EXECUTION OF NON-MONEY JUDGMENTS
AND MEANS OF ENFORCEMENT IN JAPAN

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I. Introduction

Traditionally, suits for the recovery of possession of the premises have been the main field in which the execution of non-money judgments are employed. From the current number of such cases there seems to be no change in this tendency. From the viewpoint of social concern, however, the focus of interest is shifting from the traditional area to such new areas as environmental protection, sex discrimination, and disputes with administrative bodies. Many new legal problems have arisen in these areas. For example it is not uncommon for the plaintiff in an environmental protection case to have difficulty in specifying his or her demand because it is not easy for him or her to know what of the defendant's actions are causing the infringement on the environment. Again in the stage of enforcing the judgment, the plaintiff is sometimes hard-pressed to decide upon the most appropriate means to realize his or her claim as recognized in the judgment.

In the discrimination cases, it is usual for the court, when being petitioned for relief against an alleged discriminatory rejection of a labor contract, to declare the invalidity of the rejection or recognize the plaintiff's status as an employee. However, it has also been common for an employer to disregard such a declaratory judgment with the excuse that the judgment only declares the validity or invalidity of the employee's status, but does not include any specific order to the defendant.

With respect to the statutory resource of the execution proceedings, the Act of 1979 made a radical change to the previous Code. But even in this revision, the legislature mainly focused on the problems in the execution of money judgments. As a result, there still remain a lot of problems left to case law. In order to show how the case law has been and will be developing, in Chapter II I have chosen three cases belonging to different areas. Then in Chapter III, I shall cover specific problems raised in the first case as how to enforce a judgment requiring defendant to abstain from doing something which infringes the environment. The problems include in the second case will be analyzed in Chapter IV. The crux of these problems is the enforceability of the declaratory relief, for which Japanese law has no concept of contempt of court.

In the last Chapter, I will discuss the problems regarding the enforcement of the judg-

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* I wish to thank Mr. Randal Nagatani for his editorial help. This paper was submitted to the 12th International Congress of Comparative Law in September 1985.

* The translation of the statutory sources including Civil Execution Act in 1979 is cited from Z. Kitagawa, Doing Business in Japan (Statute vol. 1980).
ment against administrative bodies. As shown in the third case selected, administrative bodies sometimes disregard judgments against them. And in addition to this problem, the final judgment is often too late for protecting the plaintiff’s interest. It becomes important, therefore, to determine the most appropriate type of relief in light of the fact that there is some danger that an administrative body may disregard a judgment.

II. Three Cases Representing Difficulty of Enforcement

(1) Nagoya Shinkansen Case. In this case plaintiffs, who are residents near the Shinkansen (bullet train) railway, filed lawsuits seeking three types of relief: first an injunction restraining the defendant (Japan National Railway) from the noise caused by its trains running beyond certain levels, second, damages for past injuries, and third, damages for potential future harm to plaintiffs. With respect to the injunctive relief, the defendant disputed the plaintiffs' allegation as follows: the plaintiffs' demand is not specified, because there can be various ways of preventing the noise intrusion on the plaintiffs' premises. For example, such means can be considered as lowering the speed of the bullet train, installing facilities surrounding the railway, or improving the plaintiffs' houses for sound proofing. It is not evident from the plaintiffs' allegation what kinds of the defendant's actions are required among such possibilities. Therefore, the plaintiffs' demand is not specified. And insofar as the specification is insufficient, the judgment cannot be enforced by the execution organ.

The Nagoya District Court held on this issue as follows: it required of the plaintiffs to specify the defendant's action which should be prohibited by the court in enforcing the judgment. The degree of the specification should be determined vis-a-vis what kinds of means are available for the enforcement of the judgment. Insofar as the plaintiffs were intending to enforce the judgment by ordering the defendant to take some specific action in order to realize the purpose of the injunctive relief, they were required to specify each action in the lawsuit. In cases where the plaintiffs expect the judgment executed by means of the astreintes, there is no necessity for such strict specification. In such case, it is enough for the plaintiffs to specify the defendant's action as being prohibited, regardless of the means which would be available for preventing the harm alleged.

As discussed later, this holding has been highly raised, on the one hand, because the plaintiff need not specify the defendant's action strictly. The reason for the approval ac-
corded this decision is that, in fact, a plaintiff sometimes faces difficulty in specifying the defendant's action, because he or she does not know exactly the process of the defendant's action which has caused damage to the plaintiff. There is also criticism to the holding, on the other hand, to the effect that the plaintiff with the judgment, which can be enforced only through the astrentes, cannot resort to other means of the execution, even if they are more effective.

(2) Nissan Automobile case. This is a case concerning the sex discrimination. A plaintiff in this case, a female factory worker, was required to retire by her employer on account of the labor contract, which provides that for male employees the retirement age is 55 years old and for female employees the retirement age is 50 years old. In her petition the plaintiff demanded the court to declare the validity of the employer-employee relationship between her and the defendant. The Tokyo District Court accepted the plaintiff's allegation and declared the validity of her employment status. It thus remains a problem whether her status as an employee can be reinstated upon this judgment or not. It is common belief that such a declaratory decision, may it be a final judgment or an interlocutory decision, is not considered as a title upon which a plaintiff can file a petition for its execution, because this kind of judgment, with the court's authority, only confirms the validity or invalidity of a certain legal relationship, but does not include any court's order to the defendant to do anything for the plaintiff. Employing such understanding as a background it has been not uncommon that an employer will disregard such a judgment, with the result that people will regard the judgment as being ineffective.

(3) Cases concerning the denial of issuing a passport. In this part I will not deal with any specific case, but analyze some cases concerning an administrative agency's denial to issue a passport to a person. Upon the Ryokenho (Passport Act) section 13(5), the Foreign Minister may refuse to issue a passport to such person whom he deems has done acts against the public interest or public safety. Basing upon this provision, the Foreign Minister has repeatedly denied an application for the passport on account of the jeopardy to the public interest or public safety. There is no doubt, in such cases, the applicant may file a lawsuit seeking the court to discard the Foreign Minister's order of denial. Even assuming this standing, however, there is another problem posed by this kind of cases. For the plaintiff it is necessary that the passport will be issued at the latest until his scheduled date of travel. The problems for the plaintiff are in two parts: first, whether the defendant will be obligated to issue the passport or not when the judgment for the plaintiff will be

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4 In Japan there are two ways of relief for the employee discharged. When he alleges that the discharge was made on account of his activity in the labor union, he may file a petition for relief to the Labor Relation Board. When he alleges the invalidity of the discharge on other reasons, he may file a petition to the court.

5 698 Hanrei Jiho 36 (1973). The decision was upheld by the Tokyo Court of Appeal, see 918 Hanrei Jiho 24 (1979). It is the reason of the court's decision that the contract violates section 14 of the Constitution, which provides equality under the law; therefore, the contract should be deemed invalid as a result of the application of section 90 of the Civil Code, which reads that: "A contract whose object is contrary to the public order or good morals is null and void."


7 162 Hanrei Jiho 6 (Supreme Court 1958), 569 Hanrei Jiho 32 (Supreme Court 1969).

8 The same problem may happen with respect to the permission for holding political demonstrations issued by the police agency.
entered, and second, if the final judgment will be too late, whether the plaintiff may file a petition for an interlocutory order or not.

In the Gyoseijiken-Sosyoho (Act Providing Special Procedures for Administrative Cases) there are provisions concerning the actions to discard the order of an administrative agency or declaring its invalidity. Nevertheless there is no provision allowing the action obligating the agency to take certain action for the plaintiff. Also, with respect to the interlocutory order, the Act provides such order to stay the effect of the agency's decision, but says nothing about directing the agency to take the action. Therefore, in order to protect the interest of the plaintiff in this kind of case both problems stated above have to be considered.

III. Enforcement of Obligation-Duty for Forbearance

The obligations other than money payments can be categorized into two groups: the obligation-duty whose subject is defendant's performance (hereinafter, performance-obligation), and the obligation-duty whose subject is defendant's forbearance (hereinafter, forbearance-obligation). First of all I will illustrate the basic procedure in which these two kinds of obligations are enforced.

(1) Procedure to enforce obligation duties. Under the Civil Code and the Civil Execution Act there are two means to enforce both a performance-obligation and a forbearance-obligation. The first method authorizes the obligee to file an application to arrange for the obligation to be done by a third person at the expense of the obligor. Under the second method, the court orders the obligor, who does not obey the judgment voluntarily, to pay a certain amount of money deemed reasonable in order to secure the performance. In this paper, I call the first the authorizing order, and the second the astrentes.

The obligation-duty categorized vis-a-vis the means of the enforcement of performance-obligations can be divided into three groups: (a) Obligations not enforceable on account of their character. An example of such obligations, is the obligation of a married couple to live together. (b) Obligations enforceable by means of the authorizing order. Obligations falling into this category can be carried out not only by the obligor but also by third persons. In other words the obligation must be capable to performance by other than the obligor. (c) Obligations enforceable by means of the astrentes. Unless the obligor is substitutable, the plaintiff cannot employ the means of the authorizing order; in such cases, he may resort to the astrentes.

With respect to the forbearance-obligations they are fundamentally enforceable by means of (a) the astrentes. In addition, the Civil Code permits two ways of execution: (b) The authorizing order to remove the consequence created as a result of obligor's non-compliance with the judgment ordering the forbearance. For example, a plaintiff may petition for the authorizing order to remove a building, which was built in violation of the judgment ordering the defendant not to build anything on the premises. (c) The reasonable precautionary steps against repetition. For example, if there still remains the danger of the

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9 Section 8 and 36.
10 Section 25.
11 Section 414 of Civil Code, and Section 171 and 172 of Civil Execution Act.
defendant's violation in the future, in the case stated above, the plaintiff may petition for such precautionary measures as erecting a wall or barrier to prevent the defendant from re-commencing building on the premises.

(2) Relationship between the Nagoya Shinkansen case and the means of execution. As explained in chapter II, the court in this case held that the plaintiff need not strictly specify his demand insofar as he is expecting the enforcement by way of the astrentes. Japanese legal scholars have raised two issues with respect to two issues have been raised by this holding. The first is as to the degree of the specification required. Even though strict specification is not necessary, some specification is indispensable. Otherwise it is impossible for the defendant to know what kind of action is prohibited by the judgment in order to protect himself from the sanction of the astrentes. Also, the execution organ, itself, cannot determine whether the defendant has met his obligation unless the plaintiff's demand is specified. In light of such necessity the crux of the issue becomes the criteria which should be employed in determining an acceptable degree of specification. For this purpose, two criteria can be considered. The first focuses on defendant's specific action relating the consequence which is disrupting the environment. As an example in the Nagoya Shinkansen case, under such a criterion the plaintiff has to allege with specificity how the noise was created by running the train, or to what extent the speed of the train is related to the degree of the noise. As stated earlier, for the plaintiff who is in difficulty position to know the inside of the defendant's operation, this kind of specification imposes a great hardship upon plaintiff to successfully maintain the lawsuit.\(^\text{12}\)

Under the second criterion the plaintiff may allege such facts as the source of the harm and its consequences, e.g., the operation of the bullet train as the source, and the degree of the noise as the consequence.\(^\text{13}\) As a means of avoiding the hardship caused by the first criterion, this opinion has been obtaining a lot of support.\(^\text{14}\) This opinion is also supported from the viewpoint of fairness to the plaintiff. For the defendant it is easy to know what of his actions are disputed by the plaintiff, and it is he who knows what causes the consequences. Therefore, once the court orders the defendant not to create the objectionable consequence, he may choose, in his discretion, one of the appropriate means to prevent the consequence.

The second point raised with respect to the Shinkansen case is whether the plaintiff, upon the judgment ordering the defendant not to create the noise beyond certain levels, may petition for installing some facilities to prevent the future violations. Needless to say, such a petition would not be necessary if the defendant, either under the sanction of the astrentes or voluntarily, has successfully prevented all harm to the plaintiff. However, in cases where the defendant has not been able to prevent it, the problem arises as to whether the plaintiff may file such a petition. As stated earlier, even when the obligation-duty is for forbearance, the court may order any appropriate plan to prevent the future violation. It is the reason why there is a dispute in this case that there is no indication in the judgment as to what is the appropriate order. Therefore the court, in the process of executing the

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12 One of the reason of the hardship imposed on the plaintiff is that our civil procedure lacks discovery proceedings and is inadequate for requiring disclosure of evidence possessed by the defendant.


judgment, has to determine itself what should be an appropriate arrangement for prevention, e.g., requiring building a fence around the railway or improving the structure of the bullet train.

Fundamentally, this problem relates to the separation between the court as the adjudicator and as the execution organ. Adopting the principle carried over from German law, Japanese law maintains a strict attitude toward this separation. It is a firm principle that the existence and the content of a substantive right has to be determined in the lawsuit by the court as the adjudicator, while the execution organ is responsible for its realization. The so-called “obligation title” performs the role of connecting the adjudication process and the execution process.\textsuperscript{15} The substantive right, which was decided by the court, should be indicated on the obligation title. For the execution organ there is no room for discretion, because the right realized is indicated on the obligation title without ambiguity. The Civil Execution Act recognizes two types of execution organs including the court.\textsuperscript{16} Even the court, when it is characterized as the execution organ, should be distinguished from the court as the adjudicator, and has to carry out its role in accordance with the obligation title.

In light of such a basic procedural structure, it is the traditional approach, and also the holding of the Nagoya District Court, that the substantive right for the installment of some facilities is not indicated on the obligation title which orders the defendant not to cause the noise beyond certain degree: therefore, the court may not enter an appropriate order for such installment. Under such approach, the judgment can be enforced only through the astrentes. As a background of this argument there was an amendment to said Act in 1979 concerning the character of the astrentes. Before the 1979 amendment, it was provided that the court could order the defendant to pay the damages for the purpose of securing the performance. In other words, the maximum amount of money payment as the astrentes was limited to the amount of the actual damages caused by the non-performance. By contrast, section 172 of the new Act provides that the court may order payment of a certain amount of money deemed reasonable for securing the performance, which amount need not be limited to actual damages. Upon such a background the astrentes is allegedly enough to secure this kind of the obligation-duty.

Admitting the strengthened force of the astrentes, some commentators argue that there still remains the necessity of employing the court’s order to prevent future violations.\textsuperscript{17} With respect to the principle of the separation between the adjudication and the execution, they argue that it is generally improper for an execution organ, even though it is a court, to create a substantive right which is not indicated on the obligation title. In this case, however, such substantive rights as these for installing facilities is not newly created by the court acting as an execution organ, but they are included in the obligation-duty on the obligation title. As a matter of fact, during the course of the litigation, it must have been

\textsuperscript{15} Nakano, supra note 5, at 17. The word “obligation title” is tantamount to the German concept “Schuldtitel,” upon which the plaintiff may commence the execution. Under section 22 of the Civil Execution Act the obligation title includes: final judgment, judgment accompanied by a declaration of provisional execution, document drawn up by a notary for a claim the subject matter of which is the payment of certain amount of money, and some other court’s orders.

\textsuperscript{16} Another execution organ is the execution officer, see section 2.

\textsuperscript{17} Takeshita, supra note 11, at 35, Nakano, supra note 12, at 480.
discussed what the effective facilities to prevent the noise are, or their feasibility. Relying upon such discussion, the court determines whether or not to sustain the plaintiff's demand. Thus, the consideration concerning what the effective means to prevent the future violation should logically be included in the court's decision, which, in turn, is crystallized into the obligation title.

As justification for the new approach it is alleged that the defendant may protect himself from an extraordinary court order by instituting an objection to claim. An extraordinary order here means such order which is not foreseeable from the judgment. When such order is issued, it is deemed beyond the extent of the obligation-duty on the obligation title. Thus far, the burden of proving the extraordinariness has been imposed on the defendant.

Such conclusion has been gaining supporters, although there is yet no judicial decision applying this conclusion to an actual case. In addition to the specific case stated above, this conclusion is also applicable to other environmental protection cases to make the relief for the plaintiff more effective. In 1960's plaintiffs in environmental cases tended to seek the recovery of damages, as exemplified by the famous Minamata case. Since 1970's the recovery sought, at least in addition to damages, has been changing toward injunctive relief. In 1980's, the trend has been toward seeking more effective means to enforce injunctive relief. The argument discussed above is one example of such efforts.

IV. Order for Reinstatement and Enforcement of Declaratory Relief

The first problem which has to be explained is the reason why a plaintiff in such case as Nissan Automobile may not petition to the court to order the defendant to reinstate his job. If such petition would be sustained, a judgment for the plaintiff may be enforced by way of the astrentes. The authorities, nevertheless, deny the legitimacy of such a petition by virtue of the fact that the status of an employee consists of various interests, e.g., wage and various fringe benefits. On the other hand, an employee has no right against an employer to demand any particular work. It is the right of the employer to demand the employee's labor, but there is no converse employee's right to request specific work. Therefore, if an employee desires to be treated as an employee, he should petition for the payment of wage or other specific benefits instead of such ambiguous status as treatment as an employee.

Upon this reasoning a plaintiff, a discharged employee, may not file a petition demanding that the defendant employer, should be obligated to treat him as employee. The plaintiff, therefore, is limited to filing a petition for declaratory relief that the employer-employee relationship exists between the parties and/or a petition for such specific performance as

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18 Section 35 of Civil Execution Act provides: An obligor who has an objection to the existence or contents of a claim right concerning an obligation title may institute an action of objection to the claim in order to demand a declaration that compulsory execution by virtue of the obligation title shall not be permitted.

19 This is a case in which some 100 plaintiffs filed claims for damages by reason that their health has been seriously injured by the water pollution caused by a chemical effluent discharged into the ocean from defendant's factory which led to severe birth defects caused by consumption of local seafood. Kumamoto District Court entered the judgment for plaintiffs, see 696 Hanrei Jiho 15 (1973). This case is famous account of the seriousness of the harm caused by the pollution, and the fact that it has become the symbol of the anti-pollution movement and litigation in Japan.
payment of wages. With respect to this relief there are two kinds of court decisions: the final judgment and the interlocutory order. Here I will focus on the latter, because it is more important than the final judgment in practice, and also causes more acute problems either for the plaintiff or the defendant.

Traditionally, the declaratory decision on the employer-employee relationship (hereinafter, declaratory decision) has been characterized by a mere expectation of defendant's voluntary obedience therewith such that the plaintiff may not resort to the enforcement by the execution organ. In order to simplify understanding of the reasons for such a decision I shall review the historical origin of this type of decision. In the early 1950's, employees who were discharged for various reasons tended to file a petition for the wage payment. Some courts entered the declaratory decisions instead of the order for the wage payment, assuming the invalidity of the discharge. It is for this reason why some courts adopted the attitude that the courts should assert more self-restraint in labor relations than in other conflicts. It was deemed the best solution in labor relations that both parties settle their conflict voluntarily, with the court assisting in this voluntary solution. If the court enters an order for wage payment and the employer is forced to pay it, it may have undesirable influence on labor relations. Instead, it was deemed more desirable that the employer, upon issuance of a declaratory decision, voluntarily treats the plaintiff as his employee, and also pays him wages.

The court, however, was compelled to change its attitude in the following decade because few employers, against whom declaratory decisions had been entered, voluntarily reinstated the plaintiffs as employees. The court, as a result, was criticized for giving the plaintiff no effective relief. Based upon such criticism, courts changed their attitude and began to sustain petitions for both wage payments and declaration of the labor relationship. It was the common attitude of employers in this period to pay the wage, because the order was enforceable, but in all other respects they chose not to treat plaintiffs as their employees inasmuch as the declaratory part of the order was not enforceable.

The third period began in 1970's. Faced with petitions for both kinds of relief stated above, some courts rejected the petition for the declaratory relief, claiming that the declaratory relief in addition to the wage payment was unnecessary because it had no effect in resolving the conflict between the parties. Through this history of the declaratory decision one can see that in the early period courts were occupied by an optimistic feeling about the employer's obedience to the declaratory decision while in the later period, in contrast, a pessimistic mood prevailed in the courts, resulting in the denial of the value of the declaratory decision. In such a country as Japan where no execution is provided for declaratory relief, this history raises a critical problem regarding the effect of the relief. Before proceeding to a conclusion of this problem, I would like to review the basic idea as to how the declaratory relief can be effective under Japanese law. Taking as an example the declaration of plaintiff's ownership of the object in controversy, which is the most common type of the declaratory judgment in the courts, the role of the declaratory relief is considered to be as follows. There are several situations in which declaratory relief is sought. Such situations are categorized into two groups, i.e., cases where the plaintiff's possession is not

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21 The case law is illustrated on my thesis which will be published on Hanrei Jiho within a few months.
yet violated, and cases where the possession has been violated. In the first case the declaratory relief is sought for the purpose of preventing future violations by the defendant. In the second case, on the other hand, the most effective relief for the plaintiff is the recovery of possession. It is not uncommon, however, that the plaintiff petitions for the declaratory relief in addition to the recovery of possession. It is the purpose of the petition to establish the ownership itself between the parties, because the judgment ordering the repossession does not, by itself, establish it. In both cases, the plaintiff petitioning for the declaratory relief intends to establish ownership, expecting to prevent future disputes. Therefore the role of the declaratory relief may be summarized as establishing the fundamental right or relationship of ownership, which forms the heart of the conflict between parties. The parties are required to take action according to the relationship established. If a party fails to respect to that relationship, he will lose in any future litigation.

Applying such a role for declaratory relief to the case of labor relations the following can be said. The significance of the declaratory decision in addition to orders for wage payment is deemed as establishing the fundamental relationship, vis-a-vis the labor relationship between the parties, enabling the parties to rely on this relationship. Either party should not suffer any disadvantage insofar as he accepts this relationship. Instead, in cases where he disregards the relationship, he should assume some disadvantage. It is the next problem as to what that disadvantage might be.

Let us assume that the plaintiff in the Nissan Automobile case filed both a petition for wage payment and a declaration of the valid labor relationship, with the court entering a decision sustaining both petitions as in an interlocutory decision. The employer has been paying the wages according to the decision. With respect to the status as the employee, in fact, he has not been treating the plaintiff as an employee, reasoning that reinstating such an employee would disrupt order in the factory. Thereafter, the decisions above are reversed by the court in the final judgment. In this situation, may the employer recover the paid wages as an unjust enrichment? It is current case law that insofar as the decision ordering the wage payment is interlocutory the plaintiff has to return the wage as the unjust enrichment, should the decision be reversed.\(^{23}\) So far it seems that there is no doubt regarding this conclusion. Actually, it causes great difficulties for the discharged employee who has been regularly paid wages for the period covered by the interlocutory order. Upon the final judgment, however, he is ordered to reimburse the paid wage at once. For the usual employee this obligation may lead to bankruptcy or, at least, severe financial difficulties.

If the employer, while paying the wage, has been treating the plaintiff as an employee, there then arises no necessity for reimbursement, because the employee has acquired the right to such wages as the just compensation for working in this period. In other words, the necessity of reimbursement is caused by the employer's disregard of the decision declaring the validity of the labor relationship. Upon considering such background, it can be said that the conclusion requiring the employee to reimburse wages paid does not take the effect of the declaratory decision into consideration. As stated above the role of the declaratory decision in general is in the fact that either party, especially the plaintiff, may rely on the relationship declared, while the party disregarding the decision may suffer some dis-

\(^{23}\) 451 Hanrei Times 106 (Sendai District Court 1981).
advantages in the future litigation. If it is true, the employee plaintiff in this case should not suffer the disadvantage of required reimbursement of wages paid, while the employer defendant, by contrast, is not disadvantaged even if he may not recover the wage paid.

The enforcement of the declaratory relief has not been discussed well in this country. The importance of the declaratory relief will increase according to the growing number of the various discrimination cases. The effect of the declaratory relief, therefore, should be re-discussed taking the aforementioned case into consideration.24

V. Lawsuit Obligating Administrative Body to Take Action

As stated regarding the case of the passport issuance, the present procedure is not satisfactory for the plaintiff who seeks some affirmative action by the administrative agency for his relief. The present procedure is designed fundamentally to dispute the propriety of an already-entered order of the administrative body. In most cases, reversing the administrative order is not enough for the plaintiff; rather, some additional orders become necessary. Traditionally, this problem is usually resolved as follows: in the case of the passport issuance, if the denial of the issuance will be invalidated by the court, the judgment binds the administrative agency, acting vis-a-vis the Foreign Minister. The Minister, therefore, may not repeat the denial on the same grounds. As a result, the Minister is compelled to issue the passport to the plaintiff. In addition, if the Minister will do nothing with the passport application after the judgment, the plaintiff can file a petition for the declaration that the defendant's inaction is illegal. Therefore, the action obligating defendant to take an affirmative action is not necessary.

Against this traditional approach, there have been raised some criticisms.

(a) The first is the problem of the interlocutory relief: as shown in the Passport case, the present procedure of the interlocutory order is not satisfactory for the plaintiff who seeks an affirmative action from the administrative agency.25 In order to improve the plaintiff's status it is necessary to enter an interlocutory order which obligates the defendant to take the affirmative action. It is imperative that the court be able to order this obligation in its final judgment, because the obligation not permissible in the final judgment is not permissible in the interlocutory order. With respect to this point there are a lot of discussions as stated below.

(b) The argument of the traditional approach justifies itself on the basis that the administrative agency, once its order has been invalidated, will voluntarily take the affirmative steps necessary whether or not they are ordered by the court. According to an empirical research there are two trends.26 In most cases, administrative agencies have taken the action as expected by the plaintiffs. In some cases, however, administrative agencies have not taken such actions as expected. For example, in the case where a prisoner filed a petition to the warden of a jail to give him the permission to buy a book, the warden rejected the petition. The prisoner, therefore, filed a lawsuit, and the court entered a judgment

24 The Notable article in this area is Takeshita, Kyusai no Hoho, 8 Kihon Hogaku 183 (1983).
26 Abe, Gimuzuke-Sosyoron, 4 Koho no Riron 2103 (1977).
to invalidate the warden's rejection. The warden, nevertheless, did not give him the permission to buy the book. Finally the prisoner filed again a lawsuit seeking the recovery of damages caused by the warden's illegal conduct, and won the case.

There is another example concerning the operator's license for the taxi cab. In this case, the plaintiff filed a petition to the Transportation Ministry for a license to operate a taxi cab. The Ministry rejected the petition. The plaintiff disputed the rejection, and commenced the lawsuit. The case went up to the Supreme court, and the Court finally entered the judgment for the plaintiff. The date of the judgment was October, 1971. The plaintiff, upon receiving the judgment, refiled the petition for the license to the Ministry in February, 1972. The Ministry, however, did not give him the licence immediately. There were some disputes and negotiations between the parties, and finally the license was granted to the plaintiff in December, 1972. This case shows that it is not always easy for the winning plaintiff to obtain the administrative agency's action as expected.

There are two reasons for such a reluctant attitude of the administrative agencies. No doubt, the first is the practical reason that some agencies tend to insist on their legitimacy in spite of the judgment. Secondly, there is the theoretical problem that it is not always evident what the extent of the binding effect of the judgment on the agency is. For example, in the taxi cab license case the Ministry rejected the petition on certain grounds. After the judgment, may the Ministry again reject the petition for other reasons? If one takes the stand that the agency has to allege all possible reasons sustaining the rejection whether or not they were actually the reason of the rejection, the re-rejection stated above is considered as against the binding effect of the judgment. On the other hand there is another view that the agency is not necessarily required to submit all reasons, but the reasons which actually formed the basis for the rejection. Under this approach, the agency may repeat the rejection using a different reason. As a result, the agency is not automatically obligated to enter the order for the defendant.

In the light of such a situation, there have been growing assertions that actions directly obligating the agency to take certain steps (hereinafter action for obligation) should be permitted, and also the interlocutory order to realize the obligation temporarily should be recognized. From the traditionalist side, there has been raised intensive criticism against this new approach. The issues between both sides are as follows: (a) The traditionalist side alleges that the action for obligation violates the primary responsibility of administrative agencies, because such problem as what kind of action should be taken for the plaintiff has to be determined solely upon the responsibility of the agency, and should not compelled by the court's order. Against this argument the supporters of the new approach counter that the action for obligation will not be filed until the conflict becomes ripe. In other words, in the example of the passport case, the plaintiff should not be allowed to file the action for obligation directly after his petition to the agency. The action will be allowed

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27 14 Syomu-Geppo 614 (Hiroshima District Court 1968).
28 Even though the plaintiff is awarded the damages, his ultimate objective to read the book in jail was not satisfied.
29 25 Minsyu 1037 (Supreme Court 1971).
30 Section 33 of the Act providing special procedure for Administrative case provides: The judgment invalidating the order of the administrative agency binds the agency insofar as the case is concerned.
only after the agency's rejection to the petition or at least after the agency's inaction for certain period. Therefore, this action does not reverse the primary responsibility of the agency, but rather assume that the agency has such responsibility. (b) The next rationale of the traditionalist side is found in the discretionary character of the agency's action, i.e., the agency should be granted the discretion concerning whether it will enter a certain order for the plaintiff or not. If the action for obligation is permitted, this discretion may be compromised. Against this argument, the new approach refutes this by claiming that there are various degrees of discretion. It is the exceptional case where the agency is granted unconditional discretion. In most cases, the discretion is conditioned upon the authority granted by enabling statues. Therefore, if the existence of such facts has been disputed in the litigation, and the court then orders the agency to make certain action, such order is not considered to violate the agency's discretion.

(c) The third rationale of the traditionalist side is that there is no execution procedure for the judgment. It is evident that in the statutes one can find no provision regarding execution. The supporters of the new approach argue that even if there is no execution one can expect the voluntary obedience by the agency, when the obligation is declared by the court without ambiguity.

Theoretically, as stated above, it seems that there remains a possibility of allowing the action for obligation under the present Act. Therefore, the present dispute is as to under what requirements the action would be allowed. The basic structure of the requirements is the concept of ripeness. In other words, the action for obligation is deemed as legitimate when the obligation of the agency is provided in the statute without ambiguity, the petition to the agency has been already made, the agency has rejected the petition or taken no action for the petitioner, and there is an emergent necessity for the petitioner to file the action for obligation instead of the action for declaring the invalidity of the rejection or the illegitimacy of inaction. If the action for obligation will be allowed under such requirements, the court also may enter the interlocutory order to satisfy the plaintiff's petition temporarily.

VI. Conclusion

In the various fields including such as stated in this paper, the effort has been made by courts and commentators to make judgments more effective. The means for this purpose are not identical. In the Nagoya Shinkansen case there is no doubt concerning the enforceability of the judgment. With respect to the means of execution, however, the effort has been made to explore an effective means in addition to the astreites. In the case of the discharged employee, the concept of enforcing the declaratory decisions has been unknown. Distinguished from the enforcement of the judgment obligating the defendant to some act, there remains a necessity to consider how to make the declaratory relief effective. The argument raised herein is an example of such efforts. Finally, in the case of the lawsuit against an administrative body, the ineffectiveness of the traditional means has been recognized, and a new type of action, an action for obligation, has begun to be introduced. Upon such trends, it can be said that either in the field of execution of judgments or as to
the type of relief being sought by plaintiffs, efforts are being made to granting more effective relief to plaintiffs.

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