

and Delaware's *Revlon* duty is that it is plaintiff who bears the burden of proof.

## 8. Labor Law/ Social Security Law

### X v.s. Kishiwada City

Osaka District Court, October 31, 2013

Case No. (*gyo-u*) 194 of 2009

1603,4 CHINGIN TO SHAKAIHOSHO 81

#### Summary:

In the case that the Welfare Officer in *Kishiwada* city dismissed five applications, which were made by a plaintiff who lived in this city with his wife, by reason of the possibility that a plaintiff and his wife were available for work, the court decided that (1) they had met the requirement on Art.4 of the Act and that (2) the Welfare Officers had never done sufficient investigation concerning their abilities, confirmation of their will, and thus the welfare officers had infringed the applicants' right for application.

#### Reference:

Article 4 of the Public Assistance Act, Article 1 (1) of the State Redress Act

#### Facts:

X (a plaintiff) has lived in Y (Kishiwada city) with W (the plaintiff's wife) since February 2008. Although X and W visited the Welfare Office in Y around June 2008 and held a consultation on Public Assistance (referred to hereafter as the "this consultation"), P (a staff member of the welfare office) did not only ask about matters such as their living conditions or job seeking conditions, but also confirmed whether their situation is living in poverty or not. While X and Y had filed applications for the commencement of the Public Assistance 5 times after this consultation; on June 24, July 7, September 5, October 23, December 24, the welfare officers rejected each application on the grounds that 'X and W have the

possibility to utilize their ability to work for maintaining a minimum standard of living.’ Then, X brought an action to the court, (1) requesting a rescission for the disposition that the welfare office in Y rejected the July 7<sup>th</sup> application (referred to hereafter as the “this rejection”) so that X and W fulfilled the requirements in Art. 4; ‘that a person who is in living in poverty shall utilize his/her … abilities … for maintaining a minimum standard of living’, and (2) claiming damages against Y concerning each of the five rejections by welfare officers and an offence that Y’s staff did not assist and led X to apply for the commencement of public assistance when X had visited the welfare office for this consultation.

**Opinion:**

*The court partly upheld claims.*

1. Whether or not a person fulfills the requirement in Art. 4 of utilizing his/her ability for work shall be decided that (a) whether or not a person has the ability to work, (b) if so, whether or not a person has an intention to utilize the ability, and (c) whether or not a person is able to gain a work practically for which he/she could utilize his/her own ability. In addition, as for the requirement (a), it should be examined not only whether an applicant has ability or not but also the degree of the ability, and thus considering several elements such as his/her age, health condition, life history, educational record, employment record and qualification. As for the requirement (b), if an intention of the applicant that he/she will make an effort to maintain a minimum standard of living has been acknowledged to the extent that it is needed for a standard person and based on the qualities and the levels of poverty of him/her, it should be perceived that he/she has an intention to utilize the ability. And as for the requirement (c), it should be decided according to whether the applicant could get a job opportunity in practice when once he/she puts in for one. The “job opportunity” means an opportunity where the applicant could be paid by an employer a certain amount or more and he/she would continue to be available for it.

In this case, the court could recognize as follows; though X had had the ability to work and an intention to utilize the ability, there had not been an opportunity to utilize his ability for work, so that X could not

work. Thus, X fulfilled the requirement of utilizing his ability for work; as for W because she had had an ability to work, an intention to utilize the ability, and in fact she had gotten a job opportunity, thus W also fulfilled the requirement of utilizing her ability for work. Therefore, this rejection, on the ground that X and W did not utilize their ability to work for maintaining a minimum standard of living, should be defined as an offence and must be rescinded, because Y misinterpreted the requirement of utilizing an ability to work under the Art. 4(1) in the Act.

2. Almost all people are genuinely living in poverty and need the Public Assistance seriously among visitors to the welfare office for consultation. For such people, it is necessary that third parties support them to apply for the commencement of public assistance because they may not have a correct knowledge on the requirements for and the way to apply for the public assistance. Accordingly, a public assistance administrator, in order not to remove one genuinely living in poverty from the Public Assistance, must pay sufficient attention to several matters, such as a consulter's behavior, health condition, and ask appropriate questions to him/her. And so, an administrator must grasp whether or not he/she needs the Public Assistance and whether or not he/she has an intention to apply for the commencement of the Assistance. If he/she has the intention, an administrator should be required as an obligation to assist his/her application procedure for the commencement.

Therefore, an administrator would have violated this obligation and accordingly the administrative agency to which a administrator belongs would be liable for damages based on the violation of the obligation in cases fulfilling the following conditions: that an administrator never confirmed an applicant's intention to receive the Assistance notwithstanding an administrator could have a grasp that an applicant had an intention to apply for the commencement of the Assistance through his/her behavior; and that an administrator could have guessed easily his/her intention if an administrator investigated his/her matters such as living conditions; so that it could be seen that a administrator infringed the applicant's right to an application.

The court could recognize that X and W had been in poverty and in a situation where they needed to receive the Public Assistance at the time of this consultation, and X had done this consultation toward Y's welfare office in such a situation, so that X might have had an intention to apply for the commencement of the Assistance. If only Y's officers had appropriately asked and investigated X and W's intention at the time of this consultation, X could have applied for the commencement of the Assistance. Thus, the reaction of Y's officers would be regarded as the infringement on the applicant's right to an application, and defined as an offence against the obligation of the welfare officers, or at least as negligence, concerning the Article 1 (1) of the State Redress Act.

3. In this case, these rejections have violated the provision of Art. 4(1) in the Act, and an action of Y, who is responsible for these rejections, had been defined not only as an offence concerning Art. 1 (1) of the State Redress Act but also as negligence, so that Y must be liable for mental and proprietary damages caused by the fact that X and W had no choice but to live under the conditions below the minimum standard of living.

**Editorial Note:**

The article 4 (1) states "Public assistance shall be provided based on a requirement that a person who is in living in poverty shall utilize his/her assets, abilities and every other thing available to him/her for maintaining a minimum standard of living." That a person utilizes his/her abilities in this provision is called "a requirement of utilizing his/her ability for work", and this case is able to be placed as a case contesting about this requirement. In opinion 1 cited above, the court suggested three elements of interpretation of the requirement; (a) whether or not a person has an ability to work, (b) if so, whether or not a person has an intention to utilize the ability, and practically, (c) whether or not a person is able to gain a work for which he/she could utilize his/her own ability. We could see such elements are mostly the same as in the past decisions (see the decision of Nagoya District Court on October 20, 1996, the decision of Tokyo District Court on August 8, 2011, the decision of Otsu District Court on March 6, 2012, the decision of Tokyo High Court on July 18, 2012).

Such elements are also used by administrative decision. Thus, the way of interpreting the requirement of the Art. 4 (1) has already been established as a case law.

However, there is a distinctive feature in this case, which is that the court suggested matters to be considered with details in each elements as follow; on the requirement (a), the degrees of a claimant's ability should be examined, and be decided by considering his/her concrete conditions. On the requirement (b), it should be examined, with respect to the claimant's concrete conditions, that he/she has an intention to utilize the ability. Lastly, on the requirement (c), it should be examined whether the applicant could get a job opportunity in practice once he/she puts in for one. All of such matters require public assistance administrators to seriously consider and appropriately grasp the concrete conditions of the applicant, so that it may greatly affect the work of an administrator on confirmation of the applicant's ability. In Japan recently, the number of people who are in living in poverty and receiving Public Assistance is increasing. Public assistance administrators should refrain from denying an application only by reason of a presumption he/she may be able to work. It is necessary both to appropriately grasp the condition of the applicant and to accomplish his/her independence while receiving the Public Assistance, in order to satisfy the purpose of the Public Assistance Act, "to guarantee a minimum standard of living as well as to promote self-support for all citizens who are in living in poverty. [Art.1]"

In opinion 2 it appears that public assistance administrators are obliged to confirm the consuler's intention to make an application, and if the administrator confirms his/her intention, the administrator would be obliged to assist and advise his/her application. The number of cases concerning violation of these administrative obligations and a claim against such a violation based on the State Redress Act has increased in recent years (e.g. Fukuoka District Court March 29, 2011, Saitama District Court February 20, 2013). There is a distinctive feature in this case, that is the court insists that violating administrative obligations to confirm, assist and advise may infringe the right of application, and accordingly the administrative agency would be liable for damages based on the violation of these obligations.

By revising the Public Assistance Act revised on November 2013,

when people would like to apply for the Public Assistance they are obliged to submit an application document that fulfills the requirements prescribed in article 24 (1). Because the court in this case correctly recognized that people in living in poverty might not have a correct knowledge of the requirements for and the way to apply for the Public Assistance, it is desirable that public assistance administrators would provide the Public Assistance appropriately for people in living in poverty. In this regard, this case would be a suggestive case of the way to provide the Public Assistance for people in need after the reversal of the Act in 2013.

## 9. International Law and Organizations

### **Case Concerning a Violation of the Japanese Act on the Punishment of and Measures against Piracy**

Tokyo High Court, December 18, 2013

Case No. (*u*) 578 of 2013

#### **Summary:**

The Tokyo High Court (THC) upheld the original decision of the Tokyo District Court (TDC) in which two Somali pirates were sentenced to ten years imprisonment with labour. In this case, the Act on the Punishment of and Measures against Piracy adopted in 2009 (The Piracy Act) is applied, and thereby universal adjudicative jurisdiction is exercised by the Japanese Courts for the first time ever.

#### **Reference:**

Act on the Punishment of and Measures against Piracy; United Nations Convention on the Law of the Sea (UNCLOS); International Covenant on Civil and Political Rights (ICCPR).

#### **Facts:**

The appellants (the accused) are two professedly Somali nationals