

3. Family Law

The constitutionality of the differential treatment of illegitimate children in the statutory share of succession.

Order by the Grand Bench of the Supreme Court on July 5, 1995. Case No. (*ku*) 143. 885 *Hanrei Taimuzu* 83, 1540 *Hanrei Jihō* 3. (See **Case a** in the part of Constitutional and Administrative Law, *supra*.)

[Reference: Civil Code, Article 900(iv)]

[Facts]

“A” (female, deceased) was born in the days before females could legally represent a family. She, therefore, entered into several marriages aimed at conceiving the proper successor of the “*Iye*” (house) under the old family system of law.

Eventually she had seven legitimate children and one illegitimate child in the course of three marriages. Illegitimate child “C” was born during first marriage.

After A’s death, “X”, who is a child of A’s illegitimate child “C” and heirs per stripes of A’s succession, filed an application for mediation to the family court in Shizuoka and claimed a fair share of A’s inheritance with other successors. X’s claim was dismissed, with the mediation ending in failure, and the case was transferred to the adjudication of the family court. The family court held that decisions regarding shares in succession are issues of legislative policy. In ruling so, the Proviso of Article 900(iv) of the Civil Code would not be a violation of the Constitution of Japan. The family court, therefore, decided to divide the estate in accordance with Article 900.

Although X appealed to the Tokyo High Court, the court dismissed X’s claim for the same reason.

Finally, X appealed to the Supreme Court.

[Opinions of the Court]

Appeal dismissed.

Majority Opinion

(1) The Court held that Article 14 (1) of the Japanese Constitution provides for equal treatment under the law, but the provision is intended to prohibit discrimination without reasonable ground. It is not a violation of the Constitution when discrimination is based on an individual circumstance (Citing decisions on May 27, 1964 and November 18, 1964).

Then, after surveying the distributive system of Inheritance Law including designation of the shares in succession by will, waiver of the inheritance right and agreement regarding the distribution of the deceased person's property, the Court held that the Civil Code of Japan, as demonstrated by provision of determination of shares in succession and so on, does not necessarily require successors to share according to the statutory shares in succession. The provision will work as a supplement when such a determination does not exist.

(2) The legislature has the discretionary power to design the distributive system according to the extensive considerations that include tradition, social circumstances, common sense, marital and family law and so on.

(3) The purpose of this provision is to show respect for legal marriage, and on the other hand also consider the rights of illegitimate children, and protect them by giving them one half of the share of a legitimate child. The Court understands that the provision strikes a balance between legitimate marriage and protection for an illegitimate child. Accordingly, as the Civil Code adopts the system of legal marriage, Article 900(iv) gives the spouse and the legitimate child a priority; thereafter, illegitimate children are also given a specific shares of succession to protect them.

The Court decided that because the Civil Code adopts the legal marriage system, the purpose of that provision is reasonable. Relative to that purpose, it does not exceed the bounds of legislative discretion that the Legislature makes a difference in the statutory share of succession between legitimate and illegitimate children. The Court concludes that the provision is not discrimination without reasonable ground, and does not violate Article 14(1) of the Constitution.

Dissenting Opinion

(1) This provision violates Article 14(1) of the Constitution, and

the judgment of the High Court should be set aside. The reasons are as follows:

(2) Article 14(1) of the Constitution recognizes a distinction which is based on reasonable grounds according to the nature of a case. The judgment of rationality as to discrimination that is at issue in the case fundamentally depends on whether an illegitimate child belongs to a legitimate marriage or whether each child should be with respect to the deceased's other children. Accordingly, a judgment should examine whether there exists that purpose itself, and whether a substantive relationship between the purpose of the legislation and the means of regulation is more than rational. But in this case, as follows, even simple rationality is not found.

(3) The majority opinion is based on the Civil Code's adoption of legal marriage system, and concludes that this provision has rationality. Based on the purpose of this provision, such an understanding would not accord with the purpose of Article 24 of the Constitution, because an illegitimate child does not belong to a legitimate family and Article 24 of the Constitution declares the principle that individual dignity must be respected in inheritance. The illegitimate child has no substantial responsibility regarding his birth and it is not changed by his intention and effort. This discrimination goes beyond the scope of the object of legislation, and as there is no relationship between the object of legislation and means of the regulation, it is not reasonable.

One of the reasons given in majority opinion is that the purpose of this provision also protects the illegitimate child and therefore it is reasonable. The majority overlooks the effect of this provision on our society. This provision indicates that people think that the illegitimate child is inferior to the legitimate child.

Accordingly, at least in our present society, this provision is unreasonable because of its disagreement with existing circumstances. In addition, the dissenting opinion considers the international trend and treaties (UN Convention on the Right of the Child, International Covenant on Civil and Political Rights).

[Comment]

Although illegitimate children whose paternity has been acknowledged by the biological father or court have the right of succession, they have only one half of the share in succession of legitimate children under Article 900(iv) of the Civil Code.

This regulation means that the sin of the parents is passed on to their children. Even if discrimination in statutory share of succession will continue, it is doubtful that the discrimination can restrain the procreation and birth of illegitimate children.

Moreover, the regulation is contrary to the spirit of the international treaties that Japan has ratified, such as UN Agreement B 24(1) and Article 2(2) of the Convention on the Rights of Children.

Accordingly, the constitutionality of this provision is suspect, and illegitimate children should have the same share in an estate as legitimate children. Now, in the tentative draft of the Family Law in the Civil Code Reform, the Legislative Council of the Civil Law Division proposes to repeal this statutory discrimination. In addition, the international trend promotes the abolition of this kind of discrimination. Such discrimination against illegitimate children cannot be continued.

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4. Law of Civil Procedure and Bankruptcy

1. Prescriptive acquisition of a piece of a lot which is close to the whole boundary and standing in an action for boundary confirmation.

Decision by the Third Petty Bench of the Supreme Court on March 7, 1995, Case No. (o) 1728 of 1989. A *jōkoku* appeal requesting retrial of a default judgment. 49 *Minshū* 919; 885 *Hanrei Taimuzu* 156; 1540 *Hanrei Jihō* 32.