

寰宇醫事裁判

# 日本B型肝炎 「除斥期間」之爭患者敗訴 (2022年札幌判決)

A Controversy over the Preemption Concerning the Hepatitis B in Japan: The Patients Defeat (Judgment in Sapporo in 2022)

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平成24年(ワ)第1428號損害賠償請求事件 今和4年3月11日札幌地方裁判所



## 摘要

原告A與B於嬰幼兒期,因共用針頭接種疫苗而感染B型肝炎,進而起訴日本政府國家賠償集體訴訟。原告分別在1990年與1991年e抗原陰性慢性肝炎發病,並惡化為肝纖維,嗣於2012年起訴。被告主張,原告起訴時距e抗原陰性慢性肝炎發病皆已超過20年,除斥期間已經過;原告則主張,雖除斥期間已經過,但肝炎已復發且惡化為肝纖維,則應視為新的損害發生並重新起計除斥期間。札幌地方法院認為,在e抗原陰性慢性

關鍵詞:B型肝炎(Hepatitis B)、除斥期間(preemption)、損害賠償

( compensation for damage )

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肝炎發病之後,雖然出現輕、中度肺纖維化等病情惡化的狀況,但在未達肝硬化程度前,皆被視為與慢性肝炎同相同階段的病態,除斥期間的起算點仍維持「e抗原陰性慢性肝炎發病」之際。幌地方法院判決原告們敗訴,原告們的損害賠償請求權在提起本件訴訟時已超過除斥期間,權利即告消滅。

Plaintiffs A and B were infected with hepatitis B when they shared needles for vaccinations as infants and children, and filed a class action lawsuit against the Japanese government seeking national compensation. In 1990 and 1991, the plaintiffs developed E antigen-negative chronic hepatitis, which progressed to liver fibrosis, and sued the Japanese government in 2012. The defendant argued that the preemption period had expired because it was more than 20 years after the onset of the e-antigen-negative chronic hepatitis when the plaintiff filed the lawsuit; the plaintiff argued that although the pre-emption period had expired, the hepatitis had recurred and progressed to liver fibrosis, so the pre-emption period should be recalculated as if a new injury had occurred. The Sapporo District Court ruled: Although the disease worsens after the onset of E antigennegative chronic hepatitis, such as mild to moderate pulmonary fibrosis, it is considered to be in the same stage as chronic hepatitis until it reaches the level of cirrhosis, and the starting point of the exclusion period remains the onset of E antigen-negative chronic hepatitis. The Sapporo District Court therefore ruled against the plaintiffs, and the plaintiffs' right to compensation was extinguished as the statute of limitations had expired by the time the lawsuit was filed.

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## 壹、事實概要

#### 一、事件概要

原告A、B為嬰幼兒期因共用針頭接種疫苗感染B型肝炎之國賠集體訴訟案的受害者。本件系爭除斥期間之起算點,被告日本政府認為依最高法院2021年之判決,起算點應為「e抗原陰性慢性肝炎發病」之際,距原告們提起告訴已超過20年之除斥期間。原告們則主張雖然兩人於2012年提出訴訟時,距「e抗原陰性慢性肝炎發病」(原告A為1990年、原告B為1991年)皆已超過20年,但因日後肝炎又復發並惡化為肝纖維化(原告A為1993年7月2日、原告B為2009年8月6日),應視為新的除斥期間起算點。

慢性B型肝炎之發病及死亡率,病程是否進展為肝硬化或肝癌,與體內病毒DNA(HBV-DNA)的濃度有密切關係,HBV-DNA的濃度越高代表病毒複製越活躍,故抗病毒藥物治療的短期目標是使HBV-DNA的量降低、ALT值恢復正常,並期待e抗原陽性患者的血清轉陰性。e抗原陽性B型肝炎在臨床上可能會經過四個階段:「e抗原陽性(免疫廓清期)」→「血清轉換(seroconversion)」→「不活動帶原期」→「e抗原陰性」。在進入最後e抗原陰性的階段後,肝炎會趨於鎮靜化,成為不活動型帶原者,日後進展為肝癌等的風險較低,長期預後也較良好。話雖如此,在此階段後仍有10~20%的病例會發展為慢性肝炎,並進展為肝纖維化。

肝纖維化(Fibrosis,縮寫為F)分為五期,F0為正常,F1是輕度,F2是中度,F3則達到重度,F4已達肝硬化。原告A的肝纖維化進展於1990年至1993年間從F0(正常)發展到F1(輕度),原告B則是在1991年e抗原由陽性轉為陰性,但當時的肝纖維化程度不明,直至2009年才發現已發展至F2(中度),如表1。