

pressure groups can infiltrate a political process. For the candidates who can procure a “personal vote” like celebrities or leaders of pressure groups, enjoy an advantage, though most of the electorates vote for their party, not a pressure group. But then we should introduce a closed party list system for a progressive change, especially given the current open-list system has been introduced by the LDP in 2001 for their interests.

Besides, if we take the Court’s remarks seriously and want to make the election law better, we should introduce a simpler election system, for example, that based on a proportional representation system to reflect the public opinion in a direct fashion and repeal the current monstrous mixture of Prefectural districts (partly jointed districts, variable fixed numbers each district) and open-list (but virtually can be closed) proportional representation. The joint districts by 2015 amendment, which the Supreme Court held constitutional, should be also a temporary expedient from this viewpoint.

2. Family Law

Partial Revision of the Civil Code and the Domestic Relations Case Procedure Act

Law No. 72, July 13, 2018 (Effective on July 1, 2019 [partly, by January 13, 2019, and April 1, 2020])

Background:

The Inheritance Law of Japan enforced in 1989 had earlier been reformed in 1947, 1962 and 1980, and this revision followed those.

In the last revision in 1980, following decreasing birthrate and aging of the population, the raising of the spouse’s statutory share in inheritance was reviewed and the contributory portion system was established. Afterwards, for a space of forty years, the aging of Japan’s population advanced with the extension of the average life expectancy: the percentage of the population aged 65 or older reached 27.7 % in 2017 compared with 9.1 % in 1980. Accordingly, since the age of the surviving spouse at the time of the commencement of an inheritance had become considerably

older, how to protect the living of a surviving elderly spouse began to be regarded as an important issue of Japanese society.

In addition to this background, the decision of the Supreme Court on September 4, 2013, led directly to this revision. The decision stated that the provision at that time of statutory share in inheritance, which specified that the share in inheritance of a child born out of wedlock should be one half of the share in inheritance of a child born in wedlock (the first sentence of the proviso to prior Art. 900, Item (iv) of the Civil Code) was in violation of Art. 14 (1) of the Constitution which stipulated equality under the law (see the Supreme Court, G. B., decision of September 4, 2013. MINSHU Vol. 67, No. 6, at 1320). Based on this decision, a Partial Revision of the Civil Code was approved on December 4, 2013, and thereby, the content of the above-mentioned provision was deleted and the discriminatory treatment concerning the child's statutory share in inheritance was eliminated. On the other hand, according to the expansion of the share in inheritance of a child born out of wedlock, there was concern about weakening the protection for legal marriage, and in order to esteem a surviving spouse, namely the wife of a decedent, a revision of the Inheritance Law was proposed.

From the above, it can be summarized that the motivation for this revision are placed on the respect for legal marriage and protection for a surviving spouse. Besides that, the necessity of coping with the current situation of an accelerating aging society and stipulating the accumulated legal theory in judicial precedents are added to the aim of the revision.

Main Provisions:

The following provides an overview of the Partial Revision of the Civil Code with respect to the Inheritance System (hereinafter referred to as "the Amendment Act"), focusing on four major points: establishing (1) the spouse's residence rights system, (2) the special contribution pay system and (3) the refund of the deposit and savings system before a division of the inherited property, and (4) reviewing the testament system.

First of all, in regards to (1), a problem had occurred in the case where the eviction of a spouse of a decedent was demanded from a residential building in possession of the decedent by another heir who obtained that property. This situation might mentally and physically burden a surviving

elderly spouse in particular because of leaving the house where she/he had lived for a long time and being compelled to change residence. In addition, as far as a surviving elderly spouse is concerned, it is difficult for her/him to earn a living on her/his own. From the above, a guarantee of the spouse's residence rights was stipulated [Arts. 1028 to 1041], and thus, a surviving spouse became able to continue living in the residential building in possession of the decedent without obtaining the proprietary rights when she/he lived gratuitously in the residence at the time of the commencement of the inheritance. The spouse's residence rights can be divided into two types: the long-term residence right [Arts. 1028 to 1036] and the short-term residence right [Arts. 1037 to 1041].

The provision of the short-term residence right derives from the legal theory in judicial precedent (see the Supreme Court, 3rd P. B., judgement of December 17, 1996. MINSHU Vol. 50, No. 10, at 2778) which judged that it shall be presumed that one of the coheirs who had lived together with a decedent in the decedent's building with the decedent's permission made a contract for loan for use regarding that building for the period from the time of the commencement of the inheritance until the time of division of the inherited property. In contrast, the long-term residence right is guaranteed for life and greatly differs from the short-term residence right in that a surviving spouse can not only use but also profit from using the decedent's building with the owner's permission and assert against a third party with registration, and, furthermore, obtain other inheritances such as a deposit and savings according to the value of the long-term residence right because it is a factor to be considered in the division of the inherited property and more inexpensive than gaining property right. In short, a surviving spouse becomes able to maintain both a living environment and a livelihood after the decedent's death through obtaining the long-term residence right.

In the next place, as for (2), a raise in the share in inheritance is approved as the special contributory portion system provided in the present Art. 904-2 in order to realize equally the division among joint heirs by inheritance, when there is an heir who has contributed to maintaining or increasing the decedent's property through medical care or nursing of the decedent; in other words, this provision only applies to heirs. However, in actual fact, a spouse of an heir (typically, the wife of the first son) often

cares for a decedent (namely, parents-in-law) in her/his old age. From the above, the special contribution pay system was established [Art. 1050], and thus, as a special contributor, a person not an heir but a decedent's relative became able to demand defrayment according to her/his contribution from the heirs; those not due to fall under the category of a relative in the Civil Code, such as a spouse in a de facto marriage and a de facto adopted person are out of consideration.

Subsequently to (3), judicial precedents had so far regarded that the deposit and savings claims of a decedent could separately belong to joint heirs according to their shares in inheritance upon the commencement of inheritance and be severally exercised by each heir because deposit and savings claims are divisible claims and exempt from a division of the inherited property. However, the Supreme Court in 2016 concluded that deposit and savings claims are subject to a division of the inherited property (see the Supreme Court, G. B., decision of December 19, 2016. MINSHU Vol. 70, No. 8, at 2121). This alteration of precedents meant that an heir shall not be able to refund deposit and savings till the termination of a division of the inherited property without the consent of all joint heirs: this would hinder necessary expenditure before a division of the inherited property, such in the cases where an heir depended on a decedent's living expenses, or needed to prepare funeral costs or perform the obligation of a decedent. From the above, in order to cope with the need for payment of each joint heir quickly, Art. 909-2 was stipulated, and thus, each joint heir became able to exercise deposit and savings claims severally within a fixed amount of money (namely, multiplying one-third of the amount of deposit and savings claims on the commencement of inheritance by share in inheritance of each joint heir) before a division of the inherited property without a judge of the Family Court.

Lastly, concerning (4), the following three points were reviewed. (a) Will by holographic document had been made under a strict method that a testator must write the entire text in her/his own hand. Moreover, lightening the burden imposed on a testator and promoting utilization of the testament system had been required. For this reason, the requirement of a will by holographic document was mitigated [Art. 968 (2)]: when a testator makes a will by holographic document accompanied by an inventory of inheritance property (for instance, information of immovables,

bank accounts, etc.) , as for the inventory, it is permitted not to be handwritten. (b) A testator has accountability for the management of her/his will by holographic document. However, this would cause a loss of the will, the existence of several wills, and the concealment or alteration of the will by an heir who found out. From the above, a law concerning the custody of a will by holographic document was separately enacted in order to prevent disputes over the testament. (c) Rights and duties of an executor who has the role of realizing the content of a will was clarified [Arts. 1012 to 1016].

Editorial Note:

The amendments of the Inheritance Law after the last reform in 1980 ranges from all quarters and has especially great significance in the points of protecting the living of a surviving elderly spouse, promoting the utilization of the testament system, and realizing equity among joint heirs and convenience in practice.

Moreover, the new establishment of the special contribution pay system is noteworthy and helpful in order to solve inequality between an heir's relative not appreciated in spite of contributing to a decedent and an heir who can obtain the property although contributing nothing. On the other hand, it is indicated that new differentiation occurs between the legal marriage and de facto marriage or same-sex partner, due to a focus on respecting a surviving spouse in the revision. Therefore, there is a view that the diversity of family structure and subsuming different lifestyles other than legal marriage should be recognized in order to aim at substantial equality by inheritance; however, this remains as a future issue.