

A Normative Analysis on § 3-9 of Japanese Code of Civil Procedure (summary)

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Article 3-9, which is newly enacted by the Act on the Partial Revision of the Code of Civil Procedure and Civil Provisional Remedies Act (Act No. 36 of May 2, 2011), is said to be modified the doctrine of the “peculiar circumstances of a case” that is formed by the judicial precedents before the revision. Then, by comparing the previous and subsequent judgments, the interpretation of Article 3-9 was tried, and the following three conclusions were obtained.

1. Two factors, namely the circumstances that would be “inequitable to either party” or the circumstances that would “prevent a fair and speedy trial”, are provided in Article 3-9. In judgments rendered prior to the revision, the courts denied the jurisdiction in view of the “particular circumstances of a case”. In these cases, the courts upheld the “particular circumstances of a case” on the grounds that it violated the inequity of the parties and fair and speedy trial. Hence it seems that the “particular circumstances of a case” were based on a single factor, namely the inequity of the parties and fair and speedy trial. In contrast to this, there are a few judgments post-revision that the courts approved the “special circumstances” on the either factor of the inequity of the parties or fair and speedy trial. Consequently, it seems in these judgments the factors of “special circumstances” were separated.
2. In judgments rendered prior to the revision, where jurisdiction was upheld on the basis of the defendant’s domicile or the principal business place, the courts did not approve the “particular circumstances of a case”. On the other hand, in judgments post-revision, the courts approved the “special circumstances” on the case which the jurisdiction was upheld on the bases of the domicile of defendant or principal business place.
3. In judgments rendered prior to the revision, the “particular circumstances of a case” were a factor against the maintenance of jurisdiction. Therefore, if the “particular circumstances of a case” existed, the case was dismissed not because of its existence, but because jurisdiction was denied. Compared to this, there are some judgments post-revision, if the “special circumstances” were approved, the courts rejected the

case only because of its existence.