Validation of acts of Prime Minister and Ministers

5. Acts done by the Prime Minister and by Ministers prior to the conferment of their powers by the Provisional Government are hereby given effect retroactively.

Acts of officers

6. No act done by any judge, police officer, government officer or competent authority shall be invalidated on the ground that it was done by him before he was appointed in accordance with the law or before he received authority to do such act.

Application of Ordinances

7. Sections 3, 5 and 6 of this Ordinance apply to Ordinances signed and acts done between the 6th Iyar, 5708 (15th May, 1948) and the date of the coming into force of this Ordinance.

Title

8. This Ordinance may be cited as the "Law and Administration (Further Provisions) Ordinance, 5708-1948".

David BEN-GURION
Prime Minister

Felix ROSENBLUETH
Minister of Justice

24th Sivan, 5708 (1st July, 1948)

Japan

Transmitted by a note verbale *dated 15 June 1964 of the Permanent Mission to the United Nations*

A. TREATIES

(a) MULTILATERAL INSTRUMENTS

TREATY OF PEACE WITH JAPAN. SIGNED AT SAN FRANCISCO, ON 8 SEPTEMBER 1951[1]

. . .

Article 2

(*a*) Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.

(*b*) Japan renounces all right, title and claim to Formosa and the Pescadores.

. . .

Article 4

(*a*) Subject to the provisions of paragraph (*b*) of this Article, the disposition of property of Japan and of its nationals in the areas referred to

[1] United Nations, *Treaty Series*, vol. 136, p. 45. Came into force intially on 28 April 1952.

in Article 2, and their claims, including debts, against the authorities presently administering such areas and the residents (including juridical persons) thereof, and the disposition in Japan of property of such authorities and residents, and of claims, including debts, of such authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities. The property of any of the Allied powers or its nationals in the areas referred to in Article 2 shall, in so far as this has not already been done, be returned by the administering authority in the condition in which it now exists. (The term nationals whenever used in the present Treaty includes juridical persons.)

(*b*) Japan recognizes the validity of dispositions of property of Japan and Japanese nationals made by or pursuant to directives of the United States Military Government in any of the areas referred to in Articles 2 and 3.

(*c*) Japanese owned submarine cables connecting Japan with territory removed from Japanese control pursuant to the present Treaty shall be equally divided, Japan retaining the Japanese terminal and adjoining half of the cable, and the detached territory the remainder of the cable and connecting terminal facilities.

(b) Bilateral instruments

Treaty of Peace between the Republic of China and Japan. Signed at Taipei, on 28 April 1952[1]

. . .

Article II

It is recognized that under Article 2 of the Treaty of Peace with Japan[2] signed at the city of San Francisco in the United States of America on September 8, 1951 (hereinafter referred to as the San Francisco Treaty), Japan has renounced all right, title and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratly Islands and the Paracel Islands.

Article III

The disposition of property of Japan and of its nationals in Taiwan (Formosa) and Penghu (the Pescadores), and their claims, including debts, against the authorities of the Republic of China in Taiwan (Formosa) and Penghu (the Pescadores) and the residents thereof, and the disposition in Japan of property of such authorities and residents and their claims, including debts, against Japan and its nationals, shall be the subject of special arrangements between the Government of Japan and the Government of the Republic of China. The terms nationals and residents whenever used in the present Treaty include juridical persons.

---

[1] United Nations, *Treaty Series*, vol. 138, p. 3. Came into force on 5 August 1952.

[2] See section A, (a) above.

B. LAWS AND DECREES

CIRCULAR DATED 19 APRIL 1952 OF THE DIRECTOR OF THE CIVIL AFFAIRS BUREAU, MINISTRY OF JUSTICE, ON THE HANDLING OF MATTERS CONCERNING THE NATIONALITY AND FAMILY REGISTRATION OF THE KOREANS AND FORMOSANS AFTER THE CONCLUSION OF THE PEACE TREATY.[1]

With the forthcoming entry into force of the Peace Treaty (hereinafter referred to as the Treaty) the matters concerning the nationality and family registration shall be handled by the following principles. . .:

(1) Korea and Formosa

(i) As Korea and Formosa are to be detached from the Japanese territory as from the date of entry into force of the Treaty, all Koreans and Formosans including those residing in Japan proper, shall lose their Japanese nationality, *ipso facto*, as of this date.

(ii) Those who are Koreans or Formosans by origin but with whom grounds have subsequently arisen to be entered in the Family Register of Japan through such personal procedures as marriage with or adoption by Japanese effected prior to the entry into force of the Treaty are regarded as Japanese, and shall retain their Japanese nationality without going through any procedures after the entry into force of the Treaty.

(iii) Those who are Japanese by origin but who have had grounds to be removed from the Family Register of Japan through such personal procedures as marriage with or adoption by Koreans or Formosans effected prior to the entry into force of the Treaty are regarded as Korean or Formosan and shall lose their Japanese nationality with the entry into force of the Treaty.

No entry will be necessary in the Family Register, from which the persons mentioned above have been removed, of the fact of the loss of Japanese nationality.

(iv) After the entry into force of the Treaty, the former procedures will be abolished, according to which a Japanese by origin is transferred to the Korean or Formosan Family Register and a Korean or Formosan is transferred to the Family Register of Japan, as the case may be, through such personal procedures as adoption, marriage, dissolution of adoption or divorce.

(v) After the entry into force of the Treaty, a Korean or Formosan can only acquire Japanese nationality through the procedures of naturalization for aliens in general, according to the provisions of the Nationality Law of Japan.

In the case of the aforementioned naturalization, a Korean or Formosan (those of Japanese origin mentioned in (iii) above excepted) shall not come under "those who were of Japanese nationality" as stipulated in Article 2, Paragraph 2 of the Nationality Law nor under "those who lost Japanese nationality" as stipulated in Article 6 Paragraph 4 of the same law.

. . .

[1] Homo-fu Minji-ko No. 438.

C. DECISIONS OF NATIONAL COURTS

SUMMARIES AND EXTRACTS FROM DECISIONS

1. *Cases involving Koreans*

(a) *Kôbe District Court*

Pai Ho Sun v. *Shin Chan Shik: Decision of 25 April 1952 (Divorce (Ta) 14 of 1951)*[1]

Nationality of a Korean residing in Japan prior to the conclusion of the Peace Treaty

A petition by the plaintiff for conciliation procedures for divorce at Kobe Family Court having failed, an action for divorce was instituted by the same.

Held: "As the nationality of Koreans who have been continuously residing in Japan since September 2, 1945, is pending until the final decision is made at the Peace Conference and a treaty is subsequently concluded between Japan and Korea after the Peace Conference, the parties concerned hold the Japanese nationality and are therefore subject to laws of Japan." The Court applied the Civil Affairs Ordinance for Koreans, in accordance with Article 2 of *Kyôtsûhô* (the Law concerning the Principles of Application of Laws for Civil and Criminal Affairs between the subjects of the territories under differing legal systems but under the sovereignty of Japan; promulgated in 1918) and *Hôrei* (the Law concerning the Application of Laws).

(b) *Nagoya District Court*

Tàmako Arai v. *Shakusai Arai: Decision of 20 May 1952 (Divorce (Wa) 44 of 1951)*[2]

Nationality of a Korean residing in Japan prior to the conclusion of the Peace Treaty — Nationality of a Japanese woman married to a Korean.

Plaintiff suing for divorce entered into cohabitation with a Korean in 1942 and went through the formality of registration of marriage in March 1945.

Held: "Both the plaintiff and the defendant are aliens." The Court applied the laws of Japan on the grounds that it was unable to ascertain the contents of the laws enforced in Korea in April 1947, *lex patriae* of the husband at the time of occurring of the cause of divorce.

(c) *Nagoya District Court*

Haruko Iwamoto v. *Tokuji Iwamoto: Decision of 29 May 1954 (Divorce (Ta) 6 of 1953)*[3]

The Peace Treaty and nationality of Koreans — Nationality of a Japanese woman married to a Korean

The plaintiff, a Japanese woman married to the Korean defendant prior to the conclusion of the Peace Treaty, sued for divorce from the latter.

---

[1] III Kakyû Saibansho Minji Saitan Rei Shû [Collection of Lower Court Civil Cases] (hereinafter cited as "Ka Min Shû") 580.

[2] III Ka Min Shû 676.

[3] V Ka Min Shû 788.

Held: "Japan recognized the eventual independence of Korea through the acceptance of the Potsdam Declaration in the Instrument of Surrender, and the territories to be alienated to Korea were actually detached from Japan. It recognized the independence of Korea by virtue of Article 2 (*a*) of the Treaty, but the Treaty contains no provisions concerning the nationality of Koreans after the independence; nor does there exist any treaty concluded between Japan and Korea. It is to be concluded, however, that since Japan has recognized the independence of Korea, all Koreans shall *ipso facto* acquire the Korean nationality and lose the Japanese nationality with the entry into force of the Peace Treaty, and that even those Japanese by origin who have been removed from the Family Register of Japan through marriage with a Korean before the entry into force of the Treaty, shall acquire the Korean nationality and lose the Japanese nationality as well with the entry into force of the Treaty."

(d) *Hiroshima District Court*

Heijutsu Hirayama v. *Otsurei Hirayama: Decision of 23 September 1955 (Divorce (Ta) 11 of 1954)*[1]

Nationality of Korean residents in Japan before the entry into force of the Peace Treaty.

This is a case involving the question of determining the proper law for the case, *lex patriae* of the plaintiff in the autumn of 1948, the time of occurrence of the cause of divorce.

Held: "Prior to April 28, 1952, the date of the entry into force of the Peace Treaty, the laws of Japan shall apply to Korean residents in Japan, since they are regarded as holding the Japanese nationality as before. Therefore, the laws of Japan shall be considered *lex patriae* of the plaintiff." The Court decided on the basis of *ratio legis*, on the ground that the proper law, the Civil Affairs Ordinance for Koreans, being out of effect by the time, there existed no *lex patriae* to apply to the Korean residents in Japan.

(e) *Nagoya District Court*

Chung Sun Dong v. *Kim Pen Ryon: Decision of 30 October 1956 (Divorce (Ta) 22 of 1956)*[2]

Acquisition and loss of territory and laws concerning personal status

The parties involved, both of whom are Koreans, were legally married in Japan proper in 1938 according to the formalities of Japan. Immediately after the end of the war in 1945 the defendant left the plaintiff saying that she would return to Korea alone. But she had since been neither seen nor heard except that she seemed to have moved to Kyoto in April 1950, and has been considered missing for more than three years.

Held: "The fact that the Government of Korea was established on August 4, 1948, that the inauguration of her independence was celebrated on the 15th of that month, that Japan recognized the independence of Korea by virtue of Article 2 of the Peace Treaty, and that

[1] VI Ka Min Shû 2048.
[2] VII Ka Min Shû 3071.

Treaty entered into force on April 28, 1952, . . . does not affect the applicability of the laws of Japan regulating heretofore the personal status of those Koreans, who were residents in Japan before October 1945, the year of the cessation of hostilities as well as of those Koreans who have been residents in Japan continuously since before the war. The reason is that on the occasion of independence of a part of a country, the detachment of territory or the change of nationality does affect the sovereign jurisdiction but laws concerning personal status which regulate social life of individual citizens cannot be affected *ipso facto* by such detachment or change." The court stated further: "the question as to whether the Civil Code of Japan or the Korean Race Law, both of which were laws of Japan at the time, is to be applied in the case, should be solved by the principles governing the conflict between the State law and a district law, now that the *Kyotsuho* has become out of effect due to Japan's having been placed under the Allied Powers' Control."

The Court, however, applied, in accordance with Article 16 of *Hôrei* [the Law for Application of Laws of Japan], the Korean Race Law as proper law of divorce without demonstrating that this is the *lex patriae* of the plaintiff, the husband.

(*f*) *Kumamoto Family Court*

Choe Ryong Chon v. *Choe I Su*: *Decision of 24 December 1956 (Conciliation procedures on the confirmation of nullity of recognition (Ka-I) 25 of 1956)*[1]

Peace Treaty and Nationality of Koreans residing in Japan

The petitioner is a child born out of wedlock between the deceased third party A and the deceased third party B. When A married respondent, the petitioner, a child born in her previous cohabitation with B, was maintained by respondent. The latter recognized the former as his own child, and the petitioner requested the Court to confirm that the recognition is null and void. Article 18 of *Hôrei* [the Law for Application of Laws of Japan] provides that the recognition of a child is governed by *lex patriae* of the father. In this case, therefore, the question was which law was *lex patriae* at the time of recognition of the child by the respondent.

Held: "The Korean residents in Japan lost Japanese nationality with the entry into force of the Peace Treaty", and the Korean Civil Affairs Ordinance, i.e. *lex patriae* of the father at the time of recognition went out of effect, and therefore is not applicable in this case. The Court decided the case on the basis of *ratio legis*.

(*g*) *Sendai High Court*

Japan v. *O. Gyong Hi*: *Decision of 13 March 1958 (Case of the use of counterfeit official document and seal and the violation of the Alien Registration Law (U) 566 of 1957)*[2]

---

[1] 9 Katei Saibansho Geppo [Monthly Report of Family Court] 32.

[2] 11 Kôtô Saibansho Keiji Hanrei Shû [Collection of High Court Criminal Cases] (hereinafter cited as "Kô Sai Kei Shû") 163.

Independence of Korea and nationality

This is a case of a violation of the Alien Registration Law. The defendant, son of a Korean by origin, contended that he had not actually lost his Japanese nationality.

Held: "In cases where part of the territory of a State has become independent, seceding from the rule of the mother State, the change in nationality of some of the inhabitants in that territory *ipso facto* follows. It is usual that with independence of part of the territory of a State, the nationality of those originated and residing in that part changes; but this is not necessarily the case with those who originated from the newly independent part but residing within the territory of the mother country. There is no established principle of international law on this point, and the question as to who among those people should be subject to change of nationality is usually determined by a treaty between the parties concerned. There has been, however, no treaty concerning the question of nationality between Japan and Korea (whether the Republic of Korea or the Democratic People's Republic of Korea). Nevertheless, since recognition by Japan of the independence of Korea under the provisions of the Peace Treaty is no other than its recognition of the restoration of Korean independence lost by the annexation by Japan of the formerly independent Korean State, Japan must admit by this recognition of independence that all Koreans, including those who held Korean nationality at the time of annexation and those who are considered naturally to have had it if there had been no annexation, should lose Japanese nationality, irrespective of whether or not they now reside in Korea or in Japan. Accordingly, it can be concluded that after the entry into force of the Peace Treaty all Koreans have lost the Japanese nationality and aquired the status of aliens at least for the purposes of domestic laws of Japan, without regard to the conclusion of a treaty between Japan and Korea concerning the question of nationality of Koreans."

(*h*) *Tokyo High Court*

Japan v. *Chung Sam Ja: Decision of 8 August 1959 (Violation of the Alien Registration Law (U) 1773 of 1957)*[1]

Status of Korea before the Conclusion of the Peace Treaty — Peace Treaty and Nationality of Koreans — Nationality of a Japanese woman married to a Korean

The defendant was married to a Korean on 19 October, 1950, and was resident in Japan ever since. She was prosecuted for failure to apply for an Alien Registration certificate as required by the law, after the entry into force of the Peace Treaty.

Held: "Although Korea was actually not under the Japanese administration during the period from the cessation of hostilities to the entry into force of the Peace Treaty, it was still under the sovereignty of Japan in the eyes of the laws of Japan, and the Koreans had the Japanese nationality." . . . "With the entry into force of the Treaty, however, all Koreans are considered to have lost the Japanese nationality and to have become aliens, by virtue of the provisions of Article 2 (*a*), regaining their status before the annexation. It is proper to consider that the

[1] 12 Kô Sai Kei Shû 692.

Koreans referred to herein include, first, all those who had Korean nationality at the time of annexation and, second, all those who would have had the Korean nationality if there had been no annexation; that those referred to in the second category shall be those who were entered in the Korean Family Register and those who had cause to be entered in the said Register after the annexation." Accordingly, it was held that the defendant, a Japanese woman who was married to a Korean prior to the entry into force of the Peace Treaty "had become an alien losing her Japanese nationality".

(*i*) *Tokyo High Court*

Japan v. *Tori Kim: Decision of 8 August 1959 (Violation of the Alien Registration Law (U) 2350 of 1957)*[1]

Peace Treaty and Nationality of Koreans

Defendant is a Japanese woman who had become *de facto* wife of a Korean before the entry into force of the Peace Treaty and was removed from the Family Register, in which she was originally entered, on the ground that she would bear the family name of the husband. Their marriage, however, was not entered in the Korean Family Register at the place of the permanent domicile of her husband. In the trial the Defendant's nationality was discussed.

Held: "Even after the cessation of hostilities the Koreans continued to hold the Japanese nationality, until the time when Japanese sovereignty over Korea became extinct with the conclusion of the Peace Treaty. . . . Upon the entry into force of the Treaty all Koreans are considered to have lost their Japanese nationality and have become aliens regaining the status before the annexation."

(*j*) *Oita District Court*

Soe Shibata v. *Eiji Yoshinari: Decision of 12 July 1960 (Divorce (Ta) of 1960)*[2]

Nationality of Koreans before the conclusion of the Peace Treaty — Existence of two governments in Korea

The plaintiff, a Japanese woman, married the defendant, a Korean, in January 1948 and went through the registration of marriage as required by the law of Japan. The defendant was a man of loose morals and cohabited with another woman begetting a child by her in 1956. Later, he lived with another woman again and transferred residence to another prefecture together with this woman, and had since been missing. The plaintiff, therefore, sued for divorce.

Held: "It can be construed that on 2 September 1945 Korea seceded from the sovereignty of Japan and regained the status of an independent country and thereupon the Koreans lost Japanese nationality and regained or acquired Korean nationality." The Court took the view that the *Kyotsuho* which had hitherto been in force for the regulation of legal relations between Japan and Korea had *ipso facto* lost its force, and with respect to legal relations between Japanese and Korean nationals, *Hôrei* should apply as the rules regulating the conflict of laws. Under

[1] 227 Hanrei Jihô [Law Times Report] 36.
[2] XI Ka Min Shû 1470.

Article 13 of *Hôrei* the validity of a marriage in 1948 should be decided by *lex patriae* of both parties. "In investigating the *lex patriae* of the defendant, the fact must be taken into consideration that there now exist two governments in Korea, each of which claims to be the legitimate government of the whole Korea, and that in reality each of them respectively exercises control over North and South Korea divided by 38th parallel of latitude. Accordingly, it is proper to apply *mutatis mutandis* Article 27, Paragraph 3 of *Hôrei* in determining which is *lex patriae* of the defendant. Since his permanent domicile exists in South Korea, the area which is under the control of the Republic of Korea, and since in the present case there are no special circumstances to take into consideration, e.g. that the defendant was repatriated to North Korea of his own accord, the law of the Republic of Korea can be accepted as the proper law in the present case."

(*k*) *Tokyo High Court*

Japan v. *Kino Yamamura: Decision of 30 November 1960 (Violation of the Alien Registration Law (U) 906 of 1960)*[1]

Personal status of Korean residents in Japan before the conclusion of the Peace Treaty — Treaty and the nationality of Koreans — Nationality of a Japanese woman married to a Korean

The defendant was married to a Korean in Japan before the entry into force of the Peace Treaty. She was prosecuted for failure to apply for the alien registration as required by the law of Japan.

Held: Under the Korean Family Registration Ordinance (applicable to the entry into the Family Register of this couple), as well as under the Korean Civil Affairs Ordinance (applicable to the defendant's marriage to a Korean), the defendant had become a Korean, and hence had been obligated to go through the procedure of applying for alien registration under Article 4 and other related provisions of the Alien Registration Law of 1947.

The Court stated: "The question of nationality as is at issue in this case should be settled formally by an international treaty to be concluded between Japan and Korea, whose independence has been recognized by Japan under the Peace Treaty. Until such formal settlement, a case involving the question of nationality has to be decided under the domestic laws of Japan, by reference to the relevant provisions of the Peace Treaty and to the State practice in international law concerning the problem as to who should become nationals of the newly independent State which has attained its independence by the cession of territory and other causes, i.e. the problem of acquisition of the new nationality and of loss of the former nationality." And the Court stated further: "Since Korea's independence was recognized by Japan by virtue of the provisions of the Peace Treaty, it is proper to consider, in accordance with State practice in the matter of international law and having regard to the contents of the Potsdam Declaration which Japan has accepted and the Cairo Declaration referred to therein, as well as having regard to the circumstances of the annexation of Korea by Japan, that the Koreans

[1] 13 Kô Sai Kei Shû 718.

who are to acquire Korean nationality and lose Japanese nationality shall include all those who held Korean nationality at the time of annexation and also all those who would have acquired Korean nationality if Korea had not been annexed to Japan; and that those who would have held the Korean nationality if there had been no annexation shall include those who were entered in the Korean Family Register and those who had cause for being entered in it after the annexation."

(*l*) *Supreme Court (Grand Bench)*

Masako Kanda v. *Japan: Decision of 5 April 1961 (Case of the confirmation of holding Japanese nationality (0) 890 of 1955)*[1]

Nationality of a Japanese woman married to a Korean — Recognition of the independence of Korea by the Peace Treaty resulted in loss of Japanese nationality by Koreans

The appellant, a Japanese by origin, was married to a Korean in 1935. She obtained a decree for divorce on the ground of wilful desertion at the Tokyo District Court in 1952. However, the responsible officer for the Family Register in Tokyo declined to reeeive the application for the registration of divorce based on the said decree, holding that she had lost her Japanese nationality in accordance with the Circular dated 19 April 1952 of the Director of the Civil Affairs Bureau of the Ministry of Justice.[2] The appellant thereupon brought this suit for a decision to confirm her Japanese nationality, After failing in the Court of the second instance, to which the State appealed from the decision of the Court of the first instance in her favour, she appealed to the Supreme Court.

Held: "There is no doubt that a change in nationality is provided by an alteration in territory. There is no established principle in international law with regard to such change of nationality. It is customary that the question is settled, either expressly or implicitly as the case may be, by provisions in a treaty. Accordingly, it is proper to construe that the Constitution of Japan purports to recognize that the change of nationality accompanying the transfer of territory may be effected by a treaty.

"Article 2 (*a*) of the Peace Treaty provides, in short, that Japan recognizes the independence of Korea and renounces the sovereignty over the territory belonging to Korea. There is no doubt that by these provisions Japan renounces not only the territorial sovereignty (*dominium*) over the territory belonging to Korea, but also the personal sovereignty (*imperium*) over those persons who are to belong to Korea . . .

"This means that those persons who are to belong to Korea shall lose the Japanese nationality. It is proper to consider that those persons who are to belong to Korea are those who have had the legal status of Koreans under the laws of Japan after the annexation of Korea by Japan. Those who have had the legal status of Koreans are those who were subject to the Korean Family Registration Ordinance and were in fact entered in the Korean Family Register . . .

"In the case where a Japanese woman was married to a Korean, was

[1] XV Saikô Saibansho Minji Hanrei Shû [Collection of Supreme Court Civil Cases] 657.

[2] See section B above.

entered thereby in the Korean Family Register and removed from the Japanese Family Register . . ., she must be considered in law to have lost her Japanese nationality and to have acquired the Korean nationality. . . . During the period when Japan was under the control of the Allied Powers, there was a legal distinction between those who had the legal status of Koreans and those who had the legal status of Japanese. . . . Thus the distinction was consistently maintained from the time of the annexation of Korea by Japan and remained unchanged during the period of occupation. The Peace Treaty was concluded in this legal situation, and Japan recognized the independence of Korea and renounced the sovereignty over the people who were to belong to Korea, causing them to lose their Japanese nationality. Such being the case, it is proper to consider that those who are to lose Japanese nationality are those who have had the legal status of Koreans under the Japanese law.

"The appellant in the present case is a woman of Japanese origin, but the fact that she was married to a Korean and was entered in the Korean Family Register on July 16, 1935 is confirmed in the decision of the first instance. The appellant thereby acquired under the law the legal status of Korean and lost that of Japanese. By virtue of the provisions of the Peace Treaty, Japan recognised the independence of Korea and caused all those who should belong to Korea to lose their Japanese nationality. Those who should belong to Korea are, as stated above, those who have had the legal status of Koreans. The appellant had this legal status and must therefore be considered to have lost Japanese nationality."

2. *Cases involving Formosans*

(*a*) *Yamagata District Court*

Lin Yuan v. *Wang Chin Tung: Decision of 7 September 1951 (Divorce (Ta) 7 of 1951)*[1]

Application of Japanese law to the matters relating to personal status of Formosans before the final determination of sovereignty over Formosa

The parties concerned, both of whom are Formosans, were married at Tsuruoka City in 1946 and went through the formality of registration of their marriage at the Chinese Residents Affairs Office of the Chinese Mission of the Allied Powers in Japan. This is a case in which the plaintiff sues for divorce from the defendant.

Held: "After the surrender of Japan in this war, the Formosans were placed outside the sovereignty of Japan. It is accordingly natural that the actual political situation which has taken place in Formosa may cause the Formosans to be treated substantially as aliens in certain cases. But the sovereignty over the Formosan territory being not yet finally determined today, matters relating to their personal status in the field of private law, which have nothing to do with the exercise of sovereignty must be decided by maintaining the existing legal system of Japan and applying it as it stands."

[1] II Ka Min Shû 1075.

(*b*) *Nagasaki District Court*

Yang Shizuko v. *Yang Mao Sheng: Decision of 19 February 1956 (Divorce (Ta) 20 of 1955)*[1]

Nationality of a Japanese woman married to a Formosan

The plaintiff, a Japanese woman, and the defendant, a Formosan, were married at Shanghai and went through the formality of registration of marriage with the Consul-General of Japan in Shanghai in 1943. The parties moved to Taipei in 1947. The defendant left by himself for Hongkong or thereabouts in 1948 and had since been missing. The plaintiff returned to Japan and brought an action for divorce.

Held: "It is recognized that the defendant is a Formosan and the plaintiff is a Japanese . . . since it is accepted that even after Formosa has been detached from Japan, a Japanese who is married to a Formosan does not lose her Japanese nationality." With regard to the applicable law for the present case of divorce, the Court held that the fact of wilful desertion, which took place before the detachment of Formosa from Japan pursuant to the entry into force of the Peace Treaty, has continued up to now and hence this fact as the cause for divorce still exists and that therefore the proper law to govern the present case is "*lex patriae* of the defendant, i.e. the Civil Code of the Rebublic of China".

(*c*) *Tokyo District Court*

Shozo Azuma and Yoshiko Azuma v. *Japan: Decision of 11 September 1958 (Confirmation of Japanese nationality (Gyô) 11 of 1955)*[2]

Status of Formosa and Nationality of Formosans during the period from the surrender to the conclusion of the Peace Treaty

The plaintiff, Shozo Azuma, who was a Formosan by birth, was married in 1929 to A, the third party, who was a Japanese woman by origin; he was entered in the Family Register of his wife as an incoming husband. Later, he was divorced from her by agreement in March 1946, and changed his family name to the present one. The defendant claimed that since the plaintiff should have formed a new Family Register of his own in Formosa consequent upon this divorce, he had lost the Japanese nationality with the entry into force of the Peace Treaty.

Held: "The Instrument of Surrender [signed on 2 September 1945] has not only effected the cessation of hostilities but also politically determined, except for certain small islands, the extent of territories to be retained by Japan . . . During the period between the signing of this instrument and the conclusion of the Peace Treaty, Japan was under the control of the Allied Powers and did not exercise her sovereignty over Formosa. Under the Allied policy of control over Japan, the Formosans were treated as so-called liberated nation and distinguished from the Japanese. Further, Article 2 (*b*) of the Peace Treaty provides that Japan renounces all right, title and claim to Formosa and the Pescadores. Judging from these facts, it is proper to consider that as far as Formosa is concerned Japan already renounced its sovereignty over that island

[1] VII Ka Min Shû 300.

[2] IX Gyôsei Jiken Saiban Rei Shû (collection of judicial precedents concerning administrative cases) 2087.

by accepting the Potsdam Declaration and that the conclusion of the Treaty is the confirmation of this fact". And as to the determination of the nationality of Formosans, the Court, referring to the contents of paragraph 3 of the Cairo Declaration, took the view that "the Formosans are those who would have had Chinese nationality if Japan had not annexed Formosa . . . Accordingly, it must be concluded that the Formosans have lost their Japanese nationality as a result of the signing of the Instrument of Surrender above referred to". Thus it was concluded that "a Formosan who acquired the personal status of a Japanese by reason of marriage as an incoming husband with a woman who was a Japanese by origin when the *Kuôtsûhô* was in force, from analogy of the provisions of Article 5 item 2 of the former Nationality Law then in force, should not be deemed to have lost his Japanese nationality as a result of the signing of the Instrument of Surrender; and the question as to whether the said Formosan has lost his Japanese nationality by the later change if his personal status should be decided by the application of the Nationality Law as applied to the aliens in general. The Court, by applying Article 19 of the former Nationality Law of 1946, decides that since the plaintiff has not acquired Chinese nationality, he still retains the Japanese nationality which he acquired by the marriage as an incoming husband".

(*d*) *Tokyo High Court*

Japan v. *Lai Chin Jung: Decision of 24 December 1959 (Violation of the Immigration Control Ordinance (U) 1714 of 1958)*[1]

Peace Treaty between Japan and the Republic of China — Nationality of Formosans

The defendant, who was born in Formosa in 1932 as eldest son of a Formosan who had permanent domicile on that island, was living there until his unlawful entry into Hongkong in 1956. He was prosecuted on the ground of unlawful entry into Japan, and in connection with the applicability of the Immigration Control Ordinance to the defendant, the question arose as to his nationality.

Held: "Apart from the discussion as to whether the Formosans have lost their Japanese nationality *ipso facto* with the entry into force of the Peace Treaty concluded at San Francisco, Formosa and the Pescadores came to belong to the Republic of China, at any rate on August 5, 1952, when the Treaty between Japan and the Republic of China came into force; and the Formosans who hold Chinese nationality in accordance with the laws of the Republic of China must have lost the Japanese nationality and are to be treated *ipso facto* as nationals of the Republic of China . . . In the Republic of China the Formosans living in Formosa are known to have regained the status of citizenship of that Republic since October 25, 1945, in accordance with the Ordinance for Determination of Nationality of the Formosans residing abroad. Accordingly, the defendant, who is a Formosan by birth and is living on that island, is considered to have acquired the Chinese nationality under the said Ordinance, and, by virtue to the provisions of the Peace Treaty between Japan and the Republic of China he shall *ipso facto* have lost the Japanese nationality and must be treated as a national of the Republic of China holding the citizenship of that country."

[1] X Tokyo Kôtô Saibansho Keiji Hanketsu Jihô [Law Times Report of the Tokyo High Court Criminal Cases] 473.

(e) Osaka District Court

Chang Fukue v. *Chang Chin Min: Decision of 7 June 1960 (Divorce (Ta) 100 of 1959)*[1]

Those who had been entered in the Formosan Register of Personal Status acquired Chinese nationality with the entry into force of the Peace Treaty

The plaintiff, a Japanese woman by birth, went through the ceremony of marriage in March 1946 with the defendant, who had his permanent domicile in Formosa and had been living in Japan proper since before the end of the war. The plaintiff sued for divorce from the defendant on the ground of wilful desertion. The plaintiff had been removed from the Family Register at her permanent domicile by this marriage and yet had not been entered in the family register of the defendant at his permanent domicile.

Held: "Where a man, having his permanent domicile in Formosa and residing in Japan, marries a woman having her permanent domicile in Japan proper and residing therein prior to the entry into force of the Peace Treaty concluded in 1952, the determination as to whether the parties have lost the Japanese nationality they had once held should be made on the basis of the Formosan Register of Personal Status established for the Formosans as a special category, separately from the Family Register of Japan, ever since the establishment of Japanese sovereignty over Formosa. It is therefore proper to understand that those who held such personal status in the Register referred to above have lost Japanese nationality and acquired the nationality of the Republic of China with the establishment of permanent sovereignty of the Republic of China, i.e., with the entry into force of the Peace Treaty in 1952 when the *de jure* change of sovereignty over that territory occurred . . . It must be admitted that since the defendant is a so-called Formosan with his permanent domicile in Formosa, he now holds the nationality of the Republic of China. However, when the plaintiff was married to the defendant, they both had the Japanese nationality; and even if the permanent domicle of the plaintiff be unknown at present, she has not been entered in the Formosan Family Register. Besides, there is no special circumstance to be taken into account, such as the fact that the plaintiff has lost her Japanese nationality, For these reasons, the plaintiff must be a Japanese national".

[1] 241 Hanrei Jihô [Law Times Report] 36.