

【English Translation by Lawyers for LGBT and Allies Network (LLAN: llanjapan.org). Original Japanese judgment available at <https://bit.ly/3cIrRS4>】

Judgment delivered on March 17, 2021: receipt of the original on the same day Court clerk [stamp]  
Case No. (Wa) 267 of 2021, Claim for Damages Case  
Date of conclusion of the oral argument: 28 October 2020

## **Judgment**

The list of parties is contained in Exhibit 1. The terms used in the judgment shall have the meanings defined in Exhibit 1.

### **Main Text of Judgment**

1. The plaintiffs' claims are dismissed.
2. The cost of the litigation shall be borne by the plaintiffs.

### **Facts and Reasons**

#### **I Plaintiffs' Claim**

The Plaintiffs request that the Defendant pay each of the Plaintiffs 1,000,000 yen and interest thereon at a rate of 5% per annum from February 28, 2001 until the completion of payment.

#### **II Summary of the Facts**

##### **1 Summary of the Facts**

The Plaintiffs argue that the Civil Code and the Family Register Act, which do not permit marriage between persons of the same sex, is a violation of Article 13, Article 14, Paragraph 1, and Article 24 of the Constitution, and that the failure of the State to take necessary legislative measures is unlawful under Article 1, Paragraph 1 of the State Redress Act. The Plaintiffs seek payment from the State of 1,000,000 yen per Plaintiff for compensation of non-pecuniary damage, together with interest thereon at a rate of 5% per annum, the statutory rate prescribed in Article 404 of the Civil Code prior to the amendment by Law No. 44 in 2017.

##### **2 Undisputed Facts (the facts below are not in dispute amongst the parties)**

###### **(1) Sexual Orientation**

Sexual orientation refers to the attraction that a person feels towards another person in a sensual, emotional or sexual sense. A person who has such feeling of love and sexual attraction towards a person of the opposite sex is heterosexual (“**heterosexual person**”), and a person who has such feeling of love and sexual attraction towards a person of the same sex is homosexual (“**homosexual person**”).

## (2) Relationships of the Plaintiffs

- (i) Plaintiff 1 and Plaintiff 2 are male and homosexual. Plaintiff 1 and Plaintiff 2 filed a marriage notification at their place of residence in January 2019. However, such notification was rejected because they are of the same sex.
- (ii) Plaintiff 3 and Plaintiff 4 are male and homosexual. Plaintiff 3 and Plaintiff 4 filed a marriage notification at their place of residence in January 2019. However, such notification was rejected because they are of the same sex.
- (iii) Plaintiff 5 and Plaintiff 6 are female and homosexual. Plaintiff 5 and Plaintiff 6 filed a marriage notification at their place of residence in January 2019. However, such notification was rejected because they are of the same sex.

### 3 Relevant Provisions of the Civil Code and the Family Register Act

Article 739, Paragraph 1 of the Civil Code provides that marriage shall be effective upon notification pursuant to the Family Register Act and Article 74, Item 1 of the Family Register Act provides that persons who intend to marry shall provide notification of the married surname of the husband and wife. In this manner, the provisions of the Civil Code and the Family Register Act concerning the marriage system, as a whole, only allow marriage between individuals of the opposite sex (“**opposite-sex marriage**”), and no provision therein allows marriage between individuals of the same sex (“**same-sex marriage**”). Thus, the relevant provisions of the Civil Code and the Family Register Act concerning marriage (collectively, the “**Provisions**”) stipulate that only individuals of the opposite sex may marry.

### 4 Issues and Summary of the Parties’ Assertions

The issues in this case are as follows, and the outline of the parties’ submissions on these issues are described in Exhibit 2. The terms used in the body of the judgment shall have the meanings defined in Exhibit 2.

- (1) Whether the Provisions are in violation of Article 13, Article 14, Paragraph 1 and Article 24 of the Constitution;
- (2) Whether the failure to amend or repeal the Provisions is unlawful for the purpose of Article 1, Paragraph 1 of the State Redress Act; and
- (3) The amount of the plaintiffs’ damages.

## III The Court’s Judgment

### 1 Findings of Fact by the Court

The Court accepts the following facts based on the evidence provided:

- (1) Sexual Orientation
  - (i) Sexual Orientation

Sexual orientation refers to the attraction a person feels towards another person in a sensual, emotional or sexual sense. A person who has such feeling of love and sexual attraction towards a person of the opposite sex is heterosexual, and a person who has such feeling of love and sexual attraction towards a person of the same sex is homosexual. While the causes of one’s sexual

orientation, or homosexuality have not been found, experts point to a combination of factors such as genetics and environment as possibly influencing one's sexual orientation. However, the majority of associations of psychiatric professionals state that in most cases, sexual orientation is determined before birth or in the early years of life, and that it is not a choice. The majority opinion among psychologists is also that sexual orientation cannot be chosen or changed at one's own will. Although some homosexual persons may alter their sexual behavior, this does not mean that they have changed their sexual orientation beyond a mere change in behavior. Sexual orientation cannot be changed at will or by psychiatric therapy (*Undisputed Fact (1); Plaintiffs' Evidence A2 (including sub-sections), 7 (including sub-sections), 231, 233, 235; Testimony of Plaintiffs 1-2, 4-6*).

(ii) Population by Sexual Orientation

The number of people with a non-heterosexual orientation in Japan is unclear. Three different surveys claim that the population ratio of LGBT persons (collective term for homosexual men and women, bisexual persons with both homosexual and heterosexual orientations, and transgender persons whose gender identify is not aligned with their biological sex) is 7.6%, 5.9%, and 8% respectively. In all three surveys, the population ratio of heterosexual persons exceeds 90% (*Plaintiffs' Evidence A350*).

(2) Perception of Homosexuality in the Meiji Era

In the Meiji era, homosexuality was regarded as a form of sexual perversion or congenital disease, somewhere between being healthy and psychotic. Major symptoms of sexual perversion included homosexual desires, men desiring young boys, men engaging in sodomy (sexual acts between men), and women loving women. These were regarded as the first signs of degeneration. Treatments for such sexual perversions included hypnotism, bromine drugs, physical work, cold water baths, and change of environment (*Plaintiffs' Evidence A187, 189*).

In addition, homosexuality in adolescence was considered to occur because of a very strong desire for affection. It was considered that this situation should not cause any concerns as long as it remained within certain limits, but that a deepening affection between persons of the same sex would lead to impure homosexuality and should therefore be treated with extreme caution and should be completely prohibited (*Plaintiffs' Evidence A190*).

(3) Marriage System under the Family Law Section of the Civil Code (“**Meiji Civil Code**”) Prior to the Amendment by Law No. 222 of 1947 (“**1947 Amendment of the Civil Code**”)

(i) Drafting of the Meiji Civil Code

When the Meiji Civil Code was drafted, the drafters referred to foreign laws of eight countries, including the French Civil Code, the Italian Civil Code, and the Belgian Civil Code. During the drafting process, the drafters assumed as a matter of course that marriage should be between a man and a woman and there is no evidence of discussion around whether or not to allow same-sex marriage. At that time, there were foreign laws that explicitly prohibited same-sex marriage. However, the drafters considered it obvious that same-sex marriage should not be recognized and that there was no need to include specific provisions in the Civil Code (*Plaintiffs' Evidence A184, 186, 188*).

(ii) Marriage under the Meiji Civil Code

Even before the enactment of the Meiji Civil Code, marriage was considered an important life event, and there were already a number of customs related to marriage. The Meiji Civil Code

was enacted to codify these old customs. Instead of fully abolishing these customs, the Meiji Civil Code regulated certain harmful customs and clarified other customs that were ambiguous (*Defendant's Evidence 3*).

The Meiji Civil Code was based on the concept of the family system (*kazoku shugi*), which centers around the household (*ie*), with the head of the household (*koshu*) having the power to control the household (*koshu-ken*). Marriage was for the benefit of the household. Thus, marriage required the consent of the head of household or an individual's parents, and the mere agreement of the parties to the marriage was not sufficient. Further, the husband had dominance over his wife. Marriage under the Meiji Civil Code was considered a bond between a man and a woman meeting the requirements of morals and customs and for the purpose of life-long cohabitation. It was also considered a bond between the opposite sexes for the purpose of living a life recognized by law. Consequently, under the Meiji Civil Code, it went without saying that marriage was between a man and a woman, and therefore, there was no provision prohibiting same-sex marriage. Marrying a person of the same sex was considered to be the same as metaphors like "to take an academic discipline as a wife" or "to marry books" and such kind of marriage must be rejected because it is completely devoid of the intention to marry (*Plaintiffs' Evidence A19, 183, 188, 193, Defendant's Evidence 4, 5*).

### (iii) The Purpose of the Marriage System in the Meiji Civil Code

Since the time of the drafting of the Meiji Civil Code, there were considerations and discussions on whether a man and a woman who cannot reproduce could still be married. While some people believed that the nature of marriage was for a man and woman to continue the family line and to live together sharing the hardships of life, others believed that the definition of marriage as a man and a woman continuing the family line could not account for the fact that some married couples could not have children due to old age or other reasons. The view that the purpose of marriage cannot be achieved if a man and a woman cannot have children is not in accordance with the purpose of the Meiji Civil Code, which understood marriage as essentially a union of two people without requiring the capacity to produce children.

Through such discussions, the Meiji Civil Code established the view that marriage was for the joint life of a man and a woman as husband and wife, and was not necessarily for the purpose of procreation or for the purpose of having heirs. Therefore, marriage between elderly persons or those incapable of reproduction was also considered valid (*Plaintiffs' Evidence A186, 196, 199 and Defendant's Evidence 4*).

### (4) Perception of Homosexuality from the Early Post-War Period (Around 1945) to Around 1980

#### (i) Perception of Homosexuality in the Fields of Medicine and Psychology

Even in the early days after the end of World War II, sodomy and sexual intercourse between women were considered to be forms of perverted sexual desire. In other words, sodomy and sexual intercourse between women were regarded as pathological sexual perversions akin to exhibitionism, and something commonly seen among the mentally disturbed.

In the field of psychology, homosexuality was considered to be an abnormal disposition that had existed since ancient times regardless of ethnic group or social rank. Homosexuality was considered to occur when, before a person matured into heterosexuality, the person experiences homosexuality either mentally or physically and became fixated on the homosexual experience. It was believed that while most persons would later become heterosexual and lead a healthy married life, in some cases homosexuality could become pathologically entrenched due to external

factors, and unlike normal healthy affection, this was considered as a kind of sexual maladjustment. It was believed that, if homosexuality became pathologically entrenched, psychological therapy consisted of essentially self-suggestion, self-observation, investigation of the cause, and removal of the obstacle to heterosexuality (*Plaintiffs' Evidence A201 to 205 for the foregoing*).

(ii) Perception of Homosexuality in Foreign Countries

In the first edition of the Diagnostic and Statistical Manual for Mental Disorders (DSM-I) published by the American Psychiatric Association in 1952 and its second edition (DSM-II) published in 1968, homosexuality was considered to be a psychopathic personality accompanied by pathological sexuality or a personality disorder (*Plaintiffs' Evidence A48, 215*).

In addition, the World Health Organization's International Classification of Diseases (ICD) also categorized homosexuality under sexual deviation and sexual disorder up to and including the 9th edition (ICD-9) prior to publication of the 10th edition (ICD-10) in 1992 (*Plaintiffs' Evidence A29*).

(iii) Treatment of Homosexuality in the Field of Education

The "Basic Material on Problematic Behavior of Students" published by Japan's Ministry of Education in January 1979 as guidance for junior and senior high school students described homosexuality as a perverted form of sexual delinquency and further indicated that aversion to the opposite sex may occur due to certain causes. It added that most would return to normal heterosexuality with maturation but for some homosexuality would continue into adulthood. The material also indicated that homosexuality is generally likely to impede the development of healthy heterosexual love, and is not acceptable even in modern society because it is contrary to sound social morality and is likely to result in sexual disorders (*Plaintiffs' Evidence A26*).

(5) Marriage in the Context of Family Law under the Civil Code after the 1947 Amendment of the Civil Code ("**Current Civil Code**")

(i) 1947 Amendment of the Civil Code

In 1947, the Meiji Civil Code was amended for the following reasons:

Articles 13 and 14 of the Constitution make it clear that all citizens shall be respected as individuals and are equal under the law, and that there shall be no economic or social discrimination on the basis of sex or other factors. Article 24 of the Constitution declares that marriage shall be based solely on the mutual consent of both sexes, that it shall be maintained through mutual cooperation on the basis that husband and wife have equal rights, and that with regard to choice of spouse, property rights, inheritance, domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted based on respect for the individual and the inherent equality of the sexes. However, as the Meiji Civil Code had provisions which violated fundamental principles of the Constitution, the amendment of the Meiji Civil Code was considered necessary. Under Meiji Civil Code, the law was based on the concept of the family system (*kazoku shugi*), which centers around the household (*ie*), with the head of the household (*koshu*) having the power to control the household (*koshu-ken*); marriage, being for the benefit of the household, required the consent of the head of household or an individual's parents and the mere agreement of the parties to the marriage was not sufficient; and the husband had dominance over his wife. The amendment of the Meiji Civil Code sought to emphasize individual autonomy in marriage, and aimed to change the legal approach to family matters to one that is based on an individualistic view of family and cherishes individual purpose.

However, the 1947 Amendment of the Civil Code focused on the provisions of the Meiji Civil Code that conflicted with the Constitution and the provisions of the Meiji Civil Code that did not conflict with the Constitution were unchanged. There is no indication that same-sex marriage was discussed at the time (*Plaintiffs' Evidence A19, 142, 143, 145, 146, 152, 177, Defendant's Evidence 6, 7, the overall import of oral arguments*).

(ii) Concept of Marriage at the Time of the 1947 Amendment of the Civil Code

Even with the 1947 Amendment of the Civil Code, marriage continued to be considered as something to which only a man and a woman could be party. A marital relationship was considered to be a spiritual and physical union between a man and a woman forming a marital relationship under social conventions, according to what society generally considered to be a marital relationship. In addition, the intention to marry was understood to mean the intention to grant the parties the status of husband and wife as determined by social norms, and to enable children born between the parties in the future to acquire the status of children as determined by social norms, or the intention to form a relationship that could be viewed as a marriage under the social norms of the time (*Plaintiffs' Evidence A206, 207, Defendant's Evidence 8, 9*).

(iii) Understanding of Same-sex Marriage

At the time of the 1947 Amendment of the Civil Code, as described in paragraph (ii) above, as a marital relationship was considered to be a spiritual and physical union between a man and a woman forming a marital relationship consistent with social norms, according to what society generally considered to be a marital relationship, same-sex marriage was not recognized as marriage in that sense. In addition, similar to the position under the Meiji Civil Code, same-sex marriage had to be rejected as something completely devoid of the intention to marry, as can be seen when using metaphors such as “to take an academic discipline as wife” or “to marry books.” (*Plaintiffs' Evidence A206, 207, Defendant's Evidence 9*)

(6) Perception of Homosexuality since around 1973

(i) Changes in Perception of Homosexuality in Foreign Countries

The American Psychiatric Association adopted the resolution to remove homosexuality from its list of mental disorders in 1973, and in 1975, the American Psychological Association endorsed the same resolution and adopted a resolution that homosexuality on its own did not imply the existence of a disability with respect to the person's judgement, stability, reliability, general social ability or occupational performance (*Plaintiffs' Evidence A1 (including sub-sections) 3 (including sub-sections)*).

The American Psychiatric Association, in its third edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-III) published in 1980, amended the description of homosexuality to the effect that it constituted a mental disorder only if a homosexual patient disliked a persistent pattern of homosexual excitement and claimed that it was a source of persistent distress, but this was also eliminated in the revised third edition (DSM-III-R) published in 1987 and homosexuality is no longer considered a mental disorder (*Plaintiffs' Evidence A27-1 to 28-2, 48, 215, 217*).

In 1992, the World Health Organization published the tenth edition of the International Classification of Diseases (ICD-10), which eliminated homosexuality from the classification of diseases. The World Health Organization also declared that homosexuality is not something that can be subject to treatment in any sense of the word (*Plaintiffs' Evidence A30-2, 48, 215, 217*).

(ii) Changes in Perception concerning Homosexuality in Japan

In Japan, by around 1981, the perception that homosexuality should not be considered a psychiatric problem as long as the individual concerned is leading a normal social life, and that it should be sufficient to treat only those complaining of mental distress became widespread, and since then homosexuality has not been regarded as a mental disorder in Japan (*Plaintiffs' Evidence A48, 216, 217*).

(7) Status concerning Same-Sex Marriage in Various Countries and Regions

(i) Status of Legal Systems in Various Countries and Regions

(a) In 1989, Denmark adopted a registration system that officially recognized the relationship between two persons of the same sex and granted them a certain status (the details of which vary depending on the country introducing such a system; collectively, the “**Registered Partnership System**”). Germany and Finland adopted a Registered Partnership System in 2001, followed by Luxembourg in 2004 and Ireland in 2010 (*Plaintiffs' Evidence A141*).

(b) In addition, the following countries introduced a system recognizing same-sex marriage (*Plaintiffs' Evidence A141*) in the following years:

2000	Netherlands
2003	Belgium
2005	Spain and Canada
2006	South Africa
2008	Norway
2009	Sweden
2010	Portugal, Iceland and Argentina
2012	Denmark
2013	Uruguay, New Zealand, France, Brazil and the United Kingdom (England and Wales)
2015	Luxembourg and Ireland
2017	Finland, Malta, Germany and Australia

(c) On June 25, 2015, the U.S. Supreme Court, in the Obergefell case, rendered a judgment to the effect that a state law which limited marriage to couples of the opposite sex and did not permit same-sex marriage was in violation of the Fourteenth Amendment to the U.S. Constitution providing for due process and equal protection (*Plaintiffs' Evidence A155*).

In Taiwan, in 2017, the Judicial Yuan, which corresponds to a constitutional court, ruled that the Civil Code of Taiwan, which did not permit same-sex marriage, violated the Constitution of Taiwan, and, in light of this judgment, the Civil Code was amended to permit same-sex marriage (*Plaintiffs' Evidence A101 (including sub-sections), 135*).

In Italy, the Constitutional Court ruled in 2010 and 2014 that marriage referred to a union between individuals of the opposite sex. However, the court ruled that, the fact that there was no system other than marriage available under Italian law which appropriately provided for the rights and obligations of same-sex couples violated the Italian Constitution. Consequently, a law which established a Registered Partnership System was enacted in 2016 (*Plaintiffs' Evidence A141*).

(d) In 2013, the Russian Federation enacted a statutory amendment, which while not prohibiting homosexual acts, prohibited the promotion of homosexuality. In 2014, the Constitutional Court ruled that the homosexual acts did not violate the Constitution.

In Vietnam, the law was amended in 2014 so that a wedding ceremony between a same-sex couple was no longer a prohibited activity. However, at the same time, the amended law stipulated that marriage was defined as being between a man and a woman, and that the law would not provide legal approval or protection for same-sex marriage.

In addition, in the Republic of Korea, a district court ruled in 2016 that recognition of same-sex marriage should be decided by the legislature and not by judicial decision. According to a survey conducted in Korea in 2013, 67% of respondents were against legally recognizing same-sex marriage while 25% were in favor (*Plaintiffs' Evidence A141 for the foregoing*).

(ii) Trends in Foreign Organizations Located in Japan

In September 2018, the American Chamber of Commerce published a written opinion advocating freedom of marriage for LGBT couples, pointing out that same-sex marriage or Registered Partnership Systems have been recognized by G7 member nations other than Japan, and noting that same-sex couples married in foreign countries are restricted in terms of the activities they can pursue in Japan because they are unable to obtain a spouse visa in Japan. In the same month, the Australian and New Zealand Chambers of Commerce in Japan, the British Chamber of Commerce in Japan, the Canadian Chamber of Commerce in Japan, and the Ireland Japan Chamber of Commerce also expressed support for this opinion, and the Danish Chamber of Commerce and Industry in Japan also subsequently expressed its support (*Plaintiffs' Evidence A112, 131, 132*).

(8) Situation in Japan

(i) In Japan, Shibuya City, Tokyo first introduced a Registered Partnership System in October 2015, and then Setagaya City, Tokyo introduced a Registered Partnership System in November of the same year. Since then there has been an increase in the number of local authorities which have introduced such a Registered Partnership System. As of today, about 60 local municipalities covering over 37 million residents have introduced a Registered Partnership System (*Plaintiffs' Evidence A75 to 91, 98, 119 to 129, 164 to 170, 271 to 292, 311 to 322, 325*).

(ii) According to a survey on the number of companies that have adopted basic policies on LGBT rights, such as policies to respect LGBT rights and to prohibit discrimination of people in the LGBT community, there were 173 companies with such policies in 2016 and 364 companies in 2019 (*Plaintiffs' Evidence A387, 388*).

(9) Statistics on Marriage

(i) Results of Surveys on Opinions toward Marriage

(a) According to the 2005 White Papers on the National Lifestyle issued by the Cabinet Office, in all age groups from 18 to 49 years of age, approximately 60% of the respondents answered "yes" to the question of whether it would be better to get married if an unmarried person is having a child, and fewer than 10% answered "no." In addition, in every annual survey from 1982 to 2002, more than 90% of the respondents answered that they wished to get married one day (*Plaintiffs' Evidence A236*).

(b) According to a 2009 survey conducted by the Ministry of Health, Labour and Welfare, 70% of the respondents agreed or somewhat agreed with the idea that "marriage is an individual freedom" and that "anyone can choose to get married or not."



However, according to a survey conducted by the same ministry in 2010 targeting people 20-49 years of age, 64.5% of the respondents answered either “everyone should get married” or “it is better to get married.” This exceeded the ratio of respondents who answered the same in the U.S. (53.4%), France (33.6%) and Sweden (37.2%) (*Plaintiffs’ Evidence A238*).

(c) According to a 2015 survey conducted by the National Institute of Population and Social Security Research, 64.3% of unmarried male respondents and 77.8% of unmarried female respondents answered that marriage has some benefits. The frequently cited reasons by those respondents are as follows (respondents were given multiple choices and could choose up to two options) (*Plaintiffs’ Evidence A345*):

“We can have children and families” (35.8% for men, 49.8% for women);

“We will have a place for peace of mind” (31.1% for men, 28.1% for women);

“We can meet the expectations of our parents and people around us” (15.9% for men, 21.9% for women);

“We can live with loved ones” (13.3% for men, 14% for women); and

“We will gain social trust and equal standing” (12.2% for men, 7% for women).

(d) According to the 2015 survey conducted by the National Institute of Population and Social Security Research, 64.7% of male respondents and 58.2% of female respondents agreed with the statement that “it is not desirable to be single throughout life,” and 74.8% of male respondents and 70.5% of female respondents agreed with the statement that “a man and a woman should marry if they live together” (*Plaintiffs’ Evidence A345*).

(ii) Statistics on Marriage

(a) According to the 2018 Vital Statistics Survey conducted by the Ministry of Health, Labour and Welfare, although the number of marriages in 2016 was about half the 1.1 million that took place in 1972 (when the number of marriages was the highest) and although the annual number of marriages is generally declining, there were still 620,531 marriages in 2016 (*Plaintiffs’ Evidence A239*).

(b) According to the same survey, the annual marriage rate in Japan (calculated by dividing the annual number of marriages by the total population and then multiplied by 1,000) has typically been declining year on year since 1972, although there have been fluctuations. In 2016, the marriage rate decreased to 5%, but still exceeded those in European countries such as Italy (3.2%), Germany (4.9%), France (3.6%), and the Netherlands (3.8%). The percentage of children born out of wedlock was 2.3% in Japan, significantly lower than in other countries like the U.S. (40.3%), France (59.1%), Germany (35%), Italy (30%), and the UK (47.9%) (*Plaintiffs’ Evidence A239*).

(c) According to the surveys conducted by the Ministry of Health, Labour and Welfare from 1986 to 2018, the percentage of households with children among all households declined year by year from 46.2% in 1986 to 22.1% in 2018 (*Plaintiffs’ Evidence A240*).

(10) Statistics of Surveys on Opinions toward Same-Sex Marriage

(i) According to a 2015 survey conducted by a group led by Professor Kazuya Kawaguchi of Hiroshima Shudo University, 44.8% of male respondents and 56.7% of female

respondents responded that they supported or somewhat supported same-sex marriage. 50% of male respondents and 33.8% of female respondents opposed or somewhat opposed same-sex marriage. Further, 72.3% of respondents in their 20s or 30s and 55.1% in their 40s or 50s supported or somewhat supported same-sex marriage. Only 32.3% of respondents in their 60s or 70s supported same-sex marriage, and 56.2% in the same age group were against or somewhat against same-sex marriage (*Plaintiffs' Evidence A104-2*).

(ii) According to a 2015 survey conducted by the Mainichi Newspapers Co., Ltd., 38% of male respondents and 50% of female respondents supported same-sex marriage, while 49% of male respondents and 30% of female respondents opposed it (*Plaintiffs' Evidence A105*).

(iii) According to a 2015 survey conducted by the Japan Broadcasting Corporation, 51% answered “yes” to whether same-sex marriage should be allowed, while 41% responded “no” (*Plaintiffs' Evidence A107*).

(iv) According to a 2015 survey conducted by the Asahi Shimbun Company, 49% answered “yes” and 39% responded “no” to whether same-sex marriage should be legally recognized. Among the responses, 70% of respondents between 18 and 39 years of age answered positively. 42% of those in their 60s gave positive responses and another 42% gave negative responses. Among those in their 70s or older, 63% responded negatively (*Plaintiffs' Evidence A109*).

(v) According to the 2018 National Survey on Family conducted by the National Institute of Population and Social Security Research, 75.1% of respondents completely or somewhat agreed that some kind of legal guarantee should be granted to same-sex couples, and 25% completely or somewhat disagreed. Further, 69.5% completely or somewhat agreed that same-sex marriage should be legally recognized, while 30.5% completely or somewhat disagreed (*Plaintiffs' Evidence A174*).

## **2 Whether the Provisions violate Article 24 or Article 13 of the Constitution (related to Issue (1))**

(1) Matters relating to marriage and family require a comprehensive determination based on various social factors, including national tradition and public sentiment, and consideration of the overall principles that govern marital and parent-child relationships of the relevant era. Therefore, the Constitution does not equivocally define the specifics of these matters, and it is more appropriate for the laws to embody such details. From this viewpoint, it can be said that Article 24, Paragraph 2 of the Constitution primarily leaves it to the reasonable legislative discretion of the Diet to establish specific systems regarding marriage and family matters. Article 24, Paragraph 2 also sets limitations on such discretion by requesting and providing guidance that such legislation is based on the dignity of individuals and the essential equality of both sexes. Furthermore, Article 24, Paragraph 1 provides that “marriage shall be based solely on the mutual consent of both sexes and it shall be maintained through mutual cooperation founded upon the equal rights of husband and wife.” This provision is interpreted as a clarification that the decision on whether to marry, when to marry, and whom to marry should be left to the parties who will be married and based on the principles of free will and equality. Marriage confers important legal rights such as the right of inheritance of a surviving spouse (*Article 890 of the Civil Code*) and the legitimacy of children born in wedlock (*Article 772, Paragraph 1 et al. of the Civil Code*). Further, while the public has begun to accept diverse family relationships in recent years, respect for the legal institution of marriage still widely permeates the public’s thinking. As such, the aforementioned freedom to marry should be accorded proper respect in the light of the purpose of Article 24, Paragraph 1 of the Constitution (*case number 2013 (O) 1079, Supreme Court*

*Grand Bench judgment of 16 December, 2015, Minshu Vol.69, No.8, p.2427 (the “Grand Bench Judgment on the Unconstitutionality of the Period of Prohibition of Remarriage”).*

Incidentally, Article 24, Paragraph 1 of the Constitution uses the terms “the mutual consent of both sexes” and “husband and wife,” and Paragraph 2 of the same article uses the phrase “essential equality of both sexes.” A literal interpretation of these paragraphs would mean that they only provide for opposite-sex marriage. Therefore, we need to examine whether the freedom to marry extends to same-sex couples.

(2) When the Meiji Civil Code was enacted, homosexuality was regarded as a kind of mental disorder or congenital disease that must be prohibited, and homosexual persons must be cured into heterosexuality (*Findings of Fact (2)*). In the Meiji Civil Code, although there was no provision prohibiting same-sex marriage, marriage was understood to be between individuals of the opposite sex as a matter of course and thus there was no need to explicitly stipulate against same-sex marriage (*Findings of Fact (3)(i), (ii)*). In the early postwar period, homosexuality was still regarded as a perverted sexual desire, and homosexual persons were seen as mentally deranged (*Findings of Fact (4)(i)*). The same was true in foreign countries (*Findings of Fact (4)(ii)*). When the Constitution entered into force on May 3, 1947, it did not mention same-sex marriage; and although there is no evidence that same-sex marriage was discussed during the amendment of the Civil Code in the same year either, it was understood that same-sex marriage was naturally not allowed (*Findings of Fact (5)(i) to (iii)*).

In light of the background mentioned above, we understand that under the Meiji Civil Code, same-sex marriage was not permitted since homosexuality was considered to be a mental disorder, and it was unnecessary for the law to include any express provisions against it. Furthermore, the perception of homosexuality as a mental disorder did not change in the 1947 Amendment of Civil Code. Same-sex marriage was still considered naturally unacceptable, the same understanding as under the Meiji Civil Code. Therefore, even in the Constitution promulgated in 1946, Article 24, Paragraphs 1 and 2, and Article 13 embody the same understanding of homosexuality. Thus, Article 24 does not mention same-sex marriage. In light of the legislative history above and the fact that Article 24 uses terms such as “both sexes” and “husband and wife” which implies men and women, it is appropriate to construe Article 24 as stipulating opposite-sex marriage and not same-sex marriage. Consequently, it is reasonable to construe the term “marriage” in Article 24, Paragraph 1 to mean opposite-sex marriage and the freedom to marry as extending to opposite-sex marriage only. Accordingly, the fact that the Provisions do not recognize same-sex marriage cannot be construed to violate Article 24, Paragraphs 1 and 2 of the Constitution.

(3) Furthermore, as explained in paragraph (1) above, since Article 24, Paragraph 2 of the Constitution primarily entrusts the establishment of specific systems concerning marriage and family matters to the reasonable legislative discretion of the Diet, and Paragraph 1 of the same article defines the limits of such discretion, we conclude that Article 24 does not guarantee any right to seek a particular system concerning marriage and family. Obviously, same-sex marriage falls within the scope of matters concerning marriage and family. Considering the nature of Article 24, a specific provision on marriage and family matters, we also conclude that Article 13 of the Constitution, a comprehensive provision on human rights, does not guarantee any right to seek a specific system for same-sex marriage and the families created from such unions.

Substantively, as explained in paragraph 3(2)(i) below, marriage is a legal act that, simultaneously and subsequently, confers various legal effects tied to the status created by a relationship; namely, the creation of a family relationship between the parties to the marriage and their family, public certification of the relationship by means of the family register and legal status comprising a variety of legal rights and obligations based on that status. Based on the Provisions, we believe that it may

be necessary to consider creating family relationships or legal statuses for same-sex marriage that differ from those for opposite-sex marriage, such as the provisions of the Civil Code that assume reproduction (*Article 733 and seq.*) and those concerning biological children (*Article 772 and seq.*). It is difficult to directly derive a system of same-sex marriage solely through the interpretation of Article 13 of the Constitution.

Therefore, the Court does not find that the Provisions' failure to recognize same-sex marriage violates Article 13 of the Constitution.

### **3 Whether or not the Provisions violate Article 14, Paragraph 1 of the Constitution (Related to Issue (1))**

(1) Article 14, Paragraph 1 of the Constitution sets forth the principle of equality under the law, and this provision should be interpreted to prohibit discriminatory treatment under the law unless there are reasonable grounds based on the nature of the matter (*case number 1962 (O) 1472, Supreme Court Grand Bench judgment of 27 May, 1964, Minshu Vol.18, No.4, p. 676., case number 1970 (A) 1310, Supreme Court Grand Bench judgment of 4 April, 1973, Keishu Vol.27, No.3, p. 265, Grand Bench Judgment on the Unconstitutionality of the Period of Prohibition of Remarriage, etc.*).

As described in paragraph 2(1) above, since matters relating to marriage and family require a comprehensive determination based on various social factors, including national tradition and public sentiment, and consideration of the overall principles that govern marital and parent-child relationships of the relevant era, Article 24, Paragraph 2 of the Constitution grants the legislature the primary responsibility to establish specific systems relating to marriage and family matters using its reasonable legislative discretion. In addition, as described in paragraphs 2(2) and (3) above, given that Article 24 and Article 13 of the Constitution should not be interpreted as guaranteeing the right to same-sex marriage or the right to a specific system pertaining to same-sex marriage, the legislature has broad discretion in determining marriage and family matters in relation to same-sex couples.

(2) (i) Under the Family Register Act, a marriage shall be registered upon the filing of a notification (*Article 74 of the Family Register Act*) and when a marriage notification is filed, a new family register shall be created for the married couple (*Article 16, Paragraph 1 of the Family Register Act*), in which each person in the family register shall be described as husband or wife (*Article 13, Items 1 and 6 of the Family Register Act*). Further, the married couple shall file a notification upon the birth of a child (*Article 49, Paragraph 1 of the Family Register Act*) and the child shall be entered in the family register of the parents (*Article 18 of the Family Register Act*). The Family Register Act also stipulates that an original of the family register shall be kept at the city office (*Article 8, Paragraph 2 of the Family Register Act*), and public certification of the relationships between the husband and wife and between the parents and children is conferred by the family register. In addition, the Civil Code contains the following provisions on marriage (*Article 731 et seq.*): marriage shall take effect upon the filing of the notification pursuant to the Family Register Act (*Article 739, Paragraph 1 of the Civil Code*), and persons within the third degree of affinity are defined as relatives (*Article 725, Item 3 of the Civil Code*). The Civil Code also contains provisions regarding the obligation to support relatives living together (*Article 730 of the Civil Code*), the marital property system between husband and wife (*Article 755 et seq. of the Civil Code*), the obligation of husband and wife to live together, cooperate and support each other (*Article 752 of the Civil Code*), the presumption of legitimacy of children born to the couple (*Article 772 of the Civil Code*), the parental authority with respect to children of the couple (*Article 818 et seq. of the Civil Code*), and the right of inheritance of spouses (*Article 890 of the Civil Code*). The Civil Code thus confers legal status comprising legal rights and obligations based on the status of the parties to the marriage and the family.

Based on the foregoing, marriage is a legal act that, simultaneously and subsequently, confers comprehensive legal benefits (collectively, the “**Legal Benefits of Marriage**”) tied to the status created by a relationship, namely the creation of a family relationship between the parties to the marriage and their family, public certification of the relationship by means of the family register and legal status comprising a variety of legal rights and obligations based on that status.

(ii) The Provisions provide only for opposite-sex marriage. Heterosexual couples can choose either to marry and avail themselves of the Legal Benefits of Marriage, or not to marry and not receive the Legal Benefits of Marriage. But same-sex couples cannot marry even if they want to, and they cannot avail themselves of the Legal Benefits of Marriage. As such, there is differential treatment between heterosexual persons and homosexual persons in this respect (“**Differential Treatment**”).

Based on the foregoing, as described in paragraph (1) above, although the legislature has broad discretion in determining marriage and family matters in relation to homosexual couples, it is necessary to consider whether the Differential Treatment has a reasonable basis and is within the scope of the above-mentioned legislative discretion of the legislature.

(iii) In this respect, the Defendant argues that since even homosexual persons can marry a person of the opposite sex, there is no differential treatment by sexual orientation.

Certainly, even homosexual persons may marry a person of the opposite sex under the Provisions. However, sexual orientation refers to the attraction a person feels towards another person in a sensual, emotional or sexual sense. Such feeling of love and sexual attraction towards a person of the opposite sex is heterosexuality, and such feeling of love and sexual attraction towards a person of the same sex is homosexuality. Furthermore, the fundamental essence of marriage is that both sexes have a sincere intention to live together for the purpose of lasting spiritual and physical union (*see case number 1986 (O) 269, Supreme Court Grand Bench judgment of 2 September, 1987, Minshu Vol.41, No.6, p.1423*). In light of the foregoing, even if homosexual persons can legally marry a person of the opposite sex who is not aligned in sexual orientation, such marriage, in most circumstances, would not embody the fundamental essence of marriage for a homosexual person, and it is difficult to consider that this kind of marriage would be a marriage of the kind contemplated by Article 24 of the Constitution and the Provisions. Furthermore, the desire to marry (*Article 742, Item 1 of the Civil Code*) can be construed as the desire to seek to establish a relationship that is considered to be a true marriage under social norms (*see case number 1967 (O) 1108, Supreme Court Second Petty Bench judgment of 31 October, 1969, Minshu Vol.23, No.10, p.1894*). Accordingly, even if a homosexual person marries a person of the opposite sex who is not the object of his/her love or sexual attraction, it would be difficult to find that this kind of marriage embodies the desire to marry as mentioned above, and there would be doubts as to whether this kind of marriage would be a valid marriage at all.

In the light of sexual orientation and the fundamental essence of marriage mentioned above, it is obvious that even if a homosexual person can marry a person of the opposite sex who is not aligned in sexual orientation, homosexual persons cannot be regarded as having the same legal benefits as heterosexual persons. The Defendant’s argument that there is no differential treatment by sexual orientation cannot be accepted.

(3) Next, this Court examines whether the Differential Treatment has a reasonable basis.

(i) Homosexuality is not currently regarded as a mental disorder. Although the causes of sexual orientation have not been discovered, it is possible to conclude that it is established knowledge that sexual orientation cannot be chosen at one’s own will or changed at one’s own will or by medical treatment. (*Findings of Fact (1)(i), (6)*). As such, it can be said

that sexual orientation is a kind of personal characteristic which is determined irrespective of one's own will and is equivalent to sex and race.

Whether or not differential treatment based on matters that cannot be chosen or changed at one's own will has a reasonable basis must be carefully examined based on whether or not such differential treatment is truly compelling in light of, among others, the existence of any legislative context and the specifics of that context, the purpose of the legislation and the content of the restricted legal rights.

(ii) At present, there is widespread respect for civil marriage (*see case number 2012 (Ku) 984, 985 Supreme Court Grand Bench judgment of 4 September, 2013, Minshu Vol.67, No.6, p.1320*). This is demonstrated by the following circumstances: (i) the system of marriage has been consistently upheld from the Meiji Civil Code to the Current Civil Code; (ii) while the number of married couples has been decreasing each year, approximately 600,000 couples still marry every year and, compared with other countries, the marriage rate is high and the rate of children born out of wedlock is low (*Findings of Fact (9)(ii)(a) to (c)*); (iii) in several surveys, a significant majority of respondents supported marriage (*Findings of Fact (9)(i)(a) to (d)*); (iv) the Cabinet has also recognized the public's widespread respect for legal marriage (*Plaintiffs' Evidence A261*); and (v) under applicable laws and regulations, there are many cases where a person who has not filed a notification of marriage and is in circumstances similar to a de facto marital relationship is treated in the same manner as married persons (*Article 3, Paragraph 2 of the Child Allowance Act; Article 5, Paragraph 1, Item 1 of the Act on Support for Crime Victims, etc., Such as Payment of Crime Victims Benefit; Article 3, Paragraph 3 of the Child Support Allowance Act; Article 6, Paragraph 1 of the Act on Welfare for Single Mothers, Single Fathers and Widows; Article 3, Paragraph 2 of the Employees' Pension Insurance Act; Article 5, Paragraph 7 of the National Pension Act, etc.*). In this regard, the system of marriage has survived, even though it is legally possible to provide persons who are in circumstances similar to a de facto marital relationship the same rights and obligations as married persons.

Based on the foregoing, it should be construed that it is a legal interest to enjoy, through marriage, the Legal Benefits of Marriage.

It can be said that enjoying the Legal Benefits of Marriage is an important legal interest for heterosexual persons, since Article 24 of the Constitution protects marriage as a system to realize such legal interest. Considering that the only difference between heterosexual and homosexual persons is their sexual orientation and sexual orientation cannot be chosen or changed at one's own will, it should be construed that there is no basis for differentiating between heterosexual and homosexual persons with respect to the value of their interest to enjoy the Legal Benefits of Marriage. Both heterosexual and homosexual persons must be able to equally enjoy such legal interest.

Accordingly, the Differential Treatment can be regarded as distinguishing between heterosexual and homosexual persons in terms of the interest to enjoy the Legal Benefits of Marriage, which is an important interest that should be equally enjoyed irrespective of whether one is heterosexual or homosexual.

(iii) Under the Meiji Civil Code, marriage was considered as a union between a man and a woman for the purpose of living jointly for life, consistent with the moral and social requirements (*Findings of Fact (3)(ii)*). Likewise, when the Current Civil Code was enacted in 1947, marriage was interpreted to mean the spiritual and physical union between a man and a woman to form a marital relationship consistent with social norms, consistent with how society generally perceived a marital relationship (*Findings of Fact (5)(ii)*). In Japan, same-sex marriage

has been naturally unrecognized in light of such social norms without any express provision prohibiting same-sex marriage (*Findings of Fact (3)(ii), (5)(ii), (iii)*).

That is because, under the Meiji Civil Code, homosexuality was considered a type of mental disorder or a congenital disease that should be treated and prohibited (*Findings of Fact (2)*) and even after the Current Civil Code was enacted in 1947, homosexuality was still considered a mental disorder that should be treated and prohibited (*Findings of Fact (4)(i) to (iii)*). Even if homosexual couples wished to marry, this desire was construed to arise from a mental disorder, as homosexuality was considered a mental disorder, and homosexual couples were considered incapable of consummating normal marital relationships consistent with social norms. Therefore, it was unnecessary to expressly prohibit same-sex marriage by laws and regulations.

However, by around 1992, it became established knowledge in Japan and internationally that homosexuality is not a mental disorder (*Findings of Fact (6)(i), (ii)*). In addition, it became clear that sexual orientation cannot be chosen or changed by one's own will, neither can it be changed after birth (*Findings of Fact (1)(i), (6)(i), (ii)*). As such, we can conclude that there is no longer any scientific or medical basis for denying same-sex marriage based on the belief that homosexuality is a mental disorder.

(iv) (a) The Current Civil Code stipulates provisions regarding married couples and their children, including the provisions concerning children biologically born to married couples (*Article 772 et seq. of the Civil Code*); the provisions concerning parental authority (*Article 818 et seq.*). Further, the Family Register Act stipulates matters such as the filing of a notification at the time of the birth of a child (*Article 49, Paragraph 1*) and entry of a child into the family register (*Article 18*). Considering these provisions, the Provisions can be construed to have an important purpose of providing legal protection to the relationship between cohabitating heterosexual couples who bear and raise children.

However, under the Current Civil Code, the legal status of married couples does not vary based on whether or not they have children, are capable of bearing children, or have the intention to have children. It should be left to the decision of an individual whether to bear and raise children, and the couples' choice of not having children should also be respected. Also, the main purpose of the marriage system under the Meiji Civil Code was not to bear or raise children but to provide legal protection for the cohabitating relationship of married couples (*Findings of Fact (3)(iii)*). These aspects of the Meiji Civil Code do not appear to have been amended when the Current Civil Code was enacted in 1947 (*Findings of Fact (5)(iii)*). In light of these facts, regardless of whether a married couple has a child, or has the intention or ability to have a child, the protection of the cohabitating relationship of married couples itself should be considered as an important purpose of the Provisions. Marriage for purposes other than having a child has become more important in recent years. This is demonstrated by the fact that the number of households with children has been decreasing year by year (*Findings of Fact (9)(ii)(c)*), the number of marriages still exceeds 600,000 per year and is relatively high compared to other countries (*Findings of Fact (9)(ii)(a), (b)*), and there appear to be many people who believe that there are advantages of marriage other than having children (*Findings of Fact (9)(i)(c)*).

(b) The above-mentioned purpose of the Provisions is legitimate, but it cannot be construed as a reason to deny all of the Legal Benefits of Marriage for homosexual couples.

In other words, the essence of marriage is that both sexes have the sincere intention to live jointly for the purpose of lasting spiritual and physical union. Considering that the

difference between heterosexuality and homosexuality is only the difference of sexual orientation, homosexual individuals can live jointly with individuals of the same sex who share the same sexual orientation, while maintaining the essence of marriage, as between the opposite-sex married couples. As mentioned in paragraph (iii) above, the Provisions did not provide for same-sex marriage because at the time of the enactment of the Current Civil Code in 1947, homosexuality was regarded as a mental disorder, and thus homosexual individuals were considered to be incapable of consummating normal marital relationships in accordance with social norms. Since this view has been completely repudiated now, it is not possible to interpret the Provisions' denial of all legal protection to cohabitating homosexual couples as justifiable, where the essence of their relationship is the same as the essence of marriage between heterosexual persons. That is because, if we interpret the Provisions as denying all legal protection to cohabitating same-sex couples, it would mean that the Provisions are based on incorrect facts in denying the relevant benefits to homosexual persons.

(c) This is the same in the light of the purpose of Article 24 of the Constitution, and as mentioned in paragraph 2(2) above, the reason why the Provisions only provide for the marriage of the opposite sex is the same as that explained in paragraph (b) above. In addition, despite the fact that Article 24 of the Constitution only provides for the marriage of opposite sexes and that it does not refer to same-sex marriage, Article 24 of the Constitution cannot be construed to deny all legal protection to cohabitating same-sex couples where the essence of their relationship is the same as the essence of marriage for heterosexual couples.

(d) As mentioned above, the Provisions and Article 24 of the Constitution, in light of their purposes, cannot be a basis for denying all legal protection to homosexual couples.

(v) In Japan, Shibuya City, Tokyo, first introduced the Registered Partnership System in October 2015. Since then, the number of local authorities which have introduced the Registered Partnership System has increased. Today, around 60 local authorities covering 37 million residents have introduced a Registered Partnership System (*Findings of Fact (8)(i)*). In addition, although there are differences across age groups, survey results show that the percentage of people in support of legally recognizing same-sex marriage has increased from 2015 to 2018. In 2015, the number of people supporting same-sex marriage already reached around 50%. In particular, people in younger generations hold more positive views towards same-sex marriage (*Findings of Fact (10)(i) to (v)*). Further, 75% of the respondents to the survey agreed that some kind of legal guarantee should be granted to same-sex couples (*Findings of Fact (10)(v)*). The number of companies in Japan that have adopted basic policies on LGBT rights, such as policies to respect LGBT rights and to prohibit discrimination against people in the LGBT community, also doubled between 2016 and 2018 (*Findings of Fact (8)(ii)*).

Although these facts do not represent the views of all people, they show that public awareness of the need to eliminate differential treatment on the basis of sexual orientation has increased, and that such public awareness is likely to continue to increase into the future. This should be taken into consideration in deciding whether there is any reasonable basis for the Differential Treatment.

(vi) Since it was recognized that homosexuality is not a mental disorder, many countries have enacted legislation to legalize same-sex marriage or to introduce the Registered Partnership System for the same-sex couples. While courts in some jurisdictions have held that marriage is limited to the opposite sex, others have held that the failure of a legal system to recognize same-sex marriage is unconstitutional. Those examples can be found in many developed countries, such as the G7 member states (*Findings of Fact (7)(i)*). Foreign



organizations in Japan also express concerns that their foreign employees' activities in Japan have been restricted (*Findings of Fact (7)(ii)*).

Since foreign countries and their organizations differ from Japan in their culture, values and religious views on marriage and romantic relationships, their views cannot directly influence our country's approach to providing legal protection to same-sex couples. However, those facts show that, since it has become commonly accepted that homosexuality is not a mental disorder, the growing demand in other countries and regions to eliminate the differential treatment between same-sex couples and heterosexual couples should be taken into consideration in deciding whether there is any reasonable basis for the Differential Treatment.

(vii) (a) Until around 1980, in Japan and internationally, homosexuality was commonly perceived as a mental disorder that must be prohibited. It was also a widely held view in the area of education (*Findings of Fact (4)(iii)*). According to a recent survey, while the majority of people supported permitting same-sex marriage by law, many people in older age groups of 60 and above were against it (*Findings of fact (10)(i), (iv)*). The prevalent view from the Meiji period until recently that homosexuality was a mental disorder which should be cured or prohibited is one of the reasons why national consensus has yet to be reached on permitting same-sex marriage. It is also one of the reasons why people form negative opinions and views on same-sex marriage. Now, while this view has been rejected both scientifically and medically, many people continue to form negative opinions and views on same-sex marriage due to this historical background. In light of this, it must also be taken into consideration that not an insignificant number of people still hold negative opinions and values toward same-sex marriage. In particular, since the enactment of the Meiji Civil Code, marriage has been defined by social customs and socially accepted ideas (*Findings of Fact (3)(ii), (5)(ii)*). Therefore, when exercising its legislative discretion on whether to permit same-sex marriage in the same way opposite-sex marriage is permitted, the legislature can take into consideration that not an insignificant number of people hold negative views towards same-sex marriage.

(b) However, as we explained repeatedly, it is now established knowledge that homosexuality is not a mental disorder in any sense and cannot be chosen or changed at one's own will. Homosexual persons are only a minority in our country, and heterosexual persons account for more than ninety percent of the population (*Findings of Fact (1)(ii)*). Because of this, if we do not provide homosexual persons any of the important Legal Benefit of Marriage because the heterosexual majority does not understand or tolerate homosexuality, this is too severe a result for homosexual persons, who could not choose their sexual orientation, considering the legal rights heterosexual persons can enjoy. This is true even taking into consideration that extending legal protection to homosexual persons would more or less change our country's traditional view of the family.

As explained in paragraph (v) above, there is increasing public awareness of the need to eliminate discriminatory treatment on the basis of sexual orientation and such public awareness will continue to increase into the future, and similar trends are seen in other countries as well. Considering these facts, while the negative opinions on same-sex marriage explained in paragraph (a) above can be one factor that the legislature can take into account in exercising its discretion, it should only be given limited weight in deciding whether there is any reasonable basis for not providing homosexual persons with the legal means to enjoy, even partially, the Legal Benefits of Marriage.

(viii) The Defendant argues that there is no disadvantage to same-sex couples because they can enjoy the same legal benefits as those attained from marriage through contracts or wills.

However, as described in paragraph (2)(i), marriage is a legal act which confers comprehensive legal benefits tied to such family relationship either simultaneously or subsequently, since marriage creates a family relationship between the parties to the marriage and their respective families, publicly certifies such relationship through the family register, and grants a variety of legal rights and obligations corresponding to that relationship. The nature of Legal Benefits of Marriage is in the creation and the public certification of the family relationship and in the grant of legal status corresponding to such family relationship. As a result, marriage cannot be substituted by contracts or wills which create individual debtor-creditor relationships but do not confer a family relationship. The Civil Code does not present contracts or wills as alternatives to marriage in the first place. While heterosexual couples can create rights and obligations through contracts or wills in addition to marriage, same-sex couples do not have the means to marry. It is obvious that same-sex couples do not have the same legal means available to heterosexual couples. In addition, with regard to the right of inheritance of a surviving spouse (*Article 890 of the Civil Code*), one of the Legal Benefits of Marriage, although same-sex couples can transfer property upon death by a testamentary gift or a gift on donor's death, these means are different from the right of inheritance of a surviving spouse because they can be subject to the claim for forced shares (*Article 1046 of the Civil Code*). With regard to the right of short-term residence of a spouse (*Article 1037 of the Civil Code*), a contract between the parties cannot be asserted against a third party. While contracts or wills can confer some legal benefits, they cannot confer the same level of legal benefit as the Legal Benefits of Marriage.

Based on the foregoing, the purpose and legal effects of a contract or a will differ from marriage. Creating individual debtor-creditor relationships through contracts or wills is not substitutable with the Legal Benefits of Marriage. Therefore, we reject the Defendant's argument above.

(4) Taking into consideration the circumstances described in paragraph (3), we now consider whether or not there is any reasonable basis for the Differential Treatment.

As described in paragraph (3)(i), the Differential Treatment in this case is based on sexual orientation—something that cannot be chosen or changed at one's own will. Therefore, we need to carefully consider whether there is any reasonable basis for the Differential Treatment in this case. As discussed in paragraph (3)(ii), the Legal Benefits of Marriage are benefits conferred by law, and they should be equally available to both same-sex couples and heterosexual couples and the Differential Treatment here concerns those benefits. The Differential Treatment is derived from the Provisions. As explained in paragraphs (3)(iii) and (3)(iv), while the purpose of the Provisions is justifiable, the view at the time of the 1947 Amendment of the Civil Code that homosexuality was a mental disorder and must be prohibited was completely rejected by around 1992. In light of this, the Provisions' failure to recognize same-sex marriage and Article 24 of Constitution cannot be the reason to deny all legal benefits to same-sex couples. Notwithstanding this, the Provisions create a distinction between homosexual persons and heterosexual persons in relation to whether they can marry someone that matches their sexual orientation.

As described in paragraph 2(3) above, the system for marriage and family of same-sex couples cannot be determined unequivocally. Since it is a system for same-sex couples, it inevitably will not (and cannot) be exactly the same as the system for marriage and family of heterosexual couples. Further, the specific system for same-sex marriage cannot be derived from the interpretation of the Constitution. Therefore, we must wait for the discretionary judgement of the legislature. Additionally, as described in paragraph 2(1) above, a somewhat significant number of citizens hold negative opinions and values toward same-sex marriage. Marriage has been defined by social customs and norms since the Meiji Civil Code, and matters pertaining to marriage and family should be determined by making a comprehensive examination of the overall principles governing marital and parent-child relationships

of the relevant era, as well as the various social factors including national tradition and public sentiment. Therefore, if the legislature takes the matters above into consideration within its broad legislative discretion pertaining to the marriage and family of same-sex couples and determines that the Provisions do not apply to same-sex couples, it does not automatically mean that such determination should be considered as lacking a reasonable basis.

However, as described above, the only difference between heterosexual persons and homosexual persons is their sexual orientation, which cannot be chosen or changed by one's own will. In light of this, there should be no difference in legal benefits that persons of any sexual orientation can enjoy. Nevertheless, the Provisions fail to make available any legal means to homosexual persons to enjoy, even partially, the Legal Benefits of Marriage. As described in paragraphs (3)(v) to (vii) above, when considering whether the Differential Treatment is reasonable, the increasing number of citizens who hold positive opinions on granting legal protection to homosexual couples, the growing desire to eliminate the distinction between homosexual persons and heterosexual persons, and the similar trend in other countries to eliminate differential treatment based on sexual orientation should be taken into account. On the other hand, the fact that not an insignificant amount of people hold negative opinions and values toward same-sex marriage should be given limited weight in deciding whether it is reasonable to not provide legal means to enjoy even a part of the Legal Benefits of Marriage to homosexual persons.

The Provisions provide the institution of marriage to heterosexual persons, but fail to offer to homosexual persons any legal means to enjoy, even partially, the Legal Benefits of Marriage. Based on the foregoing, we must conclude that, even accepting its broad legislative discretion, the legislature has exceeded its discretion. The Differential Treatment, to that extent, must be considered a discriminatory treatment that lacks any reasonable basis.

Accordingly, the Provisions, to the extent described above, violate Article 14, Paragraph 1 of the Constitution.

**4 Issue (2) (whether, for the purpose of Article 1, Paragraph 1 of the State Redress Act, the fact that the Provisions have not been amended or repealed should be considered illegal)**

(1) Article 1, Paragraph 1 of the State Redress Act provides that when public officials, in exercising public authority of the State or of a public entity, have breached a legal obligation they owe to an individual citizen and inflicted damage on that citizen, the State or the public entity shall be responsible for compensating that citizen. In determining whether the Diet members' legislative action or inaction is illegal in the context of this paragraph, the key question is whether the Diet members' conduct in the legislative process breached a legal obligation they owe to individual citizens, not whether the results of such legislation is constitutional. Further, the evaluation of the legislative conduct above should, in principle, be left to the political judgement of the citizens. As such, even if a particular piece of legislation violated the Constitution, the legislative action or inaction of the Diet members should not be automatically deemed illegal in the context of this paragraph for that reason alone.

However, in cases such as where the Diet neglects, for a long time and without justifiable reasons, to take legislative measures such as revising or repealing the provisions of a law even though it is clear that those provisions are in violation of the Constitution as they restrict rights and interests that are constitutionally guaranteed or protected without reasonable grounds, the legislative inaction of the Diet members should, on an exceptional basis, be deemed to be unlawful for the purpose of applying the provisions of Article 1, paragraph 1 of the State Redress Act, as the actions of the Diet members in the legislative process constitute a breach of the legal obligations they bear under their duties stated above

(see case number 1978 (O) 1240, Supreme Court, First Petty Bench judgment of 21 November 1985, *Minshu Vol. 39, No. 7, p. 1512*, and case numbers 2001 (Gyo-Tsu) 82 and 83 and 2001 (Gyo-Hi) 76 and 77, Supreme Court, Grand Bench judgment of 14 September 2005, *Minshu Vol. 59, No. 7, p. 2087*).

(2) This Court now examines whether the fact that the Provisions have not been amended or repealed should be considered illegal in the context of the application of Article 1, Paragraph 1 of the State Redress Act.

Because at the time of the 1947 Amendment of Civil Code, homosexuality was perceived as a mental disorder (*Findings of Fact (2), (4)*), this Court cannot find the Provisions to be unreasonable even though they did not provide any specific legal protection to same-sex couples.

The perception that homosexuality is a mental disorder has since been rejected in the United States in around 1980, and by the World Health Organization in around 1992. We acknowledge that, by around 1992, Japan also rejected the perception of homosexuality as a mental disorder (*Findings of Fact (6)(i), (ii)*).

Although homosexuality as a mental disorder has been scientifically and medically rejected, the introduction of the Registered Partnership System or same-sex marriage in foreign countries did not begin to unfold until after 2000 when the Netherlands introduced their same-sex marriage system (*Findings of Fact (7)(i)(b)*). Japan's adoption of the Registered Partnership System by local authorities further lagged behind, and only began after Shibuya City, Tokyo, introduced the Registered Partnership System in October 2015 (*Findings of Fact (8)(i)*).

In addition, according to recent surveys, although the majority of people in younger age groups in their 20s and 30s hold positive views on providing legal protections to same-sex marriages or to same-sex couples, the majority of people in the relatively older age group of 60 and above hold negative views on the same (*Findings of Fact (10)(i), (iv)*). Accordingly, we infer that the positive views towards same-sex marriage did not become the majority view until relatively recently.

Furthermore, there are various approaches to granting same-sex couples the Legal Benefits of Marriage, and it is difficult to say that the specifics of the same-sex marriage system are unequivocally obvious. As mentioned in paragraph 3(1) above, the determination of the specific system to adopt should be left to the Diet's reasonable legislative discretion. Evidence in this case shows that same-sex marriage was first mentioned in the Diet on November 17, 2004 during witness testimony in the House of Councilors' Research Commission on the Constitution. However, there is no indication that same-sex marriage was discussed during that Research Commission (*Plaintiffs' Evidence A260*). We recognize that actual discussions on same-sex marriage did not begin in the Diet until 2015 (*Plaintiffs' Evidence A11, 12, 60 to 62, 261, 267*).

In addition, as explained in paragraph 3(3)(vii) above, not an insignificant number of citizens hold negative opinions and views toward providing legal protections to same-sex marriages and homosexual couples.

Further to these considerations, since the 1947 Amendment of Civil Code, there has not been any judicial decision on whether the lack of a system for same-sex marriage is unconstitutional. As such, the Court must conclude that it was not feasible for the Diet to immediately recognize that the Provisions violated Article 14, Paragraph 1 of the Constitution.

In conclusion, although the Provisions were unconstitutional to the extent explained in paragraph 3(4) above, for the purpose of Article 1, Paragraph 1 of the State Redress Act, we cannot conclude that the Diet neglected, for a long time and without justifiable reasons, to take legislative measures such as revising or repealing the provisions of a law even though it is clear that those provisions are in violation

of the Constitution as they restrict rights and interests that are constitutionally guaranteed or protected without reasonable grounds.

Accordingly, in the context of the application of Article 1, Paragraph 1 of the State Redress Act, the fact that the Provisions have not been amended or repealed is not illegal.

#### **IV Conclusion**

As stated above and without having to make findings on the other issues, this Court has determined that there is no basis to uphold the Plaintiffs' claims. The Plaintiffs' claims shall therefore be dismissed.

The judgment is rendered as stated in the decision.

Second Civil Division, Sapporo District Court

Chief Justice Tomoko Takebe [signature]

Justice Ichita Matsunaga [signature]

Justice Yuya Kawano [signature]

(Exhibit 1)

List of Parties

[Plaintiffs' identities omitted for privacy reasons]

Attorney for the six Plaintiffs above:           Takeharu Kato  
Same as above   Fumiyasu Tsunamori  
Same as above   Fumiko Suda  
Same as above   Hiromi Minagawa  
Same as above   Fumio Ueda  
Same as above   Takuya Hayashi  
Same as above   Yusuke Takahashi

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Defendant: The State

Representative of the same, Minister of Justice:       Yoko Kamikawa

Appointed agent of the same:           Kohei Asano

Same as above   Takahisa Suto  
Same as above   Daisuke Mishima  
Same as above   Yuji Yamamoto  
Same as above   Masafumi Nakano  
Same as above   Yuna Tayu  
Same as above   Akihide Hosoya

(Exhibit 2)

## Summary of the Parties' Claims

### 1 Issue (1): Whether the Provisions violate Article 13, Article 14, Paragraph 1, or Article 24 of the Constitution

#### (1) Summary of the Plaintiffs' Claims

##### (i) The Provisions violate Articles 24 and 13 of the Constitution

Article 24, Paragraph 1 of the Constitution guarantees the freedom of marriage, and this guarantee extends to marriages between couples of the same sex. Freedom of marriage is guaranteed because this is essential for the respect for individuality, which is a foundational value of the Constitution, and more specifically, because it holds value as a form of self-actualization of individuals, as well as being the foundation of both democracy and a just and fair society. That is, in modern society, the state takes on the role of defining and giving effect to requirements for marriage through its laws. It may therefore be said that civil marriage is a system whereby the law sets forth the requirements and effects of, and sanctions and authenticates, the continued cohabitation between two persons. The Constitution also anticipates the existence of civil marriage (*Article 24, Paragraphs 1 and 2 of the Constitution*), and the Civil Code grants various legal and economic benefits comprehensively, such as the obligation of mutual cooperation of the parties (*Article 760 of the Civil Code*<sup>1</sup>), a system for fair and equal realization of property rights (*Article 882 et seq.*), and distribution of property (*Article 768*), based on the characteristics of marriage which is a life of cohabitation founded upon an intimate relationship, and the parties' relationship is strengthened by these benefits and obligations. Also, civil marriage plays an important role in that the bond between the parties is legally and socially recognized as that which forms a family, and such bond is strengthened through this recognition. These values and their importance apply to two persons of the same sex, just as much as they apply to persons of the opposite sex.

In addition, Article 24 of the Constitution does not prohibit the marriage of persons who are legally of the same sex. Specifically, the purpose of this Article is to repudiate the family system that existed under the pre-war civil code and extend the principle of respect for individuality to marriage, and it may be said that such purpose also extends to same-sex marriages.

In light of the above, the Provisions not recognizing same-sex marriages unjustly infringe on the freedom of marriage and violate Article 24, Paragraphs 1 and 2, and Article 13 of the Constitution.

##### (ii) The Provisions violate Article 14, Paragraph 1 of the Constitution

(a) Sexual orientation cannot be controlled by the will of an individual. Therefore, the difference in treatment, whereupon sexual orientation determines whether an individual is able to marry or not, should be categorized as discrimination on the basis of sex or social status prohibited by the latter half of Paragraph 1 of Article 14 of the Constitution, and the reasonableness of such difference in treatment should be subject to strict scrutiny. Moreover, the benefits of marriage that are denied to homosexual persons as a result of such difference in treatment are guaranteed by the Constitution as part of the freedom of marriage. Taking into account that such benefits are directly restricted and homosexual persons

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<sup>1</sup> Translator's note: This appears to be an error. The correct article number is Article 752 of the Civil Code.

constitute a small minority in society who may not seek redress through the democratic process, the reasonableness of such difference in treatment should be subject to strict scrutiny.

(b) While the Provisions recognize the marriage of heterosexual persons according to their sexual orientation, they do not allow for the marriage of homosexual persons on the same basis. The freedom of marriage encompasses marriage between persons of the same sex as discussed in item (i) above, and the difference in treatment as noted above concerns the difference as to whether an individual may marry according to his/her sexual orientation. Therefore, the Provisions violate Article 14, Paragraph 1 of the Constitution.

(c) In addition, even if it is assumed that the institution of marriage includes the purpose of the legal recognition of a parent-child relationship, it is clear that this is not its sole purpose. Rather, marriage centers on the continued cohabitating relationship grounded on an emotional connection between the parties, and the main purpose of marriage is to give formal recognition to, legally govern, and protect, such relationship.

The sense of respect for civil marriage is prevalent amongst Japanese citizens. Further, in Japan, while it may be said that legally married couples are formally recognized and receive social approval, social significance and necessity also exist in the very act of couples publicly announcing their relationship and marital status. However, in Japan, homosexual couples cannot receive formal certification, and as a result of the lack of such social recognition as couples, they cannot be socially accepted. In addition, while heterosexual couples enjoy various statutory rights and benefits accompanying marriage, as well as de facto benefits such as the ability to give consent for medical treatment for their partners, homosexual couples are not granted any of these rights or benefits.

At the time of the enactment of the Constitution and the Provisions, the common belief was that homosexuality was a mental disorder and was not morally acceptable. However, it has now been established that homosexuality is not a mental disorder, and although the factors that determine sexual orientation are still debated, it has at least become clear that sexual orientation is not determined by the individual's own will. Consequently, there are no justifiable reasons for granting the above official recognition and the accompanying rights and benefits to heterosexual couples but not to homosexual couples.

Moreover, a growing number of foreign countries have begun to pass legislation recognizing same-sex marriage or establishing registered partnership systems for homosexual couples. Foreign countries have also expressed concerns about discrimination based on sexual orientation, and in Japan, many local authorities (meaning ordinary local public entities and special wards) have also introduced registered partnership systems that formally recognize relationships between homosexual couples. It may therefore be said that recognition of same-sex marriage has become widespread. In current society, it is common knowledge that there are persons with various sexual orientations including not only heterosexuality but also homosexuality. In addition, the number of homosexual couples who are utilizing the registered partnership systems introduced by the abovementioned local public entities has also increased.

As discussed above, once heterosexual couples file a marriage notification, the Provisions grant formal certification, providing psychological, social, legal, economic, and de facto benefits, while not granting such formal certification or benefits to homosexual couples. There are no reasonable grounds for such difference in treatment, and therefore the Provisions violate Article 14, Paragraph 1 of the Constitution.



## (2) Summary of the Defendant's Claims

### (i) The Purpose of the Institution of Marriage

The institution of marriage in Japan has been linked to reproduction since the Meiji Period, and has developed as a system that legally and officially recognizes the union between a man and a woman. This understanding has remained unchanged even after the establishment of the current Constitution, and marriage is a system established to protect the cohabitating relationship in which men and women bear and raise children.

### (ii) The Provisions Violate neither Article 24, Paragraphs 1 and 2, nor Article 13 of the Constitution

Article 24, Paragraph 1 of the Constitution uses the phrases “both sexes” and “husband and wife.” It is clear that the Constitution presumes marriage as being between a man and a woman and not between persons of the same sex and it should be construed that said Paragraph does not mandate the guarantee for same-sex marriage to the same extent as opposite-sex marriage.

In addition, it is not clear whether Article 13 of the Constitution guarantees the right to self-determination, and neither are the details of the rights to self-determination clear. Furthermore, even if some right to self-determination concerning marriage can be conceived, the current legal system of marriage has been constructed in accordance with Article 24, Paragraph 2 of the Constitution, which requires the establishment of an institution of marriage as a union between a man and a woman, which in turn is premised on Article 24, Paragraph 1 of the Constitution. It is clear that the right to seek the establishment of a new legal system in which a person of the same sex can be chosen as a partner in marriage goes beyond the framework of the existing legal system and is not included in the right to self-determination. The current institution of marriage under the Provisions was established in accordance with the Constitution, and it cannot be construed that the right to seek the establishment of a new institution of marriage beyond this is guaranteed by Article 13 of the Constitution.

Therefore, the Provisions violate neither Article 24, Paragraphs 1 and 2, nor Article 13.

### (iii) The Provisions do not Violate Article 14, Paragraph 1 of the Constitution

As noted in item (ii) above, there is no guarantee of same-sex marriage in Article 24, Paragraph 1 of the Constitution and, because of this, the failure to recognize same-sex marriage cannot be interpreted as a violation of Article 14, Paragraph 1 of the Constitution.

The Provisions do not identify sexual orientation as part of the standards for whether a person can use the institution of marriage and all Japanese citizens can use the institution of marriage regardless of their sexual orientation. Since homosexual persons can marry persons of the opposite sex, they are not being intentionally discriminated against.

The purpose of the institution of marriage, as noted in item (i), was to give legal protection to the cohabitating relationship of a husband and wife that bear and raise a child, and even at present, it is not considered that there has been a change to the understanding that the parties to a marriage are a man and a woman. It cannot be said that, as for the meaning and purpose of marriage, the importance of reproduction and child-rearing has declined and more importance is placed on the stabilization of the human bond between partners. The provisions regarding the legal benefits of marriage are established alongside such intent or purpose of the institution of marriage; thus, it is reasonable for the Provisions to give protection to the heterosexual relationship between a husband and wife who can have a child.

Also, it is true that the various rights and obligations arising between married couples do not immediately arise between homosexual couples under the laws and regulations, but such rights and obligations can arise from an agreement between the parties.

From the above, the Provisions' differential treatment of homosexual couples and heterosexual couples is not unreasonable, and they do not violate Article 14, Paragraph 1 of the Constitution.

## **2 Issue (2): Whether for the purpose of the application of Article 1, Paragraph 1 of the State Redress Act, the Provisions not being amended or repealed should be considered illegal**

### **(1) Summary of the Plaintiffs' Claims**

Only in exceptional cases such as where the Diet neglects, for a long time without justifiable reasons, to take legislative measures such as to amend or repeal provisions of the law while it is clear that the provisions violate the Constitution as they restrict without justifiable reason the rights and benefits guaranteed or protected in the Constitution, the legislative inaction of members of the Diet is deemed to be illegal under Article 1, Paragraph 1 of the State Redress Act as such actions of the members of the Diet in the legislative process are considered to breach their legal obligations as members of the Diet.

The Provisions are about the institution of marriage, the concrete establishment of which is primarily delegated to the Diet's reasonable legislative discretion, but the matters and factors which need to be considered for the legislation of the institution of marriage will vary over time. Thus, the reasonableness of the Provisions needs to be constantly reviewed and examined in light of the Constitution's provisions regarding individual dignity and equality under the law. Also, from the fact that the Provisions lead to differential treatment based on sexual orientation, members of the Diet, when fulfilling their duties, need to give meticulous consideration to homosexual persons who are the minority, and members of the Diet should sufficiently advocate for the rights and benefits of homosexual persons. From the foregoing, regarding the Provisions, the legal obligations borne by members of the Diet as part of their duties towards individual citizens, are not passive obligations in which it would suffice for them to take legislative measures and otherwise act based on judicial rulings or other judgments that the Provisions are unconstitutional; rather, their legal obligations should be interpreted to include obligations to act with initiative and to constantly review and examine the reasonableness of the Provisions in light of the Constitution providing for individual dignity and equality under the law, through their own research into and consideration of various matters concerning the reasonableness of the Provisions.

However, even well before January 2019, when the Plaintiffs submitted their marriage notification, there were no longer any grounds for the reasonableness of the Provisions, even taking legislative discretion into account. The Provisions infringe on the Plaintiffs' freedom to marry, and discriminate against homosexual couples including the Plaintiffs regarding marriage, without justifiable reason. The Provisions infringe on the rights and benefits of homosexual couples including the Plaintiffs to be treated equally with heterosexual couples regarding legal marriage, and thus violate Article 24, Paragraphs 1 and 2, Article 13, and Article 14, Paragraph 1 of the Constitution.

From the above, the Diet should have been aware of the unconstitutionality of the Provisions well before the Plaintiffs' submission of their marriage notification, but the Diet failed to take the necessary legislative measures to amend or repeal the Provisions without justifiable reason. Therefore, the legislative inaction of the Diet in not having amended or repealed the Provisions should be deemed to be illegal under Article 1, Paragraph 1 of the State Redress Act.

## **(2) Summary of the Defendant's Claims**

“Illegal” in Article 1, Paragraph 1 of the State Redress Act means that Government officials, who exercise the public authority of the State or public entities, breach their legal obligations under their duties towards individual citizens; whether the legislative action or inaction of members of the Diet would be illegal under that provision depends on whether their actions in the legislative process breached their legal obligations under their duties towards individual citizens. This should be distinguished from the issue of the unconstitutionality of the legislation itself. Also, the evaluation of the above actions should in principle be deferred to the political judgment of the citizens, and even if the legislation contradicts the Constitution, it would not result in the legislative action or inaction of the members of the Diet being immediately deemed to be illegal under Article 1, Paragraph 1 of the State Redress Act.

That said, only in exceptional cases such as where the Diet neglects, for a long time without justifiable reasons, to take legislative measures such as to amend or repeal provisions of the law while it is clear that the provisions violate the Constitution as they restrict without justifiable reason the rights and benefits guaranteed or protected by the Constitution, the legislative inaction of the members of the Diet may be deemed to be illegal under Article 1, Paragraph 1 of the State Redress Act as the actions of the members of the Diet in the legislative process breach the legal obligations imposed on them by their duties.

However, the Provisions do not violate Article 24, Paragraphs 1 and 2, Article 13, or Article 14, Paragraph 1 of the Constitution and thus such legislative inaction cannot be considered to be illegal for the purpose of Article 1, Paragraph 1 of the State Redress Act.

## **3 Issue (3): Amount of damages suffered by the Plaintiffs**

### **(1) Summary of the Plaintiffs' Claims**

The Defendant's legislative inaction and failure to enact legislation recognizing same-sex marriage for persons who are legally of the same sex has infringed upon the Plaintiffs' freedom of marriage guaranteed by the Constitution and as a result has denied the Plaintiffs the emotional and social benefits, the legal and economic rights and benefits, and the de facto benefits that accompany the social recognition conferred by marriage. Also, the Plaintiffs have incurred substantial harm to their dignity from the stigma attached to them for being in a relationship not approved by society, and as a result of the foregoing, they have suffered significant emotional distress.

Sufficient compensation for their suffering would amount to no less than one million yen for each Plaintiff.

### **(2) Summary of the Defendant's Claims**

The Defendant denies the damages claimed by the Plaintiffs.

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