

2024 年度 グローバル法学科

英 語

〔自己推薦 A O (A)〕 14-J 1

注 意

1. 監督者の合図があるまで問題冊子は開かないでください。
2. 解答はすべて解答用紙のきめられた箇所に記入してください。

次の英文を読んで、文末の各問に答えなさい。

⁽¹⁾ An Osaka court ruled last Monday that Japan's ban on same-sex marriage was not unconstitutional, a blow not only to the rights of gay couples but to human rights in general.

In keeping with the conservative tradition of Japan's judiciary, the court essentially deferred, arguing that the responsibility for such a change rests upon the shoulders of legislators. Parliamentarians must take action then. ⁽²⁾ It is long past time for Japan's same-sex couples to enjoy all the rights afforded their heterosexual counterparts.

⁽³⁾ In the Osaka case, three same-sex couples argued that they suffer "unjust discrimination" because the current legal system prevents them from getting married. In fact, discrimination goes well beyond the ability to get married. Individuals in same-sex relationships cannot inherit their partner's assets and have no parental rights over their partner's children. They are disadvantaged when paying taxes. They can be denied comfort and companionship in the most difficult personal struggles because their closest personal relationship is not recognized. The Osaka plaintiffs sought ¥1 million (\$7,400) per person in damages, a paltry sum compared to the meaning and value of a ruling on their behalf.

Central to the case was the interpretation of Article 24 of the Constitution, which says 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." ⁽⁴⁾ The Japanese government argued that the Constitution does not mention same-sex marriage, so banning same-sex marriage should not be considered discriminatory.

⁽⁵⁾ The court examined the purpose of marriage, asserting that the institution is designed by society to protect relationships between a man and a woman for giving

birth and raising children. Given that rationale, the court concluded that the ban on same-sex marriage is constitutional.

The court took refuge in procedure, noting that “there have not been enough discussions among people in Japan” on how to best protect the interests of same-sex couples who choose to live together. It argued that it is not the court’s job to create those protections; it is instead the job of the legislature. While noting that some jurisdictions have begun to provide “marriage-like” protections, the court added that a national approach should be realized through “establishment of systems based on unfettered discussions in the democratic process.”

That argument makes sense. Nevertheless, it is an abdication of the fundamental job of the judiciary — deciding the constitutionality of laws (or the absence of laws). Instead, the Osaka court opted to defer to public opinion. But a right is either constitutional or it isn’t; popularity has little if anything to do with it. In fact, the most important role a court plays is when it makes a ruling that is not popular.

A more forward-leaning approach was taken by a Sapporo court, which in March 2021 backed the claim that not allowing same-sex marriage was unconstitutional. That court found that Japan’s civil law and family registration law violate Article 14 of the Constitution, which states “all the people are equal under the law.” This is the only other judgment on this question in Japan (although other cases are pending).

As the Osaka court noted, Japan is making progress. But it is moving too slowly. Japan is the only Group of Seven nation that doesn’t allow people of the same gender to marry. There are no legal protections for LGBTQ individuals against discrimination in housing or employment. As Amnesty International noted after the Osaka ruling, “Japan has failed to introduce national legislation to eliminate discrimination based on sexual orientation, gender identity, expression and sex characteristics.”

Smaller jurisdictions have filled the gap. Shibuya Ward in Tokyo was first in April 2015 to offer “partnership certificates” to same-sex couples, which were not legally binding but offered political recognition. Setagaya Ward soon followed. In June 2017, Sapporo became the first city in Japan to officially recognize same-sex partnerships, and Ibaraki Prefecture was the first to offer prefectural support in July 2019. Osaka Prefecture followed suit in January 2020. In total, nearly 200 local governments now have provide some sort of recognition for same-sex couples.

Some businesses have stepped up as well, offering benefits for and protections to LGBTQ employees. They have recognized that protecting those workers is the best way to attract talent and compete not only with domestic companies but international competition too.⁽⁸⁾ But companies can only go so far. Government action is required. If the Kishida administration is serious about rejuvenating the economy, it should recognize that extending equal protection to all employees will entice foreign firms to do business here.

That will require boldness from the government. The ruling Liberal Democratic Party is socially conservative and has been unwilling to adopt many policies that challenge conventional views of morality and propriety. In an October 2021 poll of those running in last fall’s election, just 12% of LDP candidates favored same-sex marriage, while 38% were opposed.

Grim as those numbers are, there are grounds for hope. Some 50% of LDP candidates were undecided and support is growing. That October 2021 poll also showed that 61% of all candidates favored same-sex marriage, 15% were against and 25% were undecided. The public is even more supportive. An October 2018 poll by Dentsu showed that 78.4% of people aged between 20 and 59 “approve” or “somewhat approve” of same-sex marriage.

Yet according to that same Dentsu poll, 50.3% of people who identified as LGBTQ described themselves as “reticent” or “somewhat reticent” to come out to work colleagues. That is more evidence of the perniciousness of the current system. These citizens are denied the freedom to be themselves and denied the fulfillments heterosexual citizens enjoy. All of us are diminished as a result. The Japanese public knows this is wrong. We should demand that our legislators correct this injustice.

出典：The Japan Times Editorial Board, “Japan’s disappointing ruling on same-sex marriage,” *The Japan Times*, Jun 24, 2022. Retrieved from <https://www.japantimes.co.jp/opinion/2022/06/24/editorials/japan-same-sex-marriage/>

注：court 裁判所, ruling 判決, blow 打撃, plaintiff 原告, the Constitution 日本国憲法, rationale 論理的根拠, constitutional 合憲の, jurisdiction 法的権限を有する機関, marriage-like 婚姻相当の, abdication 放棄, popularity 国民の意見に合うか否か, claim 主張, civil law 民法, pending 係争中の, sexual orientation 性的方向性, gender identity 性自認, ward 行政区, benefit 優遇措置, administration 政権, propriety 適切さ, poll 意見調査, the public 国民, evidence 証拠, perniciousness 悪質さ

問1 下線部(1)をふまえて、大阪地方裁判所はどのような判決を下したかについて、日本語で説明しなさい。

問2 下線部(3)をふまえて、今回の訴訟において原告はどのような主張をしたかについて、日本語で説明しなさい。

問3 下線部(4)をふまえて、日本政府は同性婚についてどのような立場をとっているかについて、日本語で説明しなさい。

問4 下線部(5)をふまえて、大阪地方裁判所が同性婚を認めないことは合憲であると判断した根拠について、日本語で説明しなさい。

問5 下線部(7)をふまえて、2021年3月に札幌地方裁判所は同性婚を認めないことの合憲性についてどのような判断を示したかについて、日本語で説明しなさい。

問6 下線部(2), (6), (8)をそれぞれ和訳しなさい。

問7 現在、日本で同性婚が認められていないことについて、あなたの考えを30～50語(30～50 words)の英文で述べなさい。