

Summary of Appeals Court Judgment

The judgment was rendered on July 29, 2015.

Heisei 26 (Year 2014) Appeals Action No. xxxx - Action seeking compensatory damages

Original decision, Tokyo District Court

Heisei 21 (Year 2009) Ordinary Civil Action No. xxxx (First Action)

Heisei 21 (Year 2009) Ordinary Civil Action No. xxxx (Second Action)

Heisei 23 (Year 2011) Ordinary Civil Action No. xxxx (Third Action)

Date of termination of oral arguments: April 27, 2015

Tokyo High Court First Civil Section

Presiding Judge	Tadao Ishii
Judge	Hideyuki Tanaka
Judge	Yuko Otake

Gist of Conclusions

1. Dismissal of each of the appeals
2. Cost of Appeals (hereinafter, omitted)

Significance of Ruling: The Tokyo High Court supported all of the conclusions of the original decision of the Tokyo District Court

Content of the Tokyo District Court's Decision

1. The Court affirmed the complaints of the four sexual harassment plaintiffs "A," "B," "C," and "D," and ordered the defending party, Jae Chang Byun (hereinafter "Byun") and the religious corporation Little Shepherd Training Association (*Shobokusha Kunrenkai* a.k.a. International Gospel Christ Church, hereinafter "LSTA") to pay compensatory damages to each plaintiff in amounts ranging from 3.3 million yen to 4.4 million yen.

2. The Court dismissed the complaints of power harassment by Plaintiff E and denied any compensation for alleged damages caused by Byun, the LSTA senior leadership, and the LSTA.

3. The Court dismissed the requests by Byun and the LSTA for payment of compensatory damages for defamation and for a public apology in Byun and the LSTA's complaint against sexual harassment plaintiffs "A," "B," "C," and "D," power harassment plaintiff "E," and four supporters.

Contents of the Appeal

1. Byun and the LSTA appealed the following:

- 1) The requirement that Byun and the LSTA pay from 3.3 million yen to 4.4 million yen in compensatory damages to sexual harassment plaintiffs (victims)

“A,” “B,” “C,” and “D.”

2) The claim of Byun and the LSTA (that the Court had rejected) that sexual harassment plaintiffs “A,” “B,” “C,” and “D,” power harassment plaintiff E, and four of their supporters must pay compensatory damages for character defamation and make a public apology.

2. Alleged power harassment victim E appealed the court’s failure to recognize his claims that Byun, the LSTA, and its senior leadership group pay him compensatory damages for the power harassment he suffered at their hands.

Gist of Reasons for the Judgment

As the court supported the original decision, for the most part it quotes without amendment the reasons for the judgment of the original decision. The main points at which the court of appeals altered the statements of the original decision are as follows (corrections for typographical errors, etc. are omitted).

I. Sexual Harassment Lawsuit (First Action)

1. Concerning the December 17, 2008 (Heisei 20) communication between Defendant Byun and church members:

Byun said at this time during his talk with church members, “For example, even the same ‘I love you’ can in one case be the highest expression of affection, or in another can mean, ‘This is already molestation.’ It depends on the situation.” This comment of Byun’s was added to the record.

2. Concerning the understanding of the oath that Byun forced sexual harassment plaintiff C to write and sign:

Byun and the LSTA argued that based on this written oath it was unreasonable that Plaintiff C claim she had been the victim of sexual harassment.

In the original decision, the court concluded that “Because Byun and the LSTA taught absolute obedience to Byun’s teaching, so that even should the spiritual leader fail or sin, this should not be spoken of, it would not be unnatural for Plaintiff C to make and to submit a written oath.” Even should the oath exist, this would not be unnatural in the case in question.

The decision of the court in the appeals trial went beyond that of the first trial concerning the written oath, adding that “Instead, even though Plaintiff C had not complained of sexual harassment at the time, that forcing Plaintiff C to make a written oath in May, 2008, just at the time when Byun’s sexual harassment was becoming a cause for rumors within the LSTA, it may suggest that Byun tried to keep Plaintiff C, the one in a psychological condition least able to resist, from speaking out.”

3. Concerning the intent and motivation for Byun’s sexual harassment of the four plaintiff-victims:

The expression, “based on sexual intent” is repeated twice in the written

statement of the original decision.

The appeals court decision changes the first “based on sexual intent” phrase to read, “as senior pastor of the first trial defendant LSTA, abused his position as highest spiritual leader, teaching to the effect that responding to his desires was a mystery of God.” The court thus recognized in greater detail the perpetrator’s intent and motivation in the case.

Because of this, the original decision was changed to read, “Defendant Byun, as senior pastor of the first trial defendant LSTA, abused his position as highest spiritual leader, teaching to the effect that responding to his desires was a mystery of God and thus placing the plaintiffs “A,” “B,” “C,” and “D” in a psychological state that made it difficult for them to resist Byun, and committed each of his acts of sexual harassment based on sexual intent.”

4. Giving detail to the content of the illegal acts

The first court’s decision stated that the sexual harassment was “in each and every case, an illegal action.”

The judgment of the appeals court made clear the details of the illegal actions: “The first trial plaintiffs “A,” “B,” “C,” and “D” cannot be said to have acted out of their free will agreement, making the actions of first trial defendant Byun illegal infringements on the sexual freedom and human rights of the plaintiffs. The court thus deems that an illegal action against each of the first trial plaintiffs “A,” “B,” “C,” and “D” is constituted.”

5. Concerning the incapacitated rape of Plaintiff C

In regards to Plaintiff C’s claim for incapacitated rape, the first trial court determined not to consider the possibility that the incident had occurred on another day near the date that Plaintiff C had specified, as this would not allow the defense the possibility of adequately preparing its case.

The appeals court completely changed the wording of the original decision to read “having examined the matter, that although the core of Plaintiff C’s testimony can be trusted, we are forced to say that it is difficult on the basis of the evidence to say that the act of adultery damage in question occurred on the specified date of February 17, 2007 or on a day near that date.”

II. Power Harassment Appeal (Second Action)

The claim was rejected without giving a detailed reason, but the following was added to the statement: “Based on the evidence, we cannot find a significant causal relationship between the actions of the first trial defendants as recorded in the original decision and the autonomic imbalance and schizophrenia of first trial plaintiff ‘E.’”

In the original decision, the court did not recognize the actions in question as illegal, but in the appeals trial, no casual relationship was recognized between the action of the defendants and the onset of mental illness in Plaintiff E. The appeals trial thus added this slight additional detail in its decision.

III. Lawsuit requesting that damages be paid for character defamation and demanding that an apology be published (Third Action)

Although this added only slightly more details to the original decision, the appeals court held that

“The complaints, accusations, and declaration of criminal acts are clearly acts that have the risk of causing significant harm to those who are the subjects of such complaints, accusations and declaration. The one who does these things, knowing that his complaints and accusations are false, and who casts doubt even without reasonable evidence on the truth of the crimes, cannot escape the responsibility to pay compensatory damages for his illegal actions.”

In addition, “although it is difficult due to the evidence available to confirm that Plaintiff C was a victim of adultery damage, the core of Plaintiff C’s statement could be trusted, and added to this, considering the process by which Plaintiff C came to specify the date of her being victimized and making her complaint, the court cannot accept that Plaintiff C was knowingly fabricating in making her complaint and in specifying the date of her being violated as February 17, 2007. Also, in light of the process described above, Plaintiff C had adequate cause to make her complaint that she had been the victim of adultery damage on the specified day, and we also cannot say that she was mistaken in her complaint. Therefore, the fact that Plaintiff C filed a criminal complaint for the adultery damage at the Tsukuba Chuo Police Station cannot be seen as an illegal action against first trial defendant Byun.”

The court of appeals pointed out, even pursuant to the more detailed principle as seen above, that Plaintiff C took no illegal action.