

# RECHTSPRECHUNG

## New Judgments of the Supreme Court

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### SHARE OF INHERITANCE BY ILLEGITIMATE CHILDREN

The Judgment of the Supreme Court, the Second Petit Bench, March 28, 2003

The Judgment of the Supreme Court, the First Petit Bench, March 31, 2003

The Constitutionality of the provision of the Civil Code which sets the share of inheritance of an illegitimate child at half of that of a legitimate child was found to be constitutional once again by the Supreme Court.

The Supreme Court ruled on this matter in the Grand Bench judgment of 1995 (Judgment of July 5, 1995). Against the argument that the arrangement in the Civil Code was against Article 14 paragraph 1 of the Constitution which guarantees equal treatment of the people, the Court ruled that this was a reasonable differentiation rather than discrimination. There were six dissenting opinions.

This time, the case was handled by the petit bench with five justices. The majority opinion found the provision in question of the Civil Code to be constitutional, referring to the 1995 Grand Bench judgment. However, there were two dissenting opinions.<sup>1</sup>

The dissenting justices pointed out that there have been significant social changes since the 1995 judgment which warrant the equal treatment of legitimate and illegitimate children. The 1996 Programme on the Partial Amendment of the Civil Code has proposed changes towards this direction. The UN Human Rights Commission, in its report on the state of human rights in Japan, expressed concern about this problem and recommended changes. It was argued that with the progress of internationalization and diversification of values, the life style of families is not uniform any more, and the relationship between parent and child has accordingly changed. Therefore, it has become even more difficult to find the differentiation of the share of inheritance depending on circumstances which are beyond the control of the children to be reasonable.

Three days later, the First Petit Bench of the Supreme Court rendered a judgment on a similar case. There were two dissenting justices. The presiding justice, in his concurrent opinion, pointed out that although the given provision was not evidently unconstitutional, its constitutionality was highly doubtful, and a legislative measure was needed.

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<sup>1</sup> An English translation of the Grand Bench judgment can be found in the Supreme Court website: [www.courts.go.jp](http://www.courts.go.jp).