

Judgment delivered on March 14, 2024: receipt of the original on the same day by the Court clerk

Case No. (Ne) 194 of 2021, Appeal to the Court of Second Instance for Damages

(Original Court: Case No. (Wa) 267 of 2019, Sapporo District Court)

Date of conclusion of the oral argument: October 31, 2023

## **Judgment**

Representations of Parties and Agents

As set forth in Exhibit "List of Parties"

### **Main text of Judgment<sup>1</sup>**

1. The appeals are dismissed.
2. The costs of the appeals shall be borne by the appellants.

### **Facts and reasons**

#### **I Purpose of the Appeals**

- 1 Reversal of the prior instance judgment ["District Court Decision"].
- 2 The appellee to pay each of the appellants 1 million yen plus a delayed payment charge at a rate of 5 percent per annum from February 28, 2019 to the date of completion of such payment.

#### **II Summary of Facts** (abbreviations and the like below shall follow those of the District Court

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<sup>1</sup> This judgment holds that not legally allowing same-sex marriage in Japan violates the Constitution, including Article 14 (1) and Article 24 thereof. However, to satisfy the State Redress Act's requirements, the Diet must have been negligent in taking legislative measures for a long period without justifiable reasons. The Plaintiffs' damages claims were dismissed because the court cannot conclude that the Diet has been negligent in not taking legislative measures for a long period without justifiable reasons. So, while this is a technical denial of the claim under the State Redress Act, the opinion's main holding regarding constitutionality of same-sex marriage is largely viewed as a significant victory for the Plaintiffs.

Decision, and where the District Court Decision is cited, “plaintiff” shall be read as “appellant,” “defendant” shall be read as “appellee,” and “Exhibit” shall be read as “Exhibit of the District Court Decision” respectively).

1. This is a case in which the appellants, who are homosexual persons, claim that: [(1)] it is in violation of Article 24, Article 13, and Article 14(1) of the Constitution that the Civil Code and the Family Register Act do not allow for marriage between homosexual persons; [(2)] the Diet is obligated to take necessary legislative measures to remedy such violations but has failed to do so (a legislative omission); and [(3)] the appellants are unable to marry and are suffering mental distress because of this. Therefore, the appellants demand that the appellee pay each of them 1 million yen plus a delayed payment charge at a rate of 5 percent per annum as prescribed by the Civil Code prior to the amendment by Law No. 44 of 2017 from February 28, 2019 (the day after the date of service of the complaint) to the date of completion of each such payment based on Article 1(1) of the State Redress Act.

The Sapporo District Court (the "District Court") dismissed the appellants' claim on the grounds that the marriage provisions of the Civil Code and the Family Register Act (the “Provisions”) which do not permit marriage between homosexual persons, although not in violation of Articles 24 and 13 of the Constitution, are in violation of Article 14(1) thereof. However, such violation [of Article 14(1)] is not a violation of Article 1(1) of the State Redress Act because the Diet could not easily recognize that a violation had occurred.

The appellants filed this appeal against that judgement.

2 The Undisputed Facts, the relevant provisions of the Civil Code and the Family Register Act, the issues and the outline of the allegations of the parties concerning the issues are the same as paragraphs 2 to 4 of “II. Summary of the Facts” under “Facts and Reasons” of the District Court Decision and are hereby cited, subject to the following amended restatements and the addition of the supplemental claims of the appellants as described in paragraph 3 below.

(Amended Restatements to the District Court Decision)

The text in line 20 of page 41 of the District Court Decision which states [the] “Registered Partnership Systems that formally recognize relationships between homosexual couples” shall be restated here to be read as “systems that certify relationships between homosexual persons without any direct legal effects, unlike systems of some foreign countries as described below that provide legal effects almost equivalent to those of a heterosexual marriage in a different form from a marriage system (1(7)(i)(a) of “III The Court’s Judgment” under “Facts and Reasons” of the District Court Decision) (“Partnership Certification System”)", and additionally, the text in line 25 of page 41 of the Original Judgment “Registered Partnership System” shall be restated here to be read as: “Partnership Certification System".

3 Supplemental claims of the appellants in this court

(1) Violation of Articles 24 and 13 of the Constitution

The basis of the constitutional protection of freedom of marriage is primarily based on Article 24 of the Constitution, but behind it is the right to liberty and the pursuit of happiness that lays a foundation for Article 13 of the Constitution, and both Articles should be taken into consideration when determining the constitutionality of the Provisions. Because the interpretation of "marriage" in Article 24 of the Constitution is subject to change due to changes in social conditions, the importance of the benefits enjoyed by the people through marriage without being bound by the words "both sexes" and "husband and wife" of the same Article, nor the understanding of those words at the time of their enactment, and going back to right of the people to freely decide whether, when, and with whom to marry as supported by the right to liberty and the pursuit of happiness in Article 13 of the Constitution (Case No. (O)1079 of 2013, judgment of the Grand Bench of the Supreme Court of December 16, 2015, Minshu Vol. 69, No. 8, at 2427, the "Remarriage Prohibition Period Grand Bench Judgment"), it is appropriate to understand that the freedom of the people to choose a same-sex partner for marriage is guaranteed and protected under Article 24(1) of the Constitution.

In addition, because the Constitution does not prohibit legislation allowing same-sex couples to

marry or form a family relationship, it is a matter of the Diet's discretion to allow same-sex couples to marry. Since Article 24(2) of the Constitution [(1)] defines the limits of the Diet's legislative discretion on matters relating to marriage and family from the viewpoint of the dignity of individuals, [(2)] respects the personal interests of people that do not fall within the scope of constitutional rights, and [(3)] requires the enactment of laws that give due consideration to the fact that marriage must not be unjustifiably restricted by the nature of the marriage system (Case No. (O) 1023 of 2014, judgment of the Grand Bench of the Supreme Court of December 16, 2015, Minshu Vol. 6, No. 8, at 2586, the "Married Couples Last Name System Grand Bench Judgment"). Therefore, it is an unconstitutional abuse of the Diet's legislative discretion not to amend or abolish the Provisions, which do not allow same-sex couples to marry.

Also, as for the social landscape, as of January 2023: the number of countries and regions that recognize same-sex marriage increased to 34 countries and regions; the percentage of global GDP attributed to countries recognizing same-sex marriage was 52%; and the number of local governments in Japan that have introduced a Partnership Certification System increased to 264 local governments, covering over 65% of the population [of Japan]. Opinion polls show that the number of people who agree that same-sex marriage should be recognized has increased to 50-70% as of January 2023. There are also many resolutions, declarations, chairperson statements, recommendations, etc. of bar associations and other lawyers' organizations, academic organizations, and welfare organizations. In contrast, discriminatory and prejudice-based statements against same-sex couples have emanated from the Prime Minister, Secretaries to the Prime Minister, members of the Diet, local councilors, and some political and other groups, and there has not even been a discussion or deliberation held in the Diet on [potential] legislation.

Furthermore, since the issue of whether or not to allow same-sex couples to marry and form a family is separate from the issue of what form and content should be implemented in cases where same-sex couples are allowed to marry or form families, even if legislative discretion can

be recognized over the latter, it does not affirm in respect of the former the rationale for the current situation of not allowing same-sex couples to marry or form families at all. Additionally, since the above-mentioned distinction or circumstance arises from the Provisions, even if it is possible to establish a marriage-like system for same-sex couples, the unconstitutionality of the Provisions in cannot be denied. Even if the Registered Partnership System, which nearly similar legal effect as the marriage system, is established as in some foreign countries, if marriage and marriage-like systems are legally distinguished from each other, then society may believe that the relationships between couples who use those different systems are not equal to that of marriage, and that the relationships between same-sex couples using marriage-like systems do not have the same importance or significance as relationships between opposite-sex couples using the marriage system. [In addition, society may believe that such marriage-like systems are] inferior to marriage, and if marriage-like systems are used only by same-sex couples, then the use of a marriage-like system may result in an undesired *coming-out* of sexual orientation and gender identity of the individuals which would paradoxically [result in an inappropriate form of discrimination].

First, there is no reason to have different provisions [in the Civil Code] for same-sex couples and opposite-sex couples concerning communal property, which are intended to protect [(1)] a married couple's life together (Article 755 et. seq. of the Civil Code), [(2)] a married couple's obligation to live together, cooperate, and provide support to each other (Article 752 of the Civil Code), and [(3)] the inheritance rights of a spouse (Article 890 of the Civil Code) and other similar provisions. In addition, for provisions [of the Civil Code] governing reproductive and parent-child relationships such as the presumption of legitimacy (Article 772 of the Civil Code), acknowledgment (Article 779 and after of the Civil Code), parental authority (Article 818 and after of the Civil Code), and adoption (Article 795 and Article 817-3 of the Civil Code), there is no obstacle to applying these provisions to same-sex couples simply by amending the terminology that assumes [a heterosexual couple such as the use of] "men and women".

Although the presumption of a legitimate child is an issue for lesbian couples, in cases where one woman gives birth to a child, it is necessary to recognize the joint, legitimate parental authority of both women, and such acknowledgement should not be problematic. This was already addressed by a decision in the Case No. (Kyo) 5 of 2013, a judgment of the Third Petty Bench of the Supreme Court of December 10, 2013, Minshu Vol. 67, No. 9, at 1847, which recognized the presumption of legitimacy of a child gestated by the wife of a transgender male, who had changed sex and could not be a biological father. Furthermore, under the current state of progressive social recognition of same-sex couples, there is no reason to take the steps to establish and operate a Registered Partnership System before allowing same-sex couples to use the marriage system, and there is no need to set up a unique register system that differs from the existing family register system, which would require considerable cost and effort.

Therefore, there is no flexibility for the Diet to determine legislation other than that which includes same-sex couples as eligible under the current marriage system.

(2) Concerning Violation of Article 14(1) of the Constitution

When interpreting of the Provisions with Article 14(1) of the Constitution, it is inappropriate to allow the legislature, when exercising its discretionary authority, to consider negative opinions or perspectives of same-sex marriage from a small number of persons who hold such views,, since this would mean that in the end, discriminatory opinions or perspectives lacking reasonable grounds are used as a rational basis for discriminatory treatment. Rather, it is necessary to establish a special system for protecting same-sex marriage from social discrimination in consideration of the existence of such opinions or perspectives.

Furthermore, in order for the Provisions to conform with Article 14(1) of the Constitution, same-sex couples should be granted the legal effects arising from a marriage similar to that of the opposite-sex couples. It is not sufficient to provide same-sex couples with the legal means to share only in part of the legal effects arising from a marriage. The establishment of a Registered Partnership System as a separate legal system from heterosexual marriage like in

some foreign countries should be denied as a matter of course, as a result of repeating the error of "separate but equal" which has been rejected as a discriminatory system without reasonable grounds in case law of the United States.

(3) Concerning the illegality of legislative inaction under the State Redress Act

When determining whether or not the provisions of the law clearly violate the Constitution, first, the nature of the constitutional rights claimed to be violated and the content and degree of the violation by the provisions are factors to be considered. The Legal Benefits of Marriage can be regarded as an important legal interest considering that Article 24 of the Constitution protects marriage as a system to realize such legal interest. However, the Provisions do not provide the legal means for homosexual persons to enjoy the Legal Benefits of Marriage, and such situation will continue to exist until the Provisions are amended. Since such a violation of said interest affects 5.9% to 8.0% of the total population of Japan including the appellants, it is clear that the Provisions significantly violate important public interests.

The introduction of the first Registered Partnership System in Denmark occurred in 1989, and a same-sex marriage system was introduced in 10 countries during the 10 year period from 2000 to 2010. During this same time, the elimination of discrimination based on sexual orientation, to include introducing same-sex marriage, was consistently discussed in the Diet as a problem with the law or with the Constitution. In light of these facts, it was sufficiently possible for the members of the Diet to realize that the Provisions are no longer reasonable and are in violation of the Constitution through their own review of the reasonableness of the Provisions as of present, or through seeking assistance through research and examination from the Secretariat and the Legislative Bureau of both Houses, which are established to assist the activities of the members of the Diet, or by seeking opinions from external experts, etc. to deepen their understanding.

Consequently, the legal obligations of the members of the Diet should be interpreted to include the obligation to take initiative to review and constantly examine the reasonableness of the

Provisions.

Nevertheless, since the Diet still has not amended the Provisions, the introduction of the Partnership Certification System, which does not have a direct legal effect, has spread rapidly among local governments. Such circumstances should be considered as a positive factor working towards affirming the apparent illegality of legislative omissions concerning the same-sex marriage system.

### **III The Court's Judgment**

1 The Court also determines that the appellants' claims are groundless.

With regard to the reason for the finding, as to the findings of fact, the court quotes what is described in Section 1 of Part "III The Court's Judgment" under the "Facts and Reasons" heading of the District Court Decision while supplementing it with the following amendments. The judgment on issue (1) (i.e., whether the Provisions violate Article 13, Article 24 or Article 14(1) of the Constitution) is described in Sections 2 to 4 below, and the judgment on issue (2) (i.e., whether failure to amend or repeal the Provisions is illegal for the purpose of Article 1(1) of the State Redress Act) is as described in Section 5 below.

(Amendment of the District Court Decision)

(1) At the end of line 14 on page 4 of the District Court Decision, the following shall be added.

"This idea has existed since before the Meiji Civil Code was enacted in 1898 (*Plaintiffs' Evidence A485, 486*)."

(2) "*Plaintiffs' Evidence A19, 183, 188, 193, Defendant's Evidence 4, 5*" on page 5, line 18 of the District Court Decision shall be changed to "*(Plaintiffs' Evidence A19, 183, 188, 193, 194, Defendant's Evidence 4, 5)*", and "*(Plaintiffs' Evidence A30-2, 48, 215, 217)*" on page 10, line 2 shall be changed to "*(Plaintiffs' Evidence A30-2, Plaintiffs' Evidence A48, 180, 217)*".

(3) "in Luxembourg in 2004 and Ireland in 2010" from line 15 to 16 of the District Court Decision on page 10 shall be amended to "in Luxembourg in 2004, Austria in 2009, Ireland in 2010, and Italy



in 2016".

(4) The beginning of line 18 on page 10 to the end of line 8 on page 11 of the District Court Decision shall be revised as follows:

"(b) In the following countries/regions, a law has been enacted to enable same-sex marriage or a court has rendered a ruling admitting same-sex marriage by making the prohibition of same-sex marriage unconstitutional in the following years. The number of countries/regions allowing same-sex marriage is now 34, including Mexico, where same-sex marriage became possible in some states, and the percentage of countries admitting same-sex marriage among the global GDP has reached 52% (*Plaintiffs' Evidence A98, 137, 141, 354, 565 to 572*).

- 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)
- 2014 Luxembourg
- 2015 Finland, Ireland and the United States
- 2016 Columbia
- 2017 Taiwan, Malta, Germany, Austria and Australia
- 2018 Costa Rica
- 2019 Ecuador, the United Kingdom (Northern Ireland)
- 2021 Switzerland and Chile

2022 Slovenia and Cuba

2023 Principality of Andorra”

(5) The beginning of line 9 to the end of line 23 on page 11 of the District Court Decision (explanation on the rulings issued in the United States, Taiwan, and Italy and the subsequent formulation of the legal system) shall be deleted.

(6) "(d) In 2013, the Russian Federation" on page 11, line 24 of the District Court Decision shall be revised to "(c) As a country in which there were movements other than the acceptance of same-sex marriage, in 2013, the Russian Federation." Further, "the Constitutional Court ruled that the homosexual acts did not violate the Constitution" from line 26 on page 11 to line 1 on page 12, line 1 shall be changed to "the Constitutional Court ruled that the prohibition of homosexual advertising does not violate the Constitution."

(7) A line break and the following sentence shall be added at the end of line 23 on page 12 of the District Court Decision.

"There are a large number of corporations and law firms that agree with this opinion, and there are as many as 135 sponsoring organizations (*Plaintiffs' Evidence A757, 758*)."

(8) "A Registered Partnership System" on page 12, line 26 of the District Court Decision shall be revised to "Partnership Certification System."

(9) From line 1 to line 2, page 13 of the District Court Decision—"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."—shall be revised to "Since then, there has been an increase in the number of local authorities which have introduced a Partnership Certification System. As of October 1, 2022, about 60 local municipalities covering over 37 million residents have introduced a Partnership Certification System."

(10) A line break and the following shall be added at the end of line 4 on page 13 of the District Court Decision.

"The number of local governments that have introduced the Partnership Certification System continued to increase to 264 and the total population-coverage ratio reached 65.2% as of January 2023 (*Plaintiffs' Evidence A734*). In addition, there are six local assemblies that submitted their views to the Speaker of the House of Representatives and President of the House of Councillors, the Prime Minister and the Minister of Justice and others (*Plaintiffs' Evidence A332, 750 to 754*). In addition, the Human Rights Committee, in its summary findings on Japan's seventh periodic report on the implementation of the International Covenant on Civil and Political Rights, has expressed concern over reports indicating that the lesbian, gay, bisexual, and transgender individuals face discriminatory treatment, particularly in relation to public housing, changing their registered gender, access to legal marriage, and treatment in correctional facilities. The Committee has pointed out, under the responsibilities of the signatory states, that same-sex couples should be allowed to enjoy all rights stipulated by the Covenant, including access to public housing and same-sex marriage in the territory of the signatory state (*Plaintiffs' Evidence A574 1-2*).

(11) A line break and the following shall be added at the end of line 8, page 13 of the District Court Decision

"(iii) On November 18, 2020, the "Business for Marriage Equality" campaign was launched to visualize companies that endorse the legislation of same-sex marriage. As of March 6, 2023, the number of companies and organizations participating in this campaign was 362 (*Plaintiffs' Evidence A759 to 762*).

(iv) The Japan Federation of Bar Associations, various regional bar associations, multiple local bar association (*Tan-i-kai*), and the Japan In-House Lawyer Association published written opinions, resolutions, declarations, and chairman's statements on same-sex marriage legislation from July 2018 to March 2023 (*Plaintiffs' Evidence A113, 130, 134, 153, 154, 407 to 410, 461 to 467, and 769 to 782*).

In addition, the Japan Society for Socio-Legal Studies on Family Issues and the Science Council of Japan have issued proposals for a new provision on same-sex marriage and recommendations for the

amendments to the Civil Code (*Plaintiffs' Evidence A114, 425*).

(v) In the Diet, Diet members and witnesses made remarks on the legislation of same-sex marriage, or the Cabinet responded to the written inquiry from Diet members by submitting written answers as follows (*Plaintiffs' Evidence A11, 12, 60-62, 229, 261, 267, 432, 437, 439, 441, 442*).

May 25, 2000, House of Councilors: Judicial Affairs Committee;

February 19, 2004, House of Representatives: Research Commission on the Constitution (Sub-Committee on the Research of the Guarantee of Fundamental Human Rights);

February 16, 2005, House of Councillors: Research Committee on the Declining Birthrate and the Aging Population;

February 15, 2007, House of Councillors: Committee on Health, Welfare and Labor;

April 3, 2009, House of Representatives: Committee on Judicial Affairs;

May 20, 2010, House of Representatives: Special Committee on Youth Affairs;

February 18, 2015, House of Councillors: plenary session;

April 1, 2015, House of Councillors: Committee on Budget;

May 11, 2018, Written Answer to the Written Inquiry;

June 13, 2018, House of Representatives: Committee on Judicial Affairs;

June 19, 2018, House of Representatives: plenary session; and

July 3, 2018, House of Councillors: Committee on Judicial Affairs.

(12) "Age 18 to 49" on page 13, line 12 of the District Court Decision shall be revised to "age 15 to 49."

(13) A line break shall be added at the end of the line 6 on page 16 of the District Court Decision and the following shall be added.

"(vi) In 2019, a national survey conducted in the same manner as in (i) showed that during the four-year period starting in 2015, the number of respondents supporting or somewhat supporting increased from 51.2% to 64.8% on average for all generations, while those opposing or somewhat opposing decreased from 41.3% to 20.0%. In the public opinion surveys conducted by Kyodo News and

several newspaper companies in 2023, at least 54% and at most 72% responded that the same-sex marriage should be allowed (*Plaintiffs' Evidence A786, 789-792*)."

## **2 Concerning the claim that the Provisions are in violation of Article 13 of the Constitution (related to Issue (1))**

(1) The appellants can be understood as claiming that the Provisions are in violation of Article 13 of the Constitution, which unjustly infringe on the "freedom of marriage with persons of the same sex," which is one of the personal rights guaranteed under the Constitution. Alternatively, they can be understood as claiming that the Provisions unjustly infringe on "sexual orientation," which is the basis of the "freedom to marry with persons of the same sex" as well as one of the personal rights guaranteed under the Constitution. In claiming that the Provisions are in violation of Article 13 and Article 24 of the Constitution, the appellants argue that the prohibition of discrimination based on sexual orientation and the protection of human rights has been violated. Since the freedom of marriage between persons of the same sex can be regarded falls under these issues, we will first examine the alleged violation of Article 13 of the Constitution, and will discuss the alleged violation of Article 24 of the Constitution later. Moreover, assuming that the appellants construe the Provisions as establishing rules on marriage between individuals of the opposite sex but prohibit marriage between individuals of the same sex, in violation of the Constitution, their arguments can be understood as claiming that such rules violate the relevant provisions of the Constitution. The following judgment is based on such understanding.

(2)(i) 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 towards a person of the same sex is homosexual. While the causes of one's sexual orientation, or homosexuality have not been determined, 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.. The idea that sexual orientation is a disorder or disability has become unacceptable (*Findings of Fact (1)(i)*).

Considering the nature of sexual orientation described above, it can be said that although humans are born either biologically as males or females, in either case, they may have sexual orientation apart from their biological functions. Therefore, when comparing the situations of heterosexual love and homosexual love, there is only an inherent difference in the orientation. It then follows that, since romance and sexuality are important elements in respect for individuals, and the related sexual orientation is an inherent identity of a person, legal protection of respect for individuals afforded to heterosexual persons should be enjoyed by homosexual persons as well. Consequently, it can be said that sexual orientation is an important legal interest. The same reasoning can apply not only in the case of homosexuality but also in the cases of bisexuality and persons unable to identify their own genders. However, in this case, based on the appellants' arguments, we will only consider homosexuality and heterosexuality, and same-sex marriage and opposite-sex marriage.

As mentioned above, sexual orientation is an inherent propensity, and there is no fundamental reason to differentiate the treatment of heterosexual persons and homosexual persons in society. At the same time, from the perspective of the individuals, [sexual orientation] should be the basis on which a person is respected as an individual and a symbol of his or her personality, and can constitute a part of his or her personal rights.

(ii) However, even if sexual orientation and the freedom of marriage between individuals of the same sex can constitute a part of one's personal rights, in terms of whether the system of marriage can apply to homosexual persons, the system of marriage is part of the legal system and its specifics are subject to legal regulations. Therefore, personal rights related to sexual orientation and the freedom of marriage between individuals of the same sex should not be understood uniquely in terms of the Constitution, but can only be concretely understood by taking into consideration the legal system established in light of the purpose of the Constitution (*see the Married Couples Last Name System*

*Grand Bench Judgment*).

Consequently, it is inappropriate to depart from the specific legal system and to immediately call out an infringement upon personal rights and to discuss whether or not it is unconstitutional, based on the fact that same-sex couples cannot get married.

(iii). In relation to the Provisions in the present case, which provide for opposite-sex marriage but does not permit same-sex marriage, while Article 24 of the Constitution provides for a system of marriage, it has been construed to provide for marriage between individuals of the opposite sex. Therefore, the Provisions which provide the specifics of marriage and family as part of the legal system based on the concept of Article 24 of the Constitution do not give rise to problems of unconstitutionality with regard to marriage between individuals of the opposite sex.

However, the issue in this case is whether to allow not only heterosexual persons but also homosexual persons to enjoy marriage, which is a social system that changes their social status. The issue also concerns, based on various historical events and ideas and as a matter of interpretation of the Constitution, whether the system of marriage for heterosexual persons (which has been envisaged by society and by law) should also include same-sex marriage. Therefore, it is appropriate to consider not only Article 13 of the Constitution but also Article 24 of the Constitution, as well as various laws and regulations and social circumstances. From this viewpoint, it cannot be immediately concluded that Article 13 of the Constitution guarantees one's sexual orientation and the freedom of marriage between individuals of the same sex as personal rights, and that the Provisions are against Article 13 of the Constitution.

(3) However, sexual orientation and the freedom of marriage between individuals of the same sex can be regarded as important legal interests that can constitute personal rights. Sexual orientation is the basis for respecting a person as an individual and is an element of an individual's personality. There is no reason to differentiate between heterosexual and homosexual persons socially. Therefore, it is easy to understand that if there is a disadvantage in the way society treats [homosexual persons], this can lead to a sense of loss of identity and the feeling that one's existence as a human being has been

denied.

The appellants, despite the fact that they love their same-sex partners and desire to live together as a family, are suffering from a sense of loss of the meaning of their existence when they are with families other than their partners, at work and in social life, because their partners are not of the opposite sex but of the same sex (*see Plaintiffs' Evidence B4 through B9* and results of the examination of Plaintiff Nos. 1, 2, 4, 5 and 6 in the District Court Decision). Now that respect for individuals has increased, there is no reason for the appellants to receive such treatment on the grounds of differential treatment based on sexual orientation. This can be regarded as an issue concerning the dignity of individuals, which is protected by the Constitution.

Therefore, sexual orientation and the freedom of marriage between individuals of the same sex are important legal interests that can constitute personal rights guaranteed as constitutional rights. As will be discussed below, this is a matter that should be taken into consideration when discussing whether the fact that the Provisions do not permit same-sex marriage exceeds the scope of legislative discretion provided by Article 24 of the Constitution.

### **3 Regarding the argument asserting that the Provisions violate Article 24 of the Constitution (related to Issue (1))**

(1) The appellants argue that the fact the Provisions allow marriage between persons of the opposite sex but do not permit marriage between persons of the same sex substantially infringes the freedom of marriage, and even taking into account the legislative discretion of the Diet, the Provisions violate Article 24 of the Constitution on the grounds that they infringe individual dignity.

(2) (i) Article 24(1) of the Constitution stipulates 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." This has been interpreted to make clear the intent that whether to marry and when and with whom to marry between both sexes, that is, between a man and a woman, must be left to the free and equal decision of individual parties (*see Remarriage Prohibition Period Grand Bench Judgment*).



The Provisions are construed to provide for marriage between both sexes, that is individuals of the opposite sex, in response to Article 24 of the Constitution. Therefore, in this respect, the Provisions cannot be assessed as not being in line with the intent of Article 24(1) of the Constitution. The fact that marriage is restricted by a particular legal system is a matter to be considered when examining whether it is beyond the scope of the legislative discretion of the Diet in shaping the legal system concerning marriage and family (*see Married Couples Last Name System Grand Bench Judgment*).

(ii) Article 24(2) of the Constitution stipulates 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".

As matters concerning marriage and family are embodied in the relevant legal system, the design of such legal system has important implications. In this context, it can be said that Article 24(2) of the Constitution primarily entrusts the Diet with the reasonable legislative discretion to establish a specific system and defines the limitation of this discretion by providing the requirement and guidelines that the legislation should be based on individual dignity and the essential equality of the sexes, based on Paragraph 1 of the same article.

Furthermore, in light of the fact that Article 24 of the Constitution clearly and intentionally provides the requirements and guidelines for legislative action to be carried out, while such legislative action ordinarily requires consideration of various factors, the requirements and guidelines do not merely require that legislation should not infringe on the personal rights guaranteed as constitutional rights, and it is not sufficient that legislation that secures the formal equality of both sexes is enacted. Rather, that article calls for the enactment of legislation with due consideration to respect personal interests, which may not be directly guaranteed under the Constitution, to ensure the substantial equality of both sexes, and to avoid unreasonable prohibition of marriage in practice due to the structure of the marriage system. In this respect, the Article provides guidelines that limit the legislature (*see Married Couples Last Name System Grand Bench Judgment*).

(iii) In the following, the Court will examine whether Article 24 of the Constitution guarantees not

only marriage between individuals of the opposite sex but also marriage between individuals of the same sex.

The wording of Article 24 stipulates marriage between individuals of the opposite sex, and it is considered that marriage between individuals of the same sex was not envisaged at the time of the enactment of the Constitution. It is understood that the wording of “both sexes” was adopted with the aim of amending the restriction of the household (“*ie*” in Japanese) system under the former Constitution in the system of marriage and family, and stipulating marriage based on the free will of equal parties. In addition, it is presumed that, at that time homosexuality was still perceived as a disease or disorder. However, when interpreting laws and regulations, it is generally interpreted not only based on the wording and expression but also based on their purposes and this is considered to be same in the interpretation of the Constitution, including in cases where the human rights of corporations and foreign nationals are at issue (*see case number 1966 (O) 444, Supreme Court Grand Bench judgment of 24 June, 1970, Minshu Vol.24, No.6, p. 625., case number 1975 (Gyo-Tsu) 120, Supreme Court Grand Bench judgment of 4 October, 1978, Minshu Vol.32, No.7, p. 1223, etc.*). Furthermore, even if that purpose was not assumed at the time of the legislation, as societal conditions change, interpretations that are suitable for society or life are being made again following the purpose of the legislation. Therefore, with regard to Article 24 of the Constitution, there is no reason to be constrained only by the wording, and it is appropriate to interpret the provision based on the background that respect for individuals has become more clearly recognized.

Furthermore, it is stated above that sexual orientation and the liberty of marriage between individuals of the same sex may be personal rights under Article 13 of the Constitution and are understood to be important legal interests that should be fully respected. Article 24(1) of the Constitution has been interpreted to make clear the intent that whether to marry and when and with whom to marry must be left to the free and equal decision of individual parties, and such freedom of marriage can be construed to be fully respected in the light of the provisions of Article 24(1) of the Constitution (*see Remarriage Prohibition Period Grand Bench Judgment*). In addition, Article 24(2) of the

Constitution stipulates that the legislation on matters concerning marriage and the family shall be based on individual dignity and the essential equality of the sexes. Therefore, since sexual orientation and the liberty of marriage between individuals of the same sex are important legal interests related to the respect of individuals, it is appropriate to consider that Article 24(1) of the Constitution includes the intent of providing for marriage as a free relationship between a person and a person, and guarantees marriage between individuals of the same sex to the same extent as marriage between both sexes, that is individuals of the opposite sex.

(3) (i) On the other hand, matters concerning marriage and family should be determined by a comprehensive judgement that takes into account various factors in the societal circumstances, including national tradition and national emotions, and the overall discipline of husband and wife and parent-child relationships in each era. In particular, the rights that are not expressly stipulated in the Constitution or the personal interest and substantive equality that are not directly guaranteed by the Constitution can contain various meanings, and the manner of realization of those rights, interests and equality should be determined by societal conditions, the circumstances of peoples' everyday lives, the state of the family unit within society at that time, and other factors at that time.

(ii) Of course, legislative measures should not be taken in violation of Article 13 of the Constitution by unjustly infringing on the personal rights guaranteed under the Constitution. However, the decision about what specific legislative measures should be taken in response to the requirements and guidelines under Article 24 of the Constitution is left to the consideration and determination of the Diet covering various factors as mentioned in (i) above. Therefore, whether or not the Provisions which stipulate that the legal system of marriage and family should be accepted as conforming to Article 24 of the Constitution should be judged from the perspective of whether or not the Provisions are unreasonable in light of the requirement of respect for the individual and the inherent equality of the both sexes and the Provisions are regarded as exceeding the scope of the legislative discretion of the Diet, after consideration of the purpose of the legal system and the effects that would result from the adoption of the system (*see the Judgment of the Grand Bench of the Supreme Court on the Same*

*Surname System*).

(iii) With respect to the points (i) and (ii) mentioned above, even if Article 24(1) of the Constitution guarantees same-sex marriage, since the wording of the Constitution provides for marriage between individuals of the opposite sex, it is necessary to conduct the same analysis when determining whether or not the Provisions which provide only for opposite-sex marriage violate Article 24 of the Constitution.

(4) From the above viewpoints, the conformity of the Provisions to Article 24 of the Constitution is discussed below.

(i) In accordance with Article 24 of the Constitution, the Provisions have been adopted as a legal system in our country providing for marriage between individuals of the opposite sex and have taken root in our society. The Provisions regard the married family between individuals of the opposite-sex as a natural and basic collective unit of society, which had been recognized as reasonable.

However, sexual orientation and the liberty of marriage between individuals of the same sex is regarded as an important legal interest under Article 13 of the Constitution, as are personal rights. Article 24 of the Constitution is provided for under Article 13 of the Constitution, and even if Article 24(1) does not directly guarantee same-sex marriage in the wording, in light of the fact that the dignity of an individual can be realized in social life by means of an institutional guarantee based on the family, as provided in Paragraph 2 of the same article, it should be interpreted that Article 24(1) provides for the freedom of marriage between a person and a person, and the purpose of this provision is to guarantee same-sex marriage to the same extent as marriage between individuals of the opposite sex. This is as described above.

In reality, the Provisions do not permit marriage between individuals of the same sex, and homosexual persons cannot receive any guarantee under the social system of marriage. This has resulted in not only a disadvantage in social life where the degree of disadvantage is significant, but also a loss of identity, an inability to feel the significance of one's own existence, and difficulties in maintaining social trust, reputation, and feelings of acceptance, which have compromised individuals' dignity.

(ii) On the other hand, if we examine the social disadvantages and harms of establishing the social and legal same-sex marriage system, we cannot find any disadvantages or harms in society, including social effects.

Rather, homosexual persons are a proportionally small social minority (Findings of Fact (1) (ii)). There is no indication that there is precise evidence that the recognition of same-sex marriage would bring about a significant change in the social situation and that the impact of such a change would need to be considered. However, even if the number of homosexual persons is proportionally small, the number of such persons is assumed to be considerable. Therefore, recognizing the same-sex marriage system would be significant in establishing an exception to the existing marriage system, guaranteeing the right to the small percentage, but considerable number, of homosexual persons, and respecting them as individuals.

(iii) The following is a description of current social trends.

Marriage between individuals of the same sex is permitted in more than 30 countries and regions (Findings of Fact (7)(i)(b)). In its Report to the Government of Japan, the United Nations Human Rights Committee pointed out that lesbian, gay and other people face discrimination in their access to legal marriage and other rights, and that they should be able to enjoy all of the rights stipulated in the International Covenant on Civil and Political Rights, including homosexual marriage, in all of the territories of the countries that are a party thereto (Findings of Fact (8)(i)). In addition, while many foreign countries have established a system of homosexual marriage or introduced a registered partnership system equivalent thereto (Findings of Fact (7)(i)), in Japan, among local governments (of which there are approximately 1,700 nationwide), 260 have introduced a Partnership Certification System, and the population coverage ratio has reached 65% (Findings of Fact (8)(i)).

Currently, more than 360 enterprises and associations participate or support associations that support the legalization of homosexual marriage (Findings of Fact (8)(iii)). The Japan Society for Socio-Legal Studies on Family Issues and Science Council of Japan has announced proposals for the establishment of new provisions regarding homosexual marriage and recommendations for

amendments of the Civil Code (Findings of Fact (8)(iv)).

In various surveys of Japanese citizens, the number of respondents who agree with same-sex marriage has increased, and now more than half have recently responded that they marriage between individuals of the same sex is acceptable (Findings of Fact (10)(i) – (v)). According to the latest polls conducted by a newspaper company, at least 54% and at most 72% of respondents said that they would accept same-sex marriage (Findings of Fact (10)(vi)). Discussions have also been held in the Diet regarding legislation permitting same-sex marriage (Findings of Fact (8)(v)).

(iv) Here, we examine the opinions of those who oppose marriage between individuals of the same sex.

One view is that throughout history and in our institutions, there has been a long history of marriage between individuals of the opposite sex and a family system in which male and female couples with different reproductive functions constitute the basic unit. Therefore, we see situations where people have a sense of discomfort, and in some cases a strong aversion and prejudice toward, marriage between individuals of the same sex. However, this can be regarded as a visceral or emotional reaction, and as we already see happening, it is possible that this point will resolve itself as people realize that homosexuality derives from the nature of one's birth and so there are no reasonable grounds to distinguish it from heterosexuality.

Another view is that it is appropriate to provide a social system guaranteeing marriage between men and women whose reproductive functions differ from the viewpoint of raising children for the next generation, and therefore it is not necessary to guarantee marriage between individuals of the same sex. Opinions about such social systems vary. However, in order to realize the freedom and rights bestowed upon us from birth and the related dignity of individuals, a family and social system guaranteeing the family is indispensable, and it is necessary to eliminate the disadvantage that arises from individuals of the same sex being unable to marry. If this is the case, although opinions about the system of marriage vary and the significance of marriage between men and women with different reproductive functions is acknowledged to a certain extent, it is not a reason to prohibit marriage

between individuals of the same sex.

(v) Some municipalities have established a registered partnership system to alleviate the disadvantage of marriage between individuals of the same sex, and this system is widely being used (Findings of Fact (8)(i)). This system has the advantages of alleviating to a certain extent the disadvantages that arise in situations where individuals of the same sex cannot marry and increasing the degree of tolerance for same-sex marriage among the citizens. However, Partnership Certification Systems are limited to each local government that adopts it, and considering that the Provisions do not allow for anything other than marriage between individuals of the opposite sex, it cannot be deemed that the Partnership Certification System has eliminated the disadvantages caused by the fact that same-sex marriage is not permitted. Therefore, one cannot conclude that it is unnecessary to revise the Provisions due to the adoption of Partnership Certification Systems.

(vi) Even where same-sex marriage is allowed, there are several ideas and approaches to designing such a system. For example, one idea is to first establish a Partnership Certification System, confirm the situation, and then establish a marriage system. The marriage system constitutes various provisions of the Civil Code other than those regarding the married couple, such as provisions regarding parents and children, rules of inheritance, and other related laws and ordinances, so even if a marriage system is established, there are many matters to be considered, such as whether it should be identical in every way to marriage between men and women, and how to draft all of the individual provisions in the legal system regarding marriage and family. These matters are subject to the enactment of the law and are left to the discretion of the Diet, and the process of examining these issues needs to be considered. However, in light of the fact that significant disadvantage has been caused by the inability of individuals of the same sex to marry, the fact that most citizens now accept same-sex marriage, and the fact that many other countries already accept homosexual marriage and provide for a system of homosexual marriage, even if the necessity of the process of examining how such a system should be designed is taken into account in the application of Article 1(1) of the State Redress Act, as discussed below, in terms of whether or not the Provisions constitute a violation of

the Constitution, are not reasonable grounds for not allowing homosexual marriage at all.

The legal provisions concerning marriage and family are numerous and vary widely, and with respect to marriage, the disadvantages caused by the fact that same-sex marriage is not permitted can be resolved to a certain extent by interpreting some of the provisions stipulated by law or regulation or by social custom in such a way that they apply not only to marriage between individuals of the opposite sex but also to homosexual marriage. However, these protections are limited to such individual provisions and cannot be regarded as reasonable grounds for not permitting same-sex marriage in the Provisions.

(vii) Taking the above points into consideration comprehensively, and given that the Provisions now only provide for marriage between individuals of the opposite sex, do not allow marriage between individuals of the same sex, and do not provide any alternative measures, then in light of Article 24 of the Constitution, which is understood to be based on the dignity of individuals and which guarantees freedom of sexual orientation and the right to marriage between individuals of the same sex, the Provisions are deemed to be unreasonable, and at least at present, should be acknowledged as exceeding the legislative discretion of the Diet.

Therefore, the Provisions are in violation of Article 24 of the Constitution.

It should be noted that since the above determination is that the relevant provisions of the Civil Code and the Family Register Act concerning marriage which do not permit same-sex marriage violate the Constitution, it is not necessary to analyze the individual articles.

#### **4 Claim that the Provisions violate Article 14(1) of the Constitution (Related to Issue (1))**

(1) The Appellants argue that the Provisions violate Article 14(1) of the Constitution because they only permit the marriage between persons of the opposite sex and do not permit marriage between persons of the same sex.

(2) Article 14(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, as the Supreme Court has held (*see case number 1962 (O) No. 1472, Supreme Court Grand Bench judgment of 27 May, 1964, Minshu Vol. 18, No.4, p. 676, case number 1310, Supreme Court Grand Bench judgment of 4 April, 1973, Keishu Vol. 27, No.3, p. 265, etc.*).

The marriage system is a mechanism stipulated by the national government where parties to a marriage, as they intend, form a relationship of status as spouses as the basic unit of a family and are granted legal status with various rights and duties corresponding to the status. When establishing the marriage system, the traditions, social situations, and national sentiment of each country must be taken into consideration. Furthermore, the current marriage system is closely related to how the family should be perceived, and cannot be established independent of the rules on marriage and parent-child relationships and public awareness. Taking these factors into consideration in a comprehensive manner, it should be left to the legislature's reasonable discretion to decide how to establish the marriage system.

Homosexual persons are not discriminated against on the basis of gender, as to being either a female or a male, since they are allowed to marry persons of the opposite sex. Rather, as the Provisions do not permit same-sex marriage, and heterosexual persons are, in fact, allowed to marry persons of the opposite sex and receive official notarization through the family registry, legal status with various rights and duties and various services, while homosexual persons cannot marry persons of the same sex and enjoy the said benefits, the question in this case is whether the distinction of treatment in the marriage system related to such sexual orientation (hereinafter referred to as the "Differential Treatment") falls under the discriminatory treatment without reasonable grounds. If there are no reasonable grounds for the Differential Treatment, even in the light of the above discretion given to the legislature, it is reasonable to conclude that the Differential Treatment should be deemed to be in violation of Article 14(1) of the Constitution (*see case number 2012(Ku) 984, 985 Supreme Court*

*Grand Bench judgment of 4 September, 2013, Minshu Vol. 67, No.6, p. 1320).*

(3) Whether there are reasonable grounds for the Differential Treatment shall be examined. These considerations are almost the same as those that have been discussed in the explanation of whether the Provisions are in violation of Article 24 of the Constitution.

(i) The Provisions have been interpreted as stipulating marriage between individuals of the opposite sex, as the wording of Article 24(1) of the Constitution provides for marriage between both sexes, and same-sex marriage was not contemplated at the time of the enactment of the Constitution.

It is now understood that homosexuality is not a disorder or disease, and that one's sexual orientation is a matter inherent in each person and cannot be chosen or changed by the person's will. According to the nature of sexual orientation, it is understood that sexual orientation is an important legal interest that can constitute a personal right granting respect to an individual.

However, the system of marriage and family should be determined by the Diet in consideration of a wide variety of circumstances, and this is made clear by Article 24(2) of the Constitution. Even if sexual orientation is an important legal interest, it may be difficult to delineate the exact contours of what sexual orientation is, and it does not necessarily follow that the same system for marriage between individuals of the opposite sex or the same family system should be established for marriage between individuals of the same sex.

Notwithstanding the discretion that the Diet enjoys, the difference between heterosexual persons and homosexual persons is only a difference in sexual orientation that cannot be chosen or changed by one's will. It can be understood that the purpose of Article 24 of the Constitution requires that individuals be respected, their dignity protected and free and equal

marriage for all, ensued by the creation of family, and the legal protection thereof, be realized. As such, persons of different sexual orientations ought to have the same legal status to enjoy the same institutional protections, and there is no reasonable ground to treat people differently based on sexual orientation. Nevertheless, the Provisions do not permit same-sex marriage, and homosexual persons are not entitled to the legal effect of marriage. Consequently, it can be said that there are no reasonable grounds for the Differential Treatment.

(ii) Regarding the above-mentioned distinction of marriage treatment, one should refer to the state of affairs in other countries. Homosexuality is regarded as a type of sexual orientation, and the system of marriage for homosexual persons has been adopted in many countries.

Under such circumstances, the Human Rights Commission of the United Nations Covenant on Civil and Political Rights pointed out in its report on the Government of Japan that homosexual persons and others face discriminatory treatment in terms of access to legal marriage, etc., and that all rights, including same-sex marriage, stipulated in the International Covenant on Civil and Political Rights, must be enjoyed in all territories of the state parties.

(iii) In Japan, many local governments have introduced the Partnership Certification System in order to alleviate the disadvantages caused by the inability of homosexual persons to marry.

(iv) According to public survey in Japan, support for accepting same-sex marriage exceeds nearly 50%.

On the other hand, there is a proportion of people who have negative views and perceptions towards same-sex marriage. These are, however, nothing more than emotional reactions and

are not grounded in reasonable explanation for the distinction between the same-sex marriage and opposite-sex marriage.

( v ) As mentioned above, there are various opinions among Japanese citizens, but these views have changed over time, and it has been pointed out in the Diet and the judiciary that a failure to permit same-sex marriage constitutes discrimination.

(vi) Given the present situation, since the Provisions do not permit same-sex marriage, homosexual persons cannot marry, and therefore cannot receive institutional protections that the Provisions mandate, which causes a significant disadvantage for homosexual persons, who are not receiving the various systematic benefits that should be enjoyed upon consummation of opposite-sex marriage. This is true in everyday life, in workplace relationships, in social life and in the cases of an unexpected event. In short, lack of protection for homosexual persons under the Provisions interferes with human activities.

(vii) Even if homosexual persons are unable to marry, through contracts or wills, they may receive certain effects similar to those of marriage to some extent. However, while it is unclear whether it could be reasonable ground to differentiate if the alternative measures do not result in disadvantages, even if such measures are taken, the effects of marriage are provided for by various laws and regulations in addition to the Civil Code, and it is therefore difficult to conclude that alternative measures would eliminate the disadvantage in cases where homosexual persons are unable to marry.

(4) For the reasons stated above, even taking it into account that the Diet is granted legislative discretion, the fact that the Provisions do not permit marriage between persons of the same sex despite permitting marriage between persons of the opposite sex lacks reasonable grounds at present, and the Differential Treatment provided for in the Provisions can be interpreted as discriminatory treatment.

Therefore, the Provisions are in violation of Article 14(1) of the Constitution.

**5 Regarding the claim that the failure to amend or repeal the Provisions is illegal for the purpose of Article 1(1) of the State Redress Act (Related to Issue (2))**

In addition to the amendment as follows, judgment is made as described in “III The Court’s Judgment” 4 of “Facts and Reasons,” of the District Court Decision, and is hereby cited.

(Amendment of the District Court Decision)

(1) The “Registration Partnership System” on page 34, line [6/3] of the District Court Decision is revised to the “Partnership Recognition System” and “However” from the line [17/14] to the end of the line [22/19] (part explaining the situation of discussions in the Diet) is deleted.

(2) The phrase “[the Provisions] violated Article 14(1) of the Constitution” on page [35/34], line[s] [2/25-26] of the District Court Decision is revised to “[the Provisions] violated Article 24 and Article 14(1) of the Constitution,” and the phrase “[the Provisions] were unconstitutional to the extent explained in paragraph 3(4) above” on [page 35, ]line [5/2] is revised to “violated Article 24 and Article 14(1) of the Constitution.”

(3) The following shall be added to the end of line [12/9], after a new line, on page 35 of the District Court Decision.

“(3) The Appellants argue as set forth in II, 3(3).

Certainly, it can be seen that there are several millions of homosexual persons in Japan, even when the smallest statistics are estimated (*Findings of Fact (1)(ii)*), and it can also be acknowledged that the Provisions violate the Constitution because it does not permit same-sex marriage, thereby causing a serious violation of the important interests of Japanese citizens. In addition, not only in the trends in other countries (*Findings of Fact (7) (i), (ii)*), but also in the trends in Japan (*Findings of Fact (8)*)

(i)-(v)), especially in the Diet since May 2000, there have been discussions on the legislation of same-sex marriage from time to time.

However, even with these findings of fact, there are still various possible ways to legislate same-sex marriage, and it is difficult to say that the contents of the system that ought to be established are clearly defined, there are some people who have negative opinions and perceptions regarding the legal protection of same-sex marriage, and it is necessary to go through the process of discourse. Therefore, it cannot be concluded that the Diet has been negligent in taking legislative measures such as amendment or repeal of the Provisions for a long period of time without justifiable reasons.

Therefore, the Appellants' arguments cannot be adopted.

(4) Add to the above findings.

With regard to the Provisions that do not permit marriage between individuals of the same sex, it cannot be said that the Provisions, which do not permit marriage between persons of the same sex, had been clearly deemed as violations of the Constitution during the Diet's debates and judicial proceedings, and that there needs to be discussion on the construction of the system. It may have been the case that the target group was a small group and could not easily constitute a majority opinion. However, on the other hand, even under such circumstances, discussions continue in various situations, including the Diet and judicial proceedings, and there are opinions pointing out the unconstitutionality of not permitting same-sex marriage, and many Japanese citizens now accept same-sex marriage; therefore, it is also important to accept such changes in society. Above all, providing for marriage between individuals of the same sex does not mean that Japanese citizens are required to be unified in their opinions and evaluations. Marriage is fundamentally related to personal dignity and respect for the individual, and homosexual persons are disadvantaged in their daily social lives and face a sense of existential loss, which call for immediate measures against such disadvantages. Therefore, as a matter of urgency, it would be desirable to engage in earnest

discussions and measures as soon as possible, including the implementation of the marriage system for same-sex marriage as that of opposite-sex marriage.”

#### **IV Conclusion**

Therefore, the Appellants’ claims should be dismissed for lack of grounds and the District Court Decision to the same effect is reasonable in its conclusion. Thus this Appeal is dismissed for lack of grounds and the judgment is rendered as stated in the decision.

Third Civil Division, Sapporo High Court

Presiding Judge

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Kiyofumi Saito

Judge

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Masahiro Yoshikawa

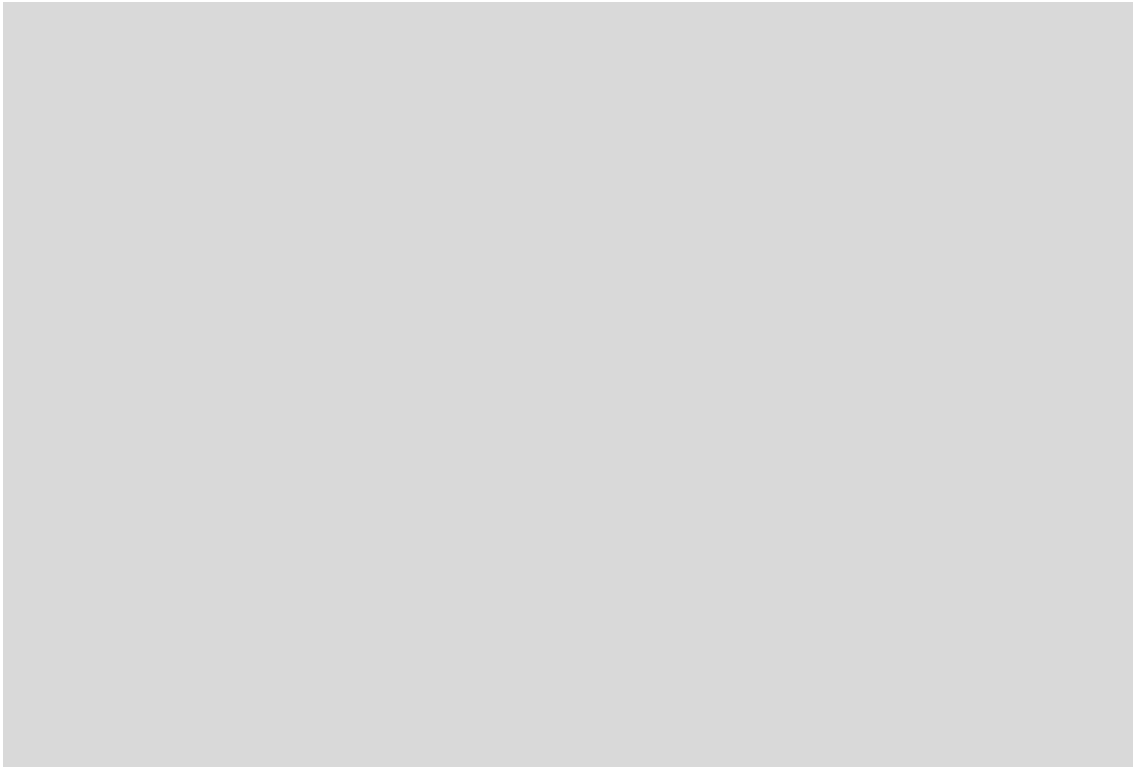
Judge

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Yasuhiro Ito



## LIST OF PARTIES



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