

Provisional Minutes of the 23rd Meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On February 28, 2023, the 23rd 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.

Firstly, the Secretariat reported to the Subcommittee members and non-voting members that – concerning the public comment procedure from December 6, 2022 to February 17, 2023 – over 8,000 comments were received from a tremendous number of organizations and individuals. The Secretariate will document these comments by summarizing them and sharing the summary with the Subcommittee.

Secondly, as a supplementary discussion on other pending issues about the Family Law, the Subcommittee discussed the grounds for judicial divorce set forth in the Japanese Civil Code. Article 770, paragraph 1, item (iv) of the Civil Code stipulates as one of the judicial grounds for divorce: “if a spouse is suffering from severe mental illness and there is no prospect of recovery”. Many Subcommittee members expressed their views that such provisions of the current law should be deleted, pointing out that these provisions may constitute discrimination against persons with mental disabilities, and that it seems appropriate that the severity of a spouse’s mental illness is to be taken into consideration when determining if there is “any other grave cause making it difficult to continue the marriage” as provided in Article 770, paragraph 1, item (v) of the Civil Code.

In addition, the Subcommittee members shared the concepts of General Comment No. 12 and General Comment No. 14 made by the UN Committee on the Rights of the Child and exchanged views on children’s right to express their views. For example, there were opinions that it is generally desirable for children to participate in the decision-making processes when their parents and courts make decisions on child custody, and that it is important to create an environment in which children can freely express their own opinions. It was also suggested that children’s opinions should be heard in a prudent manner because having to express their own opinion may be difficult for some children.

※These provisional minutes are the summarized results of the subcommittee meeting and are to be provided by the Secretariat of the Subcommittee in both Japanese and English on an as-needed basis. The official meeting minutes (in Japanese) will be published at a later date.