

Summary of Decision about Confirmation of Japanese Nationality in Supreme Court

【Majority Opinions】

Although acquisition and loss of Japanese nationality is left to the discretion of the legislature, distinction deriving from legal requirements concerning acquisition and loss of nationality violates Art.14 of the Constitution when legislative purpose does not have a logical reason or the distinction is not relevant to the purpose.

Art.3, para.1 of Nationality Law grants Japanese nationality to a child born to a non-Japanese mother and a Japanese father if the child acquires quasi-legitimate status by the fact that the father acknowledges paternity after the child's birth and the mother and the father get married to each other.

This provision stipulates that Japanese nationality can be granted only when the requirement that proves one has close connection with Japan on the basis of blood principle are fulfilled and thus the legislative purpose had a logical reason. At the time of 1984, it was reasonable to consider wedlock as the connection and therefore the requirement was relevant to the legislative purpose.

However, the requirement is no longer relevant today considering changes in idea about family life and parenthood as well as diversification of the reality. Other countries are also proceeding to solve discrimination against children born outside wedlock by revising laws. Thus it is difficult to find a reasonable relation between the requirement and the legislative purpose any more.

While legitimate children born to Japanese parents acquire Japanese nationality by birth, children born outside wedlock who genealogically have a Japanese parent and legal parenthood with the parent cannot acquire Japanese nationality even with notification unless their parents get married. Since acquisition of Japanese nationality heavily affects fundamental human rights, disadvantages caused by this discrimination cannot be overlooked and relevance with the legislative purpose is not evident.

Therefore, it has to be said that this provision today is the means that largely exceeds the scope of reasonable relevance with the legislative purpose. At the time when the plaintiffs submitted notification to the Ministry of Justice, at the least, this distinction constituted unreasonable discrimination even if the discretion of the legislature is taken into account and the provision of the Nationality Law violated the Art.14, para.1 of the Constitution.

On the basis of blood principle, which is a fundamental principle of Nationality Law, the law can reasonably and constitutionally be interpreted and solve the discrimination for redressing its unconstitutionality if wedlock of the parents is excluded from the requirements for acquisition of Japanese nationality.

This interpretation only rejects the requirement that generates unreasonable discrimination and it does not mean that the Court exercises legislative function. It should therefore be appropriate to consider that the plaintiffs acquired Japanese nationality when they submitted the notifications to the Ministry of Justice.

【Supplementary Opinion of one of Judges, Mr. Tokuji IZUMI】

It is conventional and standardized view to see that the connection with Japanese society is weak for lack of “wedlock of the parents.” Granting Japanese nationality, applying Art.3, para.1 of Nationality Law without the part of “wedlock of the parents” is consistent with intent s of International Human Rights Convention and Convention on the Rights of the Child.

【Supplementary Opinion of one of Judges, Mr. Isao IMAI】

When the Court judges unconstitutionality of the legislature for violation of the egalitarian principle, the Court is responsible to provide protection for those who have not been guaranteed the protection which they should have had been accorded, and therefore it does not go beyond jurisdiction.

【Supplementary Opinion of one of Judges, Mr. Mutsuo TAHARA】

The opinion that the legal effect of parental recognition affects acquisition of nationality as a result of annulment of Art.3, para.1 of Nationality Law concerning a child whose paternal recognition comes after a child’s birth causes many legal problems. Thus restrictive interpretation of the law is appropriate.

【Supplementary Opinion of one of Judges, Mr. Takaharu KONDO】

It is plausible to add other requirements by revisions of Nationality Law as the exercise of discretion in legislative policy. Requirement of a certain period of residential experience in Japan besides parental recognition by a Japanese father after birth would be a possibility.

【Supplementary Opinion of one of Judges, Mr. Tokiyasu FUJITA】

The undeniable discrimination arises from “insufficiency” of the provision. The insufficient part has to be complimented in order to solve the state of unconstitutionality. It is natural to treat children born outside wedlock in the same way as children born within wedlock.

【Opposite Opinions of Judges, Ms. Kazuko YOKOO, Mr. Osamu TSUNO, Mr. Yuhki FURUTA】

We cannot see a remarkable change in the state of family life. Although more and more countries, mainly in the West, grant nationality to children born outside wedlock, the social situation is quite different in our country. The legislation is constitutional given that naturalization system is reasonable and requirements are largely simplified. Even if the provision is unconstitutional, expanding (acquisition of nationality) to everyone has parental recognition is beyond the interpretation of terms and purpose of the provision.

【Opposite Opinion of Judges, Mr. Tatsuo KAINAKA, Yukio HORIGOME】

When one does not fulfill the requirements provided by Nationality law, it is only the matter of legislative absence in terms of acquisition of nationality and it is absence of non-existence of legislation or legislative omission as far as children born outside wedlock are concerned. This is unconstitutional but the provision in itself is constitutional. The majority’s opinion exceeds interpretation of the law.