

Tokyo District Court Ruling on the Constitutionality of Same-Sex Marriage in Japan – Summary

Background

On 30 November 2022, the Tokyo District Court (the "**Court**") published its highly anticipated judgment on the constitutionality of same-sex marriage in Japan. The case concerned 4 same-sex couples (the "**Plaintiffs**") who sought damages on the basis that certain provisions of the Civil Code and the Family Register Act (the "**Provisions**"), which restrict marriage to heterosexual couples, violated the principles of marriage and equality protected under Articles 14(1), 24(1) and 24(2) of the Constitution. They also sought damages in respect of the Diet's failure to implement legislation legalising same-sex marriage, which they argued was unlawful under Article 1(1) of the State Redress Act.

Article 24 of the Constitution

Article 24(1) provides that "*marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis*". The Plaintiffs argued that the references to "*both sexes*" and "*husband and wife*" were not intended to exclude same-sex couples but were rather a reflection of social norms at the time, and that Article 24(1) should be construed as guaranteeing the freedom of marriage and thus extending to same-sex couples. However, whilst the Court acknowledged that society's views on same-sex relationships had changed since the Constitution was first adopted, it could not conclude that views had changed sufficiently to interpret "*both sexes*" and "*husband and wife*" in such a way as to include same-sex couples, and accordingly ruled that Article 24(1) could not, "*at this time*", be read as granting the freedom of marriage to same-sex couples.

Article 24(2) provides that "*with regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes*" (emphasis added). The Court found that, from the "*standpoint of individual dignity*", there was no justifiable reason for failing to provide a legal system which protected the rights of same-sex couples, the absence of which violated their rights to individual dignity, and that the situation under the present state of the law could be said to be in violation of Article 24(2). However, the Court went on to find that the Provisions did not in fact violate Article 24(2) as it was within the Diet's legislative discretion to also implement such a legal system for same-sex couples (e.g. one akin to, but separate from, the existing marriage regime for heterosexual couples).

Article 14(1) of the Constitution

Article 14(1) provides that "*all of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin*". The Plaintiffs argued that the Provisions violate this right to equality on the basis that they allow for differential treatment in respect of marriage based on sexual orientation. The Court agreed that such a difference in treatment existed, but concluded that there were reasonable grounds for this as the Provisions were enacted in order to give effect to Article 24(1) of the Constitution (which, in the Court's view, only envisaged marriage between heterosexual couples). The Court therefore found that the Provisions did not violate Article 14(1).

Article 1(1) of the State Redress Act

The Plaintiffs argued that the Diet's failure to enact legislation legalising same-sex marriage was unlawful under Article 1(1) of the State Redress Act. However, given that the Court had already found

that there was no violation of the Constitution, it concluded that this ground had no basis as the Diet was under no obligation to enact such a law.

Conclusion

Although the Court's judgment was a mixed one for LGBTQ+ equality, it included some important positive findings. In particular, whilst Japan's ban of same-sex marriage was held to be constitutional, it was also found that the failure of the Diet to enact a legal system which protected the rights of same-sex couples violated their rights to individual dignity. The recognition of those rights in a judgment of this nature is an important step in ensuring their full application in the future.