

Additional submissions on the 4th and 5th

Periodic Report of Japan

Our Objections to WRs by Japanese Government

Ensure the right of the child to maintain relations with
both parents after divorce

Convention on the Rights of the Child Japan

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Objection to No. 57 and No. 58 of WRs

Government of Japan replied to the LOIs that Article 766 of the Civil Code and family court operation shall put highest priority on interest of the child whose parents are divorced.

According to a survey by the Ministry of Health, Labor and Welfare, the proportion of custodial parents (mothers) who carry out child visitation is 27.7% in 2011 and 29.8% in 2016. Article 766 of the Civil Code is amended in 2012, but the implementation rate of child visitation remains at a very low level.

In Japan, there is no penalty on a parent who takes away his/her children without consent of the other parent with no justifiable reason, which often involves significant changes in surrounding environment for children. Whereas if the other parent tries to bring back the children home, he/she is accused for underage minor abduction and kidnapping. Although Article 766 of the Civil Code stipulates and supposedly puts high priority on children's best interest, in practice, what matters the most is who is capturing the physical body of the children.

Furthermore, in family courts, due to an increase in conflict of parents over children, there are long intervals between mediations or trials, and during that period children's care is set aside. In the mediations and trials, the family court spends more time on coordinating the opinions of parents, rather than discussing children's interests, which should be at the highest priority. Another problem in the family court is that they easily adopt the remarks of the children who are separated from one of the parents, and lost or confused in the midst of parents' conflict. It could lead to a serious consequence that children have to choose either parent, putting too much responsibility on their hearts.

The conditions of child visitation decided by the family court are so poor, following the average standard of "once a month for three hours". After the settlements or the rulings are issued, the family court will not monitor the cases anymore. There is no obligation or function to follow up the consequence of the decisions.

Although children are in the stage of growth and development, the family court gives priority to settling short-term problems and lacks the long-term perspective. As a system to secure the right of the child to maintain relations with both parents, it cannot be said that the family court is effectively functioning.

Objection to No. 59 of WRs

GOJ replied to the LOIs that there is an indirect compulsory execution system to “urge voluntary visits and other contacts” for separated parents and children in case ruled obligation is not performed.

However, to file an indirect compulsory claim, it is necessary for non-custodial parents to obtain an agreement or a judgement eligible for the claim beforehand. Reaching to an agreement is not easy, and it takes a long time to go through mediations and trials.

In addition, the amount of the penalty is generally too small to be effective. Because parent education is insufficient, many custodial parents regard that they could skip child visitation if they pay a penalty. And even if the custodial parent does not pay, there is no legal system that imposes further penalties.

The idea of compulsory execution system is to prevent parent-child separation with money, but it leads to further conflict between parents. It will put children in the middle of the conflict and will not serve the best interest of the children.

Objection to No. 60 of WRs

GOJ replied to the LOIs that “consultation on arrangements for parent-child visits and other contact after divorce” is provided by the “Child Raising Support Consultation Center” whose project is consigned by GOJ.

Child visitation support is outsourced to the organization called FPIC (Family Problems Information Center) and its employees primarily consist of retired Family Court Probation Officers. FPIC’s visitation support is limited up to only once a month, and available areas are also limited. GOJ provides almost no subsidy for private visitation support organizations other than FPIC.

Neither the FPIC nor the private visitation support organizations have no authority to enforce child visitation. Whatever the reason, if a custodial parent refuses child visitation, visitation support cannot be continued. GOJ’s effort is not enough to maintain parent-child relations after divorce.

Objection to No. 61 of WRs

GOJ claims that support is offered to children for visitation and contact under the "Act for Implementation of the Hague Convention."

Yes, visitation and contact are offered. However, the operative issue really should be, how successful is the visitation and contact, or access, that is offered?

Recent testimony to a US House of Representatives subcommittee by Jeffery Morehouse on December 10, 2018 describes the situation. There are two aspects. First, access to a child offered by the GOJ, as described by a Japanese official, is dependent on the cooperation of the taking parent. It should be noted that the Hague Convention is a treaty between member states, so the obligation to provide access under Article 21 is borne by the Government of Japan, and should not rightfully be at the discretion of the taking parent, but rather should be compulsory.

Second, 30 applications for access submitted by the US Hague Central Authority at the outset of the implementation were approved for support by the GOJ, but as far as we know, only 3 of those cases enjoyed any access. This is an unacceptable ratio that is a key indicator of performance of the implementation of the Hague Convention in Japan.

<https://foreignaffairs.house.gov/hearing/subcommittee-hearing-reviewing-international-child-abduction/>