7. Social Security Law

X vs. *Oita* City
Supreme Court 2nd P.B., October 31, 2013
Case No. (*gyo-hi*) 45 of 2012
386 HANREI CHIHO JICHI 78

Summary:

Under the existing law in Japan, the alienage has never been subject to the application or the application Mutatis Mutandis of the Public Assistance Act, so that they do not have the right to receive any benefits from the Act.

Reference:

Article 1 & 2 of the Public Assistance Act

Facts:

1. X (female; an appellee of the final appeal, a plaintiff of the first instance, and an appellant of the second instance) is an alienage who has the status of permanent residence in Japan. X had run a restaurant with his husband P, who had Chinese citizenship and the status of permanent residence in Japan, since they married on October 5, 1954. However, after P resigned his work due to his illness around 1978, X had a livelihood by an income earned from P's rental properties etc. instead of running her restaurant. When P went into hospital for dementia around September 2006, R, who is P's younger brother, moved to X's house around April 2008, then X started to live with R. But X was robbed of P's passbook and seal which was to take out a deposit, and assaulted violently by R, so that she could not maintain her stable living.

2. On December 15, 2008, X filed applications with the Welfare Office in Y (an appealer of the final appeal, a defendant of the first instance, and

an appellee of the second instance) for the commencement of Public Assistance (referred to hereafter as the "this application"). In accordance with the investigation into P's passbook, however, the welfare officer rejected this application on December 22 (referred to hereafter as the "this rejection"), on the grounds that 'X and P have enough savings to maintain a minimum standard of living.'

3. Being dissatisfied with this rejection, X filed an appeal for examination against the Governor of Oita Prefecture on February 6, 2009. The Governor determined to dismiss the appeal on March 17, on the ground that this rejection did not follow the term as an "original administrative disposition", which is a condition for an appeal to be filed pursuant to the Administrative Complaint Review Act, because the right to benefit due to Public Assistance for alienage could not be guaranteed by the Public Assistance Act.

   Then, X brought an action to the court, requesting, as a main claim, (a) a rescission for the disposition that the welfare office in Y rejected this application, and (b) an order to commence providing of the Public Assistance. In addition, X brought (c) a mandamus action for the commencement of the Public Assistance subject to the minimum standard of living (as the first preliminary claim), and lastly, (d) an action for a declaratory judgment that X has a status eligible to receive the benefit pursuant to the Public Assistance Act (as a second preliminary claim).

4. The decision of the first instance (the decision of Oita District Court on October 18, 2010, Chingin To Shakaihosho No. 1542, p22) separated this application by X as two types of application: (A) the one "based on the Public Assistance Act," (referred to hereafter as "the application based on the Act"), and (B) the one as requesting an administrative voluntary assistance based on "the Notice" between government ministries and offices, named "the Administrative Measures for the Public Assistance for Alienage who is living in poverty," (This notice referred to hereafter simply as "the Notice." Such application referred to hereafter as "the application based on the Administrative Measures"). Then, as with (A), the decision dismissed with prejudice

her request for rescission for the disposition (A-a), and dismissed without prejudice for her mandamus action (A-b, c and d). As with (B), the decision also dismissed without prejudice her requests to rescind the disposition that the Welfare Office rejected "the application based on the administrative measures" (B-a) and to require the commencement of the Public Assistance (B-b).

5. By contrast with the first instance, the decision of the second instance (the decision of Fukuoka High Court on November 15, 2011, Hanrei Times No. 1377, p104) admitted that, making reference to the process such that the government had ratified the Convention relating to the Status of Refugees, the disposition (A-a) should be rescind. Y appealed against this decision.

Opinion:

The court quashed and decided.

1. "On the contrary to the old Public Assistance Act in which the scope being applicable to that Act was not discriminated whether a person requiring public assistance was a "citizen" or not, in article 1 & 2 of the current Act the scope being applicable to the Act would be restricted to "citizens." The term "citizens", as used in such articles about the scope applicable to the Act, means Japanese citizens, and such a term does not include alienage. After the current Public Assistance Act was enacted, neither the Act has been changed that the scope applicable to it extends to certain range of the alienage, nor have there been related legislations including the fact that the alienage could be applied mutatis mutandis pursuant to the Act up to the present date. Therefore, on the existing law in Japan containing the Act, there is no legal basis that the Act should be applied, or applied Mutatis Mutandis, to the alienage.

2. "Because the Notice is a notification between administrative agencies, even if the relief, in fact, has been conducted as the administrative voluntary measure based upon the Notice, we could not interpret that the Act would became applied, or applied Mutatis Mutandis, to certain range of the alienage unless the government legislated such a revision

of the articles 1 & 2 of the Act." And "even if we make reference to the process that the government had ratified the Convention relating to the Status of Refugees, we could not interpret that the alienage could be covered the scope of the relief under the Act on the grounds of the Notice. In addition, it is clear, literally, that the Notice is premised that the Act was not applying to the alienage living in poverty and they are not subject to the Act, and is set that the welfare office should relief the alienage as a de facto administrative measure, according with same process as decisions about and implementation of public assistance to Japanese citizens under the Act."

3. "Therefore, while the alienage can be continued as de facto subject to relief by the administrative measures based upon the Notice, they cannot be the subject based on the Act, so that they cannot have the right to receive any benefits from the Act. Accordingly, this rejection is lawful on the ground that it is an application from a person who does not have the right to receive any benefits from the Act"

Editorial Note:

1. The judgment showed here (referred to hereafter as "this judgment") is the first decision of the Supreme Court indicating that the "alienage" could not be subject to application of the Public Assistance Act. Though in the Act itself, the alienage are not explicitly excluded, then administrative practices have treated them as the subject to be applied Mutatis Mutandis according to the Notice, and have interpreted that the Act itself would not apply to them. Notwithstanding such a practice, the decision of the second instance decided that the alienage who has a status of permanent residence in Japan could have the Act itself applied to them. This judgment quashed such a decision.

As for whether or not the Act is applicable, the Supreme Court previous ruling (Supreme Court 3nd P.B., September 25, 2001) already indicated that the "overstayers" among alienage, which means "a person who has stayed in Japan beyond the period of stay authorized without obtaining an extension or change thereof" on the definition of the court, would not have the Act applied to them. The ruling of this case, however, restricted the scope being the Act applied only to "overstayers," so that

there has never been an existing law concerning all the "alienage," including the alienage who has a status of permanent residence in Japan like X.

It needs close attention for us that the judgment indicated only about the application concerning (A) as shown above Para. 4 in the Facts: whether or not the alienage has eligibility to receive benefit "based on the Act," so that not about the application concerning (B): "based on the administrative measures."

2. The old Public Assistance Act (Act No. 17 of 1946), which was enacted soon after World War Ⅱ was over, provided only the unilateral duty of the state to support a person who needs any assistance, did not allow the right to apply for assistance under the Act and retained the ineligibility rules for recipients. On the contrary, the current Public Assistance Act allows the right to apply for Public Assistance for all "citizens" by renewing such matters under the old Act.

However, as article 1 of the old Act stated "the purpose of this Act is for the State to protect the livelihood of *persons* who need assistance without treating them discriminately or preferentially, …" the old Act adopted the principle to treat equally Japanese and alienage. On the other hand, article 1 of the current Act stated "The purpose of this Act is for the State to guarantee a minimum standard of living… for *all citizens* who are in living in poverty by providing the necessary public assistance," the article 2 also stated "*All citizens* may receive public assistance under this Act… in a nondiscriminatory and equal manner …." The Commentary (Shinjiro Koyama, *The Interpretation and Administration of the Public Assistance Act* [*revised edition*], Japan National Council of National Welfare, 2004) written by the legislator explained about the interpretation of "citizens" in these articles, "the Act restricts its scope to Japanese citizens" and the term "citizens…means a person who could meet requirement prescribed in the Nationality Act (based on article 10 of the Constitution of Japan)."

This judgment in opinion 1 interpreted faithfully the language of the current Act on the grounds of such a transition. In addition, this judgment adduced the following reasons: no reforms have been made and there have not yet been related legislations containing the fact that a certain range of the alienage could be applied Mutatis Mutandis pursuant to the Act. We

cannot but accept the reasoning of this judgment because of the transition between the old Act and the current one.

3. This judgment in opinion 2 indicated the legal nature of the Notice. It is surely a notification, as the judgment said, known as a "Tsu-tatsu" which is a method for communication between administrative agencies, so that does not have a legal effect itself. Rather, it has only played a role as a kind of rule of payment actually. Therefore, we could not conclude that the alienage would have the Act applied or applied Mutatis Mutandis by relying on the Notice. It is appropriate that, as well as the interpretation concerning the Notice, even if the government had ratified the Convention relating to the Status of Refugees, the judgment could not understand "that the alienage could be covered the scope of the relief under the Act by the notice."

4. We, however, should pay attention that the judgment mentioned only the point whether or not the alienage has the right to receive any benefit "*based on the Act.*" The point concerning whether or not they have right to receive it "*based on the administrative measure*" was not subject of the judgment, so that it would be open to argue in sequence. On this point, the decision of the first instance suggested that a character of legal relationship between an alien applicant and an administrative agency in the case of administrative measure would be "a contract of gift." So, if an administrative agency has rejected an application from an applicant such a contract would not been concluded and no legal entitlement to apply for any benefit would be originated. Thus, when the alienage has their application rejected, even if there has been any defect in the administrative process, they could never redress such a defect. Considering such risks, it is reasonable to reexamine the existing practice that the public assistance for the alienage has been conducted not as a treatment based on the Act, but as based on the administrative measure.