

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

On January 25, 2022, the eleventh 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 remaining issues regarding divorce and the related systems based on the meeting materials.

The Subcommittee began by examining how the ruling should address situations in which people other than parents are involved in raising a child: Firstly, discussions were held on situations where third persons, such as grandparents, are taking care of a child. Many viewed this child-rearing situation positively. However, pros and cons were raised with respect to granting a third person, such as a grandparent, the right to petition for conciliation or adjudication of domestic relations regarding the appointment of a custodian or the visitation or other contact with a child. Even if such procedures were to be established, it was pointed out that careful consideration is needed as to the scope of persons eligible to file such petition in order to protect child rearing environment from becoming unstable; Secondly, discussions were held on child rearing in cases where there are multiple parents (natural parents and adoptive parents) for a child. On this point, many expressed positive views over the involvement of more than one parent in child rearing, but again the pros and cons of granting a natural parent the right to petition for conciliation or adjudication of domestic relations regarding the appointment of a custodian etc., even after adoption, were discussed.

Subsequently, the Subcommittee continued discussions on the approach to the codification of basic concepts such as "parental authority and the right of custody" and "child rearing, custody and support" under current laws, as well as on the usage of the terminology. Regarding this point, there raised an opinion that the current laws have no terminology or provision for rights and duties stemming from just being a parent apart from parental authority; therefore, it is necessary to define and codify such legal status. In addition, since the term "parental authority" (*shin-ken*) overemphasizes the aspect of rights, opinions were expressed that words such as "responsibility" and "duty" or words emphasizing "rights and obligations" should be used. Moreover, some commented that instead of considering only the replacement of such concepts under current laws with new terms maintaining the original meaning, an appropriate way of handling problematic

cases should be elaborated, for example, by exempting certain problematic child-rearing situations from the current legal framework, such as the notion of parental authority or the right of custody.

Finally, discussions were held on issues such as whether the right to claim sharing of living expenses between husband and wife living separately should be treated in the same manner as the right to claim child support, and on the procedure for changing a child's surname, taking into consideration the case where the child's surname differs from that of the person with parental authority as a result of remarriage.

At the next and subsequent meetings, the discussions and issues addressed so far will be summarized, and then the second round of discussions on child rearing upon divorce of parents etc. will be held.

※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.