

Japan's Sapporo High Court rules for the first time in second instance that the ban on same-sex marriage is unconstitutional (Dr Yaru Li)

The Sapporo High Court in Hokkaido ruled on 14 March 2024 that the Civil Code provision that does not recognise same-sex marriages is unconstitutional, becoming the first Japanese High Court ruling on same-sex marriage disputes.

The dispute arose three years ago, when three homosexual couples in Hokkaido had filed a lawsuit for damages against the State, claiming ¥1 million per person, complaining that the Civil Code and the Family Registration Law violated, by not recognising same-sex marriages, the principle of equality before the law in Article 14 and the guarantee of “freedom of marriage” in Article 24 of the Constitution.

Although the Sapporo District Court's first-instance judgment of 2021 ruled that sexual orientation could not be changed or chosen on the basis of personal will and that the non-recognition of same-sex marriages constituted a violation of the principle of equality under Article 14 of the Constitution, it rejected the plaintiffs' claim for compensation.

Subsequently, the plaintiffs therefore appealed to the Sapporo High Court, which reiterated the innovative concept for Japan of the first-instance ruling that, with regard to Article 24(1) of the Constitution, although same-sex marriage had not been provided for at the time of its promulgation, nevertheless “the Constitution defines marriage as a free union between persons, and same-sex marriages should be guaranteed to the same extent as

heterosexual marriages”. At the same time, the High Court in its second instance ruling reiterated that “homosexuals are unable to obtain the security of the social system through marriage and are therefore at a significant disadvantage, which is detrimental to their dignity and personal integrity. Not allowing same-sex marriages is discriminatory treatment that lacks a reasonable basis’ and was therefore declared unconstitutional. However, the High Court held that Parliament’s failure to amend the law could not be considered a violation of the law itself, so the claim for inaction was rejected.

It is worth noting that there were other claims for the non-recognition of same-sex marriages in no less than five district courts of first instance, which expressed uneven positions: on the one hand, the Osaka District Court recognised the full constitutionality of the provisions prohibiting same-sex marriages, whereas the Fukuoka and Tokyo District Courts spoke of “potential unconstitutionality” and the Sapporo and Nagoya District Courts established their unconstitutionality.

The Sapporo High Court’s second instance ruling concludes that although the regulation of ‘same-sex marriage’ varies from country to country around the world due to cultural, moral, ethical and religious factors, ‘living in accordance with one’s gender identity and sexual orientation is an inalienable right rooted in important personal interests’.

The final decision will now be left to the Supreme Court.