
MAJOR JUDICIAL DECISIONS

Jan. – Dec., 1984

1. Constitutional and Administrative Law

a. Constitutional Law

I. Introduction

During the summer of 1984, two district courts made decisions regarding the constitutionality of compulsory fingerprinting for foreigners living in Japan. Both courts ruled the practice constitutional⁽¹⁾. This article will critically consider these two judicial decisions. The outline of the fingerprinting system for foreigners and its historical background will be presented first. The plight of Koreans, who make up a majority of the foreigners in Japan, will then be outlined. Recent protests against this system — especially by Koreans — will then be discussed. And the two judicial decisions will be summarized. Finally, the constitutional problems raised by these decisions will be examined.

II. The System and Its Historical Background

The Alien Registration Law requires certain foreigners living

in Japan to have their fingerprints taken for identification⁽²⁾. Anyone who has permission to stay here for one year or more must have the print of his or her left index finger taken upon application for an alien registration card, and the need to possess and carry such a card is a further requirement of the law. Further, he or she must comply with the renewal procedure which provides for new fingerprinting every five years⁽³⁾. Those who do not comply with this rule are liable to imprisonment for up to one year or a fine not exceeding 200,000 yen⁽⁴⁾. The law was revised in 1982 when the renewal period for registration was extended from three years to five years⁽⁵⁾.

The fingerprinting system was first introduced in 1952, with the passage of the Alien Registration Law⁽⁶⁾. At the time this law was prepared, there were many cases of illegal registration, forgery and alteration of alien registration cards⁽⁷⁾. Since photographic technology was underdeveloped at that time, the system was considered reasonable⁽⁸⁾.

Internationally, approximately 30 countries — including such liberal democracies as Britain, West Germany, France, the Netherlands, Sweden, and the United States, to name a few — also have a fingerprinting system for aliens. They are, however, limited in scale or practiced on the principle of reciprocity⁽⁹⁾.

III. Koreans in Japan: The Majority of Foreigners

Of some 840,000 foreigners in Japan, some 680,000 or 82% are Koreans⁽¹⁰⁾. Koreans in Japan are considered to have special status by Japanese society. The large Korean population in Japan is one of the legacies of pre-war Japanese imperialism. Most first generation Koreans were forced to leave their homeland and come to Japan after the annexation of Korea in 1910 and remedy a shortage of labor in Japan. When Korea was liberated from Japanese colonial rule, many Koreans in Japan returned to their homeland immediately, but many others stayed here. Today 85% of the Koreans in Japan are second or third generation residents who have been considerably “Japanized” in life style and cus-

toms. They were born and brought up here and only a few of them know their parents' language⁽¹¹⁾.

Although requirements for naturalization are stiff, Koreans who wish to become Japanese citizens are able to do so. However, Koreans who are naturalized in Japan are regarded as traitors within the Korean community, and at the same time, face discrimination by the Japanese. As a result, most of the Koreans in Japan prefer not to acquire Japanese citizenship and have accustomed themselves to unpleasant treatment such as fingerprinting and compulsory carrying of an alien registration card at all times. It must be understood, therefore, that although Koreans are legally aliens, they are in a sense quasi-nationals⁽¹²⁾.

IV. Recent Development of Anti-Fingerprinting Movement

Demands for a review of the fingerprinting system have been voiced increasingly by Korean residents here. Their activities against the practice intensified during 1983 and 1984⁽¹³⁾.

In June, 1984, several dozen members of the Korean Women's Association in Japan visited the United Nations Human Rights Commission in New York to deliver a petition describing the feeling of persecution stemming from the fingerprinting practice⁽¹⁴⁾.

By that time nearly 40 people across the country, mostly Koreans, had refused to comply with the statutory requirement, claiming that the practice was humiliating and deprived them of human rights guaranteed under the Constitution and the International Covenants on Human Rights which Japan had ratified in 1977⁽¹⁵⁾. Of those people, eight were indicted by local public prosecutor's offices and were having their indictments heard by the courts. A national liaison council to support the defendants in the fingerprinting trials was established in November, 1983⁽¹⁶⁾. A total of 575 municipal assemblies around the country and the National City Mayors Association adopted a resolution calling for total abolition or review of the fingerprinting system⁽¹⁷⁾.

V. Morikawa and Han Cases

A. Morikawa Case

Kathleen Morikawa, originally from Pittsburgh, Pa., came to Japan in 1973 and married a Japanese. Although she complied with registration procedures until 1979, Morikawa refused to have her fingerprint taken on the third renewal of her registration in 1982, contending that the Japanese government was treating her as if she were a criminal and was therefore violating her human rights. Under the Alien Registration Law, she was indicted by the prosecutors after the Yamato City Office lodged an accusation against her for refusing to have her fingerprint taken for the registration procedure in September, 1982⁽¹⁸⁾.

The prosecution maintained the Justice Ministry's view that the fingerprinting system was the most reliable method for identification available. It also asserted that 24 other nations including the United States had similar alien registration systems, and demanded that the defendant should pay a 20,000 yen fine for violating the law⁽¹⁹⁾.

Defense counsel argued that being fingerprinted against one's will violated not only Article 13 of the Constitution, which required respect for individuals, but also the International Covenants on Human Rights which banned treatment that harmed a person's dignity. Counsel also argued that forcing only foreigners to submit to fingerprinting denied the equal protection of the laws which was guaranteed by Article 14 of the Constitution and Articles 2 and 26 of the International Covenant on Civil and Political Rights⁽²⁰⁾.

On June 14, 1984, the Yokohama District Court found Morikawa guilty of the above charge and ordered her to pay a 10,000 yen fine⁽²¹⁾. The Morikawa ruling was the first of eight cases challenging the constitutionality of the fingerprinting system.

B. Han Case

A Korean resident in Japan, Han Jong Sok, a company direc-

tor from Tokyo's Shinjuku Ward, refused to be fingerprinted when he renewed his registration in 1984 and was subsequently indicted⁽²²⁾.

Defense counsel submitted to the court that the fingerprinting system had been enacted at a time when forgeries of alien registration certificates had been common, but that the occurrence of such forgeries had greatly decreased over the years. It was also submitted that the system was not being applied uniformly nationwide, and that the Justice Ministry had itself conceded that fingerprinting was no longer considered the best means of identifying a person. Defense counsel contended, further, that another reason for obtaining fingerprints might be to use those of Korean residents for police investigations of criminal activities⁽²³⁾.

On August 29, 1984, the Tokyo District Court found Han guilty of violating the Alien Registration Law and ordered him to pay a 10,000 yen fine⁽²⁴⁾. This was the second court decision finding a person refusing to be fingerprinted guilty, and the first one involving a Korean living in Japan.

VI. Judicial Decisions: Summaries of Opinions of the Courts

A. Yokohama District Court Judgment. June 14, 1984. (Japan v. Morikawa)

The purpose of the Alien Registration Law is to identify the address and status of foreign residents and to supervise them fairly. To attain this purpose, it is necessary to identify the person who is to be registered. Fingerprints are the most effective and scientific method for identification. It is likely that people will feel psychological resistance when they have their fingerprints taken because fingerprints have been customarily used for criminal investigation purposes. Nevertheless, it cannot be said that identification by photograph is sufficiently reliable that no other identification method is needed. Thus, the fingerprinting system is reasonably necessary for identification⁽²⁵⁾.

It is reasonable to consider that the equal protection of the

laws guaranteed by Article 14 of the Constitution covers not only Japanese citizens but foreign residents. The fingerprinting system, however, which is applied only to foreigners, is regarded as based on the fundamental difference between the status of the Japanese and that of foreigners. This treatment of foreigners in Japan is considered to be reasonable and not to evade the protection of Article 14⁽²⁶⁾.

Article 13 of the Constitution guarantees personal liberties which include freedom from having one's fingerprint taken without one's consent, but only "to the extent that it does not interfere with the public welfare."⁽²⁷⁾ The different treatment of Japanese citizens and foreigners concerning fingerprinting is considered to be required by the public welfare⁽²⁸⁾.

B. Tokyo District Court Judgment. August 29, 1984.

(Japan v. Han)

Generally, people have freedom not to have fingerprints taken against their will as a part of their right to privacy, something which is guaranteed by Article 13 of the Constitution. Foreigners as well as Japanese nationals enjoy this freedom. If foreigners were denied their rights without rational reasons, such treatment would violate Article 14 of the Constitution and Article 26 of the International Covenant of Civil and Political Rights. The fingerprinting system under the Alien Registration Law is an effective method of identification. It is unavoidable that personal liberties are subject to considerations of "public welfare." Taking the explanation of the Ministry of Justice into consideration, the fingerprinting system is employed for good reasons; therefore, it does not violate Article 13 of the Constitution⁽²⁹⁾.

It cannot be denied that a fundamental difference exists between the status of Japanese nationals and that of foreigners; therefore, the introduction of the fingerprinting system with the purpose of identifying the address and status of aliens and fairly supervising them has a reasonable basis. It does not deny the equal protection of the laws and falls within the boundary which is permissible under Article 14⁽³⁰⁾.

It would raise considerable problems to treat resident Koreans differently from other foreigners. Those resident Koreans who are born in Japan, live a Japanese way of life, and pay taxes as the Japanese do are, in short, members of Japanese society. However, the solution of this problem lies within the scope of legislative discretion. Imposition of the requirement of fingerprinting on foreigners with permanent resident status does not violate Article 14 of the Constitution⁽³¹⁾.

VII. Consideration of the Judicial Decisions: Problems of Constitutional Interpretation

The rulings of *Japan v. Morikawa* and *Japan v. Han* cases presented the first judicial decisions concerning the constitutionality of the fingerprinting system for foreigners. There are close similarities between the frameworks of review of these two rulings. The following three points are noteworthy from the viewpoint of constitutional interpretation.

A. Protection of the Rights of Foreigners

Some protection of fundamental rights applies to foreigners and some does not. The distinction should be made according to the nature of the rights involved. This is the position of the Supreme Court and also the majority opinion of constitutional lawyers in Japan⁽³²⁾. As long as the different treatment accorded to Japanese nationals and foreigners is rational and minimal, it does not violate the Constitution. However, when government actions are reviewed, the standard of review should be different for personal liberties and for economic liberties⁽³³⁾. From this viewpoint, the above two decisions may have problems. Instead of the “rationality” standard, the standard of “strict scrutiny” should have been employed⁽³⁴⁾.

B. The Right to Privacy

The right to privacy is defined as including one’s right to control information concerning oneself⁽³⁵⁾. A fingerprint is a distinc-

tive sign of one's identity and is no doubt one form of information included in the privacy rights guaranteed by the Constitution. Having one's fingerprint taken causes psychological resistance and a sense of humiliation, and may damage one's dignity as an individual. The right to privacy is indispensable for maintaining personal liberties, the restriction of which must be reviewed under the standard of strict scrutiny. Reasonable necessity is not enough to justify a restriction⁽³⁶⁾.

C. The Standard of Review for Equal Protection Cases

Article 14 of the Constitution provides that "... there shall be no discrimination ... because of race, creed, sex, social status or family origin." Discrimination based on race, creed, or sex is considered, under Article 14, equivalent to the "suspect classification" of discrimination in American constitutional law, which is always subject to strict scrutiny⁽³⁷⁾. Since the listing of prohibited factors of discrimination is only illustrative and should not be interpreted to exclude "nationality" as one of the suspect classifications, discrimination against foreigners must be reviewed under the standard of strict scrutiny⁽³⁸⁾.

VIII. Conclusion

With respect, the rulings of the Yokohama District Court and the Tokyo District Court should not be accepted as satisfactory for the reasons stated above. They should be reconsidered in the light of constitutional interpretation. Although the fingerprinting system might have had a rational basis at the time it was introduced, it seems to have lost its rationale as a result of changes in the environment. Even if the system is constitutional, it does not mean that it is appropriate as a governmental policy. In an age of internationalization, what is needed for Japan is an attitude of tolerance and open-mindedness toward foreigners and the international community.

APPENDIX I

The Constitution of Japan

Article 13

All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14

All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

International Covenant on Civil and Political Rights

Article 2

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

APPENDIX II

Aliens living in Japan

Nationality	Number	Percentage
Korea	687,135	81.7
China	67,895	8.1
U.S.	27,882	3.3
Philippines	9,618	1.1
U.K.	6,354	0.8
Others	42,001	5.0
Total	840,885	100.0

Source:

Immigration Bureau of the Ministry of Justice ed.

Statistics of Resident Aliens: 1980 edition.

Tokyo: Printing Bureau of the Ministry of Finance, 1981.

NOTES

1. *Hanrei Jihō*, 1125, p. 97, p. 101. *Hanrei Taimuzu*, 530, p. 282, 534, p.98.
2. Article 14 of the Alien Registration Law.
3. Articles 11 and 14 of the Alien Registration Law.
4. Article 18 of the Alien Registration Law.
5. Appendix of the Alien Registration Law.
6. *Asahi Evening News*, 16 June 1984.
7. *Ibid.*
8. *Ibid.*
9. *Japan Times*, 19 June 1984.
10. See Appendix II.
11. Sanghee Rhy, "Why Koreans Oppose the Fingerprint Law," *Japan Quarterly*, July–September 1985, pp. 308–309.

12. Ibid., p. 310.
13. *Japan Times*, 31 July 1983, 25 August 1983, 4 September 1983, 3 October 1983, 21 November 1983, 3 December 1983.
14. *Asahi Evening News*, 11 June 1984.
15. *Japan Times*, 5 September 1984.
16. *Japan Times*, 21 November 1983.
17. *Asahi Evening News*, 16 June 1984.
18. *Japan Times*, 15 June 1984.
19. Ibid.
20. Ibid.
21. Ibid.
22. *Japan Times*, 30 August 1984.
23. Ibid.
24. Ibid.
25. *Hanrei Jihō*, 1125, p. 97. *Hanrei Taimuzu*, 530, p. 282.
26. Ibid.
27. Article 13 of the Constitution of Japan.
28. *Hanrei Jihō*, 1125, p. 97. *Hanrei Taimuzu*, 530, p. 282.
29. *Hanrei Jihō*, 1125, p. 101. *Hanrei Taimuzu*, 534, p. 98.
30. Ibid.
31. Ibid.
32. Supreme Court Judgment, Oct. 4, 1978 (McLean v. Japan).
33. This is the well-established principle in American and Japanese constitutional law.
34. See Atsushi Furukawa, "Review of the Morikawa and Han Cases," *Jurisuto*, 15 June 1985, pp. 8–10.
35. See, for example, Richard A. Posner, *The Economics of Justice* (Cambridge, Mass.: Harvard University Press, 1983), p. 233.
36. See Atsushi Furukawa, "Review of the Morikawa and Han Cases," *Jurisuto*, 15 June 1985, pp. 8–10.
37. For "suspect classification," see, for example, Gerald Gunther, *Cases and Materials on Constitutional Law* (Mineola, N.Y.: The Foundation Press, 1980), p. 705.
38. See Atsushi Furukawa, "Review of the Morikawa and Han Cases," *Jurisuto*, 15 June 1985, pp. 8–10.

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By Prof. KENJI URATA
AKIHIKO KIMIJIMA