

DEPRAVATION OF VOTING RIGHT UNCONSTITUTIONAL FOR PERSONS UNDER GUARDIANSHIP : TOKYO COURT RULING

Overview of the case

A woman with Down Syndrome, who was deprived of her voting right when she was placed under the adult guardianship, filed a suit against the government at the Tokyo District Court on 1 February 2011. She asked for the confirmation of her right to vote claiming that the Paragraph 1 of Section 1 of Article 11 of the Election Law, that restricted the voting right of people under guardianship, violated the voting right and was unconstitutional.

The Status of Adult Guardianship in Japan

In Japan, possible candidates for adult guardianship amount to 4.5 million people. In fact, there are approximately 30,000 cases applied for adult guardianship annually and 24,000 cases are classified by the court as “koken” category that is most restrictive and restricts independent activities.

Historic Ruling Today by the Tokyo District Court

Today, the Tokyo District Court ruled the provision of Election Law (11.1.1) was violating the voting right and was unconstitutional. It confirmed that the plaintiff has the right to vote, as requested by the plaintiff. The ruling stated the restriction of voting right could be made only when the voting by the person concerned jeopardized the fairness of the election. It also stated that there was no proof that use of voting right by people under adult guardianship harmed the fairness of the election and that some people under the legal guardianship had the capacity to vote. It further stated that the system of adult guardianship was established to respect self-determination, make use of the remaining capacity, promote normalization, and protect the interest of people concerned and it was not meant to remove the right of person, including his/her right to vote. Legislation in a number of counties recently narrowed voting right restriction, it continued, and the fact that Japan was a signatory to the Convention on the Rights of Persons with Disabilities should be taken into account and that the linking of adult guardianship to voting right could not be accepted.

Japan Federation of Bar Associations

Japan Federation of Bar Associations on 25 December 2012 advised the prime minister, speakers of both House of Representatives and House of Councillors to eliminate 11.1.1 of Election Law since it is unconstitutional.

For Further information, please do not hesitate to contact Sugiura Hitomi

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