

Minutes of the ninth meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On November 16, 2021, the ninth meeting of the Family Law Subcommittee of the Legislative Council was held at the Ministry of Justice (in person and online). Nearly all the members and non-voting members attended the meeting. The Chairman, Prof. OMURA Atsushi, presided over the meeting.

During the meeting, the Subcommittee examined the points related to the adoption system, focusing on the adoption system¹ for minors, based on the meeting materials used in the previous meeting.

The members exchanged opinions widely on the following topics:

- (a) Rules concerning the establishment of adoption of a minor (hereinafter referred to as “minor adoption”), including the necessity of permission of the family court in adopting a minor, and whether or not both of the child’s birth parents and any adoptive parents should be involved in the adoption process;
- (b) Rules concerning the effect of minor adoption, including the state of parental authority, the right to inheritance, and the duty of support after adoption; and
- (c) Rules concerning the dissolution of minor adoption.

Concerning (a), on the necessity of permission of the family court for a minor adoption, it was pointed out from the viewpoint of the best interests of the child that the permission of the family court should be required in cases where a lineal descendant of a parent or his/her spouse is adopted, such as adoption of a child from a former marriage or adoption of a descendant. On the other hand, another opinion was presented that it would be unnecessary to obtain the permission of the family court for all minor adoption cases.

Regarding another point mentioned in (a), i.e., on whether or not both of the birth parents should be involved in the adoption process, it was stated (although the current law does not require a separated birth parent who has neither parental authority nor right of custody to be involved) that some sort of involvement should be allowed for such separated parent in the adoption process, but the way of involvement needs to be examined further. On the other hand, another member stated that it would be difficult for a separated parent to judge appropriately whether or not the adoption would be preferable.

Concerning (b), the following comments were presented:

That even if there is a need for adoption where the adopted child would not be given the right to inheritance, it should be kept in mind that there is a risk of prejudice arising between the adopted child and a natural child due to the difference in the status with respect to the right to inheritance;

¹ In Japan, there are two types of adoption: regular adoption and special adoption. In this meeting, regular adoptions are discussed, and the parent-child relationship with the birth parents is not severed in the case of regular adoptions.

That in some cases the adoptive parent should bear the primary duty of supporting a child while in other cases the natural parent should bear the primary duty even after the adoption, so it should be necessary to consider the rules on the priority for the duty of support; and

That even in cases where a stepparent who lives with a child after divorce does not adopt the child of the adoptive parents, rules on child rearing should be established that address the involvement of the stepparent.

With regard to (c), while the opinion was expressed that the permission of the family court should be required even in the case of dissolution of minor adoption, another opinion was expressed that it would be difficult to imagine a case in which the family court should deny the dissolution of adoption despite the situation that both the adoptive parent and the adopted child had consented to the dissolution, and therefore the permission of the family court at the time of dissolution would not be significant.

For its next meeting, it was decided that the Subcommittee would examine issues on the property distribution system.

※These minutes are the responsibility of the Secretariat of the Committee, which has provided this summary of the outcome of the meeting as a preliminary report in English.