

Provisional Minutes of the 34th Meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On November 28, 2023, the 34th 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.

First, the Subcommittee discussed the pending issues concerning parental authority based on the meeting materials, centering around the suggestion by some members and non-voting members to change some points in the second draft of the proposed outline .

Specifically, they suggested the following changes: 1) the circumstances under which parents are permitted to independently exercise parental authority should be relaxed, even when both of them have parental authority; 2) with regard to the framework for determining parental authority after divorce, the “will of the child” should be clearly stated so that the court may take it into consideration; 3) an “agreement between parents” for child custody should be added as a requirement when the court grants parental authority to both parents; 4) if parental authority is granted to both parents after divorce, determination of the custodial parent should be required; and 5) a third party other than the parents should be able to request the court to designate himself/herself as the person entitled to take custody of the child.

Some members and non-voting members expressed their support for the suggestions above. However, many other members and non-voting members expressed opposition to them, and they suggested that, in the next and subsequent meetings, the Subcommittee should discuss the proposals in accordance with the “second draft of the proposed outline.”

Second, the Subcommittee discussed the basic rules concerning the parent-child relationship based on the meeting materials. It is proposed in the meeting materials that the rules concerning the responsibilities, rights, and duties of father and mother, regardless of whether or not he/she has parental authority, should be established. The subcommittee members expressed both support for and opposition to the proposal, and changes to the wording were also requested.

Third, the Subcommittee discussed the amendment to Article 818, paragraph 1 of the Civil Code, which states that a child who has not attained the age of majority “is subject to” the parental authority of the child’s parents, so as to codify the nature of parents’ duties in relation to the child. All members and non-voting members agreed to this proposal.

The Subcommittee will discuss the pending issues to summarize the proposed outline at its next and subsequent meetings.

※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.