11,000,000 yen with 5 percent annual interest from December 10, 2003 to the day of paying off to the plaintiff Association.
(2) The defendant Tokyo Metropolitan Government must return seized items No.1 to 3, 5 to 8 and 30 listed in the appended table (1) of seized items to the plaintiff Association.
(3) The defendant Tokyo Metropolitan Government must scrap photo-copies of seized items listed in the appended table (1) and (2) of seized items for the plaintiff Association.
- 2, (1) The defendant Tokyo Metropolitan Government must pay 5,500,000 yen with five percent annual interest from December 10, 2003 to the day of paying off to the plaintiff Sato.
(2) The defendant Tokyo Metropolitan Government must return confiscated items listed in the appended table (3) to (5) of seized items to the plaintiff Sato.
(3) The defendant Tokyo Metropolitan Government must scrap photo-copies of seized items listed in the appended table (3) to (5) of seized items for the plaintiff Sato.
- 3, The defendant Government of Japan must pay 5,500,000 yen with five percent annual interest from December 10, 2003 to the day of paying off to the plaintiff Association.
- 4, The defendant Government of Japan must pay 3,300,000 yen with five percent annual interest from December 10, 2003 to the day of paying off to the plaintiff Sato.

(Claimed total amount of compensation: for the defendant Tokyo Metropolitan Government 16,500,000 yen, for the Government of Japan 8,800,000 yen)

2. Claims of plaintiffs

In this case, the plaintiffs who suffered search and seizure on suspicion of violation of the Law on Punishment against Violent and Other Acts as a third party, insisting the application for the warrant of search and seizure by a judicial police personnel belonging to the Public Safety Bureau of the Tokyo Metropolitan Police Department, the issue of warrant by a judge of Tokyo Summary Court and the search and seizure executed by the judicial police personnel based on the above warrants were illegitimate, as for the execution of judicial police personnel, to the defendant Tokyo Metropolitan Government, as for the execution of the judge, to the defendant Government of Japan, claimed for compensation of loss of non-pecuniary advantage based on the Article 1, Section 1 of the Law of State Liability and Compensation, claimed for returning of seized items based on the

property right and demanded to scrap photo-copies of seized items kept in the Metropolitan Police Department based on the personal rights (or the right to privacy).

3. Judgment of the Court

1, First Search and Seizure

- (1) The application for warrant of the first search and seizure (in Meguro Satsuki Kaikan) is legitimate. Because it can be judged rational that the police estimated there existed a suspicion of the organized crime by JRU, JR Tokai Union and Kakumaru-extremists in the alleged case. And also because it can be judged rational that the police estimate in the offices of plaintiff Association, Satsuki Planning and Railway Family in Meguro Satsuki Kaikan there were evidences related to the means and methods of crime such as videotapes and photos which recorded the scenes of criminal acts in the alleged case and there was evidence related to the motives, objectives, backgrounds and complicity of the alleged case since the police saw these bodies closely related to JRU and others.
- (2) The issue of the warrant of the first search and seizure is legitimate.
- (3) Among the execution of the warrant for the first search and seizure, seizures of documents of Satsuki Planning general shareholder's meeting (No.1 to 3 in the table (1) of seized items), a book of the rules of complainant Association (No.5 and 6 in the table (1) of seized items) and its certain passbooks (which have been carried over to the next one considerably long before the alleged case, No.21 to 23 in the table (1)) have no rational reasons in relation to the alleged case, and are illegitimate. Because the judicial police personnel knew beforehand that the plaintiff Association, Satsuki Planning and others had status of legal entities and they were independent bodies from JRU or JR Tokai Union. The existence of the rules and accounting books which endorse the organizational structure and financial sources was easily predictable and, if the police intended to seize them, it could get the clear yes-or-no judgment by the judge who issues the warrant by specifying the items to seize on the occasion of application. Therefore these items could not be identified as the rules and the accounting books which endorse the organizational structure and financial sources of JRU, etc. and Kakumaru-extremists among the items to seize. Seizure of other items is legitimate.
In addition, it could not be judged that this is the search and seizure on a charge of convenience aimed to gather information about plaintiff and JRU or other related groups and individuals and to damage them departing from the objective to clarify the alleged case.

2, Second Search and Seizure

- (1) The application for the warrant of the second search and seizure (in the safety-deposit box of the plaintiff Association, and the residence of the plaintiff Sato) is legitimate for the same reason as 1, (1).

(2) The issue of the warrant of the second search and seizure is legitimate.

(3) Among the execution of warrant of the second search and seizure, seizure of certain title deeds, etc. (No.1 to 3, 5 to 24 and 27 to 32 in the table (2)) has no rational reasons in relation to the alleged case, and is illegitimate for the same reason as 1, (3).

Seizure of other items is legitimate. It could not be judged that this is the search and seizure on a charge of convenience.

3, Third Search and Seizure

(1) The application for the warrant of the third search and seizure (in the residence and the car of the plaintiff Sato) is legitimate for the same reason as 1, (1).

(2) The issue of the warrant of the third search and seizure is legitimate.

(3) Among the execution of warrant of the third search and seizure, seizure of the name cards of the plaintiff Sato with titles of officers of the Association, Satsuki Planning and Tetsudo Family (No.1, 2 and 4 in the table (4)) has no rational reasons in relation to the alleged case, and is illegitimate.

Seizure of other items is legitimate. It could not be judged that this is the search and seizure on a charge of convenience.

4, Request for Scrap of Copies of Seized Items

Not only does the plaintiff Sato have the right to privacy, but the plaintiff Association as a judicial person also has a kind of right derived from the personal rights. Therefore, on the basis of these rights, the plaintiffs can request the defendant Tokyo Metropolitan Government to scrap the copies of illegitimately seized items.

5, Request for Return of Unreturned Items Based on the Property Right

Because the items requested to return were seized through the procedure of the search and seizure, the request for return from the plaintiffs based on the property right is liable to dismissal.