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作成:弁護士　仲　晃生(Teruo NAKA)

1．　国籍法１１条１項の沿革

1. History of Article 11.1 of the Nationality Law

１８９９年に明治憲法下で定められた。

It was established in 1899 under the Meiji Constitution.

提案理由「自己の意思によって日本を離れて外国の国籍に入った者を、強制的に日本人としておいても、日本にはほんの わずかの益もない。国籍の衝突が生じるという弊害がある。」

Reasons for Proposal "There is little benefit for Japan in forcing those who have left Japan and entered to a foreign nationality of their own volition to remain being Japanese. It has the harmful effect of creating a conflict of nationalities.

明治憲法下の日本では、主権者は天皇で、国民は臣民だった。天皇とその取り巻きが定めた目的のために死ぬことが、臣民の生きる道とされていた。国民は国家の道具だった。国民の権利も法律の範囲で認められるに過ぎなかった。

In Japan under the Meiji Constitution, the Emperor was the sovereign and the people were subjects. The way of life of the subjects were to die for the purpose set by the emperor (and his cronies). They were instruments of the state. The rights of the people were only recognized within the limits of the law.

(参考資料)

https://www.ndl.go.jp/constitution/e/shiryo/03/059shoshi.html

Reform of the Japanese Governmental System (SWNCC228), STATE-WAR-NAVY COORDINATING COMMITTEE

https://www.ndl.go.jp/constitution/shiryo/03/059/059tx.html

APPENDIX "B", DISCUSSION,

「３　国民に対する政府の責任を確保しうる制度の欠如

(b) 日本の現憲法は、一方においては、国民の側の代議制への要求をなだめるという目的、他方においては、明治の指導者である憲法制定者達が、近代の世界の中で日本が存続し発展するために必要であると信じた、中央集権的、独裁的統治機構を、強化し永続させんとする目的、という二重の目的をもって書かれたのである。この後者の目的に合致するため、国家権力は、天皇の周囲にいる数少ない個人的助言者達の手に握られ、選挙によって選ばれた、国会における国民の代表者には、立法に対し限られた範囲で監督的権限が与えられただけであった。……(以下略)。」

3. <u>The Absence of an Effective System of Responsibility of the Government to the People</u>.

a. There are of course several ways in which this responsibility may be effected. In the United States the executive government is directly responsible to the President, who is himself elected by the people and is limited by the judicially enforced Constitution from encroaching upon the rights of the judiciary and the Congress. In Great Britain the executive government is nominally responsible to a hereditary monarch, but actually it is responsible to the House of Commons, which is elected by the people. While in theory the power of the Parliament is absolute, in practice it recognizes the independence of the courts and certain rights of the executive.

b. The present Japanese Constitution was drawn up with the dual purpose of, on the one hand, stilling popular clamor for representative institutions, and on the other, of fortifying and perpetuating the centralized and autocratic governmental structure which its framers, the Meiji leaders, believed necessary for Japan's continued existence and development in the modern world. Consistent with this latter purpose, power was retained in the hands of a small group of personal advisors around the Throne, and the people's elected representatives in the Diet were given only limited supervisory powers over legislation. When a Cabinet falls the new Prime Minister, who selects his own Cabinet, is appointed by the Emperor not automatically from the leadership of the majority party in the Lower House but on the recommendation of these advisors, originally the Genro and more recently a council of former prime ministers. The nature and composition of a new government, consequently, was determined by the balance of forces around the Throne rather than by the majority view in the Lower House.

c. This lack of responsibility of the Cabinet to the Lower House was also the result of the Diet's limited powers over the budget. The Constitution provides (Article 71) that if a budget is rejected by the Diet, the budget of the preceding year automatically goes into effect. Consequently, even though the Prime Minister failed to win a vote of confidence in the Lower House he knew that he was assured of a budget equal at least to that of the current year.

d. Although the passing of general laws pertaining to the internal affairs of the nation are within its province, in practice most bills are introduced by members of the Cabinet, in whose selection the Diet has no part. The power to declare war, make peace, and conclude treaties are Imperial prerogatives over which the Parliament can exert only the most indirect influence because of its inability to control the Cabinet and the Privy Council which, together with the Keeper of the

Privy Seal, the Minister of the Imperial Household and others close to the Throne, advise the Emperor on these matters. The Diet has no power over dynastic affairs, it cannot initiate amendments to the Constitution, it cannot convene of its own accord, and it may be prorogued for a period up to fifteen days any number of times during a session by the Emperor on the advice of the Prime Minister.

e. Although the Diet possesses indirect means of impressing its views upon the government which have proven more effective in practice than the direct controls, budgetary or otherwise, at its disposal, even these indirect methods have been of limited value. Its power to address the Throne or make representations to the government has little practical significance, because neither is bound to respond to its representations. Its power to establish committees of inquiry on any matters of state is limited by its inability to compel the attendance of witnesses. Interpellations and questions from the floor can embarrass a Cabinet, and have been among the Diet's most effective weapons, but ministers are free to make evasive replies or to refuse to answer at all on the ground of "military security" or "diplomatic security" or as "contrary to public interest." Although both Houses are empowered by custom to pass resolutions on matters within their jurisdiction, and resolutions of no confidence by the Lower House prior to 1931 frequently led to the resignation of a cabinet or of the ministers thus censured, such resolutions have also frequently led to the dissolution of the House and a new election which, although it supported the House against the government, was not followed by the latter's resignation. Nevertheless, during the past fifteen years, criticism of the government from the floor or in address or representation resolutions have been virtually the only means by which members could hope to influence policy.

「６　人権保護の規定が不十分なこと

（a）日本の国民は、特に過去１５年間においては、事実上、憲法が彼らに保障している人権の多くのものを奪われていた。憲法上の保障に、「法律に定めたる場合を除き」、あるいは「法律によるに非ずして」という文言による制約が設けられていたために、これらの権利の大幅な侵害を含む法律の制定が可能になった。同時に、日本の裁判所が、仮に直接的な政府の圧力にではないとしても、社会的圧力に屈従し、公平なる裁判を行ないえなかったことも、はっきりしている。」

6. Inadequate Provision for the Protection of Civil Rights.

a. The Japanese people have been deprived in practice, particularly during the past fifteen years, of many of the civil rights guaranteed them in the Constitution.

Qualification of the constitutional guarantees by the phrase "except in the cases provided by law" or "unless according to law" has permitted the enactment of statutes involving wholesale infringement of these rights. At the same time Japanese courts have shown themselves subservient to social, even if not to direct governmental, pressures, and have failed signally to administer impartial justice.

b. To rectify this situation, General MacArthur, on October 4, 1945, ordered the Japanese Government to abolish all measures which restricted freedom of speech, of thought and of religion and to report to him by October 15, 1945, on all steps which had been taken to assure civil rights to the people.

c. In one other respect the Japanese Constitution falls short of other constitutions in its guarantee of fundamental rights. Instead of granting those rights to all persons it stipulates that they shall apply only to Japanese subjects, leaving other persons in Japan without their protection.

１９４５年の敗戦とそれに続く日本国憲法の制定により、国民は主権者となった。国民は基本的人権を享有する存在となり、個人として尊重されることが定められた。
With the defeat of Japan in 1945 and the subsequent enactment of the new Constitution of Japan, the people became sovereign. They also became beings who enjoyed fundamental human rights and were to be respected as individuals.

ポツダム宣言を受諾した日本政府は、日本の政治体制の変更を義務づけられた。しかし、日本政府が作成した新憲法案は、天皇主権のままであるなど、旧来の政治体制を維持しようとするものであった。
Upon accepting the Potsdam Declaration, the Japanese government was obliged to change Japan's political system. However, the draft of the new constitution prepared by the Japanese government attempted to maintain the old political system, such as retaining the sovereignty of the Emperor.
そのため、GHQ が草案を作成し、日本政府に提示した。この草案は、日本の民間グループが作成していた新憲法草案も参考にしていた。
Therefore, GHQ prepared a draft and presented it to the Japanese government. This draft was also based on a draft of a new constitution that had been prepared by a group of Japanese citizens.

（参考資料）
https://www.ndl.go.jp/constitution/e/shiryo/03/060shoshi.html

GHQ 草案を基礎として修正（例えば、健康で文化的な最低限度の生活の保障の規定が追加された）が加えられて、日本国憲法が制定された。
Based on the GHQ draft, amendments were made (e.g., a provision guaranteeing a minimum standard of living for a healthy and cultured life was added), and the Constitution of Japan was enacted.
日本人たる要件を法律で定めるという憲法１０条は、最終段階で挿入された規定である。明治憲法１８条の条文をそのまま使ったもので、①重要な事項であること、②GHQに押し付けられた憲法ではないことを示すのが重要であること、が追加の理由であった。
Article 10 of the Constitution, which stipulates the requirements for being Japanese by law, was a provision inserted in the final stage. The text of Article 18 of the Meiji Constitution was used verbatim, and the reasons for its addition were (1) that it was an important matter and (2) that it was important to show that the Constitution was not imposed by GHQ.

１９５０年、国籍法が新たに制定された。家族の国籍を同一とする制度が個人中心の国籍制度に変更したほか、日本国籍離脱の制度を設けるなど、新憲法に合わせた変更がなされた。
In 1950, the Nationality Law was newly enacted. The system of having the same nationality for family members was changed to an individual-centered nationality system, and a system for renunciation of Japanese nationality was established. Those were made to accommodate the new constitution.
１９８４年、女性差別撤廃条約の批准に伴い、父母両系血統主義が採用された。国籍の承継について、男女平等が実現した。男女平等を基本とする新憲法に合わせた変更がようやくなされたといえる。
In 1984, the ratification of the Convention on the Elimination of All Forms of Discrimination against Women led to the adoption of the lineage principle for both parents. This resulted in equal rights for men and women with respect to the inheritance of nationality. The final change was made in accordance with the new Constitution, which is based on the equality of men and women.
しかし、国籍法１１条１項は、そのままだった。
However, Article 11.1 of the Nationality Law remained intact.

２．　新憲法と国籍法１１条１項

2. New Constitution and Article 11, Paragraph 1 of the Nationality Law

２００８年、最高裁判所は日本国籍について次のように説明した。「我が国において基本的人権の保障，公的資格の付与，公的給付等を受ける上で意味を持つ重要な法的地位」
In 2008, the Supreme Court explained Japanese nationality as follows; "an important legal status that has significance in guaranteeing fundamental human rights, granting public entitlements, and receiving public benefits in Japan.
つまり、新憲法の下の日本国籍は、主権者としての地位であり、憲法上の基本的人権保障の土台である。このような日本国籍を本人の意思に反して失わせることは、①国民主権原理、②基本的人権尊重原理、③個人の尊重原則に違反する。
In other words, Japanese nationality under the new Constitution is a sovereign status and the foundation for the guarantee of fundamental human rights under the Constitution. To make a person lose such Japanese nationality against his/her will violates (1) the principle of peoples sovereignty, (2) the principle of respect for fundamental human rights, and (3) the principle of respect for the individual.
議会の多数決で決めた法律により奪うことは憲法上許されない。
It is not constitutionally permissible to deprive a person by a law decided by a majority vote of Congress.
明治憲法　天皇とその取り巻きが国民に与えた憲法
Meiji Constitution; Constitution given to the people by the Emperor and his cronies.
日本国憲法　国民が帝国議会で議論して社会契約として締結された憲法
Constitution of Japan; Constitution concluded as a social contract after the people debated it in the Imperial Diet.

	大日本帝国憲法（1889 年）	日本国憲法（1947 年）
性質	欽定憲法	民定憲法
主権者	天皇（国会も立法の参与機関）	国民（国会は国権の最高機関）
国籍	臣民（Subject）たる地位	①日本の構成員の資格、 ②日本において基本的人権の保障、公的資格の付与、公的給付等を受ける上で意味を持つ重要な法的地位 （2008 年 6 月 4 日最高裁大法廷国籍法違憲判決）
原理等	権利・自由は恩恵、臣民の道。法の下の平等は公務就任権のみ	基本的人権尊重主義、個人の尊重、平和主義

参考 **Afroyim v. Rusk 387 U.S.253,267(1967)**
https://supreme.justia.com/cases/federal/us/387/253/

“To uphold Congress' power to take away a man's citizenship because he voted in a foreign election in violation of § 401(e) would be equivalent to holding that Congress has the power to "abridge," "affect," "restrict the effect of," and "take . . . away" citizenship. Because the Fourteenth Amendment prevents Congress from doing any of these things, we agree with THE CHIEF JUSTICE's dissent in the *Perez* case that the Government is without power to rob a citizen of his citizenship under § 401(e). [Footnote 23]
Because the legislative history of the Fourteenth Amendment, and of the expatriation proposals which preceded and followed it, like most other legislative history, contains many statements from which conflicting inferences can be drawn, our holding might be unwarranted if it rested entirely or principally upon that legislative history. But it does not. Our holding, we think, is the only one that can stand in view of the language and the purpose of the Fourteenth Amendment, and our construction of that Amendment, we believe, comports more nearly than *Perez* with the principles of liberty and equal justice to all that the entire Fourteenth Amendment was adopted to guarantee. Citizenship is no light trifle to be jeopardized any moment Congress decides to do so under the name of one of its general or implied grants of power. In some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country in the world -- as a man without a country. Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country, and the country is its citizenry. The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship. We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.”

「合衆国市民権は、決して、軽い些事ではないのであって、合衆国市民権は、連邦議会が、一般的に、あるいは黙示的に授権された権限の名の下に、いつ何時に権限を行使したとしても、危険に晒されるべきではない。いくつかの例では、合衆国市民権の喪失は、本国を持たない人間として、市民権による保護がないまま、世界のあらゆる国に放り投げられることを意味する。この国における市民権は、協働しながら遂行する事業の一部である。市民（団）こそが国家であり、国家とはその市民（団）である。我々の自由な政府の本質は、一時的に公職に就任中のある市民集団が他の市民集団の市民権を奪うことができるという法原則とは、まったく調和し

ない。第１４条修正は、この国のすべての市民を、宗教的信条、肌の色、人種にかかわらず、連邦議会による強制的な市民権剥奪から保護するために設けられ、かつ、実際に保護していると我々は判示する。我々の判示は、この市民に対して、彼自身の権利である、彼が自由意思でその市民権を放棄しない限り自由な国家の市民としてありつづけるという憲法上の権利を、付与する以上のものではない。」

３． 訴訟について

3. Litigations

現在、４つの訴訟が進行している。

Four lawsuits are currently in progress.

名称、提訴時期、係属裁判所	原告	外国籍	特殊性	状況
東京訴訟 2018年３月 （最高裁）	欧州在住（スイス、フランス、リヒテンシュタイン）	取得した人６名 取得を希望する人２名	取得を希望する人に訴えの利益が認められるか（高裁は肯定）	2023/9/28最高裁第一小法廷が上告棄却 2023/10/26 再審の訴え提起 2024/1/4 再審の「再審の訴え」提起
福岡訴訟 2022年６月 （福岡地裁）	糸島市在住 米国弁護士	米国籍を取得	国籍法 11 条 1 項に関する相談を数多く受けてきた弁護士による提訴。国の周知義務違反も追及。	2023/12/6判決を受けて、控訴
京都発!大阪訴訟 （大阪地裁）	京都市在住 大学教授（経済学）	カナダ国籍を取得。親の介護のため永住目的で帰国。	国籍喪失届を適法に行ったのに受理されなかった	第一審
子どもの国籍喪失、英国籍訴訟 2023年５月 （東京地裁）	英国在住 未成年者	日英カップルと日本国内で特別養子縁組し、それにより英国籍を取得したもの	法定代理人の行為に国籍法 11 条１項を適用できるのか。	第一審

		と養親が考えて英国旅券の申請手続をしたところ、外国籍の志望取得だとして日本国籍を喪失させられた。	生来的な複数国籍の未成年者と同様の扱いをしないことは平等原則違反ではないのか。	

４．　憲法に関連する争点

4. points in dispute related to the Constitution

（１）Article 10 of the Constitution

Article 10.　The conditions necessary for being a Japanese national shall be determined by law.

外国の国籍を自己の意思により取得したら日本国籍を失うとか、いったん付与された日本国籍を法律で喪失させられるといったことまで、社会契約の当事者全員が受け入れられる「重なり合うコンセンサス」として成立していた、とは考えられない。

It is inconceivable that there was an "overlapping consensus" that all parties to the social contract could accept, such as that a person who voluntarily acquires a foreign nationality loses Japanese nationality or that once granted Japanese nationality is forfeited by law.

（重なり合うコンセンサス及び社会契約論について）

On overlapping consensus and social contract theory;

John Rawls. political liberalism expanded edition. Columbia University Press, 1993.

法律で日本国籍の喪失を定めることが許されるとしても、複数国籍の発生防止のために本人の意思に反して剥奪することまで許されるのか。

Even if it is permissible to provide for the loss of Japanese nationality by law, is it even permissible to deprive a person of his/her nationality against his/her will in order to prevent the occurrence of multiple nationalities?

それほど重大な弊害が複数国籍により生じるのか。

Is such a serious harm caused by multiple nationalities?

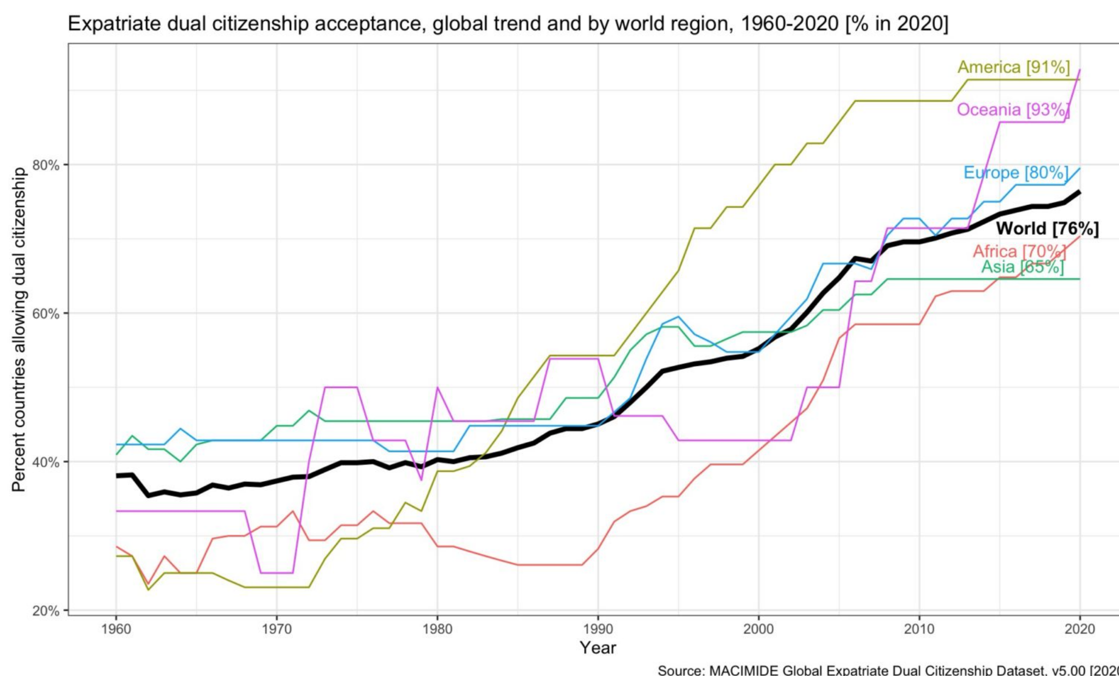
諸外国の状況

外国の国籍を取得した自国民から、国籍を自動的に喪失させない国は、２０２４年には世界の７７％を超えている。

The number of countries that do not automatically lose their nationality (original nationality) from their citizens who acquire the nationality of a foreign country exceeds 77% of the world in 2024.

（参考情報）

Vink, Maarten; De Groot, Gerard-Rene; Luk, Ngo Chun, 2015, "MACIMIDE Global Expatriate Dual Citizenship Dataset", doi:10.7910/DVN/TTMZ08, Harvard Dataverse, V5 [2020].



複数国籍を肯定する国が増え続けている理由

Why more and more countries are affirming multiple nationalities?

① 弊害がないという認識が広がってきた。

(i) There is a growing recognition that there are no harmful effects.

② 個人のアイデンティティや幸福追求を保障すべきという意識が広がってきた。

(ii) There is a growing awareness that individual identity and the pursuit of happiness should be guaranteed.

③ 外国に移住した自国民が居住国の国籍を取得して活躍することが、自国にも有益であるという認識が広がってきた。

(iii) There is a growing recognition that it is beneficial to the home country for its own citizens who have immigrated to a foreign country to acquire the nationality of the country of residence and to play an active role.

④ 移民受入国では、包摂や統合のために移民が帰化しやすい条件をつくることが、自国の利益になるという認識が広がってきた。

(iv) There is a growing recognition in migrant-receiving countries that it is in their interest to create conditions that facilitate the naturalization of immigrants for the sake of inclusion and integration.

⑤ 国際的な人材獲得競争を勝ち抜くうえで、複数国籍を肯定することにメリットがあるという認識が広がってきた。

(v) There is a growing recognition that there are advantages to affirming multiple nationalities in winning the international competition for human resources.

Cf. 日本政府が主張する複数国籍の弊害

Cf. The harmful effects of multiple nationalities claimed by the Japanese government.

① 外交保護権の衝突（Conflict of diplomatic protection）

←国際慣習法で解決済み

（1930 年ハーグ国籍法抵触条約第 1 章の一般原則（外交保護権に関する第 4 条も含まれる）は国際慣習法となっている。また、ノッテボーム事件判決、国際司法裁判所 1955 年 4 月 6 日。）

Already settled by customary international law.

（The general principles found in Chapter 1 of the 1930 Hague Convention on Certain Question relating to the Conflict of Nationality Laws, which includes article 4th that regulates conflict of diplomatic protection, have become customary international law. *"International standards on nationality law: texts, cases and material", Gerard-Rene de Groot and Olivier Willem Vonk, p87.* / Nottebohm Case Judgment, International Court of Justice, April 6, 1955）

② 兵役の衝突（Conflict of conscription, duty of military service）

←日本に兵役はない。現在の憲法は徴兵制度を禁止している。

There is no conscription, military service in Japan. Present Constitution of Japan prohibits conscription.

③ 納税義務の衝突（Conflict of tax liability）

←納税義務は通常、国籍によらない。国籍による納税義務を日本政府が創設した場合、それが嫌な複数国籍者は日本国籍を離脱して解決できる。

The obligation to pay taxes is usually independent of nationality. If the Japanese government establishes a tax obligation based on nationality, a person with dual nationalities who does not like it can resolve the problem by renouncing Japanese nationality.

④ 適正な入国管理の阻害（Obstruction of an adequate immigration control）

←適正な旅券で出入国する限り、問題はない。

As far as they enter and leave the country with proper passports, there is no problem.

⑤ 重婚の発生（Breeding ground of bigamy, multiple marriage）
←複数国籍とは無関係。
It has nothing to do with multiple nationalities.

⑥ 単一国籍者が享受できない利益を享受する者の発生（They will enjoy rights and merits which mono-national Japanese cannot enjoy.）
←意味不明。
Nonsense.

（２）Article 13 of the Constitution

Article 13.　All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

国籍法１１条１項は、個人のアイデンティティを毀損し、外国で幸福追求する権利を侵害する。

Article 11(1) of the Nationality Law damages the identity of individuals and violates their right to pursue happiness in a foreign country.

(3) Article 14(1) of the Constitution

Article 14（１）.　All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

外国国籍を外国の法律により与えられた場合、出生時に複数の国籍を取得する場合、外国人が日本国籍を取得する場合には、複数国籍の発生を許容し、複数国籍の存続を許容している。日本国民が外国国籍を志望により取得した場合にのみ複数国籍を徹底して防止するのは差別である。

When foreign nationality is conferred by foreign law, when multiple nationalities are acquired at birth, or when a foreigner acquires Japanese nationality, the occurrence of multiple nationalities is allowed and the retention of multiple nationalities is permitted. It is discriminatory to thoroughly prevent multiple nationalities only when a Japanese citizen has acquired foreign nationality by choice.

外国国籍を外国の法律により与えられた日本国民、出生時に複数の国籍を取得した日本国民、外国人が日本国籍を取得して複数国籍になった場合に、日本国籍を喪失させる制度はある。しかしこれらの場合には、法律を知らなかったために日本国籍が喪失させられないよう、事前の告知の制度がある。ところが国籍法１１条１項は、この条文を知らなかった人の日本国籍も自動的に喪失させてしまう。これは差別である。

There is a system that allows Japanese nationals who have been granted foreign nationality by foreign law, Japanese nationals who acquired more than one nationality at birth, and foreigners who acquire Japanese nationality and become multiple nationals to lose their Japanese nationality. In these cases, however, there is a system of prior notification to ensure that Japanese nationality is not forfeited due to ignorance of the law. However, Article 11, Paragraph 1 of the Nationality Law automatically forfeits Japanese nationality to those who were unaware of this article. This is discrimination.

（4）Article 22(2) of the Constitution

Article 22（２）.　Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

憲法２２条２項は日本国籍を離脱する自由とともに離脱しない自由を保障している。これは憲法の条文の一般的な解釈手法により導かれる。実質的に考えても、日本国籍を離脱しない自由がないとすると、いつ離脱するかを決める自由もなくなるから、離脱する自由を保障しないのと同じことになってしまう。

Article 22, paragraph 2 of the Constitution guarantees the freedom to renounce Japanese nationality as well as the freedom not to renounce it. This is guided by a general method of interpretation of the Constitution's articles. Practically speaking, if there is no freedom to not renounce Japanese nationality, it would be the same as not guaranteeing the freedom to renounce, since there would be no freedom to decide when to renounce.

（5）Article 31 of the Constitution

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

財産の没収ですら告知や聴聞の機会が憲法で保障されるのに、日本国籍という重要な地位が本人の知らないうちに失われるのは不合理である。

It is absurd that an important status such as Japanese nationality can be lost without the person's knowledge, when the Constitution guarantees notice and an opportunity for a hearing even for the confiscation of property.

（6）Article 98(2) of the Constitution

Article 98(2). The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Universal Declaration of Human Rights

Article 15(2). No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness

https://www.refworld.org/docid/5ec5640c4.html

５． なぜ裁判所は国を勝たせるのか

5. Why do the courts let the state win?

東京訴訟で最高裁判所第一小法廷は、２０２３年９月２８日、重要で新しい憲法問題が提起されているのに、明確な理由を示さずに、棄却した。

In the Tokyo case, the First Petty Bench of the Supreme Court dismissed the case on September 28, 2023, without giving clear reasons, even though an important and new constitutional issue was raised.

原告らは、１０月２６日、それは違法であると考えて再審の訴えを提起したが、それも第一小法廷が１２月４日に棄却した。

On October 26, the plaintiffs thought that was illegal and filed a motion for an examination of the judgement of September 28, which was also dismissed by the First Petty Bench on December 4.

原告らは、それは「公平な裁判所の公正な審理を受ける権利」（ICCPR 第１４条）に違反するとして、２０２４年１月４日、再び再審の訴えを提起した。しかし、それも第一小法廷が担当することになった。最高裁判所がちゃんと機能していない。

On January 4, 2024, the plaintiffs again filed a motion for an examination of the recent judgement claiming that this violated their "right to a fair and public hearing by a competent, independent and impartial tribunal" (Article 14 of the ICCPR). However, that, too, was assigned to the First Petty Bench. The Supreme Court is not functioning properly.

最高裁判所でいわゆる「３行半」の棄却決定(明確な理由の書かれていない棄却決定)が出るのは、最高裁判所事務総局が選び抜いたエリート裁判官たち（調査官と呼ばれる）が、棄却すべきであると判断して、最高裁裁判官に報告した場合。この場合、最高裁裁判官はそれを持ち回り決済で処理し、詳しく検討をしない。

The so-called "three and a half line" dismissal decision (a decision to dismiss without a clear written reason) in the Supreme Court is issued when a group of elite judges (called investigators), selected by the Supreme Court General Secretariat, decide that the case should be dismissed and report it to the Supreme Court judges. In this case, the Supreme Court judges handle it in a rotating settlement and do not consider it in detail.

最高裁判所事務総局の影響が大きいのではないか。そして、最高裁事務総局に大きな影響を持っているのが、法務省や財務省、内閣府などの官僚組織。日本の官僚組織の常として、国が間違えたということを認めたくないのではないか。
The influence of the Supreme Court Administrative Office may be significant. And the bureaucratic organizations that have a great influence on the Supreme Court Administrative Office are the Ministry of Justice, the Ministry of Finance, and the Cabinet Office. As is usual in the Japanese bureaucracy, they do not want to admit that the government made a mistake.

明治憲法下の官僚体制と政治家たちが残ったことで、国民を「臣民」とみなす意識もそのまま残り、新憲法が現実の政治体制に反映されずに現在に至ってしまった。
The bureaucratic system and politicians under the Meiji Constitution remained in place, as did the sense that the people were considered "subjects," and as a result, the new Constitution has not been reflected in the actual political system and judicial system to date.

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