

## ABSTRACT

### Unconstitutionality of the Article 750 Civil Code forcing a married couple to choose a single surname

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This paper is a legal opinion, which criticized the decision of the Tokyo District Court on May 25 2013, and was submitted to the Tokyo High Court on October 22 2013. Article 750 Civil Code describes that a husband and wife shall adopt the surname of the husband or wife in accordance with that which is decided at the time of marriage. Then, five people filed a lawsuit for damages against the government, claiming that Article 750 Civil Code forcing them to choose a single surname after marriage violated their constitutional rights. After the decision of dismiss by the Tokyo district Court, the plaintiffs appealed to the Tokyo High Court. At the trial, this paper was submitted to the Tokyo High Court.

In this paper, I insisted that the Court must review the unconstitutionality of the Article 750 per se, that the right not to be forced to change a surname must be recognized to be constitutional right as one kind of personality rights delivered from “the right to life, liberty, and the pursuit of happiness” in Article 13 Constitution of Japan, and that Article 750 has currently turned out to be unconstitutional because the human dignity of the individual, especially of wife in this case, takes precedence currently to a marital unity.

On March 28 2014, the Tokyo High Court dismissed the plaintiffs’ appeal without adopting my opinion. So I criticized the decision in this paper as a postscript 1.

On December 16 2015, the Supreme Court also dismiss the plaintiffs’ final appeal, on the ground that Article 750 Civil Code is not unconstitutional,

because the power to decide the family name belongs to the Parliament, and also because the system of same surname is already prevailed in the Japanese society. I also criticized this decision in this paper as a postscript 2.