

2. Administrative Law

X et al. v. Osaka Prefectural Government

Supreme Court 3rd P.B., September 8, 2015

Case No. (*Gyo-Hi*) 406 of 2014

69 (6) MINSHU 1607, 1420 HANREI TAIMUZU 75

Summary:

Art. 18 (1) of the Atomic Bomb Survivors' Assistance Act, which provides for the payment of medical expenses for general diseases, is also applicable to overseas atomic bomb survivors (atomic bomb survivors prescribed in Art. 1 of the said Act who do not have a place of residence or current residence in Japan) who received medical care outside Japan.

Reference:

Atomic Bomb Survivors' Assistance Act, Art. 1 and Art. 18 (1)

Facts:

Three atomic bomb survivors, who were exposed to radiation during the atomic bombing in Hiroshima, obtained atomic bomb survivors certificates under the provision of the Atomic Bomb Survivors' Assistance Act. They applied for the payment of the medical expenses for general diseases in pursuant of Art. 18 (1) of the Act, related to the medical care they received in the Republic of Korea, which was their place of residence. The Governor of Osaka Prefecture rejected these applications on the ground that Art. 18 (1) was not applicable for the overseas atomic bomb survivors whose place of residence or current residence was not in Japan.

An atomic bomb survivor and the heirs of other two atomic bomb survivors filed a lawsuit against the Osaka Prefectural Government seeking revocation of the dispositions to dismiss the applications and payment of compensation for emotional distress. Osaka District Court dismissed the claim for the compensation but revoked the dispositions to dismiss the applications for such dispositions were illegal. Osaka High

Court affirmed the judgement, and the Osaka Prefectural Government filed a final appeal to the Supreme Court.

Opinion:

The final appeal is *dismissed*.

Concerning the reasons for the final appeal argued by the representatives designated for final appeal

1. With regard to the three atomic bomb survivors who were exposed to radiation from the atomic bomb dropped in Hiroshima and who received atomic bomb survivor's certificates under the Atomic Bomb Survivors' Assistance Act, applications for payment of medical expenses for general diseases prescribed in Art. 18 (1) of the said Act were filed in relation to the medical care that they had received in the Republic of Korea, their country of residence. However, the Governor of Osaka Prefecture made dispositions to dismiss the applications on the grounds that the provisions of the said paragraph are not applicable to overseas atomic bomb survivors (meaning atomic bomb survivors prescribed in Art. 1 of the said Act who do not have a place of residence or current residence in Japan; the same applies hereinafter) (these dispositions are hereinafter referred to as the "Dispositions to Dismiss the Applications"). Accordingly, the appellees of final appeal (an atomic bomb survivor and the heirs of the other atomic bomb survivors), filed this action against the appellant to seek revocation of the Dispositions to Dismiss the Applications, etc.

2. (1) The Atomic Bomb Survivors' Assistance Act provides for assistance to atomic bomb survivors for the purpose of giving relief to them, while taking into account the extraordinary and serious nature of health damage caused by radiation from an atomic bomb and focusing on uncommon health conditions faced by atomic bomb survivors (see the Preface of the said Act, and (Gyo-Tsu) No. 98 of 1975, judgment of the 1st P.B. of the Supreme Court of March 30, 1978, 32 (2) MINSHU 435), and it does not distinguish atomic bomb survivors depending on whether or not they have a place of residence or current residence in Japan, but includes all of them in the scope of persons eligible for assistance. Accordingly, those who do

not have a place of residence or current residence in Japan would be recognized as atomic bomb survivors as long as they fall within any of the categories provided in the items of Art. 1 of the said Act and obtain an atomic bomb survivor's certificate. Art. 18 (1) of the said Act, which provides for the payment of medical expenses for general diseases, only stipulates that atomic bomb survivors are eligible to receive payment, and does not require atomic bomb survivors to have a place of residence or current residence in Japan or to have received medical care in Japan, as a condition for receiving payment. Furthermore, the said paragraph provides for the payment of medical expenses for general diseases to an atomic bomb survivor who received medical care from a person other than a medical institution designated by a prefectural governor pursuant to the provisions of Art. 19 (1) of the said Act (hereinafter referred to as a "medical institution for general diseases"). In this respect, there is no provision that limits such person other than a medical institution for general diseases as prescribed in Article 18 (1) of the said Act to a person who practices medicine in Japan. It is considered that overseas atomic bomb survivors would normally face considerable difficulty in traveling to Japan to receive medical care. If overseas atomic bomb survivors were unable to receive any payment of medical expenses for general diseases when they received medical care outside Japan, it must be said that such a situation would be contrary to the spirit of the said Act, which provides for assistance to atomic bomb survivors for the purpose of giving relief to them while focusing on their uncommon health conditions.

(2) The representatives designated for final appeal argue as follows. The Atomic Bomb Survivors' Assistance Act provides for the payment of medical expenses for general diseases, on the premise of various regulations for securing safety in medical care, such as those under the Medical Care Act. In order to ensure proper payment of medical expenses for general diseases, the Atomic Bomb Survivors' Assistance Act provides that a person other than a medical institution for general diseases may be subject to orders issued by the Minister of Health, Labour and Welfare to make reports on medical care and submit medical records (Art. 21 and Art. 17 (3) of the Atomic Bomb Survivors' Assistance Act). These regulations are not applicable to a person who practices medicine outside

Japan, and hence such a person other than a medical institution for general diseases as prescribed in Art. 18 (1) of the said Act should be considered to be also limited to a person who practices medicine in Japan. However, in light of the provisions of the said paragraph as explained in (1) above and the spirit of the said Act, if one takes this interpretation even in the absence of a provision that excludes overseas atomic bomb survivors who received medical care outside Japan from the scope of application of the provisions of the said paragraph, only because of the fact that the abovementioned regulations are not applicable to a person who practices medicine outside Japan, such an attitude should be held to be contrary to the spirit of the said Act and should therefore be judged to be inappropriate. The arguments of the representatives designated for final appeal cannot be accepted.

Art. 18 (1) of the Atomic Bomb Survivors' Assistance Act provides that medical expenses for general diseases are, in principle, paid to atomic bomb survivors who received medical care from medical institutions for general diseases, and that those who received medical care from persons other than medical institutions for general diseases are eligible to receive such payment on condition that they received medical care from such other persons due to an emergency or any other compelling reason. When there is no medical institution for general diseases in the vicinity of an atomic bomb survivor's place of residence or current residence and therefore the atomic bomb survivor needs to receive medical care from a person other than a medical institution for general diseases that is available nearby, such an atomic bomb survivor is considered to meet the abovementioned condition. The same interpretation should also be held to be valid when overseas atomic bomb survivors received medical care outside Japan.

(3) According to the above, it is appropriate to construe that the provisions of Art. 18 (1) of the Atomic Bomb Survivors' Assistance Act are also applicable to overseas atomic bomb survivors who received medical care outside Japan. Consequently, the Dispositions to Dismiss the Applications are illegal, because they were made on the grounds that the provisions of the said paragraph are not applicable at all in this case,

without determining whether or not overseas atomic bomb survivors who received medical care outside Japan meet the condition prescribed in the said paragraph.

3. For the reasons stated above, the determination of the court of prior instance that upheld the appellees' claims to seek revocation of the Dispositions to Dismiss the Applications due to the illegality of these dispositions can be affirmed. The arguments of the representatives designated for final appeal cannot be accepted.

Therefore, the judgment has been rendered in the form of the main text by the unanimous consent of the Justices.

Editorial Note:

The Atomic Bomb Survivors' Assistance Act stipulates provision of medical treatment and various benefits to survivors of atomic bombs in Hiroshima and Nagasaki. The Act defines those who stayed in Hiroshima city, Nagasaki city or the surrounding area designated in a cabinet order as 'atomic bomb survivors' (Art. 1), and they are provided with an atomic bomb survivor's certificate (Art. 2). All atomic bomb survivors are provided with a bi-annual health check (Art. 7) and payment of medical expenses for general diseases (Art. 18). Health management allowance is also provided for those who suffer from a disease or condition that involves eleven types of dysfunction (Art. 27). Furthermore, if an atomic bomb survivor is certified by the Minister of Health, Labour and Welfare as sufferer of a disease or injury that was caused by the radiation of the atomic bomb, and who are still in need of medical treatments, he or she will be provided medical treatment by the State (Art. 10) and a special medical care allowance (Art. 24) etc. This certification of causation between the radiation of the atomic bomb and a disease or injury is generally called a 'certification of atomic bomb disease.' Many lawsuits have been filed by the atomic bomb survivors to challenge the Minister's decision not to certify the causation, and many judgements have been made in favor of the atomic bomb survivors.

Expansion of the application of the Act and its predecessor, the Act on Medical Treatment etc. of the Atomic Bomb Survivors, to foreigners and

those who live outside Japan had been under challenge in some lawsuits. The judgment of the Supreme Court of March 30, 1978 (32 (2) MINSHU 435) decided that those who entered Japan illegally and were present in Japan were entitled to the benefits under the Act on Medical Treatment etc. of the Atomic Bomb Survivors. Also, the judgement of the Supreme Court of November 1, 2007 (61 (8) MINSHU 2733) declared that the Ministry's interpretation that the right to receive health management allowance was lost when an atomic bomb survivor left Japan was illegal.

After these judgements, the Ministry of Health, Labour and Welfare had been providing allowances but denied payment of medical expenses. The legality of such a denial was the issue of this case.

This judgement found that foreign atomic bomb survivors are entitled to the payment of medical expenses of general diseases for two reasons. One is the textual interpretation, which is that Art. 18 of the Act does not require an atomic bomb survivor to have residence in Japan or to be present in Japan to be entitled to the payment of medical expenses for general diseases. Second is a teleological interpretation, that the denial of payment of medical expenses for general diseases if one gets medical treatment outside Japan would be contrary to the objective of the Act to provide assistance to atomic bomb survivors for the purpose of giving relief to them while focusing on their uncommon health conditions.

After the judgement, the Ministry revised its Ministry order for the Act to designate the place to submit the application, in order to enable the payment of the medical expenses of general diseases.

3. Family Law

Xs v. Japan

Supreme Court G.B., December 16, 2015

Case No. (O) 1023 of 2014

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Summary:

Article 750 of the Civil Code does not violate Articles 13, 14, paragraph