

## **[Claim-collecting employee case]**

Supreme Court Decision 2011Do11246 decided May 9, 2012

Regarding Claim-collecting Employer's Duty of Supervision of Employees under the Network Act

### Facts

Defendant A is a claim collection company who has employed individual claim collectors on a contractual basis. Some claim collectors had unauthorized access to the website of the National Health Service (NHS) in order to catch some information about the income and properties of data subjects in default.

Since their access to NHS website amounted to breach of privacy or sensitive data, they were accused by the public prosecutor. And Company A was also indicted on account of the joint penal provision in Article 75 of the Act on Promotion of Information and Communications Network Utilization and Data Protection, etc. (the "Network Act"). The Public Prosecution regards Company A as a corporate employer who was negligent in exercising due care and performing supervisory duty to do the claim-collecting business.

### Legal Issue

Defendant A argued that the persons who violated the privacy of debtors are not the regular employees under a employment contract. As a matter of fact, they have been under the supervision of Company A when they collect claims

from debtors.

### Reasoning

Article 75 of the Network Act provides for joint punishment of employer and employee. The purport of the above double punishment provision lies in securing effectiveness of the provision by punishing an employer such as a corporation, etc. Employees of the corporation include not only those under a formal employment contract but also those under corporate control or supervision while they are performing a corporate job directly or indirectly (see Supreme Court Decisions 2003Do4966 decided February 24, 2006 and 2008Do11921 decided April 23, 2009).

In this case, the corporation is punished on charge of negligence in taking due care, and managerial and supervisory duty in relation to the business in breach of law. In a real case, whether the corporation was negligent in exercising due care of, and performing, supervisory duty depends on various facts and conditions related with the violations as a whole, taking into account the followings (see Supreme Court Decisions 2009Do9624 decided April 15, 2010 and 2010Do12069 decided December 9, 2010):

- the purports of the relevant law;
- the degree of infringement upon legal interest caused by the violations;
- the effect expected from such double punishment against the violations;
- the economic or pecuniary loss caused by the violations;
- the volume of business operations related with the violations;

the relationship of direction and supervision inside the corporation;  
the measures actually taken by the corporation to prevent such violations, etc.

#### Conclusion

Claim collecting persons are really the employees of Defendant company. The Supreme Court held that Defendant fails to exercise due care or perform the managerial and supervisory duty required to prevent the violations of the relevant Act, and shall be subjected to criminal penalty.