

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

On September 21, 2021, the seventh 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 official of the Supreme Court first explained the status quo of the implementation of visitation on a tentative basis in the family courts, and then, following up on the sixth meeting, the Subcommittee examined the issue of involvement of parents in decision-making on matters related to child rearing after divorce, based on the meeting materials. A wide range of opinions were exchanged by the members on: (i) the appropriateness of and requirements for establishing rules that enable both parents to choose to be legally responsible for making decisions on matters concerning a child after divorce; (ii) the classification and details of matters to be covered by such rules, if established; and (iii) additional rules on the manner of involvement if both parents are legally responsible for making such decisions.

For example, with regard to point (i), opinions were presented on whether to establish rules that enable both parents to choose to be legally responsible for making decisions for a child regardless of whether the divorce is consensual or judicial; but if such rules are established, some were concerned that the child's interest might be impaired as no decision could be reached by agreement between the parents. Concerning point (ii), some argued that as long as the child's interest is protected, the involvement of parents will vary based on individual circumstances, so cases in which parents are involved should take such circumstances into account. In addition, the matters proposed in the meeting materials as matters to be decided consist of various natures so they may be considered not only from the viewpoint of importance but from that of promptness; and that it should be necessary to clarify the nature of the matters because the details and scope of some of such matters that were proposed as important in the meeting materials are not clear on whether or not the parents would be responsible for making such decisions. (see page 14-17 in the meeting material 6 (only in Japanese)) Concerning point (iii), the following comments were made: the modality of rules to be established may change depending on the nature of the matters to be decided by the parents; consideration should be made by referring to the legislative examples and realities in other countries where both parents are allowed to take responsibility for making decisions; and if claims for damages are

admitted as a result of violation of the rules, a careful examination should be conducted on who infringes whose rights and what rights.

Subsequently, the Subcommittee examined the issue of respect for the child's opinions on child rearing, based on the meeting materials. Various opinions offered, including: (i) while it was observed that the current Domestic Relations Case Procedure Act requires that the opinions of a child of 15 years of age or older must be heard on certain matters, on the matter of divorce where a minor child is involved, the child's opinions should be heard unexceptionably and mandatorily, regardless of the child's age; (ii) the rules on how child's opinions are respected should be based on the child's age, but the delineation of the child's age should be carefully considered by analyzing the purport of the current law; (iii) in order to ensure that children's opinions are respected, an attorney should hold a hearing to confirm the child's intent; (iv) other experts such as psychological counselors should be involved in addition to attorneys; (v) children should not be forced to choose one parent as caregiver, so wide-ranging discussions should be held in this respect, including on the inclusion of social support.

For its next meeting, it was decided that the Subcommittee would examine the remaining issues in the meeting materials and discuss issues on the system of adoption of minors.

※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.