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Supreme Court of Japan

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2016 (Kyo) 45

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Date of the judgment (decision)	2017.01.31
Case Number	2016 (Kyo) 45
Reporter	Minshu Vol.71, No.1
Title	Decision concerning a case in which a person can demand a search service provider to delete the URLs of websites on which articles or the like containing facts related to the

	privacy of such person, as well as the titles of and excerpts from such websites from search results
Case name	Case of a permitted appeal of the decision to rescind the decision of the second instance concerning the approval and decision on a provisional disposition to delete posted articles
Result	Decision of the Third Petty Bench, dismissed
Court of the Second Instance	Tokyo High Court, Judgment of July 12, 2016
Summary of the judgment (decision)	Where a business operator that performs searches at the request of users and provides to users search results consisting of URLs, or codes to identify websites; and where the business operator responds to the request of any user to perform a search using conditions related to a certain person and provides to the user the URLs of websites on which articles or the like that contain facts related to the privacy of such person, the titles of such websites and excerpts from such websites, as a part of the search result, whether such act is illegal or not, should be determined comparing and considering the legal interest of such facts not being published and various situations related to the reasons for providing such URLs and other items as the results of the search, including the nature and contents of such facts, the range in which such facts are transmitted and the extent of concrete damage suffered by such person by the provision of such URLs and other items, the social position and power of influence of such person, the purpose and meaning of such articles, the social situation when the articles were posted and subsequent changes, and the need to include such facts in the articles. Considering these factors, if it is apparent that the legal interest of such facts not being published is greater than the legal interest of publishing them, the person may demand the business operator to delete such URLs and other items from the search results.
References	Articles 2, 198 and 199 of the Civil Code Civil Code Article 2 This Code must be construed in accordance with

honoring the dignity of individuals and the essential equality of both sexes.

Article 198 When a possessor is disturbed in his/her possession, he/she may claim for the discontinuation of the disturbance and compensation for damages by bringing an action for maintenance of possession.

Article 199 When a possessor is likely to be disturbed of his/her possession, he/she may claim either for the prevention of the disturbance or for the submission of security for the compensation for damages by bringing an action for preservation of possession.

Main text of the judgment (decision)

The appeal from a ruling is dismissed.

The costs of appeal should be borne by the appellant.

Reasons

Regarding the reason for appeal from a ruling argued by KANDA Tomohiro, the counsel for the appellant:

1. According to the records, situation surrounding this case was as follows:

(1) Based on the alleged fact of paying for child prostitution, the appellant was arrested in November 2011 on the allegation of violation of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children before revision by Act No. 79 of 2014, and was punished by a fine for the alleged charge of violation of the same Act in December of the same year. The fact that the appellant was arrested for the above-mentioned alleged charge (hereinafter referred to as the “Fact”) was reported in the media on the date of arrest, and all or some of the coverage was posted on electronic bulletin boards on Internet websites on several instances.

(2) The opposing party is a person engaged in the business of performing website searches on the Internet at the request of users and providing to these users search results, or URLs

which are codes to identify websites (hereinafter referred to as “search service provider”).

If users who will receive search results from the opposing party as stated above conduct a search by using the name of the prefecture where the appellant lives and the name of the appellant as search conditions, the user will be provided with URLs of the websites listed in the list of search results attached to the decision of provisional disposition cited in the decision of the first instance, and titles of these URLs and excerpts from these websites (hereinafter collectively referred to as “URLs and other information”), which includes the URLs and other information of the websites on which the Fact was posted (hereinafter referred to as the “Search Results”).

2. This is an appeal case in which the appellant demands an order for provisional disposition against the opposing party to delete the Search Results based on the appellant’s moral right and moral interests.

3 (1) The interest of not publishing facts related to the privacy of an individual person without due reason should be protected by law (Refer to Supreme Court Judgment 1977 (O) 323, the Judgment of the Third Petty Bench on April 14, 1981, Minshu Vol.35, No. 3, p620; Supreme Court Judgment 1989 (O) 1649, the Judgment of the Third Petty Bench on February 8, 1994, Minshu Vol. 48, No. 2, p149; Supreme Court Judgments 2001 (O) 851, and 2001 (Ju) 837, Judgment of the Third Petty Bench on September 24, 2002, Shumin No. 207, p243; Supreme Court Judgment 2000 (Ju) 1335, Judgment of the Second Petty Bench on March 14, 2003, Minshu Vol. 57, No. 3, p229; Supreme Court Judgment 2002 (Ju) 1656, Judgment of the Second Petty Bench on September 12, 2003, Minshu Vol. 57, No. 8, p973). On the other hand, the search service provider comprehensively collects information posted on Internet websites, save copies of them, organizes the information by, for example, creating an index using these copies, and

provides information satisfying certain conditions provided by users as search results based on such index. Although these processes of collecting, organizing and providing information are implemented automatically by a computer program, because the program was designed to retrieve results that are in line with the search service provider's policy for the provision of search results, the provision of search results carries the nature of an act of expression by the search service provider. The provision of search results by the search service provider also plays an important role in current society as a foundation for distribution of information on the Internet by helping the public in distributing information on the Internet and in collecting necessary information from a huge volume of information therein. If an act by the search service provider to provide certain search results is recognized as illegal, and the deletion of such search results is then forced, this means not only that the act of expression consistent with the above-mentioned policy will be restricted but also that the above-mentioned role played by it in providing search results will be restricted as well.

Considering the nature of the act of the search service provider to provide such search results as described above, whether an act of the search service provider to provide, at the request of users to perform a search using conditions relating to a certain person, the URLs and other information of websites on which articles or the like that contain facts related to the privacy of a certain person as a part of the search result is illegal or not should be determined by comparing and considering the legal interest of such facts not being published and various situations related to the reasons for providing such URLs and other information as results of the search, including the nature and contents of such facts, the range in which such facts are communicated and the extent of concrete damage suffered by such person by the provision of such URLs and other information, the social position and power of influence of such person, the purpose and meaning of such articles, the social situation when the articles were posted and subsequent changes, and the need to include such facts in the articles. Considering

these factors, if it is apparent that the legal interest of such facts not being published is greater than the legal interest of publishing them, it is reasonable to interpret that the person may demand the search service provider to delete such URLs and other information from the search results.

(2) Looking into the disputed case based on this interpretation, where the appellant demands that the Search Results be deleted because the websites, which were identified by URLs included in the Search Results, contain articles describing all or part of the Fact, although the Fact that the appellant was arrested on suspicion of child prostitution is a fact belonging to the appellant's privacy that the appellant does not want to be known by others without due reason, considering the situation where paying for child prostitution is recognized as the sexual exploitation and sexual abuse of children, which is strongly condemned by society and prohibited by law with punishment, the Fact is still a matter that concerns the public interest. In addition, considering that the Search Results are part of the results retrieved by using the name of the prefecture where the appellant lives and the name of the appellant as the search conditions, it can be said that the range in which the Fact is communicated is limited to a certain degree.

In the light of these facts, even if the situation regarding the appellant is considered, including that the appellant lives with his wife and child and has been employed by a private company after he was fined as described in 1 (1) above committing no crime for a certain period, it is not apparent that the legal interest of the Fact not being published is greater.

4. The Supreme Court upholds the decision of the prior instance that dismissed the appeal of the appellant in the second instance. The argument of the appeal with permission is unacceptable.

	Accordingly, the judgment is unanimously rendered as described in the main text.
Presiding Judge	Justice OKABE Kiyoko Justice OTANI Takehiko Justice OHASHI Masaharu Justice KIUCHI Michiyoshi Justice YAMASAKI Toshimitsu

(This translation is provisional and subject to revision.)

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