

Judgments of the Supreme Court of Korea for Korean Wartime Forced Laborers and Private International Law (summary)

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In October 2018, the Supreme Court of Korea ordered the Japanese company Nippon Steel Co., to pay four Korean men ₩ 100 million each as compensation for damages due to forced labor during World War II. In the next month, the Supreme Court ordered another Japanese company, Mitsubishi Heavy Industries, to provide compensation for the same kind of damages. These are called “Cho-yo-ko [forced laborers] Judgments” in Japan.

In the case of Nippon Steel Co., two Korean men among the plaintiffs originally brought a case in Japan against the company and the Japanese government, but it was dismissed. After that, the plaintiffs, whom other Korean men had joined, brought a case against Nippon Steel Co. in Korea. The trial court and appellate court decided against the plaintiffs on the grounds that the Japanese judgment should be recognized under the Korean Civil Procedure Act, and that the defendant was not the same legal entity as the company, where the plaintiffs were forced to work during World War II.

In 2012, the Supreme Court of Korea overturned the lower court’s decision. First, the Supreme Court refused to recognize the Japanese judgments on the grounds that the recognition would be against the *order public* of Korea based on the legal system of the Korean Constitution. Second, it denied to apply Japanese law as the personal law of corporations because of the *order public* of Korea. In the Japanese judgements, the old company and the defendant were decided to be separate legal entities under Japanese law. The Supreme Court of Korea held that they constituted the same legal entity applying Korean law. Third, the Supreme Court reasoned that the issue of individual claims arising out of tortious acts by the Japanese side had not been covered by the 1965 Claims Settlement Agreement between Korea and Japan. Finally, the Supreme Court said that the defendant’s recourse to a prescriptive period constituted abuse of rights.

In 2018, the Supreme Court of Korea confirmed the judgment of the Seoul High Court, to which the case had been remanded, and admitted the defendant to be liable for damages. The 2018 decision clarified that the plaintiffs demanded the indemnification for

victims of forced labor, not the claim for unpaid wages or compensation. The Supreme Court suggested that the decision should be based on the legal system of the Korean Constitution, which the 2012 decision had mentioned.