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Original Japanese judgment available at

https://www.courts.go.jp/app/files/hanrei_jp/849/092849_hanrei.pdf

5 Case No. 318 of 2022 (Gyotsu), No. 360 of the same year (Gyohi)

Request to rescind non-payment of Crime Victim Benefits

March 26, 2024 Third Petty Bench Judgment

Judgment

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Main Text of Judgment

The prior instance judgment (“**Nagoya High Court Decision**”) is reversed.

The case is remanded to the Nagoya High Court.

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Reasons

Reasons for the Petition for Acceptance of Final Appeal by Tetsushi Horie, the Appellant's Counsel, et al.

1. The facts and circumstances determined by the prior instance (“**Nagoya High Court**”) are summarized as follows.

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(1) The Act on Support for Crime Victims, etc. Such as Payment of Crime Victims Benefit (Act No. 36 of 1980, hereinafter referred to as the “**Act**”) stipulates in Article 3 that the State shall pay “**Crime Victim Benefits**”¹ to “**Crime Victims**”² (meaning Crime

¹ Government compensation to the surviving family members of a victim who died as a result of a criminal act or to a victim who suffered an injury or disability as a result of a criminal act.

² A person who has suffered criminal harm.

25 Victims as prescribed in Article 2(3) of the Act) or their surviving family members
(excluding certain persons prescribed in the Act). Article 4(i) of the Act stipulates
that “**Survivor Benefits**”³ from among the Crime Victim Benefits, shall be paid in a
lump sum to the first priority surviving family members of any person who has died
as a result of a criminal act (meaning an act that constitutes a crime causing death or
bodily injury to a person, as prescribed in Article 2(1) of the Act).

30 Article 5(1) of the Act provides that the scope of the first priority surviving family
members who are eligible for Survivor Benefits shall be any person or persons who
is or are (a) “a spouse of the Crime Victim (including a person who did not register
the marriage but has been in a *de facto* marital relationship with the Crime Victim)”
at the time of death of the Crime Victim (Article 5(1)(i)), (b) “children, parents,
grandchildren, grandparents, and/or siblings of the Crime Victim who were dependent
35 upon the income of the Crime Victim” (Article 5(1)(ii)), or (c) “children, parents,
grandchildren, grandparents, and/or siblings of the Crime Victim who do not fall
under the preceding item” (Article 5(1)(iii)). Article 5(3) stipulates that the order of
priority for the surviving family members to receive Survivor Benefits shall in
accordance with the above [(i.e., those under (a) are first priority, those under (b) are
40 second priority, and those under (c) are third priority)].

(2) The appellant (a man born in 1975) developed a relationship with a man born in
1962 (hereinafter referred to as the “**Victim**”) around 1994 and started cohabitating
with the Victim. The Victim died on December 22, 2014, as a result of a criminal
act committed by a third party.

45 (3) On December 12, 2016, the appellant claimed to be eligible for the payment of

³ Government compensation to the surviving family of a victim who died as a result of a criminal
act.

Survivor Benefits as someone described under the parenthetical of Article 5(1)(i) of the Act, “a person who did not register the marriage but has been in a *de facto* marital relationship with the Crime Victim”, and applied for Survivor Benefits. However, on December 22, 2017, the Aichi Prefectural Public Safety Commission issued a decision denying the payment of Survivor Benefits to the appellant, stating that the appellant did not fall under the category of a person described [in Article 5(1)(i)].

2. The appellant now seeks to have the respondent rescind the above ruling.
3. Based on the above facts and other circumstances, the Nagoya High Court held that the appellant’s claim should be dismissed because Article 5(1)(i) of the Act did not violate Article 14(1) of the Constitution for the following reasons:

Article 5(1)(i) of the Act is interpreted to recognize the surviving spouse of the deceased Crime Victim from a marriage under the Civil Code as a recipient of Survivor Benefits. It also extends such eligibility to those who had a relationship with the deceased Crime Victim equivalent to marriage under the Civil Code but had not registered their marriage. Therefore, it is natural to understand that the language “a person who did not register the marriage but has been in a de facto marital relationship with the Crime Victim,” as mentioned in the parenthetical of Article 5(1)(i), presupposes a relationship that could be registered as a marriage [under the Civil Code], and therefore, it cannot be interpreted that a person of the same sex as the Crime Victim could fall under this category.

4. However, this Court rejects the above analysis and decision by the Nagoya High Court for the following reasons.
 - (1) The Act was enacted in 1980, and was amended by Act No. 30 of 2001 to establish a purpose provision [Article 1]. [This provision states that the] purpose of the Act was for the speedy alleviation of criminal harm (death and the like caused by a

75 criminal act; and physical and mental damage suffered by the surviving family of a
person who died unexpectedly due to a criminal act) through the provision of Crime
Victim Benefits, and other means (Article 1 of the Act prior to its amendment by
Act No. 15 of 2008). Subsequently, in 2004, the Basic Act on Crime Victims
(hereinafter referred to as the “**Basic Act**”) was enacted to protect the rights and
interests of persons harmed by crimes, and their surviving families (Article 1 of the
Basic Act), and as one of the basic measures under the Basic Act, the state and other
authorities shall take necessary measures, such as improving the systems related to
80 the provision of benefits for crime victims and their surviving families, in order to
reduce their financial burden (Article 13 of the Basic Act). Furthermore, Act No. 15
of 2008 amended the purpose of the Act to include, in addition to the speedy
alleviation of criminal harm to the surviving family of those who have died
unexpectedly as a result of criminal acts, the provision of Crime Victim Benefits to
85 the surviving families to assist them in leading a peaceful life again, thus
contributing to the realization of a society in which the rights and interests of victims
of criminal harm are protected (Article 1). In addition, with the amendments to the
Act by Act No. 30 of 2001 and Act No. 15 of 2008, the payment system for Crime
Victim Benefits was expanded, which included an increase in the amount of the
90 Survivor Benefits paid under certain circumstances.

As described above, the purpose for payment of Crime Victim Benefits is to alleviate
the psychological and financial hardships and impact on the surviving families of
victims of criminal harm at an early stage, and thereby contributing to the realization
of a society in which the rights and interests of victims of criminal harm are
95 protected. In view of the fact that one of the fundamental measures under the Basic
Act on Crime Victims is the improvement of this payment system, one must fully
consider the purpose of the above-mentioned benefit payment system when

interpreting Article 5(1)(i) of the Act.

(2) In light of the fact that the purpose of the Crime Victim Benefits payment system is interpreted as (1) above, the phrase “surviving family members” who are eligible for the Survivors Benefits under Article 5(1) of the Act is interpreted to refer to those who are expected to suffer psychological and financial hardships and impact due to the death of a Crime Victim and for whom it is highly necessary to alleviate such hardship quickly.

The reason why Article 5(1)(i) includes the phrase “a person who did not register the marriage but has been in a *de facto* marital relationship with the Crime Victim” in parentheses is that, even if a person is not legally recognized as a spouse of the Crime Victim under the Civil Code due to not having registered their marriage, they may, nevertheless, have lived in circumstances akin to a marital relationship. In these cases, considering the relationship and the practical aspects of cohabitation, it can be presumed that the death of the Crime Victim would cause psychological and financial hardships and impact to the person to the same extent as what a legal spouse would experience under similar circumstances. Therefore, it is considered highly necessary to alleviate such hardships and impact as soon as possible. The high necessity to alleviate such hardships and impact is irrespective of whether the person cohabiting with the Crime Victim was of the opposite sex or the same sex as the Crime Victim.

Accordingly, it runs contrary to the purpose of the Crime Victims Benefit system to deny someone the status of “a person who did not register the marriage but has been in a *de facto* marital relationship with the Crime Victim” solely on the ground that the person is of the same sex as the Crime Victim. This conclusion is drawn in light of the purpose of the benefit payment system for Crime Victims and considering the intent of the language used in the parenthetical of Article 5(1)(i) of the Act, which

125 defines the category of surviving family members eligible to receive the Survivor Benefits. Additionally, assuming that a person of the same sex as the Crime Victim falls under the above-mentioned category does not run contrary to the purpose and reasoning of the Act.

(3) Based on the above, this Court finds that a person of the same sex as the Crime Victim can be regarded as “a person who did not register the marriage but has been in a *de facto* marital relationship with the Crime Victim” as defined in Article 5(1)(i) of the Act.

130 5. The Nagoya High Court Decision deviated from the above [analysis and erred on interpretation of the Act regarding] violations of the law, which clearly affected its ruling. The argument presented is well-reasoned, and the Nagoya High Court Decision must be overturned; therefore, this Court need not decide on the [further] reasons for the appeal. In addition, the case is remanded to the Nagoya High Court for further examination to determine whether or not the appellant qualifies as “a person who did not register the marriage but has been in a *de facto* marital relationship with the Crime Victim” vis-à-vis the Victim.

140 Therefore, with the [exception of the] dissenting opinion of Justice Yukihiro Imasaki and the unanimous opinion of all the other Justices, the judgment is rendered as stated in the Main Text of Judgment. There is a concurring opinion by Justice Michiharu Hayashi.

The concurring opinion of Justice Michiharu Hayashi is as follows.

145 I agree with the majority opinion but would like to further elaborate on the following points. Given that the parenthetical of Article 5(1)(i) of the Act stipulates the scope of surviving family members who are eligible to receive the Survivor Benefits, it is appropriate to interpret “a person who has been in a *de facto* marital relationship with the Crime Victim” in the parenthetical of Article 5(1)(i) in light of the purpose of the payment system for Crime Victim

150 Benefits, including Survivor Benefits, in addition to the purpose and reasoning of the Act.
As the majority opinion explains, the purpose of this system is to contribute to the realization
of a society in which the rights and interests of Crime Victims are protected, through such
means as speedy alleviation of the psychological and financial hardships and impact of the
surviving families of those who have unexpectedly died as a result of criminal acts. The
155 purpose of this system is important in light of its position in the Basic Act and the history of
the system's expansion to achieve the above-mentioned purpose and should be interpreted
with full consideration of the system's purpose.

In light of the purpose of the Crime Victim Benefits payment system, even if a person is of
the same sex as the Crime Victim, if the person can be said to have been in a relationship
160 equivalent to a common-law relationship with the Crime Victim of the opposite sex, in
consideration of the relationship with the Crime Victim, the fact that the person and the Crime
Victim cooperated and lived together, and the continuity of the relationship and other
circumstances, the person is considered to be eligible for Survivor Benefits as if they were
in a common-law relationship between the opposite sexes. Therefore, it is reasonable to
165 conclude that they are included among the surviving family members who are eligible to
receive Survivor Benefits, as they fall within the above definition. Although the dissenting
opinion points out that the payment of Crime Victim Benefits has the character of
compensating for damages, it is not limited to that. The psychological and financial hardships
and impact that the system aims to alleviate quickly is not necessarily the same as the damage
170 that can be claimed against the perpetrator based on a tortious act. However, in the above
cases, it seems reasonable to conclude that at least a claim for compensation based on tort
can be filed against the perpetrator.

As is clear from the majority opinion's explanation, it shows an interpretation of the scope of
those eligible for Survivor Benefits, which are paid for the specific purpose of providing
175 support to the surviving family of a person who has died unexpectedly as a result of a criminal

act. Although there are a considerable number of provisions of laws and regulations that use the same or similar language as the above (Article 5(1)(i) of the Act), the majority opinion does not make a judgment on them. Interpretation of such provisions should be made in light of the purpose of the relevant provisions, taking into consideration the purpose and objectives of the system as a whole and its structure, pertaining to the relevant provisions, and should be considered on a provision-by-provision basis.

The dissenting opinion of Justice Yukihiko Imasaki is as follows.

I believe, contrary to the majority opinion, that this appeal should be dismissed. The reasons are as follows.

1. The Act provides for the payment of Crime Victim Benefits in order to alleviate the damage caused by crimes quickly to the surviving families of those who have unexpectedly died as a result of criminal acts, and to support these persons to have peaceful lives again (Article 1), and provides Survivor Benefits along with benefits for serious injuries and illnesses as well as disability benefits (Article 4).

The amount of the Survivor Benefits is defined as the basic amount calculated by a Cabinet Order multiplied by a multiplier also determined [therein], which is made “in consideration of the living conditions of the surviving family members” (Article 9(1)). This indicates that Survivor Benefits are designed to guarantee the livelihood of the surviving family members of the Crime Victims. On the other hand, there are provisions that are not necessarily consistent with the nature of livelihood security for surviving families. For instance, it is not required that the survivor's livelihood be supported by the income of the Crime Victim (Article 5(1)).

In addition, while the amount of the Survivor Benefits is deducted by the value of the benefits under the Industrial Accident Compensation Insurance Act and compensation for damages (Article 7, Article 8), Article 9(5) provides for an additional payment for medical treatment expenses incurred by the Crime Victim

prior to their death. This indicates that the Survivor Benefits are intended to compensate for damages. However, as mentioned above, the amount to be paid is calculated mechanically in accordance with the law and government ordinances and is not intended to match actual damages.

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2. It has been explained that the essential purpose of the Crime Victim Benefits system is, while including elements of welfare policy, complementing the tort system, and criminal policy, to remove the public's distrust of the entire legal system caused by lack of care for the current situation of Crime Victims.

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The reason why such explanation is somewhat difficult to understand is that the Crime Victim Benefits system is a highly policy-oriented system and includes aspects of various policies, and therefore, the benefits that are financed by the state's general account are also given a special meaning. As such, the exact nature of Crime Victim Benefits is difficult to explain in a few words. Still, although not thoroughly implemented, considering the above-mentioned provisions, I believe that the Act aims to realize the above-mentioned purpose of the Crime Victim Benefits system, and thus the objectives of the Act, by ensuring that Survivor Benefits fully fulfill the two functions of providing livelihood security and compensating damages to the survivors.

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3. Based on the above assumptions, I will first discuss the case from the perspective of livelihood security.

As mentioned above, the Act does not require that the survivor's livelihood had been maintained by the Crime Victim in order to be eligible for Survivor Benefits (Article 5(1)), but with respect to “children, parents, grandchildren, grandparents, and brothers and sisters” (“**Close Relatives**”), those whose livelihood was supported by the income of the Crime Victim are placed ahead of those whose livelihood was not (Article 5(1)(ii)).

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For this reason, if the term “spouse of a crime victim (including a person who did not register the marriage but has been in a *de facto* marital relationship with the Crime Victim)” in Article 5(1)(i) were to include a “same-sex partner” (although the definition of “partner” itself could be an issue, here we use the term as meaning “a person living together under the same circumstances as those between a man and a woman in a marital relationship”), then Close Relatives whose livelihood was supported by the income of the Crime Victim would be subordinated to the same-sex partners and would not be eligible for the benefits. The majority opinion is, of course, a broad interpretation of the scope of surviving family members eligible for Survivor Benefits, and in this sense, it should be welcomed by the Crime Victims. However, on the other hand, albeit potentially, it also brings about the abovementioned conflict of interests among Crime Victims. Whether such an outcome meets the social needs of Crime Victims as a whole, including survivors, should be an important issue to be considered in the interpretation of the Act. This is even more so when the issue concerns the livelihood security of the children who were dependent on the income of the Crime Victims. If this is the case, the argument must first be made from these perspectives of the Crime Victim Benefits system.

4. The Survivor Benefits has the aspect of being a compensation for damages as mentioned above. If we interpret that Survivor Benefits should be paid to same-sex partners under the Act, it should be assumed that the same-sex partner of a Crime Victim has the right to claim damages against the perpetrator.

I believe that there is room to recognize the right to claim compensation for emotional damages as an inherent right of same-sex partners, although of course it depends on the case. However, it is generally understood that the right to claim damages for property, especially for the loss of the benefit of support, is difficult to consider unless Article 752 of the Civil Code is applied *mutatis mutandis*. If this is

255 the case, the right to claim damages of the same-sex partner of a Crime Victim, if
any, would be more limited than for the opposite-sex partner. Nevertheless,
according to the majority opinion, same-sex partners would be viewed the same as
opposite-sex partners and would receive Survivor Benefits in the same amount.
Considering that Survivor Benefits have an aspect of serving as a compensation for
damages, it seems difficult to explain such a contradiction with the assumed rights
260 under civil substantive law.

5. In terms of the impact on society, the interpretation of the Act by the majority
opinion poses an even more difficult problem in view of whether or not it will affect
the interpretation and application of other laws and regulations.

The phrase “a person who did not register the marriage but has been in a *de facto*
265 marital relationship with the Crime Victim” as found in Article 5(1)(i) of the Act, or
phrases with the same meaning, are used in many laws and regulations. However, it
is not clear what interpretation the majority opinion intends to give to such
provisions. Although it may be possible to interpret each individual law separately
and differently from that of the Act, we can easily imagine that the interpretation of
270 the Act will affect other laws, and there may be a significant impact on society
depending on the outcome of such effect. At this point, it is impossible to predict
the magnitude of the effect, and in that sense, the majority opinion must be viewed
with concern.

6. In conclusion, the majority opinion is unreasonable in interpreting that a person of
275 the same sex as the Crime Victim can be classified as a person prescribed in the
parenthetical of Article 5(1)(i) of the Act. The majority opinion states that, whether
the person who lived together with the Crime Victim was of the opposite sex is
irrelevant to the fact that there are situations in which it is highly necessary to
alleviate the psychological and financial hardships and impact caused by the death

280 of the Crime Victim. While I do not disagree with this, there is a separate question
as to whether the mechanism of the provisions of the Act can incorporate such a
concept without inviting inconsistencies.

7. While the majority opinion states that the case will be sent back to the Nagoya High
Court for a full hearing on whether the appellant constitutes “a person who did not
285 register the marriage but has been in a *de facto* marital relationship” with the Crime
Victim, it does not address the substance of the requirements of “a *de facto* marital
relationship”. It is not entirely obvious what distinguishes “a *de facto* situation
similar to a marriage” and a same-sex couple simply living together. Marriage has
historically and legally been conceived as a relationship between a man and a
290 woman, and it is a recent idea to extend similar legal protections to same-sex
relationships. I do not believe it is easy to answer the question of what constitutes
“a *de facto* marital relationship” in a same-sex relationship.

Setting aside this concern, given that “a *de facto* marital relationship” in a same-sex
relationship is a concept that is being newly proposed by the majority opinion, and
295 identifying the substance of such concept is an interpretation of the Act, I believe
this Court should have identified the factors to be considered in determining “a *de*
facto marital relationship” under the interpretation of the majority opinion, before
sending the case back to the Nagoya High Court.

8. The interpretation of the Act in this case is also a part of a larger issue of how same-
300 sex partnerships should be legally protected. This is an important issue concerning
the place of same-sex partnerships in society and the beliefs of each individual
citizen concerning the concept of a family, which should be discussed extensively,
including in respect of the interpretation of the Constitution. Needless to say, it
would have been preferable for considerations with regard to the Act to progress
305 based on a sufficient accumulation of such discussions. However, as far as I know,

there has been no accumulation of such discussions, and therefore, important interpretive viewpoints, such as how to position same-sex partnerships in the current legal system and what adjustment mechanisms should apply when there is a conflict of interest with other rights and legal interests, have not yet been clarified. Under such circumstances, it is inevitable that there will be considerable difficulties in attempting to find a way to provide legal protections to same-sex partners by way of interpretation of individual laws. It is possible that new interpretations and understandings will be widely shared in the near future as a result of future legislation and the development of case law and theories, which would support the positions set out in the majority opinion, but at this point, my impression is that we are moving too fast.

For the above reasons, I believe that same-sex partners should not be considered as [“spouses of a Crime Victim (including a person who did not register the marriage but has been in a *de facto* marital relationship with the Crime Victim)”] under Article 5(1)(i) of the Act, and according to what I have stated above, it cannot be said that the above item as interpreted in such way would violate Article 14 of the Constitution. Therefore, Nagoya High Court Decision to the same effect as above can be affirmed, and the appeal in this case should be dismissed.

(Presiding Justice: Michiharu Hayashi, Justice: Katsuya Uga, Justice: Yasumasa Nagamine,
Justice: Eriko Watanabe, Justice: Yukihiro Imasaki)