

standards arising from the Osaka International Airport lawsuit still remain effective. In relation to the judgment of the present case, it can be expected that strong criticisms would be developed based on certain doctrines. In this regard, the aforementioned precedent is introduced as a judicial precedent that will form an important aspect of discussions on jurisprudence relating to the Code of Civil Procedure.

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2. Railway Accidents and the power of prosecution

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On April 25, 2005, an express train travelling on the West Japan Railway (JR West) Fukuchiyama Line derailed and overturned after failing to properly negotiate a curve in the railway, resulting in the tragic death of 106 passengers and injuring 493 people (the “accident”). Even though the direct cause of this accident was that the driver of the train, who was also killed in the accident, took a tight curve at an excessive speed, the public prosecutor indicted the most senior person responsible for safety measures with respect to JR West Japan’s railway operations (in this case, the safety director) for professional negligence resulting in death and injury under Article 211 of the Japanese Penal Code. The public prosecutor claimed that had there been an Automatic Train Stop (ATS) system on the curve, the fatal accident could have been prevented. The curve where the accident occurred was constructed with a reduced turning radius, and JR West was operating an increased number of trains on a revised timetable. Further, because there had already been an accident involving a freight train that derailed and overturned at the curve of another JR West-managed railway, the prosecutor claimed that the danger of the curve where the accident occurred had already been identified and therefore, the accused owed a duty of care to the victims of the accident to install the

ATS system. However, on January 11, 2012, the Kobe District Court rejected the prosecutor's claims and acquitted the defendant. Looking back on the accident, based on its reputation as Japan's representative railway company, JR West's standards at the time for the installation of the ATS system on the curve did not meet the required standards. However, before the accident, there were no policies or regulations requiring the installation of an ATS system on the curve. Furthermore, only some—but not all—railway companies had installed ATS systems on similar curves, and of the many curves along railways, the accused could not have recognized that the danger presented by the curve at the site of the accident was higher than at other curves. Accordingly, the district court held that the accused had not failed to exercise due care in carrying out his duties. After the judgment of the Kobe District Court, the prosecution abandoned its appeal, and the JR safety officer in charge was acquitted.

Incidentally, in this case, the public prosecutor indicted only one person, the safety director, and the prosecutor made a non-prosecution decision in relation to JR West's President and other relevant corporate directors and officers. However, in 2009, the older system—leaving the ultimate decision about the institution of prosecutions to the public prosecutor's discretion—was amended, and a “new restriction of discretionary prosecution by a public prosecutor” system was introduced. Under this new system, even if the office of the public prosecutor makes a non-prosecution decision, the suspect must be prosecuted where the Committee for the Inquest of Prosecution elected by citizens resolves on two occasions via a vote that the case should be prosecuted. An attorney designated by the court will then institute prosecutions; the case will then proceed to court. The policy behind this system is to make criminal prosecutions reflect public opinion.

Under this new system, three successive Presidents of JR West Japan were indicted under Article 211 of the Japanese Penal Code and prosecuted in accordance with the committee's decision. However, on October 27, 2013, the Kobe District Court acquitted these three officers (the designated attorney appealed this judgment, and this appeal is still pending.) The district court's judgments not only impressed on the Japanese society “the limits to pursuing the criminal liability of company officers,” but it also prompted a review of the new system; in most other

cases, district courts have acquitted the accused who were prosecuted under this new system.

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