

Enfranchising people under guardianship

Japan (Parliament, Tokyo District Court) – REVISION OF ELECTION LAW

Around the world, restrictions of voting rights based on intellectual disabilities and the lack of legal capacity deprive people of their political rights. Court cases are key to repealing such discriminatory provisions. In 2013 a prominent court case in Japan led to the enfranchisement of more than 136,000 persons.

IN BRIEF

Until recently, Japan's Election Law deprived people under adult guardianship of their right to vote and to stand for elections. In a spectacular court case in 2013, the Tokyo District Court judged this relevant article unconstitutional. As a result, the Parliament swiftly – in only 74 days after the ruling – repealed the discriminatory article, which led to the enfranchisement of more than 136,000 persons under guardianship.

FACTS & FIGURES

- Initial Year: 2013
- The non-governmental organization Inclusion Japan collected 410,000 signatures in support of the court case.
- The court found the provisions depriving persons under guardianship of their voting rights unconstitutional.
- Parliament promptly revised the Election Law accordingly.

INNOVATION

Successful court case

This is the first time that a court in Japan has ruled that it is unconstitutional for the Election Law to deprive persons under guardianship of their right to vote.

Voting regardless guardianship

The ruling promotes the right to vote regardless of guardianship – a milestone in recognizing the legal capacity and political rights of persons with disabilities, as required by the UN Convention on

the Rights of Persons with Disabilities, Article 5 (non-discrimination), Article 12 (equal recognition before the law), and Article 29 (right to participation in political and public life).

Speedy revision by Parliament

Wide public support in favour of this ruling pressured members of Parliament, both ruling and opposition, to revise the Election Law in only 74 days after the ruling.

CONTEXT

Each year in Japan about 24,000 people are placed under “Koken” – the most restrictive category of adult guardianship – which deprives persons with disabilities, among others, of their right to vote. One such person was Ms. Takumi Nagoya, a 52-year-old woman with Down syndrome, who voted in every election since she turned 20 until her father was appointed as her legal guardian. Encouraged and represented by her father, Mr. Seikichi Nagoya, she sued the Japanese Government in February 2011, asking the court to restore her voting right for the coming elections. The public widely supported her case, and on 14 March 2013 the Tokyo District Court ruled that it was unconstitutional for the Election Law to deprive persons under Koken guardianship of their right to vote. On 27 May 2013 the Parliament unanimously revised the Law by deleting the relevant article.

“I cannot die while my daughter’s voting rights are being denied.”

—Mr. Seikichi Nagoya

KEY FEATURES

The presiding judge, the Hon. Jozuka Makoto, ruled that the right to vote and to run for elections is a fundamental right and is guaranteed in different articles of the Constitution. The restriction of this right can be admitted only in exceptional cases when unavoidable circumstances require it.

Otherwise, the restriction is unconstitutional. On 27 May 2013 the Japanese Parliament unanimously revised the Election Law, deleting Article 11.1.1, which deprived people under adult guardianship of their right to vote and right to stand for elections.

OUTCOME, IMPACT AND EFFECTIVENESS

- More than 136,000 people under Koken guardianship gained voting rights.
- The results of a data collection on how to make the rights of those with restored voting rights become reality were shared with the media and government.

- Local governments organized political debates, offered mock voting, or provided more personal assistants for persons with disabilities at the polling stations.

TRANSFERABILITY, SCALABILITY AND COST-EFFICIENCY

Inclusion International and International Disability Alliance are promoting the case to the governments of other nations. To date, Austria, Canada, France, Sweden, and the United Kingdom have reduced or eliminated the restriction of voting rights based on intellectual disabilities and the lack of capacity.

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