

Judgment delivered on December 13, 2024; original received by the court clerk on the same day
Case No. (Ne) 584 of 2023, "Freedom of Marriage for All" Appeal Case
(Original Court: Fukuoka District Court, Case No. (Wa) No. 2827 of 2019, Case No. (Wa) No. 447 of 2021)
Oral Argument Conclusion Date: September 2, 2024

Judgment

The parties are as indicated in the attached List of Parties

Main Text of Judgment

1. The appeal is dismissed.
2. The appellants shall bear the costs of the appeal.

Facts and Reasons

I. Purpose of the Appeal

1. To reverse the prior instance judgment.
2. The appellee to pay 1,000,000 yen each to Appellant 1 and Appellant 2, along with interest of 5 percent per annum from October 9, 2019, until payment is completed.
3. The appellee to pay 1,000,000 yen each to Appellants 3, 4, 5, and 6, along with interest at of 5 percent per annum from March 8, 2021, until payment is completed.
4. The appellee to bear the litigation costs for both the first and second trials.
5. [To obtain] a declaration of provisional execution.

II. Summary of Facts (unless otherwise specified, abbreviations follow the prior instance judgment)

1. In this case, the appellants submitted marriage notifications with a same-sex partner, but they were not processed. The appellants claim that the various provisions of the Civil Code and Family Register Act related to marriage (the "**Provisions**") only recognize marriage between opposite-sex couples (hereinafter "**opposite-sex marriage**") and do not recognize same-sex marriage. They argue that this is a clear violation of Articles 13, 14, and 24 of the Constitution. Yet the Diet has failed to take legislative measures to amend or repeal the Provisions for an extended period without justifiable reasons (hereinafter "**legislative inaction**"), causing them mental distress. Based on Article 1(1) of the State Redress Act, they seek compensation of 1,000,000 yen each, along with interest of 5 percent per annum (based on the Civil Code before the amendment under Legislation No. 44 of 2017) from the date of service of the complaint (October 9, 2019 for Appellants 1 and 2, and March 8, 2021 for Appellants 3 to 6) until payment is completed.
The prior instance trial dismissed the appellants' claims, leading them to file this appeal.
2. The undisputed facts, issues, and the gist of the parties' arguments on the issues are as set out in Items 1 and 2 of "II. Summary of the Facts" in the "Facts and Reasons" section of the prior instance judgment

and are quoted here, except for the following changes: changing "the Civil Code" on page 3, line 6¹ to "Article 740 of the Civil Code," changing "Articles 731 of the Civil Code" in the same line to "Articles 731, 732, and 734 of the Civil Code," and changing "whether the failure to amend or repeal the Provisions is illegal in light of the application of Article 1(1) of the State Redress Act" on page 52, lines 22 and 23 to "whether the legislative inaction satisfies each of the requirements of Article 1(1) of the State Redress Act."

III. The Court's Judgment

1. This court also finds that the appellants' claims are without merit.

The reasons are as follows.

2. Finding of Facts

The facts are as stated in Item 1 of "III. The Court's Judgment" under the "Facts and Reasons" section of the prior instance judgment and are quoted here with the following corrections:

- (1) The sentence "whether the failure to amend or repeal the Provisions is illegal in light of the application of Article 1(1) of the State Redress Act" on page 3, lines 21-22 of the prior instance judgment is corrected to "whether the legislative inaction satisfies each of the requirements of Article 1(1) of the State Redress Act."
- (2) The number "78" on page 4, line 16 of the prior instance judgment is corrected to "77".
- (3) The year "1992" on page 5, line 12 of the prior instance judgment is corrected to "1990".
- (4) The phrase "sacrament" on page 7, line 11 of the prior instance judgment is followed by "(an act of conveying the God's grace)," and the number "553" on page 8, line 22 is deleted.
- (5) The number "559" on page 11, line 26 of the prior instance judgment is followed by "756-758, 1013, 1014, 1025, 1207-1 and 2", and the phrase "and Cuba" on page 12, line 22 is corrected to "Cuba and Mexico," with the following additions:

"2023	Principality of Andorra, Nepal, and Estonia (however, the law will come into effect in January 2024)
"2024	Greece and Liechtenstein (however, the law will come into effect on January 1, 2025)"
- (6) The phrase "and Ecuador (2019)" is added before "and" on page 13, line 4 of the prior instance judgment, and the numbers "11, 12, 14" on lines 5-6 are corrected to "10-13".
- (7) The following is added at the end of line 6 on page 13 of the prior instance judgment:

"In Canada, in September 2023, a Japanese same-sex couple was granted refugee status. The decision stated that they were not recognized as a legal family and could not receive the same benefits as opposite-sex married couples. It also noted that discrimination exists throughout Japan, and they

¹ Translation Note: The line and page numbers of the prior instance judgment referenced herein follow those in the [original Japanese version](#).

could not escape it by moving to another region (*Plaintiffs' Evidence A1209*)".

- (8) The phrase "The European Court of Human Rights," on page 13, line 22 of the prior instance judgment is followed by "in 2015, the Italian government".
- (9) The following is added at the end of line 5 on page 14 of the prior instance judgment: "In July 2024, the Supreme Court of South Korea ruled that not recognizing same-sex couples as dependents under the national health insurance system constitutes discrimination based on sexual orientation (*Plaintiffs' Evidence A1208*).", and "human rights" from line 12 is deleted.
- (10) The following is added at the end of line 2 on page 15 of the prior instance judgment:
"The United Nations Human Rights Council issued a statement in June 2023 supporting families of sexual minorities (*Plaintiffs' Evidence A1026*)."
- (11) The following is added at the end of line 18 on page 15 of the prior instance judgment:
"a. Introduction of partnership systems"
- (12) The sentence "as of July 22, 2024, the cumulative number is 459, and the population coverage rate is 85.186% (*Plaintiffs' Evidence A1215-1218*)" is added at the end of line 8 on page 16 of the prior instance judgment.
- (13) The following is added at the end of line 8 on page 16 of the prior instance judgment:
"b. Description of relationships on residence certificates"

The city of Omura in Nagasaki Prefecture, at the request of a same-sex male couple, recorded the partner's relationship as 'husband (unregistered)' on their residence certificate on May 2, 2024. (*Plaintiffs' Evidence A1220*)

Additionally, the cities of Kurayoshi in Tottori Prefecture, Ofunato in Iwate Prefecture, Kanuma in Tochigi Prefecture, Yokosuka in Kanagawa Prefecture, Mitoyo in Kagawa Prefecture, and Tochigi also allow same-sex partners to have their relationship described as 'wife (unregistered)' or 'husband (unregistered)' on their residence certificates if they use the partnership system. (*Plaintiffs' Evidence A1221-1226; entire import of oral arguments*)

Furthermore, similar measures are being considered in Suginami Ward and Setagaya Ward in Tokyo, Yosano Town in Kyoto Prefecture, and Koga in Fukuoka Prefecture. (*Plaintiffs' Evidence A1227-1230*)"

- (14) The phrase "then" on page 17, line 2 of the prior instance judgment is corrected to "2015," and the phrase "in general have not changed from that as set out above" on line 4 is corrected to:
"[the government's responses], as of around October 5, 2022, were generally similar, but the then Prime Minister stated on February 1, 2023, that same-sex marriage 'is an issue that would change the family values, values, and society for all citizens.' On February 8, the Prime Minister further explained that 'it is necessary to carefully monitor public opinion, discussions in the Diet, the status of lawsuits regarding same-sex marriage, and the implementation and use of partnership systems by local governments, and to conduct careful consideration and discussions.'

Additionally, the opposition parties submitted similar bills to the House of Representatives and the House of Councillors on March 6 and March 29, 2023, respectively. Although opposition

members requested discussions in the Budget Committee of the House of Councillors and the Judicial Affairs Committee of the House of Representatives, the then Prime Minister and Minister of Justice responded that it was an issue to be discussed in the Diet, and the bills were not deliberated in the committees. The then Prime Minister continued to state from October 24, 2023, onwards that the introduction of a same-sex marriage system is closely related to the family values of each citizen, and it is necessary to monitor public opinion, discussions in the Diet, the status of lawsuits regarding same-sex marriage, and the implementation of partnership systems by local governments."

- (15) The number "653" on page 17, line 6 of the prior instance judgment is followed by ", 771, 773, 780, 781, 784, 785, 1065, 1066, 1075; entire import of oral arguments" and the following is added at the end of line 6:

"On the other hand, on June 16, 2023, the Act on Promotion of Public Understanding of Diversity of Sexual Orientation and Gender Identity was enacted, based on the principle that all citizens should be respected as irreplaceable individuals who equally enjoy fundamental human rights regardless of their sexual orientation or gender identity. The Act aims to eliminate unfair discrimination based on sexual orientation or gender identity and to promote a society where people mutually respect each other's personalities and individuality. The Act was promulgated and took effect on June 23, 2023."

- (16) The following is added at the end of line 9 on page 20:

"The National Institute of Population and Social Security Research conducted a national survey on family trends (valid responses: 8,910), which showed that 75.6% were in favor of legally recognizing same-sex marriage (including 'somewhat in favor'). (*Plaintiffs' Evidence A755*)

(h) 2023

In 2023, NHK conducted a nationwide public opinion survey targeting individuals aged 18 and over (1,229 respondents), which showed that 54% were in favor of same-sex marriage, and 29% were against it (*Plaintiffs' Evidence A744*).

Kyodo News conducted a nationwide public opinion survey, which showed that 64% were in favor of recognizing same-sex marriage, and 24.9% were against it (*Plaintiffs' Evidence A743*).

Yomiuri Shimbun conducted a nationwide public opinion survey (1,044 respondents), which showed that 66% were in favor of legally recognizing same-sex marriage, and 24% were against it (*Plaintiffs' Evidence A746*).

Mainichi Shimbun conducted a public opinion survey targeting individuals aged 18 and over, which showed that 54% were in favor of legally recognizing same-sex marriage, and 26% were against it (*Plaintiffs' Evidence A745*).

Sankei Shimbun and FNN (Fuji News Network) conducted a public opinion survey which showed that 71% were in favor of legally recognizing same-sex marriage, and 19.6% were against it. Among those aged 18-29, 91.4% were in favor, but the percentage decreased with age, with 47.0% of those aged 70 and over in favor (*Plaintiffs' Evidence A747, 1061*).

Asahi Shimbun conducted a nationwide public opinion survey which showed that 72%

believed same-sex marriage should be legally recognized, while 18% believed it should not (*Plaintiffs' Evidence A748*).

The Nikkei conducted a public opinion survey which showed that 65% were in favor of legally recognizing same-sex marriage, and 24% were against it. The percentage of those in favor was higher among younger age groups, with 83% of those aged 18-39, 75% of those in their 40s and 50s, and 50% of those aged 60 and over in favor (*Plaintiffs' Evidence A749*).

Jiji Press conducted a nationwide public opinion survey targeting individuals aged 18 and over (valid response rate: 59.9% out of 2000 responses), which showed that 56.7% were in favor of legally recognizing same-sex marriage, and 18.3% were against it (*Plaintiffs' Evidence A750*).

Kyodo News conducted a public opinion survey which showed that 71% were in favor of recognizing same-sex marriage, and 26% were against it (*Plaintiffs' Evidence A752*).

NHK conducted a nationwide public opinion survey targeting individuals aged 18 and over (1,544 respondents), which showed that 44% believed same-sex marriage should be legally recognized, and 15% believed it should not. Among those aged 18-29, 68% were in favor, and 8% were against it. Among those in their 30s, 58% were in favor, and 11% were against it. Among those in their 40s, 62% were in favor, and 8% were against it. Among those in their 50s, 50% were in favor, and 11% were against it. Among those in their 60s, 44% were in favor, and 15% were against it. Among those aged 70 and over, 29% were in favor, and 23% were against it (*Plaintiffs' Evidence A753*).

JNN conducted a public opinion survey which showed that 63% were in favor of legally recognizing same-sex marriage, and 24% were against it. Among men aged 18-29, 75% were in favor, and 20% were against it. Among women in the same age group, 91% were in favor, and 4% were against it. Among men aged 60 and over, 39% were in favor, and 44% were against it. Among women in the same age group, 49% were in favor, and 29% were against it (*Plaintiffs' Evidence A751*).

A nationwide random sample survey conducted by a research team led by Hosei University's Hiroshi Hiramori, Assistant Professor of the Faculty of Global and Interdisciplinary Studies, and Saori Kamano, Director of the National Institute of Population and Social Security Research, targeting 18,000 people aged 18-69, showed that 53.4% were in favor of a legal system allowing same-sex marriage, 29.8% were somewhat in favor, 9.5% were somewhat against, and 6.1% were against it (*Plaintiffs' Evidence A1062-I, 2*).

In 2024, a public opinion survey conducted by Kyodo News targeting people aged 18 and over (1,966 valid respondents) showed that 73% were in favor of recognizing same-sex marriage, and 25% were against it (*Plaintiffs' Evidence A1239-I, 2*).

- (17) The phrase "every survey year" on page 21, line 8 of the prior instance judgment is corrected to "in all seven surveys," the phrase "among [the unmarried persons who want to get married]" on line 16 is corrected to "with regards to [the reasons why the unmarried persons want to get married]", and the phrase "regarding [the question asked to unmarried respondents aged 18-34]" from the start of

line 23 to line 24 is corrected to "among [unmarried respondents aged 18-34 who answered the question]".

- (18) The following is added at the end of line 2 on page 22:

"(e) According to the Cabinet Office's 2023 Survey on Marriage, Work, and Income in the 100-year Life Era, the ideal number of children for single people without children is 0 (24% of women in their 20s, 43% of women in their 30s, 31% of men in their 20s, 38% of men in their 30s) and 2 (40% of women in their 20s, 24% of women in their 30s, 32% of men in their 20s, 27% of men in their 30s). The most desired qualities in a marriage partner were "feeling comfortable and having fun together" and "similar values," and the most common reasons for wanting to get married were "wanting to live with someone they love" (*Plaintiffs' Evidence A907*)."

- (19) The phrase "(a)" is added at the beginning of line 4 on page 22 of the prior instance judgment, and the phrase "(a)" on line 6 is corrected to "a", the phrase "(b)" on line 10 is corrected to "b", and line 13 to line 14 are corrected as follows:

"The number of households with children and their proportion of all households decreased from 17,364,000 households (46.2%) in 1986 to 11,221,000 households (21.7%) in 2019 (*Plaintiffs' Evidence A307, page 7*)."

- (20) A line break is placed at end of line 15 on page 22 of the prior instance judgment and the following is added:

"(b) According to the Cabinet Office Gender Equality Bureau's "Basic Data on Marriage and Family," published on February 7, 2022, the following facts are recognized. (*Plaintiffs' Evidence A908*)

a. Comparing 1985 and 2020, the proportions of unmarried and divorced individuals have increased for both men and women. The proportion of unmarried individuals at age 50 increased from 3.7% to 25.9% for men and from 4.3% to 16.4% for women.

b. The total fertility rate has remained around 1.4 in recent years, but the annual number of births fell below 1 million in 2016 and was 840,000 in 2020.

(c) According to the Cabinet Office's Gender Equality Bureau's 2024 White Paper on Gender Equality, under the impact of COVID, the number of marriages was 526,000 marriages in 2020 and 514,000 in 2021, which was the lowest since the post-war period. As of 2020, the proportion of unmarried individuals at age 30 was 40.5% for women and 50.4% for men, and about 30% of both men and women were without a spouse at age 50. The White Paper also states that, in regards to the challenges of gender equality in the 100-year life era, the family structures and lives of people in Japan have diversified and changed significantly since the Showa era, and in considering this point, it is necessary to aim for a society where no one is left behind, and to review and revise systems and policies in various fields for further promotion of Gender Equality (*Plaintiffs' Evidence A909*)."

- (21) The phrase "should do" on page 23, line 2 of the prior instance judgment is corrected to "should endeavor to do", and the following is added at the end of line 3:

"The United Nations Human Rights Council reviewed Japan's human rights situation and adopted a

report on February 3, 2023, recommending the legalization of same-sex marriage (*Plaintiffs' Evidence A759*).

- (22) After the phrase "endorsed" on line 10, page 23 of the prior instance judgment, the following is added: "As of July 23, 2024, the number of companies and organizations supporting the above opinion statement or the 'Business for Marriage Equality' campaign, which represents companies supporting the realization of same-sex marriage by LGBTQ support and advocacy groups, is 527. Additionally, on June 22, 2023, the Japan Association of Corporate Executives issued a 'Business Leaders' Declaration for a Society with Diversity, Equity and Inclusion', emphasizing the importance of cultivating an organizational culture where diverse talents can flourish without suffering disadvantages due to sexual orientation, providing fair opportunities and benefits to all partners regardless of marital status or the gender of their partner, and improving facilities and systems so that they are user-friendly to all. This declaration was supported by 568 CEOs and other corporate executives. Furthermore, an increasing number of companies are implementing measures such as leave and absence systems for employees with same-sex partners, provision of allowances, assignment allowances, other benefits (such as company housing and family discounts), company-specific survivor pensions, and treating the children of same-sex partners as the employee's own children." After "614" on the same line, ", 714, 715, 1046, 1233" is added. After ")" on line 14, the following is added: "Additionally, on November 9, 2022, the Japan Federation of Bar Associations issued a presidential statement declaring their full commitment to realizing the recommendations, including those concerning same-sex marriage, outlined in the concluding observations of the Human Rights Committee, including requests to the Japanese government". The number "15" on line 15 to "13," and the phrase "issued [opinion letters, presidential statements, declarations, and other documents requesting the realization of same-sex marriage]" on line 16 is revised to "issued [issued letters, presidential statements, declarations, and other documents requesting the realization of same-sex marriage], and subsequently, by July 17, 2024, new presidential statements were issued by one more bar federation and 12 more bar associations". After "541," on line 17, "620" is added. After "622" on line 18, ", 717, 718, 721-739, 1048-1058, 1236-1238" is added.

3. Finding of Facts

(1) Regarding Issue (1) (Whether the Provisions violate Articles 13, 14-1, or 24 of the Constitution)

A. Whether the Provisions violate Article 13 of the Constitution

Marriage is a significant and fundamental activity for individuals since the essence of marriage lies in two individuals choosing each other as partners in an equal relationship, free of hierarchical ties, uniting to commit to a lifelong partnership, and establishing a new family. Therefore, if two individuals wish to marry and remain married, their wishes should be respected to the fullest extent.

The decision to marry and the choice of a marriage partner should be entirely entrusted to the free and

equal decision-making of both individuals. In this sense, the dignity of individuals with respect to marriage is guaranteed, a principle that is widely recognized today (Supreme Court Grand Bench Judgment, December 16, 2015, Minshu Vol. 69, No. 8, p. 2427). In other words, the fact that Article 24-1 of the Constitution stipulates specifically 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." is premised on Articles 13 and 14 of the Constitution being appropriate with regard to marriage. From another perspective, this means that both individuals have the right to marry without any interference from others. In this sense, the freedom to marry is recognized as being guaranteed not only by Article 24-1 but also by Article 13 of the Constitution.

However, for a marriage to be established and maintained, it is not enough to merely recognize the freedom from external interference. It is also essential that marriage is granted legal status and protection by society. Article 23.1 of the International Covenant on Civil and Political Rights states that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." which reflects this idea. Therefore, establishing a legal system and granting protection should be interpreted as a requirement of Article 13 of the Constitution, and Article 24.2 of the Constitution should be interpreted as stipulating further details from this principle. Consequently, Article 13 of the Constitution should be interpreted as not only guaranteeing the freedom to marry but also as recognizing the right to receive legal protection for both the establishment and maintenance of marriage. This right is one aspect of the pursuit of happiness as defined by the same article. Given that marriage is a significant and fundamental activity for individuals and should be respected as seen above, the right to legal protection for marriage, which is a right to the pursuit of happiness, is an indispensable right for the existence of an individual and constitutes a concrete right which can receive judicial relief.

Under the current legal system, the legal framework for marriage between a man and a woman, i.e., opposite-sex marriage, is established based the Civil Code and other related codes which derive from Article 24.2 of the Constitution. Therefore, the right to legal protection for marriage is rarely explicitly recognized as a constitutional right. This is because it is taken for granted that everyone receives protection for marriage under the legal system.

Sexual orientation is determined before birth or in early life and cannot be chosen by individuals or changed by personal will or psychiatric methods. The desire to pursue happiness consisting of uniting with a partner on equal terms for a lifelong partnership and establishing a new family is the same for both opposite-sex and same-sex couples. Therefore, the right to legal protection for the establishment and maintenance of marriage as the pursuit of happiness should be equally recognized for both opposite-sex and same-sex couples. Nevertheless, the absence of a legal framework and the lack of protection for same-sex marriage deny individuals who do not regard opposite-sex partners as

potential spouses and choose same-sex partners the right to pursue happiness. This also means that they are not granted important legal effects such as spousal inheritance rights (Article 890 of the Civil Code), and the degree of this restriction is significant. On the other hand, as discussed in section B below, it is difficult to find the necessity or reasonableness of the restrictions imposed by the Provisions. While some argue that recognizing same-sex marriage would require a different legal system for establishing biological or adoptive parent-child relationships, issues such as the legal status of parent-child relationships and methods of recording in family registers can be resolved through legal interpretation and legislative measures, and do not justify the necessity or reasonableness of the restrictions.

Therefore, the part of the Provisions that limits the marriage system to opposite-sex couples and excludes same-sex couples from the marriage system infringes on the right to pursue happiness, i.e., the right to legal protection for the establishment and maintenance of marriage, for individuals who choose same-sex partners, and thus violates Article 13 of the Constitution.

B. Article 13 of the Constitution stipulates that the right to pursue happiness may be restricted for the public welfare. Therefore, we will examine whether including same-sex couples in the legal marriage system interferes with the public welfare.

Public welfare is understood as the principle of substantive fairness to reconcile conflicts and contradictions between human rights. However, it is difficult to imagine that legally recognizing same-sex marriage would infringe upon or restrict the rights and legal status of existing opposite-sex married couples, or hinder opposite-sex couples from marrying. Therefore, we can say that there is no issue of reconciling conflicting human rights.

Historically, it is a fact that marriage has been recognized only between opposite-sex couples, not only in Japan but globally since ancient times. This is reflected in Article 24(1) of the Constitution, which states, "Marriage shall be based only on the mutual consent of both sexes," and in Article 23(2) of the International Covenant on Civil and Political Rights, which states, "The right of men and women of marriageable age to marry and to found a family shall be recognized." Individuals who do not recognize members of the opposite sex as a marriage partner have existed since ancient times, yet same-sex marriage has not been generally recognized as an institution until recent years, even globally. Based on these historical facts, there may be arguments that same-sex marriage interferes with the public welfare and is, therefore, impermissible.

Considering the reasons why same-sex marriage has not been recognized as an institution, the primary reason appears to be that individuals who choose same-sex partners for marriage have been overwhelmingly in the minority. Other main reasons include the historical foundation of society on kinship-based communities, where marriage and procreation were directly linked for the maintenance

and continuation of the community, making opposite-sex marriage the norm; the dominance of religions that prohibited homosexuality and same-sex marriage; and the perception of homosexuality as a disease or disorder.

However, the Constitution strongly demands the respect and protection of minority rights. Furthermore, marriage is entirely entrusted to the free will of both parties, and any intervention for the purpose of maintaining and continuing kinship groups is not permitted, as is clear from Article 24 of the Constitution. Similarly, religious intervention in marriage or the marriage system is not permitted, as derived from the same article and Article 20 of the Constitution. The notion that homosexuality is a disease or disorder has already been rejected as a thing of the past. Therefore, the various factors that have historically been the basis for not recognizing same-sex marriage as an institution are now considered unconstitutional or unreasonable in Japan. Consequently, there is no longer any reason to deny same-sex marriage as a legal institution, and rather, the unconstitutionality of not having a legal system for same-sex marriage has been highlighted.

Indeed, even in Japan today, there are still many negative or cautious opinions about recognizing same-sex marriage as a legal institution. However, these opinions seem to stem from anxiety or discomfort with the introduction of a new legal system. Such anxieties are expected to be dispelled once a legal system for same-sex marriage is established and the legal status is clarified.

Therefore, including same-sex couples in the legal marriage system does not interfere with the public welfare.

C. *Whether the Provisions Violate Article 14(1) of the Constitution*

As mentioned above, the Provisions that exclude same-sex couples from the marriage system infringe on the right to pursue happiness for those who choose same-sex partners and violate Article 13 of the Constitution. From the perspective of equality under the law, the Provisions limit the legal marriage system to opposite-sex couples and do not allow same-sex couples to use the legal marriage system. While opposite-sex couples are granted legal status and protection, same-sex couples are not allowed to marry and obtain the accompanying legal status and protection. Therefore, the part of the Provisions that excludes same-sex couples from the marriage system discriminates against same-sex couples without reasonable grounds and violates Article 14(1) of the Constitution which stipulates equality under the law. To add, although the latter part of the same paragraph prohibits discrimination based on "race, creed, sex, social status, or family origin," the term "sex" is usually understood to mean "gender" and not "sexual orientation." Even if it is not explicitly stated that discrimination based on sexual orientation is prohibited, the latter part of the paragraph exemplifies the principle of equality in the former part, and all unreasonable discriminatory treatment is prohibited by the principle of equality in the former part. Since discriminatory treatment that violates Article 13 of the Constitution is clearly

unreasonable, it is also evident that such violates Article 14(1) of the Constitution.

Recently, many local governments have introduced partnership systems, and same-sex couples are being publicly recognized to some extent. However, as mentioned earlier, both opposite-sex and same sex couples equally possess the right to legal protection for the establishment and maintenance of marriage as the right to pursue happiness. Therefore, the inequality caused by not allowing same-sex couples to use the legal marriage system cannot be resolved by expanding the partnership system or introducing a registered partnership system as seen in European countries. In fact, according to the appellants, who are three same-sex couples, they are using the partnership system but are not able to enjoy important legal effects such as spousal tax deductions and residency status, unlike opposite-sex couples. They also face practical disadvantages in contract signing and have various anxieties about the future, and they feel extreme pain from not being recognized as a family. Simply put, unless same-sex couples are allowed to use the same legal marriage system as opposite-sex couples, the violation of Article 14(1) of the Constitution will not be resolved.

D. Whether the Provisions Violate Article 24 of the Constitution

As mentioned above, the principles of Article 13 and of Article 14(1) of the Constitution apply to family life including marriage, and based on this premise, Article 24 of the Constitution stipulates the dignity of individuals and equality of both sexes in family life.

Although Article 24 uses the terms "both sexes" and "husband and wife," which may seem to recognize only opposite-sex marriage, the main purpose of the Article is to eliminate the patriarchal authority over family members' marriages and the inferior status of wives under the old law. Given the historical context, it cannot be said that the Article specifically adopted the terms "both sexes" and "husband and wife" to prohibit same-sex marriage. Therefore, Article 24 should not be interpreted as prohibiting same-sex marriage.

Since the main purpose of Article 24 is as mentioned above, it is difficult to immediately conclude that not recognizing same-sex marriage violates Paragraph 1 of the Article. However, the content of marriage stipulated in Article 24 aligns with the conclusions derived from Article 13 and Article 14(1) of the Constitution. As mentioned above, the part of the Provisions that excludes same-sex couples from the marriage system violates Article 13 of the Constitution, which stipulates the respect for individuals. Therefore, it is clear that the part of the Provisions also violates Article 24(2) of the Constitution, which stipulates that laws related to marriage should be enacted based on respect for individuals.

(2) Regarding Issue (2) (Whether the Legislative Inaction in This Case Satisfies the Requirements of Article 1(1) of the State Redress Act)

As stated in (1) above, the right to receive legal protection regarding the formation and maintenance of marriage as part of the pursuit of happiness is guaranteed by Article 13 of the Constitution. This is a concrete right that allows for judicial remedies. The provisions in question, which do not recognize marriage for same sex couples infringe upon this right and violate Articles 13, 14(1), and 24(2) of the Constitution. Therefore, the legislative inaction in this case, namely the failure to amend or revise the provisions, can potentially result in state liability under the State Redress Act.

However, looking at the judgments of lower courts regarding these provisions, the Sapporo District Court ruled on March 17, 2021, that the provisions violate Article 14(1) of the Constitution (*Plaintiffs' Evidence A215*). Conversely, the Osaka District Court ruled on June 20, 2022, that the provisions do not violate the Constitution (*Plaintiffs' Evidence A542*). The Tokyo District Court ruled on November 30, 2022, that while the provisions are in a state of violation of Article 24(2) of the Constitution, they do not directly violate it (*Plaintiffs' Evidence A690*). The Nagoya District Court ruled on May 30, 2023, that the provisions violate Article 24(2) and Article 14 of the Constitution (*Plaintiffs' Evidence A691*). Additionally, the court of the prior instance trial in this case, on June 8, 2023, and the Tokyo District Court on March 14, 2024, each ruled in line with the above Tokyo District's Court interpretation (*Plaintiffs' Evidence A940*). The Sapporo High Court ruled on the same day that the provisions violate Article 24 and Article 14(1) of the Constitution (*Plaintiffs' Evidence A939*). These judgments vary and therefore, the Supreme Court has not yet presented a unified decision. Considering these circumstances, it is difficult to recognize that there was intent or negligence by the legislators regarding the legislative inaction in this case. Therefore, it cannot be said that the legislative inaction in this case satisfies the requirements of Article 1(1) of the State Redress Act.

IV. Conclusion

For these reasons, the appellants' claims are without merit. The prior instance judgment to dismiss these claims is appropriate. As such, all appeals in this case are dismissed, as stated in the ruling.

Fukuoka High Court, 5th Civil Division
Presiding Judge: Takeshi Okada
Judge: Hironari Kishimoto
Judge: Maiko Takechi

Appendix: List of Parties

Appellant

(Hereinafter referred to as "Appellant 1")

Same address

Appellant

(Hereinafter referred to as "Appellant 2")

Appellant

(Hereinafter referred to as "Appellant 3")

Same address

Appellant

(Hereinafter referred to as "Appellant 4")

Appellant

(Hereinafter referred to as "Appellant 5")

Same address

Appellant

(Hereinafter referred to as "Appellant 6")

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- Yuta Tominaga
- Sawako Nagasato
- Ayako Nakaji
- Yoshie Hanawa
- Misai Fujiki
- Shoko Fujii

- Ai Mori
- Yo Watanabe
- Daisuke Yoshino
- Masaki Gota

Kasumigaseki 1-1-1, Chiyoda-ku, Tokyo

Appellee: The State

- Representative: Minister of Justice, Keisuke Suzuki

- Designated Agents:

- Yoshikazu Tanaka
- Makoto Wataguchi
- Rika Fujiki
- Ryo Hosonami
- Takuya Matsunami
- Kensuke Imamura
- Tomohiko Hirose
- Shinichi Numata
- Takeshi Murakami
- Hiroyuki Yamamori

This is an original.

December 13, 2024

Fukuoka High Court Court, 5th Civil Division

Court Clerk Moeko Miyano

[End]