

Copyright	Date	April 14, 2021	Court	Tokyo District Court, 40th Civil Division
	Case number	2020 (Wa) 4481, 23233		
<p>- A case in which the court determined that a disciplinary action request form has copyrightability and granted the claim to delete the information due to infringement of the right to transmit to the public; however, the court determined that the claim due to infringement of the right to make the work public is abuse of the right and no damage was caused by it, and dismissed the claim for payment of compensation for damages.</p>				

### Summary of the Judgment

In this case, the Plaintiff alleged that [i] Defendant A, who is an attorney, uploaded a PDF file of the disciplinary action request form in question (the "Disciplinary Action Request Form") when posting an objection against the request for disciplinary action in question (the "Request for Disciplinary Action") made by the Plaintiff on the blog of Defendant A ("Article 1") and it infringed the Plaintiff's right to transmit to the public and the right to make the work public, and [ii] Defendant B, who was a litigation representative of Defendant A, provided a link to Article 1 in the blog of Defendant B ("Article 3") and this falls under accessoryship of the aforementioned act of Defendant A. Based on these allegations, the Plaintiff demanded the deletion of Article 1 and payment of solatium.

In this judgment, the court determined as follows: based on the assumption that the Disciplinary Action Request Form falls under a "work" and it cannot be determined that the request form had been "made public," Defendant A's act of posting all of the Disciplinary Action Request Form in Article 1 was conducted on a work that had not been made public, and the method to store all of the work in a PDF file and to make the file accessible is not consistent with "fair practices" and exceeds the "scope that is justified"; therefore, this act does not fall under a justifiable "quotation"; consequently, this act infringed the Plaintiff's right to transmit to the public and the right to make the work public.

However, the court also determined as follows: the Plaintiff provided the Disciplinary Action Request Form to the newspaper company, and part of the request form was quoted in the newspaper article; the need to protect the Plaintiff's right to make the work public was considerably decreased as a result; the Plaintiff itself provided information related to the Disciplinary Action Request Form to the newspaper

company and allowed quotation of the part that aligned with the Plaintiff's intention; however, once Defendant A disclosed the request form as part of the objection against the request, the Plaintiff executed the right by alleging that the act of the Defendant A falls under infringement of the right to make the work public; such act of the Plaintiff falls under abuse of the right.

Then, the court upheld the part of the Plaintiff's claims related to the deletion of the PDF file from Article 1 due to infringement of the right to transmit to the public, but did not find property damage from the infringement and dismissed the claim to demand that Defendant A pay compensation for damages.

In addition, the court determined that, merely for the purpose of explaining the assumption of introducing the statement of opinions of Defendant A, Article 3 has a link so that Article 1 can be referred to easily and therefore, there is no tort due to this act, and dismissed the claim to demand that Defendant B pay compensation for damages.

In addition to the aforementioned claims, the Plaintiff also demanded deletion and payment of compensation for damages and solatium due to infringement of the right to privacy related to the name of the Plaintiff; however, they were also dismissed. For more details of the court decision related to the claims, please see the whole text of the written court decision.

Judgment rendered on April 14, 2021

Original was issued on the same date to the court clerk

2020 (Wa) 4481 Case of appeal for injunction due to infringement of author's moral right, etc. (First case)

2020 (Wa) 23233 Case of appeal of seeking compensation for damages (Second case)

Date of conclusion of oral argument: February 3, 2021

#### Judgment

Plaintiff: X

Defendant in the first case and the litigation representative for the defendant in the second case: Y

Defendant in the second case and the litigation representative for the defendant in the first case: Z

#### Main text

1. Defendant Y shall delete the file indicated in 2. (1) B. in the Attachment "List of Articles" that is posted on the blog in 1. (1) of the Attachment.
2. The remaining claims of the Plaintiff shall be dismissed.
3. Concerning court costs, Defendant Y shall bear one-ninth of the sum of 70% of the costs incurred by the Plaintiff and 100% of the costs incurred by Defendant Y, and the Plaintiff shall bear the remaining costs.

#### Facts and reasons

No.1 Object of the claim

1. First case

(1) Defendant Y shall delete the file indicated in 2. in the Attachment "List of Articles" that is posted on the blog in 1. in the Attachment.

(2) Defendant Y shall pay to the Plaintiff 2,000,000 yen and the amount accrued thereon at 5% per annum for the period from March 5, 2020 until the completion of payment.

2. Second case

Defendant Z shall pay to the Plaintiff 1,500,000 yen and the amount accrued thereon at 5% per annum for the period from September 26, 2020 until the completion of payment.

## No. 2 Outline of the case

1. In this case, concerning the articles indicated in 2. of Attachment "List of Articles" (hereinafter the article indicated in 2. (1) of the list is referred to as "Article 1," and the article indicated in 2. (2) of the list is referred to as "Article 2," respectively), which are objections against the allegation of the Plaintiff and are posted on the blog of Defendant Y, who is the attorney against whom the Plaintiff requested disciplinary action (hereinafter referred to as the "Request for Disciplinary Action"), the Plaintiff alleged as follows: [i] the act whereby Defendant Y posted Articles 1 and 2 by indicating the Plaintiff's name infringed the Plaintiff's right to privacy and the act whereby Defendant Y reproduced the disciplinary action request form in which the name of the Plaintiff was indicated as the requester (hereinafter referred to as the "Disciplinary Action Request Form") in a PDF file, uploaded the request form on the internet, and provided a link to said file in Article 1 (hereinafter referred to as the "Link") infringed the copyright (right to transmit to the public) and the author's moral right (right to make the work public) [the first case]; and [ii] the act of Defendant Z, who was the litigation representative of Defendant Y in the first case, of providing a link to Article 1 in the article in the blog of Defendant Z (hereinafter referred to as "Article 3") after filing an appeal related to the first case falls under accessoryship for the infringement of both the aforementioned copyright and author's moral right [the second case]. Based on these allegations, the Plaintiff demanded that Defendant Y delete Article 1 (including the PDF file at the Link) and Article 2, and that Defendant Y pay 2,000,000 yen as solatium and delay damages that are accrued thereon at 5% per annum as provided for by the Civil Code (before amendment by Act No. 44 of 2017) for the period from the day following the date on which the complaint in the first case was served (March 5, 2020), which is after the tort, until the completion of payment, and the Plaintiff also demanded that Defendant Z pay 1,500,000 yen as solatium and delay damages that are accrued thereon at 3% per annum as provided for by the Civil Code for the period from the day following the date on which the complaint in the second case was served (September 26, 2020), which is after the tort, until the completion of payment.

2. Basic facts (facts that are not disputed between the parties and facts that are found based on the evidence recorded and the entire import of oral arguments; in cases of indicating evidence through the Judgment, it includes branch numbers unless otherwise mentioned.)

### (1) Parties

A. The Plaintiff is the person who made the Request for Disciplinary Action (Daini Tokyo Bar Association 2020 (Ko) 1) against Defendant Y.

B. Defendant Y is an attorney, such as serving as defense counsel for P in a criminal case under public prosecution.

C. Defendant Z is an attorney and the litigation representative of Defendant Y in the first case.

(2) Background of the first case

A. Defendant Y posted an article on the blog indicated in 1. (1) of the Attachment "List of Articles" (hereinafter referred to as the "Blog") dated January 4, 2020, which includes the following statements concerning the fact that P left Japan for Lebanon in violation of bail conditions: "First, I felt enraged. It was the feeling that I had been betrayed."; "however, one point that I can say is that, in consideration of the judicial process in Japan and its surrounding environment that he has seen over the last year, smuggling himself out of the country cannot be denied completely by calling it an 'outrage,' 'betrayal,' or 'crime'." (hereinafter referred to as the "Article on the Blog dated January 4, 2020") (Exhibit Otsu 1)

B. The Plaintiff submitted the Disciplinary Action Request Form (Exhibit Ko 2) created by the Plaintiff to the Daini Tokyo Bar Association with Defendant Y as the attorney accused, on January 7, 2020. In the Disciplinary Action Request Form, the Plaintiff stated the reason for requesting disciplinary action against Defendant Y that "Y allowed the defendant on bail to leave for Lebanon intentionally or due to gross negligence. This is an act against the bail conditions and a failure in performing management and supervisory duties and it falls under grave misconduct" and other matters, and the Plaintiff also made the following comment concerning the Article on the Blog dated January 4, 2020 that "Despite being in a position to manage and supervise the defendant, Y made these statements. It is very irresponsible. It is a statement affirming an illegal act and an act of encouraging an illegal act. It is obvious that it is an act against the dignity of an attorney" and other matters.

C. Sankei Shimbun Co., Ltd. (hereinafter referred to as "Sankei Shimbun") posted an article titled "Request for Disciplinary Action Against Attorney Y. Affirming the Running Away of Defendant P is 'Against Dignity'" on its news website on January 17, 2020 (hereinafter referred to as the "Sankei Article"). The Sankei Article introduced the details of Defendant Y's Article on the Blog dated January 4, 2020 and reported that "It was found by interviewing relevant persons that ... a man in Tokyo requested disciplinary action against attorney Y by alleging that 'making a statement affirming the running away of the defendant on Y's blog is grave misconduct' and other matters. ... According to relevant persons, in the disciplinary action request form, the man pointed out in relation to Mr. Y that 'Despite being in a position to manage and supervise the

defendant, Y made these statements. It is very irresponsible. It is a statement affirming an illegal act and an act of encouraging an illegal act. It is obvious that it is an act against the dignity of an attorney' and requested an investigation by the bar association since Y is suspected to have been involved in the running away." (Exhibit Otsu 2)

D. Defendant Y posted Article 1 (Exhibit Ko 1) on the Blog on February 4, 2020, presented an objection by stating that "The details of the explanatory statement that I submitted to the disciplinary committee of Daini Tokyo Bar Association concerning the request for disciplinary action by Mr. X are as follows." and made the Link to the part of the "request for disciplinary action by Mr. X" so that the PDF file in which details of the Plaintiff's address other than the names of the prefecture, city, and town and his telephone number were blacked out in the Disciplinary Action Request Form (Exhibit Ko 2) can be viewed on the internet (Exhibit Ko 3). Defendant Y posted an objection with the same details on another blog as Article 2 on February 5, 2020; however, the aforementioned file was not linked in Article 2 (Exhibit Ko 4).

### (3) Background of the second case

A. The Plaintiff filed an appeal for the first case against Defendant Y on February 20, 2020. The Plaintiff and Defendant Y appeared in court on the date of the first oral arguments for the first case on July 22, 2020 and made oral statements of opinions.

B. Defendant Z posted Article 3 on its blog on July 31, 2020, stating that "There is a case where an attorney Y posted an objection concerning the fact that disciplinary action was requested against attorney Y related to the case of Mr. P, by indicating the name of the requester of the disciplinary action and by posting the disciplinary action request form on Y's blog; and the requester of the disciplinary action demanded that attorney Y suspend the blog and pay compensation for damages due to infringement of the author's moral right and right to privacy."; Defendant Z then posted the details of the aforementioned Defendant Y's statement of opinions as a "wonderful statement of opinions" and provided a link to the part "posted an objection by posting the disciplinary action request form on Y's blog" in the aforementioned statement so that readers could access Article 1 (Exhibit Ko 12).

C. The Plaintiff filed an appeal for the second case against Defendant Z on September 14, 2020 and, concerning the first case, the Plaintiff increased the amount of compensation for damages from 1,500,000 yen to 2,000,000 yen by a written petition to change the appeal on the same date.

### (4) Procedures for disciplinary action against an attorney

#### A. Provisions of the Attorneys Act

(A) An attorney or a legal professional corporation is subject to disciplinary action if

the attorney or the legal professional corporation violates this Act or the articles of association of the bar association of which they hold a membership or of the Japan Federation of Bar Associations, or disrupt the order or harm the reputation of the relevant bar association or misbehaves in a manner which undermines the dignity of an attorney or a legal professional corporation, regardless of whether conducted professionally or outside the professional context. (Article 56, paragraph (1))

(B) Any person who considers that an attorney or a legal professional corporation has grounds to be disciplined may file a request for disciplinary action with the bar association of which the relevant attorney or legal professional corporation holds a membership, attaching an explanation of grounds for disciplinary action. (Article 58, paragraph (1))

(C) If a bar association considers that an attorney or a legal professional corporation that is a member thereof has grounds to be disciplined, or if a request referred to in (B) above is filed, the bar association must start disciplinary procedures and have its disciplinary committee investigate into the matter. (Article 58, paragraph (2))

(D) If a disciplinary committee finds, based on an examination pursuant to (C) above, that it would be appropriate to request the disciplinary actions committee to examine the matter with respect to the accused attorney, etc., the disciplinary committee must adopt a resolution accordingly. In this case, the bar association must, based on the relevant resolution, request the disciplinary actions committee to examine the matter. (Article 58, paragraph (3))

(E) If the disciplinary actions committee finds, based on an examination referred to in (D) above, that it is appropriate to discipline the accused attorney, etc., it adopts a resolution accordingly, clarifying the details of the disciplinary action. In this case, the bar association must, based on the relevant resolution, discipline the accused attorney, etc. (Article 58, paragraph (5))

(F) When a request for administrative review of disciplinary action taken by the bar association pursuant to the provisions of Article 56 is filed with the Japan Federation of Bar Associations, it requests the disciplinary actions committee of the Japan Federation of Bar Associations to examine the matter, and must make an administrative determination based on the relevant resolution of the disciplinary actions committee. (Article 59, paragraph (1))

(G) A person whose request for administrative review of disciplinary action taken by a bar association pursuant to the provisions of Article 56 is dismissed or rejected or who is subject to disciplinary action taken by the Japan Federation of Bar Associations pursuant to the provisions of Article 60, may file a lawsuit for revocation of the Japan

Federation of Bar Associations' decision with the Tokyo High Court. (Article 61, paragraph (1))

B. Provisions of the Regulations for the Disciplinary Committee of the Daini Tokyo Bar Association and its Disciplinary Procedures (hereinafter referred to as the "Disciplinary Committee Rules") (Exhibit Otsu 8)

(A) The disciplinary committee meetings are not disclosed. However, this shall not apply to cases where approval of the disciplinary committee is obtained or there are provisions in the Rules. (Article 10)

(B) The disciplinary committee may specify an investigation date in order to investigate a case. (Article 33, paragraph (1))

(C) The investigation date is not disclosed (Article 37, paragraph (1)). Notwithstanding the provisions of the preceding paragraph, the investigation date for the hearing of an accused attorney is disclosed at the request of the accused attorney, etc. (Article 33, paragraph (2))

### 3. Issues

(1) Whether the Disciplinary Action Request Form has copyrightability (Issue 1-1)

(2) Whether the Disciplinary Action Request Form has been made public (Issue 1-2)

(3) Whether the quotation has legality (Issue 1-3)

(4) Whether the right was abused (Issue 1-4)

(5) Whether the right to privacy was infringed (Issue 2)

(6) Whether the posting of Article 3 constitutes a tort (Issue 3)

(7) Whether there are damages to the Plaintiff and the amount thereof (Issue 4)

(omitted)

### No. 4 Judgment of This Court

#### 1. Issue 1-1 (Whether the Disciplinary Action Request Form has copyrightability)

(1) The Disciplinary Action Request Form (Exhibit Ko 2) is a document, as stated in the Basic fact (2) B. above, submitted to the Daini Tokyo Bar Association to request disciplinary action based on Article 58, paragraph (1) of the Attorneys Act by alleging that there are grounds for disciplinary action as set forth in Article 56 of said Act against Defendant Y, who is an attorney, concerning the fact that P left Japan and his statement related to the articles in its blog.

Looking at the structure, details, etc. of the Disciplinary Action Request Form (Exhibit Ko 2), the request form contains the indication that it is a disciplinary action request form, date of the request, address of the request, name of the requester, name



of the accused attorney, purpose of requesting disciplinary action, grounds for requesting disciplinary action, etc., including the formulaic matters that are to be indicated naturally due to the nature of the document of a disciplinary action request form.

However, the details of the grounds for disciplinary action were not specified unambiguously and formally and, concerning the structure, there may be various options. The Disciplinary Action Request Form consists of a quotation of part of Articles 1 and 2 and evaluations thereof, quotation of the grounds for disciplinary action against other attorneys, explanation on grounds for disciplinary action against Defendant Y, and conclusion. In the structure and development of the argument, the ingenuities made by the Plaintiff, who created the request form, are seen and it can be said that the characteristics of the Plaintiff are expressed.

In addition, concerning the details of the statement on the grounds for disciplinary action, the Disciplinary Action Request Form does not only state the facts that are grounds for disciplinary action, but also contains the Plaintiff's interpretation that the defense counsel had an obligation to manage and supervise the defendant, his question as to whether the defendant could run away without the involvement of the defense counsel, his opinion that the statement of Defendant Y facilitates long-term penal detention, matters concerning his request for an investigation by the disciplinary committee, and other matters in 70 lines (35 letters per line). It can be said that the characteristics of the Plaintiff, who created the request form, are expressed in the details and method, etc. of the expressions.

Then, the Disciplinary Action Request Form is a creative expression of the thoughts or sentiments of the Plaintiff and should be said to fall under "work" as set forth in Article 2, paragraph (1), item (i) of the Copyright Act.

(2) In response to the above, the Defendants alleged as follows; however, all of their allegations are groundless.

A. The Defendants alleged that since a request for disciplinary action is an act similar to a public act of prosecution, it does not belong to "within the literary, academic, artistic, or musical domain" and it does not fall under intellectual and cultural mental activities.

However, there are no grounds for understanding that a document for an act similar to a public act of prosecution does not fall under a work as its type. It is needless to say that a public or quasi-public document includes pre-determined formulaic statements that are provided for by laws and regulations, etc., but regarding a disciplinary action request form against an attorney, the structure of the "grounds for requesting

disciplinary action" and details of the statement are not determined unambiguously and formalistically. It should be said that there is room for a creator to make use of his/her creativity and ingenuity and there is a wide range of options in terms of expression methods and details.

Concerning the Discretionary Action Request Form, as stated in the aforementioned holding, it can be said that various ingenuities, etc. are seen in the structure and details of expressions, etc. and the characteristics of the Plaintiff are exhibited.

B. The Defendants alleged that the Discretionary Action Request Form is different from letters written by Mishima Yukio (a famous Japanese writer) and other items and is only a document in which the Plaintiff, who is not a creator, indicated facts and discussed whether the facts fall under grounds for disciplinary action and that creative expressions are not included in the request form.

However, it should be construed that "a creative expression of the thoughts or sentiments," which is a requirement for works, does not require advanced creativity or originality, but it is enough if the characteristics of the author are expressed in any form in external expression of "thoughts or sentiments." As stated in the aforementioned holding, it can be said that various ingenuities, etc. are seen in the structure and details of expressions, etc. in the Discretionary Action Request Form and the characteristics of the Plaintiff are exhibited and, therefore, it can be said that it is "a creative expression of thoughts or sentiments."

C. The Defendants alleged that, based on the background of the Copyright Act, the major subject of protection under said Act is economic benefits and that, since the Discretionary Action Request Form has no economic benefits to be protected, it does not fall under a work. However, the Copyright Act does not require the presence of economic benefits for works. Therefore, the Defendants' opinion that the presence of economic benefits is required for an item to fall under a work cannot be adopted.

In addition, the Defendants alleged that if the Discretionary Action Request Form falls under the category of a work, it will cause problems with similar requests for disciplinary action. However, concerning a request for disciplinary action against an attorney, if the subject attorneys and basic facts are different, the grounds for the request for disciplinary action are totally different, and even if it is a disciplinary action request form against the same attorney based on common facts, there is a wide range of options for the structure and details of expressions for grounds for requesting disciplinary action and the requester can make use of his/her creativity and ingenuity. Then, even if the Discretionary Action Request Form is recognized as a work, it is difficult to consider that problems are generated with similar requests for disciplinary action and that such

fact is against the purpose of the disciplinary action system.

2. Issue 1-2 (Whether the Disciplinary Action Request Form has been made public)

(1) The fact that the Discretionary Action Request Form was submitted to the bar association

A. The Defendants alleged that the Discretionary Action Request Form was "published" or "presented to the public by means of a stage performance, musical performance, on-screen presentation, transmission to the public, recitation, or exhibition" by submitting it to the bar association and, therefore, it has been "made public" (Article 4, paragraph (1) of the Copyright Act).

However, even if the Discretionary Action Request Form was submitted to the Daini Tokyo Bar Association, the request form was used only for non-public disciplinary action procedures at the bar association. It is reasonable to understand based on the nature of the procedures that persons who can access the request form are limited to the relevant persons of the bar association who are involved in the procedures. Then, it cannot be said that the Discretionary Action Request Form is "published" (Article 3 of said Act) or "presented to the public by means of a stage performance, musical performance, on-screen presentation, transmission to the public, recitation, or exhibition" by submitting it to the bar association.

B. The Defendants pointed out that the disciplinary committee of the Daini Tokyo Bar Association has approximately 100 members and officials of other bar associations also view disciplinary committee request forms as necessary and, therefore, if a disciplinary action request form is submitted to the bar association, it is naturally seen by a large number of relevant persons.

However, according to the Disciplinary Committee Rules (Exhibit Otsu 8), it is stipulated that, in the committee, resolution procedures are implemented by a sub-committee, which consists of 7 or more sub-committee members (Article 11) and investigation procedures are implemented by one or multiple senior committee members (Article 51). Therefore, it is impossible to consider that the disciplinary committee members and officials of the bar association who are not involved in the disciplinary action procedures in this case are naturally scheduled to inspect the Disciplinary Action Request Form widely.

In these procedures, even if it can be presumed that copies of the Disciplinary Action Request Form will be created, the term "publish" refers to create and distribute "copies of the work in quantities that are reasonably sufficient for meeting public demand" (Article 3, paragraph (1) of the Copyright Act) by obtaining the approval of the right owner or by other means. Regarding the Disciplinary Action Request Form, it

is not naturally scheduled to create or distribute" copies of the work in quantities that are reasonably sufficient for meeting public demand" due to the nature of the procedures for disciplinary action and such fact is not found.

C. In addition, the Defendants pointed out that examination procedures for requesting disciplinary action can be disclosed. However, even if the examination procedures are disclosed, it cannot be said that a disciplinary action request form related to the procedures is "made public" thereby, and the same applies to cases where an appeal for seeking a rescission of a disciplinary action is filed.

D. Consequently, it cannot be said that the act of submitting the Disciplinary Action Request Form to the bar association falls under the act of "making a work public" as set forth in Article 4 of the Copyright Act.

(2) The fact that the Discretionary Action Request Form was provided to Sankei Shimbun

A. The Defendants alleged that the Discretionary Action Request Form was provided by the Plaintiff to Sankei Shimbun and important parts thereof were reported as the Sankei Article, and, therefore, the request form was "made public."

The Sankei Article (Exhibit Otsu 2), as mentioned in (2) in the Basic fact above, quoted all of the third paragraph (four lines) in the "Grounds for Requesting Disciplinary Action" section in the Discretionary Action Request Form in quotation marks by slightly changing terms and the end of sentences. Considering the evidence (Exhibit Ko 2 and Exhibits Otsu 2 and 6) and the entire import of oral arguments together, it can be presumed that the Plaintiff provided the Discretionary Action Request Form or information related to the details, including the information related to the name of Defendant Y, to Sankei Shimbun and there is not enough evidence to overturn it.

However, the Sankei Article quoted only a small part of the Discretionary Action Request Form. As stated in C. below, the quoted part cannot be said to be a major part of the Discretionary Action Request Form. In light of these facts, it cannot be said that the Discretionary Action Request Form was made public by the aforementioned quotation in the Sankei Article.

B. The Defendants alleged that it is unreasonable that although part of the work was "made public," the whole work cannot be used as common property of the people.

However, the entirety of the Discretionary Action Request Form is not indivisible and the range that was made public is only a small part. In light of these facts, as stated in the holding above, even if the details of part of the Discretionary Action Request Form are recognized by the public in the form of a quotation in the Sankei Article, it cannot be said that the request form was made public.

C. The Defendants alleged that the quoted part of the Sankei Article is a major part of the Discretionary Action Request Form.

However, the part quoted in the Sankei Article is an opinion on the article posted on Defendant Y's blog, but not the grounds for requesting disciplinary action and the percentage of the quoted part in the "Grounds for Requesting Disciplinary Action" section is very small. In the Discretionary Action Request Form, following the aforementioned quoted part, grounds for requesting disciplinary action against other attorneys are quoted, and, while stating that the same grounds apply to Defendant Y, the opinion of the Plaintiff is stated additionally, followed by a conclusion. Therefore, it cannot be said that the quoted part is a major part of the Discretionary Action Request Form.

### (3) Summary

As mentioned above, it cannot be said that the Discretionary Action Request Form was made public.

### 3. Issue 1-3 (Whether the quotation has legality)

(1) Article 32, paragraph (1) of the Copyright Act stipulates as follows: "It is permissible to quote and thereby exploit a work that has been made public. In such a case, the work must be quoted consistent with fair practices and within a scope that is justified for the purpose of news reporting, critique, study, or other place in which the work is quoted." According to the provisions of this paragraph, in order to use all or part of a work by including it in a person's own work without obtaining the approval of the copyright owner, it is reasonable to understand that the following requirements should be fulfilled: [i] the work to be used is a work that has been made public; [ii] the use of the work falls under quotation; [iii] the quotation is consistent with fair practices; and [iv] the quotation is made within a scope that is justified for the purpose of news reporting, critique, study, or other place in which the work is quoted.

### (2) Requirement [i]

In this case, as mentioned in 2. above, it cannot be found that the Discretionary Action Request Form, which is a work, was made public. Therefore, Defendant Y's act of providing the Link in Article 1 and enabling access to the PDF file, in which the Discretionary Action Request Form was reproduced, does not fulfill Requirement [i].

### (3) Requirement [ii]

A. In order to say that a work is "quoted," it is assumed that an ordinary person who comes across the work can identify and discern the quoted part. Therefore, it is necessary that a work that quotes and uses another work and a work that is quoted and used are clearly distinguished. In the same way, since "quotation" is an act to include

all or part of another person's work and use it in one's own work, it is necessary that an ordinary person can discern which quotes another work and which is quoted from the two works. For this purpose, it should be said that it requires a subordinate-superior relationship between a work that quotes another work and a work that is quoted.

Then, it is reasonable to understand that the following facts constitute basic requirements for "quotation": [i] a work that quotes and uses another work and a work that is quoted and used can be clearly distinguished and recognized; and [ii] there is a subordinate-superior relationship between a work that quotes another work and a work that is quoted, in which the work that quotes another work is superior and the work that is quoted is subordinate (see 1976 (O) 923, the judgment of the Third Petty Bench of the Supreme Court of March 28, 1980, Minshu Vol. 34, No. 3, at 244; the judgment is related to Article 30, paragraph (1), item (ii) of the former Copyright Act [Act No. 29 of 1899] ("to simplify and quote in one's own work within a scope that is justified") and this concept of the "quotation" is considered to apply even under the current Act.).

B. As mentioned in (2) D. of the Basic fact above, it is found that Defendant Y posted Article 1 (Exhibit Ko 1) on the Blog, posted an objection against the Plaintiff's request for disciplinary action, and provided the Link to the part of the "request for disciplinary action by Mr. X" so that the PDF file, in which the Disciplinary Action Request Form was reproduced, can be viewed on the internet (Exhibit Ko 3).

As mentioned above, the Disciplinary Action Request Form is recorded in Article 1 by providing a link to part of the aforementioned statement in the article so that the Disciplinary Action Request Form, which is posted on another website, can be viewed. In light of such form, the work quoted by Defendant Y and the Disciplinary Action Request Form can be clearly distinguished.

In addition, Article 1 includes ten or more paragraphs, while the part for which the Link was provided is less than one line. In order to view the Disciplinary Action Request Form, it is necessary to click the linked part and then view another website. Based on these facts, it should be said that an ordinary person who comes across the Blog of Defendant Y can discern that Article 1, which quoted the Disciplinary Action Request Form, is superior and the Disciplinary Action Request Form, which was quoted, is subordinate, and that the size of Article 1 and the Disciplinary Action Request Form does not have impact on the conclusion.

C. Consequently, Defendant Y's act of providing the Link in Article 1 and enabling access to the PDF file, in which the Discretionary Action Request Form was reproduced, falls under "quotation."

(4) Requirement [iii]

A. Article 32, paragraph (1) of the Copyright Act requires that quotation "is consistent with fair practices." The term "fair practices" as used here can be different depending on the field to which the work belongs and the medium where the work is made public, and other facts, and it is considered that whether fair practices related to quotations exist in the relevant field, publication media, etc. is determined in light of evidence and then whether the quotation is consistent with fair practices or not is to be found and determined.

In addition, even in cases where fair practices related to quotations have not been established in the field where the work belongs and the medium where it is made public, etc., if the quotation is found to be made by a method, etc. that is considered to be reasonable under social convention, it should be said that the quotation "is consistent with fair practices."

B. As stated in the holding above, a file of the reproduced Disciplinary Action Request Form is made to be viewed by linking it to the statement of the "request for disciplinary action by Mr. X" in Article 1 that is posted on the Blog. Concerning the quotation method of other works in an article posted on a blog, such as in this case, there is no evidence that is enough to find the presence of established fair practices.

Then, looking at whether the quotation method, etc. of the Disciplinary Action Request Form is found to be reasonable under social convention, it can be said that it is a commonly used method to link other documents, etc. with part of the statement on the internet so that other documents, etc. related to the statement can be viewed. However, as mentioned in (5) below, it cannot be said that the quotation method and form to make all of the Disciplinary Action Request Form, which is the work of another person, available in a PDF file without the consent of the copyright owner, are reasonable under social conventions.

Consequently, it cannot be said that the quotation of the Discretionary Action Request Form is "consistent with fair practices."

(5) Requirement [iv]

A. Article 32, paragraph (1) of the Copyright Act requires that a quotation "is made within a scope that is justified for the purpose of news reporting, critique, study, or other place in which the work is quoted." This requirement is to demand that the quoted part is "within a scope that is justified" in the relationship with the found "purpose of the quotation" on the assumption that the quoted part can be clearly distinguished. It is reasonable to judge whether the quotation is made "within a scope that is justified" by considering the following points comprehensively: [i] the details and validity of the purpose of the quotation; [ii] the relationship between the purpose of the quotation and

the quoted work; [iii] the scope and size of the quoted work; [iv] the method and form of the quotation; and [v] the degrees of advantage that the copyright owner receives by the quotation and disadvantages that the person whose work was quoted suffer, and other factors.

B. It is found that since the Sankei Article reported that a request for disciplinary action was made against Defendant Y and it contained a critical comment against Defendant Y, Article 1 aims to make an objection against the grounds for requesting disciplinary action made by the Plaintiff against Defendant Y and against the details of news reporting in the Sankei Article in order to restore Defendant Y's trust and honor.

A disciplinary action against an attorney has a big impact on the business trust and social trust of the accused attorney only through the fact that the request for disciplinary action was made known by a third party. Even though it is a groundless request, if the fact that the request is made is known to outsiders, it requires considerable time and effort to clear up the misunderstanding. In this case, as mentioned above, a disciplinary action was requested against Defendant Y and, furthermore, the request for disciplinary action was reported and known widely by the public. Therefore, it is naturally allowed for Defendant Y to restore its trust and honor by the method or form of posting an objection on a blog that the public can access. Defendant Y does not obtain any economic profits and the Plaintiff does not suffer any economic disadvantages by said act of Defendant Y.

C. However, in cases of posting an objection against a request for disciplinary action against an attorney on a blog, when quoting the Disciplinary Action Request Form, which is the work of another person, the quotation needs to be necessary and, even in cases where the quotation is found to be necessary, the scope and size of the quotation must be within the scope necessary for achieving the purpose.

Looking at Article 1 from this perspective, in the explanatory statement of Defendant Y against the Request for Disciplinary Action, immediately after the subheads of items 1 through 3, the allegations of the Plaintiff, who is the requester of the Request for Disciplinary Action, were stated in a simple and accurate manner by indicating the corresponding page in the Disciplinary Action Request Form and by quoting it partially, and a person who accesses Article 1 can fully understand the allegations of the Plaintiff by these statements.

Then, there is no need for Defendant Y to quote all of the Disciplinary Action Request Form. Even if it is found to be necessary to quote the statements in the Disciplinary Action Request Form to ensure the accuracy of the summary of the allegations of the Plaintiff, it is enough to quote part of the Disciplinary Action Request



Form indicated in the explanatory statement, such as the corresponding part only. It should be said that quoting all of the Disciplinary Action Request Form exceeds the scope necessary to achieve the purpose.

D. On the other hand, the Defendants alleged that quotation of all of the Disciplinary Action Request Form is a desirable expression method to quote the Disciplinary Action Request Form accurately and it is rather inappropriate to make an objection by using part of the Disciplinary Action Request Form alone. However, in Article 1, the Plaintiff's request for disciplinary action was summarized accurately and simply and a person who comes across Article 1 can fully understand the grounds for requesting disciplinary action, as indicated in the holding above. It is not found that there are circumstances, such as that the grounds for the Request for Disciplinary Action cannot be understood and the purpose is misunderstood, etc. unless all of the Disciplinary Action Request Form is quoted.

E. Based on the above, it cannot be found that the quotation of the Disciplinary Action Request Form was "made within a scope that is justified for the purpose of the quotation."

(6) Consequently, Defendant Y's act of providing the Link in Article 1 that is posted in the Blog and enabling access to the PDF file, in which the Discretionary Action Request Form was reproduced, does not fall under legal quotation, but it should be said that the act constitutes infringement of the Plaintiff's copyright (right to transmit to the public) and the author's moral right (right to make the work public).

#### 4. Issue 1-4 (Whether the right was abused)

The Defendants alleged in this lawsuit that the Plaintiff's act of alleging infringement of the copyright and the author's moral right and to demand injunction and payment of compensation for damages falls under an abuse of the rights and is not allowed. Therefore, it is examined below.

(1) The Defendants listed the following as unavoidable circumstances to restrict the execution of the rights of the Plaintiff, who is the right owner: [i] the Request for Disciplinary Action was made by the Plaintiff, regardless of its advantages and disadvantages, against Defendant Y, who was a defense counsel in a criminal case under public prosecution against P and it has a strong public element; and [ii] the Plaintiff delivered the Disciplinary Action Request Form to the media that have wide transmission capabilities to society, based on his will and the Plaintiff must have understood that the request form would be disclosed to the public.

A. A disciplinary action against an attorney can be requested by any person (Article 58, paragraph (1) of the Attorneys Act). The Request for Disciplinary Action was made

against Defendant Y, who was a defense counsel in a criminal case under public prosecution against P, which caught social attention and the Plaintiff, who is the requester, had no private interest in the case, as pointed out by the Defendants. Then, it can be said that the Request for Disciplinary Action is not a private conflict between the Plaintiff and Defendant Y, but has public characteristics.

B. In addition, after the Request for Disciplinary Action was made, an article titled "Request for Disciplinary Action Against Attorney Y. Affirming the Running Away of Defendant A is 'Against Dignity'" (the Sankei Article) was posted on Sankei Shimbun and part of the Disciplinary Action Request Form was quoted and introduced. As mentioned in the holding above, the article is presumed to be posted because the Plaintiff provided the information related to the Disciplinary Action Request Form along with the name of Defendant Y to the newspaper company.

Article 1 is an objection against the Request for Disciplinary Action. The reason why Defendant Y posted Article 1 on the blog that the public can access is considered to be because it was widely reported that disciplinary action was requested against Defendant Y by the Sankei Article and that fact was known to the public. In this sense, it cannot be denied that the Plaintiff's act of providing the aforementioned information to the media led to an infringement of the right to his own work.

C. A disciplinary action against an attorney has a big impact on the business trust and social trust of the accused attorney only through the fact that the request for disciplinary action was made being known by a third party, as mentioned in the holding above. The fact that the disciplinary action was requested against Defendant Y was known widely to the public by the Sankei Article. Therefore, it is naturally allowed for Defendant Y to restore trust and honor by the method or form of posting an objection on a blog that the public can access, as stated in the holding above.

D. However, even if Defendant Y's posting of an article of an objection against the Request for Disciplinary Action on its blog is approved, this does not naturally restrict the execution of the right of the Plaintiff against the Defendant Y's act of providing the Link in Article 1 to enable access to the PDF file, in which all of the Disciplinary Action Request Form was reproduced, (against the act of infringing the right to transmit to the public).

As stated in the holding above, the summary of the grounds for requesting disciplinary action by the Plaintiff is stated in Article 1 and a person who accesses the article can fully understand the allegations of the Plaintiff by this statement. Defendant Y does not have to quote all of the Disciplinary Action Request Form. It should be said that even if Defendant Y quotes the request form, it would be enough to quote the part

indicated in the explanatory statement only. There is no evidence that is enough to find that it was difficult for Defendant Y to avoid infringement of the copyright, etc. of the Plaintiff by refraining from posting the file of the Disciplinary Action Request Form on the Blog or by quoting part of the request form alone.

In addition, in light of the fact that there are no circumstances suggesting that the Plaintiff allowed another person to transmit the Disciplinary Action Request Form to the public in this case, it cannot be said that execution of the Plaintiff's right by itself falls under an abuse of the right.

E. At the same time, concerning the claim based on the infringement of the right to make the work public, it is necessary to consider the circumstances that the Plaintiff provided the information related to the Disciplinary Action Request Form to the newspaper company and allowed them to quote part of the request form in the article.

The right to make the work public affects works that have not been made public. In this case, the fact is found that the Plaintiff provided the Disciplinary Action Request Form to Sankei Shimbun by itself and part of the request form was quoted in the article. It should be said that, at the time when Article 1 was posted, the necessity of protecting the Plaintiff's right to make the work public was decreased to a considerable extent. The Plaintiff provided the information related to the Disciplinary Action Request Form to the newspaper company by itself and allowed it to quote the part that met his intention in the Sankei Article. However, once Defendant Y, against whom the Request for Disciplinary Action was made, disclosed the request form as part of its objection against the request, the Plaintiff executed the right by alleging that the act of Defendant Y falls under infringement of the right to make the work public. It should be said that this falls under abuse of the right.

## (2) Allegation of the Plaintiff

The Plaintiff alleged, concerning his claim based on the infringement of the right to make the work public, that since the Disciplinary Action Request Form was not made public, there is no reason to restrict the claim; however, as stated in (1) above, in consideration of the circumstances that appeared in this case, it should be said that the claim based on the Plaintiff's right to make the work public falls under abuse of the right.

## (3) Allegation of the Defendants

A. The Defendants alleged that, in order to make accurate quotation of the Disciplinary Action Request Form, quotation of the entire text is a desirable expression method and it is rather inappropriate to counter by using part of it alone. However, this allegation cannot be adopted as stated in 3. (4) D. above.

B. In addition, the Defendants alleged that it should be considered that Defendant Y gained no economic benefits by quoting the Disciplinary Action Request Form. However, since the Disciplinary Action Request Form originally had no commercial characteristics, it is not reasonable to emphasize the element of whether the Plaintiff or the Defendant received an economic advantage or disadvantage when judging whether the right was abused in this case.

C. In addition, the Defendants alleged that the right to object is an important right to protect honor and fame against accusations through the media and, therefore, the interest to be protected by restricting expression is beyond the value of the expression to be restricted and the degree of restriction needs to be minimum. However, although the right alleged by the Plaintiff is inferior to the value of the expression of Defendant Y, the act of the court to uphold the claim of the Plaintiff falls under restriction of expression by execution of the jurisdiction.

However, the act of infringing the copyright, etc. that is disputed in this case is an act of providing the Link in Article 1 and to enable access to the PDF file, in which the Disciplinary Action Request Form is reproduced, and it does not hinder Defendant Y from making an objection against the Request for Disciplinary Action. In fact, Defendant Y made an objection against the Request for Disciplinary Action while stating the summary of the Disciplinary Action Request Form and circumstances are not found where it is difficult to make a sufficient objection unless access to the PDF file, in which the Disciplinary Action Request Form is reproduced, is secured.

Therefore, the aforementioned allegation of the Defendants is groundless.

(4) As stated above, it cannot be said that the claim based on the right to transmit to the public from among the claims based on the copyright and the author's moral right of the Plaintiff falls under abuse of the right, but it is reasonable to understand that the claim based on the right to make a work public falls under abuse of the right and is not allowed.

5. Issue 2 (Whether the right to privacy was infringed)

As mentioned in the Basic facts above, Articles 1 and 2 indicate the name of the Plaintiff as requester of the Request for Disciplinary Action. The Plaintiff alleged that the name of the Plaintiff and the fact that the requester of the Request for Disciplinary Action is the Plaintiff is a matter "that a person does not want to be disclosed without due cause to another person that the person does not wish" and, therefore, the act of Defendant Y falls under an infringement of privacy. Therefore, it is examined below.

(1) Generally, it should be said that information related to the name of a requester and information that the requester requested disciplinary action against an attorney deserve legal protection as a right to privacy or benefits. Even though a request for disciplinary

action against an attorney has public characteristics, if the attorney subject to the request for disciplinary action discloses personal information of the requester that the attorney learned through disciplinary action procedures on the internet without obtaining the consent of the requester with the aim of objection against the request for disciplinary action without reasonable circumstances and backgrounds and enables the public to access the information, it is considered to be an infringement of privacy. In this sense, the allegation of the Defendants that the right to make public a requester of a disciplinary action must be guaranteed for the accused attorney cannot be adopted.

However, in this case, as stated in the holding above, the following circumstances are found: the Plaintiff provided the Disciplinary Action Request Form or information related to the details, including the name of Defendant Y, to Sankei Shimbun after the Request for Disciplinary Action was made; as a result, the Sankei Article reported that "a male in Tokyo" made the Request for Disciplinary Action against Defendant Y; and the grounds for the request were introduced by quoting part of the Disciplinary Action Request Form.

It is considered that this behavior of the Plaintiff is to make the presence of the Request for Disciplinary Action widely known to the public and to raise public interest about the procedures, and the public who have interest in the procedures naturally have an interest in who is the requester. In addition, disclosing the name of the accused attorney in the disciplinary action procedures in question, which are closed procedures, without obtaining the consent is an act that decreases the need for protection of the information, such as the name of the Plaintiff, who is the requester of the procedures. It cannot be said that it is natural for the Plaintiff to expect that the name of the Plaintiff, who is the requester, is not disclosed and consider it as information that justifiably deserves legal protection, while disclosing to the media the name of the attorney, against whom he made the request for disciplinary action, and making it public through newspaper articles.

As mentioned above, in consideration of the aforementioned basic facts in this case, at the time when Articles 1 and 2 were posted, the information that the requester of the Request for Disciplinary Action was the Plaintiff could not be evaluated to be a matter that a person naturally does not want to be disclosed to others without due cause, and it cannot be said that the information deserves legal protection as the right to privacy or benefits.

(2) On the contrary, the Plaintiff alleged that the fact of being the requester of disciplinary action makes others presume that the Plaintiff has a conflict with such a person as an attorney, with whom people usually do not get involved unless there is any

legal conflict or case, and therefore, it is information that a person naturally does not want to be disclosed to others.

However, since anyone can request a disciplinary action, it is not presumed that a person has a conflict with an attorney immediately based on the fact of making a request for disciplinary action against an attorney. A requester of a request for disciplinary action is on the side of accusing an attorney, who is subject to the request, of its misconduct and requesting the disciplinary action. Therefore, it cannot be said that it is general that a person who requested disciplinary action does not want that information disclosed to others.

(3) As mentioned above, it cannot be said that Defendant Y's act of making the name of the Plaintiff public and disclosing that the Plaintiff was the requester of the Request for Disciplinary Action in Articles 1 and 2 constitutes an infringement of the right to privacy of the Plaintiff.

6. Issue 3 (Whether the posting of Article 3 constitutes a tort)

(1) The background and details posted in Article 3 are as stated in the Basic facts (3) A. and B. According to them, it is found that Defendant Z, as the litigation representative of Defendant Y in the first case, stated in Article 3 that the statement of opinions of Defendant Y was wonderful and introduced the details on the internet, gave explanations of the details of the first case as an assumption to introduce the details, and linked it to Article 1 so that readers could refer to Article 1.

(2) The Plaintiff alleged that the posting of Article 3 falls under accessoryship of infringement of the right to make the work public and the right to transmit to the public related to the Disciplinary Action Request Form.

However, the link was provided in Article 3 so that readers can easily refer to Article 1 only for an explanation of the assumption to introduce the statement of opinions of Defendant Y. Article 1 itself, which is the reference, is an article that Defendant Y posted and is not the work of the Plaintiff.

Therefore, it is impossible to conclude that posting Article 3 infringes the right to make the work public and the right to transmit to the public related to the PDF file, which is the destination of the link in Article 1, or falls under accessoryship thereof.

(3) Consequently, without the need to examine the remaining matters, it cannot be said that posting of Article 3 constitutes a tort.

7. Issue 4 (Whether there are damages to the Plaintiff and the amount thereof)

Based on the examination above, concerning Defendant Y's act of providing the Link to the file of the Disciplinary Action Request Form, it infringed the right to transmit to the public of the Plaintiff; however, there is not enough evidence to find that

there was property damage to the Plaintiff by this act of infringement.

In addition, even though the claim based on the right to make the work public of the Plaintiff falls under abuse of the right, as mentioned in the holding above, in consideration of the fact that the Plaintiff provided the Disciplinary Action Request Form to Sankei Shimbun and part of the request form was quoted in the article, even if Defendant Y made the Disciplinary Action Request Form public after the posting of the Sankei Article, it cannot be found that the Plaintiff suffered mental distress that deserves legal protection due to the publication.

Therefore, the allegation of the Plaintiff is groundless.

#### 8. Conclusion

Consequently, the claim of the Plaintiff has grounds to the extent of demanding to delete the file indicated in 2. (1) B. in Attachment "List of Articles," which is a PDF file at the destination of the Link, but the remaining claims are groundless and shall be dismissed. A declaration of provisional execution is not appropriate and therefore it is not attached, and the judgment is rendered as indicated in the main text.

Tokyo District Court, 40th Civil Division

Presiding judge: SATO Tatsubumi

Judge: YOSHINO Shuntaro

Judge: SAITO Atsushi

(Attachment)

## List of Articles

### 1. Blog

- (1) "B" on the internet  
(URL is omitted.)
- (2) "C" on the internet  
(URL is omitted.)

### 2. Articles

#### (1) Article 1

- A. URL for browsing  
(URL is omitted.)
- B. URL where the Disciplinary Action Request Form is posted  
(URL is omitted.)
- C. Title  
"Explanatory statement against the request for disciplinary action"
- D. Posting date  
February 4, 2020

#### (2) Article 2

- A. URL for browsing  
(URL is omitted.)
- B. Title  
"Explanatory statement against the request for disciplinary action"
- C. Posting date  
February 5, 2020