

Court/Tribunal: Supreme Court of Japan
Case: 2006 (Gyo-Tsu) No. 135

This case came before the Supreme Court of Japan when the appellant alleged that Article 3, paragraph 1 of the Nationality Act (“Act”) violated Article 14, paragraph 1 of Japan’s Constitution. The Act governs how a person may acquire Japanese nationality, Article 3 para. 1 allows a child born out of wedlock to a Japanese father and a non-Japanese mother to gain Japanese nationality through “legitimation,” i.e. acknowledgement by the father and subsequent marriage of the parents. Article 3, para. 1 does not allow a child with a Japanese father and a non-Japanese mother whose parents never wed to claim Japanese nationality, even if the child is acknowledged by the father. It is this distinction that the appellant claims violates the Constitution. In a 10-5 majority, the Court held that the legitimation requirement did violate the Constitution.

The appellant was born to a Japanese father and a Filipino mother. The father acknowledged the appellant as his child, but this took place after the birth of the child, not prior. If the acknowledgment had taken place prior to the child’s birth, the child could have acquired nationality under Article 2, item 1 of the Act, which grants nationality where the mother or father is a Japanese citizen at the time of birth. The appellant submitted a notification to the Ministry of Justice for acquisition of Japanese nationality and the Minister determined that the appellant failed to meet the required specifications because legitimation had not occurred. The appellant sued, seeking a declaration of his/her Japanese nationality.

The court of the first instance dismissed the appellant’s claim, reasoning that even if the legitimation provision were unconstitutional, it would simply be void and would not lead to a new system for granting Japanese nationality, nor would the appellant automatically acquire Japanese nationality as a result. The appeal counsel continued to allege that disparate treatment, or a “Distinction” as the Court refers to it, arises as a result of Article 3, para. 1. Counsel for the appellant also argued that the Act was only unconstitutional with regard to the part of it that causes the Distinction, and the appellant should be granted nationality under the remaining part of the paragraph.

The Court looked to Article 14 of the Constitution, which provides for equality before the law. Based on the supremacy of the Constitution, if no reasonable basis can be found in the legislative purpose for making a distinction, such as the one in the Act, or where no reasonable relevance can be found between the distinction and the legislative purpose, then the provision violates Article 14, para. 1 of the Constitution, regardless of the legislature’s discretionary power. The Court determined that where there may have once been a reasonable basis for such a distinction one no longer exists, using comparative law and changes in circumstances as the foundation for this judgment.

The Court reasoned that the legislature’s purpose when drafting the Act was to ensure that those who were granted nationality had close ties with the country, theorizing that if the parents wed, the child would maintain a close tie to Japan through his or her family life. At the time of the Act’s drafting, many other countries required both acknowledgement and legitimation for an individual to acquire nationality. The Court relied on the fact that this is no longer widely in

practice. The Court also pointed out that social and economic changes in Japan render this part of the Act less relevant; many different family lifestyles and increasing numbers of international father-mother relationships mean that there will be increasing numbers of children in the appellant's situation. More importantly, it means that a person in such a situation may be just as likely to have close ties with Japan as someone whose parents are legally wed. The Court also referred to the issue of gender equality that the provision raises; a child born to a Japanese mother will have no problem obtaining nationality, but one born to a Japanese father is presented with potential difficulties. The Court concluded that while naturalization is available to people in the appellant's situation, it is an inadequate substitute because they are then dependent upon the discretion of the Minister of Justice.

The Court also addressed whether they are free to alter the Act in a manner as to give relief to the appellant or whether this can only be done by the legislative body. The Court determined they can give relief by excluding the part of the paragraph that imposes the extra requirement, the subsequent marriage of the mother and father, while leaving the remaining parts intact. They held that this is not the same as imposing a new requirement, which is the exclusive purview of the legislature. Consequently, the appellant was found to have acquired Japanese nationality pursuant to the requirements set forth in Article 3, para. 1 of the Act, excepting the voided legitimation clause.

There were five dissenting opinions by Justices Yokoo, Tsuno, Furuta, Kainaka and Horigome who would have held that the changes the Court advocates are legislative in nature, and cannot be dealt with by the judiciary.

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