

- (1) Ensuring the right of the children to maintain relations with both parents after divorce

Our Requesting Recommendation

The committee recommends that the State party take effective measures to ensure children's rights to maintain contacts with their separated parents after divorce.

Rationale

LOI paragraph 5 says, "Please explain how the right of the child to maintain relations with both parents after divorce is ensured."

Child visitation is essential for children to maintain human relations and contacts with separated parents after divorce, and ensure the right of the children to know and to be raised by both parents. However, it has been difficult to arrange child visitation in Japan, and many children have been deprived of human relations and contacts with separated parents by divorce.

About 220,000 children, being equivalent to 23% of the number of new births in 2017, are facing parents' divorce every year. Among them, according to a survey to parents by MHLW, about 30% participate in child visitation, and about 10% of them are at the frequency of once a month or more. The remaining 70% do not participate in child visitation at all, which means that children have completely lost human relations and contacts with either parent.

- (2) Promoting education to raise public awareness of the concept of joint custody and co-parenting after divorce

Our Requesting Recommendation

The committee recommends that the State party raise public awareness and change the traditional mindset so that parents and children can maintain human relations after divorce. Besides, they should promote to implement education for parents and encourage parents to create parenting plans regarding child visitation and child support.

Rationale

In Japan, some couples divorce by mutual consent and some divorce at courts (mediation, judgement, trial) when they disagree on terms of a divorce. Divorces by mutual consent are about 90% of the total, and court divorces are only about 10% (according to a survey by MHLW).

The procedure of divorce by mutual consent is so simple that all you need is to submit “divorce paper” to the local government office. There is a check box on the notification form, to declare whether or not agreement on child visitation is made. Even if the check box is blank, the paper can be still accepted. At that time, only a small number of local government offices provide education for parents to support them making parenting plans after divorce, while the rest are not providing them. Even in divorce through the court, only rulings on child visitation are made, and educations are little provided.

Under such circumstances, parents are likely to end up divorce without enough knowledge about divorce and its influence on children, and start lives without parenting plans after divorce. In order to provide parents with sufficient knowledge, and to make after-divorce parenting smoother, education for parents at the time of divorce and creation of parenting plans are essential.

In addition, awareness toward children’s best interest is poor in Japan. Providing education to divorcing parents will be the first step to broaden knowledge and awareness about divorce as well as its influence on children in the society.

(3) Implementation of joint custody system in Japan after divorce

Our Requesting Recommendation

The committee recommends that the State party revise the family law which stipulates sole custody after divorce without exception, and implement joint custody system after divorce.

Rationale

Japanese Family law, a part of the Japanese civil law, has never been re-written after its last amendment in 1947, shortly after the World War II. Social changes such as increase of divorce, remarriage, declining birthrate, women's social advancement, etc. have not been reflected. Regarding child custody system, the provisions of the Patriarchic era, which came into effect in 1898, has remained almost unchanged. Japan's custody system is far outdated.

Japan adopt the sole custody system after divorce, and non-custodial parents are not treated as parents under law. Almost all rights and duties to nurture children are deprived of non-custodial parents except for financial aspects such as child support payment.

Under the sole custody system in Japan, many children lose human relations with the non-custodial parents, because child visitations are not actively done in Japan. If a custodial parent remarries, the children could be adopted by the new spouse without consent of the non-custodial parents.

In order to allow both parents to be involved in parenting, and children to be loved and raised by both parents, joint custody system is essential. In July 2018, the Minister of Justice announced that the government is considering to introduce the joint custody system after divorce. The government should urge its legislation.

(4) Handling children's opinion carefully at the courts

Our Requesting Recommendation

The committee recommends that the State party encourage the Japanese court to hear children's views carefully when they say, "I do not want to see my separated parent."

Rationale

It is common in the Japanese court that it takes months, and sometimes years to mediate child visitation cases. During the process, separated parents and children can hardly see each other and children are likely to suffer so-called PA: Parental Alienation. Under the strong influence of cohabiting parents, the children tend to start refusing to see separated parents, become critical, and take hostile actions. Then, the children often come to say, "I do not want to see my separated parent." The courts are so easy to swallow such statements or refusal attitudes toward the separated parents as "children's will" and deny child visitations. Behind such children's "will", there are often influence of cohabiting parents, but it is hardly taken into account.

The court decisions to deny child visitation will drive children to live in a biased or closed environment, where children have to live only under the influence of cohabiting

parents, not hearing from separated parents. As a result, “parental alienation” progresses, and the children’s refusal attitude toward separated parents becomes stronger. In other words, it will result in amplifying the vicious circle of parent-child separation. Family court inspectors often investigate children only at a superficial level. They are forcing children to take responsibility by themselves by letting them express their “will” when they are lost and confused in the midst of parents’ conflict. It results in abandoning one of their parents and losing love they should have received.

Such court's practice results in making children cut off human relations with their separated parents by their own statements. It is a tragedy.

(5) Prevention of parent-child separation by false DV claim

Our Requesting Recommendation

The committee recommends that the State party prevent parent-child separation caused by false DV claims by cohabiting parents.

Rationale

There are many cases that parents and children are separated because of false DV (Domestic Violence) claim by cohabiting parents. DV claims are easily approved only if there are claims by cohabiting parents (mostly by former wives), and no verification or investigation is required. Separated parents are often accused of DV before they are aware of it, and the new residential address of their children gets concealed by the local government, under the measures to support DV victims. In such cases, separated parents have no chance to know where their children are.

In Japan, even if it is false, once DV claim is accepted, the voice of the accused parents are not to be heard. Procedures to support DV cases are not well developed, and make the children invisible from their separated parents.

In order to prevent parent-child separation by false DV, it should not be determined only by one-sided claim but investigation based on the fact should be required