

Hanrei Jiho (Ryo Kan-ei) Case, Japan: High Courts, 6 December 1982

[Summary of Facts]

The accused entered into Japan in December 1977 with a tourist visa from Taiwan. After that time he stayed illegally in Japan in excess of the period of stay described on his passport (violation of Article 7, item 5 of the Immigration-Control Act), and he failed to effect alien registration which is required under Japanese law (violation of Article 18, paragraph 1, item 1 and Article 3, paragraph 1).

The Tokyo District Court, the lower court, recognized said two facts of violation of the law and declared the accused guilty. The accused appealed to the Tokyo High Court. Concerning residency and nationality of the accused, the High Court recognized the following facts:

- (1) The accused was born with a father who was a Chinese merchant abroad and a mother of Vietnamese nationality, and lived in Laos with his family until approximately February, 1975.
- (2) During his stay in Japan which began on February 18, 1975, the accused became unable to return to Laos due to war in that region.
- (3) The accused was forced to leave Japan on August 19, 1975 and went to Taiwan where the father and other family members, except the mother, had already escaped to from Laos via Thailand.
- (4) Since his entrance into Taiwan, as described in the proceeding paragraph (3), the accused lived in Taiwan for two years with his father and other family members and worked at jobs such as bellboy at a hotel.
- (5) On March 3, 1976, he voluntarily became nationalized and acquired Chinese nationality (Taiwan), and this act was recorded in the same family register as his father which was already made in Taiwan.
- (6) When the accused entered into Japan in November, 1977, he was provided with a new passport as a Chinese national (Taiwan) in the name of Ryo Kan-ei by the Chinese government (Taiwan) in accordance with due procedure.

In addition to the above, the court recognized that the purpose and incentive for the accused having entered Japan were to avoid conscription into the army and to help his family by working in Japan where a higher income could be achieved. In Taiwan, all nationals are drafted at the age of 18 as a responsibility of being a Chinese national and it was difficult to get an appropriate job without performing said obligation.

The attorneys alleged as the basic facts that the accused is an Indochina refugee and also a so-called "Treaties Refugee" described in the Convention relating to the Status of Refugees (hereinafter referred to as the "Refugees Treaties") and Protocol relating the Status of Refugees (hereinafter referred to as the "Protocol"). Based on such basic facts, the attorneys

further alleged that the accused is not guilty or that the penalty is unduly severe due to reasons as follows:

(1) The establishment of this case by the prosecutor violates the basic policy of the Japanese government to protect Indochina refugees, the spirit of the Refugee Treaties, and Article 7 of the International Covenant on Civil and Political Rights which prohibits immoral treatment or penalty. Accordingly, it was necessary for the prosecutor to be lenient and to not establish the case. This is, to establish this case was an abuse of the right to establish a case.

(2)

(i) Article 18, paragraph 1, item 1 and Article 3, paragraph 1, of Alien's Registration Law (foreigner's obligation to register) violates Article 14 of the Japanese Constitution (this article provides for equality under law) and Article 2 and 26 of the International Corenant on Civil and political Rights which provide for the principle of equality of foreign and native people.

(ii) It violates Article 31, paragraph 1 of the Refugee Treaties to punish the accused who is a refugee as specified in the Refugee Treaties based on an illegal stay in Japan (Article 70, item 5 of the Immigration Control Act).

(iii) The accused is an Indochina refugee and his respective violations of the law are very minor in their number and substance. Furthermore, in view of the Japanese government's basic policy, the spirit of the Refugee Treaties and the fact that the treaties became effective in Japan as of January 1, 1982 illegality normally subject to punishment was eliminated in this case.

(3) Because Japan joined the Refugee Treaties and the protocol, the Immigration Control Act was reformed to the Immigration Control and Refugee-Recognition Act and was enforced as of January 1, 1982 under Article 70-2 of said Act the refugee who committed the crime stipulated in Article 75-5 (same as Article 70, item 5 of the former Immigration Control Act) was released from punishment. Accordingly, the original sentence against the accused who is a refugee must be overruled and release from the punishment must be declared.

(4) The accused has maintained the nature of a refugee. In January 1978 when the accused was required to take steps under relevant laws, the Indochina refugees were deported by the Japanese government. Accordingly, illegal stay and failure to register by the accused were unavoidable and it was absolutely impossible to expect the accused to comply with relevant laws.

[SUMMARY OF JUDGEMENT]

It may be correct that the accused was a refugee in substance in the context that during his stay in Japan as described above the accused became unable to return to Laos due to war there. However, it is clear that the accused required Chinese nationality (Taiwan) and he resided there on a continuous basis and enjoyed the country's protection. Accordingly, based on the spirit of Article 1, paragraph C of the Refugee Treaties, the accused had lost the nature of refugee as described in said provision; at least, it was lost at the latest by the time of his last entrance into Japan. Therefore the judgement of the lower court is confirmed.

Accordingly, all contentions based on the assumption that the accused is a Indochina refugee and that he is a Treaty Refugee are not supportable. Also, concerning all other contentions, no misinterpretation of law, misapplication of law or incorrect recognition of fact are recognized by the higher court with regard to the lower court's decision.