

Associations Just Pension System

Discrimination and exclusion of non-Japanese nationals in Japan's public pension system

1. Outline of issues

1) The Japanese Public Pension Scheme

a. Japan's Public Pension Scheme is a social security system for the elderly, the disabled and survivors of policyholders. This system has both contributory and non-contributory plans.

b. Contributory Pension (National Pension and Welfare Pension)

To be eligible, one must join the scheme and pay the state-determined premium over a certain period. In order to be eligible for payments for disabilities that are acquired or become more serious after joining the scheme, one must have already paid over two-thirds of the premiums. In the case of the elderly, one must have paid the premiums for at least 25 years between the ages of 20 and 60 years. Even one month short of this will result in ineligibility. The payment of premiums is required by law; one does not have the choice whether or not to make them. There is, however, no penalty imposed for non-payment.

c. Non-contributory Pension (National Pension)

1) Old-age Welfare Pension: A transitional measure for low-income earners who were over the age of 60 at the time the pension system was put in place. This made them eligible for benefits without paying premiums.

2) Disability Pension for people who become seriously disabled before the age of 20 (the current Disability Basic Pension): In this case, one can enroll in the scheme upon turning 20 years old. This will qualify the person for benefits without having made any payments. A transitional measure was also put in place for those who had become seriously disabled before the age of 20 and were over the age of 20 at the time the pension system was introduced. This made them eligible for benefits without paying premiums.

Since the nationality clause was abolished to bring Japan in line with its obligations under the Convention on the Status of Refugees, those who become seriously disabled before the age of 20, regardless of nationality or where they celebrate their 20th birthday, gain the right to receive the Disability Basic Pension upon turning 20 years old. This does not apply to foreign nationals until after they have resided in Japan for over 90 days and completed alien registration procedures. Thus, even short-term overseas students are fully eligible for the pension from the month after registering for it, without having to pay a single premium. People who receive the Disability Basic Pension are exempt from paying premiums without an income audit.

2) Differences on the basis of nationality and limitations under the National Pension Scheme revisions

a. Japan enacted the National Pension Law in 1959, limiting the scheme to Japanese nationals. Those without Japanese nationality, even if they were born and raised in Japan and had never visited the country of which they bore citizenship, and even if they became old in Japan, were unable to receive the pension. At the time, most of the non-Japanese nationals who had settled in Japan were from Japan's former colonies.

b. The National Pension Law was revised in 1981 so that anyone residing in Japan, regardless of nationality, can join the National Pension Scheme and is obliged to pay premiums in order to receive benefits.

c. People over the age of 35 at the time, however, were not eligible to claim the pension for old

age in the future, even if they began paying premiums right away. This is because one must have made payments for at least 25 years between the ages of 20 and 60 years; those already over the age of 35, this was impossible.

- d. A revision to the law was made in 1986 whereby, in the case of non-Japanese nationals, the period over the age of 20 that premiums are not paid is added in calculating the number of years needed to become eligible, but because this is not reflected in the amount of pension received, some people are only eligible for a small amount, despite being forced to pay the premiums.

3) Today vs. the time the scheme was created

- a. The same thing happened when the National Pension Scheme was introduced. That is, if you were a Japanese national over the age of 35, it was, of course, impossible to pay 25 years worth of premiums by the age of 60.
- b. Because of this, a law was passed to make an exception to the rule, so that such people would become eligible for the pension without paying 25 years worth of premiums. Instead, they paid premiums over a shorter period, which was determined by the state. Further, a law was passed so that those over the age of 60 did not have to pay premiums at all to be eligible. These transitional measures were essential in preventing discrimination between those eligible and ineligible for the pension, which was dependent on age.
- b. Despite this, when Japan revised the National Pension Law to oblige non-Japanese nationals to pay the premiums, there was no transitional measure to prevent discrimination between those eligible and ineligible for the pension. While the National Pension Law was purposely formulated to prevent discrimination between those eligible and ineligible for the pension because of differences in the period for paying premiums, the law was intentionally revised to oblige non-Japanese nationals to pay the premiums yet not have those same rules apply.

4) Pension for the disabled

- a. Those who become disabled before the age of 20 can enroll in the scheme upon turning 20 years old, becoming eligible for benefits without having made any payments. If this is the case, then non-Japanese nationals who become disabled before the age of 20 and are able to enroll in the revised National Pension Scheme should also be eligible for benefits.
- b. In revising the law, however, a restriction was set so that those already ineligible for benefits would not be able to receive them. It was formulated so that non-Japanese nationals who had not received benefits thus far would still be unable to.

2. Bringing the matter to court

1) The historical context for Koreans in Japan

- a. Because of the National Pension Law, many people were unable to receive the pension on the grounds of not possessing Japanese nationality.
- b. The most typical case is that of the Koreans: because Korea was colonized by Japan before and after the Second World War, many Koreans, who were then regarded as Japanese citizens, and their descendents had no choice, for various reasons, but to settle in Japan. Today, because their descendents were born and raised in Japan, most no longer have ties with their places of birth in the Republic of Korea and the Democratic People's Republic of Korea. Despite this, when Japan's post-war occupation ended in 1952, the government took away their Japanese citizenship, without offering them a choice on the matter. Thus, their offspring were born and raised in Japan without Japanese nationality. In this context, they live in Japan with a nationality different from those born of Japanese nationals, and despite Japanese being their mother tongue, and in spite of fulfilling their duties of paying taxes and such, face all kinds of social discrimination on the basis of their nationality. This has already continued for 60 years.

2) The issues

- a. In the world today, respect for the individual and his or her right to live with human dignity are, apart from being enshrined in the International Declaration of Human Rights and international human rights conventions, matters of common sense. If a state's actions violate these rights, we must not simply deplore them. International society must harshly criticize the state for human rights violations that cannot be overlooked.
- b. The state has a responsibility to provide security in the situation of physical or mental disability, which no one ever knows will befall them, and for old age, from which no one can escape.
- c. Though poverty strikes people in Japan indiscriminately, the government provides security to some and not others, based solely on nationality. Japan's state policy discriminates on the basis of nationality in the provision of security for the disabled and the elderly to live life with dignity.

3) The court case

- a. Japan's actions in delineating who is or is not eligible for pension, based solely on the grounds of nationality, is in breach of Article 26 of the International Covenant on Civil and Political Rights.
- b. We, with the plaintiff Koreans who are unable to receive the pension, appealed to the state courts and demanded that the grave and continuing violation of their human rights immediately be put right.

3. Court decide that discrimination on the basis of nationality is lawful

1) The judgment

- a. The court passed judgment that this situation, whereby Koreans are unable to receive the pension, is lawful.
- b. Article 25 of the Japanese Constitution provides that: "1) All people shall have the right to maintain the minimum standards of wholesome and cultured living; 2) In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health." The basis for the decision was that the state has the discretion to decide by law what kind of security to provide and who will be eligible for it, and the courts must respect this in making its decision.

2) Problems with the court's decision

- a. Discrimination on the basis of nationality cannot be simply allowed to happen like this.
- b. When the issue of state violation of the right to equality becomes a concern, it is based on reasonable and objective standards with the aim of reaching a legitimate goal. For the state to attain this goal, it must, as much as possible, not be restricted in its actions.
- c. This principle is enshrined in Article 26 of the International Covenant on Civil and Political Rights and is familiar to all jurists of free nations around the world.
- d. Although this is an issue giving cause to believe that the state is violating the principle of non-discrimination, which is protected by law, Japan's courts have taken the stance that social security issues such as the pension system are at the state's free discretion, and that the courts must respect this in making their decisions. This way of thinking rejects what is common sense to jurists around the world.
- e. The High Court has expressed that it will not examine cases that are raised as violating international conventions. Further, some lower court rulings publicly express that the courts of Japan are not bound by general comments and views of the treaty bodies in any way.

3) Conclusion

The legislature, which the people place their trust in, and the administration, which is the last bastion in guaranteeing the right to life, are intentionally discriminating on the basis of nationality and openly ignoring international human rights conventions. This calls for harsh criticism from international society.

4. Falsehoods in the government report

- a. In its second periodic report due under the International Covenant on Economic, Social and Cultural Rights, submitted in 1998, the government stated:

3. Status and rights of foreigners

In accordance with the spirit of the Constitution, whose basic principle is the respect for fundamental human rights and the spirit of international cooperation, fundamental human rights are guaranteed to foreigners, except for such rights as suffrage, which is extended only to Japanese nationals due to the nature of these rights. The Government makes efforts to guarantee the rights authorized in the Covenant equally to foreigners as described below...

6. Social Security

In accordance with the principle of equality between foreigners and Japanese nationals, the Government makes efforts to provide to foreigners, regardless of nationality, legally residing in Japan with the same social security services as those for Japanese nationals, provided that the required payment is made. For example, Japanese nationality is not required to receive the benefits of the following systems:

- a. National Pension (National Pension Law)

- b. to e. (omitted)

- b. The government is saying, then, that there is no discrimination according to nationality under the National Pension Scheme, and that equality among foreigners exists.

- c. After this error was pointed out in a public comment, the government stated its views as follows, in rebuttal to Special Rapporteur Doudou Diene's recommendations: "When foreign nationals came to be compulsorily covered due to the Convention Relating to the Status of Refugees, concluded in 1982, the Convention requested State Parties to give equal treatment to foreign nationals as is accorded to nationals in respect of social security in the future, but did not require State Parties to take into account events prior to its ratification." The law at the time the convention was ratified stated that "Rights lost before the enforcement of the law are dependent on precedent", which created a way for Japan to avoid its obligations and tarnish the significance of the convention.