

comment. The Civil Code would concern the day-to-day living of the people, so public comment should be necessary before the final report is submitted to the Legislative Council.

3. Family Law

Act Revising the Part of the Civil Law

Law No. 61, June 3, 2011 (Effective on April 1, 2012)

Background:

In recent years, child abuse has become one of the grave social problems. The two acts that directly relate to this problem, the Act Preventing Child Abuse (Law No. 82, May 24, 2000) and the Child Welfare Act (Law No. 164, December 12, 1947), have been revised several times. However, the provisions of the system of parental authority in the Civil Law have not been revised; especially, it has been noted that the provisions of removal of parental authority, indirectly related to child abuse, are hard to make use of today.

Article 2 of the supplementary provisions of these acts (Law No. 73, June 1, 2007) has a very good opener: ‘The Government shall conduct a review of the system of parental authority to prevent child abuse and to protect the rights of children, and shall take necessary measures based on the results of the examination, within three years after the effective date of this act’. ‘The group for studying the system of parental authority’ was set up by the Ministry of Justice, where they sorted out some agendas in the Civil Law and related acts. In addition, taking their review into consideration, it was discussed further by ‘the working group for a system of parental authority to prevent child abuse’ in the Legislative Council of the Ministry of Justice, and came to be revised at last.

Main Provisions: in order explained in the editorial note

Article 834 (Removal of Parental Authority): underlined parts revised

If a father or mother conducts child abuse or malicious abandonment of his/her child or if the child’s interests are sufficiently harmed by a

particular difficulty or inappropriateness of the execution of parental authority by the father or mother, the family court may, on the application of the child, his/her relative, a guardian of the minor, a supervisor of a guardian of the minor or a public prosecutor, make a ruling that strips the father or mother of his/her parental authority.

Article 834-2 (Stay of Parental Authority): newly provided

- (1) If the child's interests are sufficiently harmed by a difficulty or inappropriateness of the execution of parental authority by the father or mother, the family court may, on the application of the child, his/her relative, a guardian of the minor, a supervisor of a guardian of the minor or a public prosecutor, make a ruling that stays his/her parental authority.
- (2) The family court, in ruling on the matters prescribed in the preceding paragraph, may decide the period of the staying of his/her parental authority for up to two years in consideration of the period needed in order for the cause of the staying his/her parental authority to cease, the physical and mental conditions and the living circumstances of the child, and all other matters.

Article 835 (Removal of Right of Administration of Property): underlined parts revised

If the child's interests are sufficiently harmed by a difficulty or inappropriateness of the execution of administering the child's property by the father or mother, the family court may, on the application of the child, his/her relative, a guardian of the minor, a supervisor of a guardian of the minor or a public prosecutor, make a ruling that strips the father or mother of his/her right to administer the property.

Article 840 (Appointment of Guardian of Minor): (1) not revised; (2) and (3) newly provided

- (1) If there is no person to become a guardian of a minor pursuant to the provisions of the preceding Article, the family court may appoint a guardian of the minor on the application of the minor ward or his/her relative, or other interested person. This shall also apply in a case where any vacancy in the position of a guardian of the minor occurs.
- (2) Even if a guardian of a minor has been appointed, the family court may appoint a further guardian, when it finds this necessary, at the application of the persons prescribed in the preceding paragraph or a

guardian of the minor, or ex officio.

- (3) In the appointment of a guardian of a minor, the family court shall consider the age of the minor ward, the physical and mental conditions and the living and property circumstances of the minor ward, the occupation and personal history of the person to become the guardian, the existence of any vested interest between them (if the person to become a guardian of a minor is a juridical person, its type and content of business and the existence of any vested interest between the minor ward and the juridical person or its representative), the opinion of the minor, and all other matters.

Article 857-2 (Exercise of Authority where Multiple Guardians of Minor): newly provided

- (1) If there are multiple guardians of a minor, the guardians should exercise authority jointly.
- (2) If there are multiple guardians of a minor, the family court may determine ex officio that a part of the guardians should exercise only authority over the property of a minor ward.
- (3) If there are multiple guardians of a minor, the family court may determine ex officio that each guardian solely or some guardians according to a division of labor should exercise authority over the property of a minor ward.
- (4) The family court may rescind ex officio a determination made pursuant to the provisions of the two preceding paragraphs.
- (5) If there are multiple guardians of a minor, it is sufficient that a manifestation of intention by a third party be made to one guardian.

Article 820 (Right and Duty of Care and Education): underlined part added

A person who exercises parental authority holds the right, and bears the duty, to care for and educate the child in the child's interests.

Article 822 (Discipline): underlined part revised

A person who exercises parental authority may discipline the child to the extent necessary to care and educate the child pursuant to Article 820.

Article 766 (Determination of Matters regarding Custody of Child after Divorce etc.): underlined part revised

- (1) If parents divorce by agreement, the matter of who will have custody over a child, the visitations and other contacts of each parent with the

child, the sharing of child support and any other necessary matters regarding custody shall be determined by that agreement. In the agreement, the child's interests shall be considered as the paramount consideration.

Editorial Note:

1. Ruling of removal of parental authority, etc.

(1) General concept

In our Civil Law, the concept of parental authority is considered to include physical custody of a child and administration of the property of a child. Before this revision, two way of limiting parental authority were provided: a system for the removal of parental authority and of the removal of right of administration of property. Especially, in relation to the former, it has been criticized that its application was eschewed and that it was not effectively exploited for the sake of preventing child abuse, since its requirements were too rigid to limit parental authority to a proper extent.

And so, on this revision, we newly provided a system of staying parental authority for up to two years for the sake of limiting parental authority to a proper extent, according to necessity, for example, in a case that was of a comparatively light degree so as to impossibly lead to the removal of parental authority or that was enough to limit parental authority in a certain period such as medical neglect (Article 834-2).

(2) Requirements

In the pre-revised Article 834, the grounds of removal of parental authority are 'if a father or mother abuses parental authority or if there is gross misconduct'; such requirements did not imply any respect to the child's interests and their substance lacked definiteness. And so, on this revision, we revised the grounds of the removal of parental authority in the light of the child's interests and mentioned some typical examples of it (Article 834).

In the pre-revised Article 835, the grounds of removal of administration of property were 'if a father or mother who exercises parental authority endangers the property of a child through an impropriety in his/her administration'; the parents could not be deprived of their right of its administration except by endangering it. But, the parents should be deprived of it not only where the property of a child is endangered but also

where the child's interests are harmed: for example, without reasonable reason, a father or mother does not give an agreement to a contract between the child and a third party. And so, on this revision, we revised the grounds of it in the light of child's interests (Article 835).

(3) Applicants

In the pre-revised provisions, the applicants of the two systems for the removal of parental authority were only 'any relative of the child or a public prosecutor'; on this revision, the child, a guardian of a minor and a supervisor of a guardian of a minor were added to them as applicants of three systems, including the newly provided 'staying' system.

Children being applicants would place too great a mental burden on them and cause them to be involved in a dispute between the parents or the relatives. But, if the children did not have any right to claim, without relatives applying for the removal of parental authority, etc., they would have no way but to rely on a public prosecutor or a chief of a child counseling center; there would not be an expeditious and pertinent protection of the children. And so, on this revision, we were led to admit the children's own right to claim (Article 834, 834-2 and 835).

2. Guardianship of minor, etc.

In the pre-revised provisions, the center of a function of a guardian of a minor was considered as physical custody; it was impossible for a juridical person to be appointed as a guardian of a minor. However, it was pointed out that the administration of property was the center of the function in regard to minors aged 18 or 19, and that it was available for a juridical person to have physical custody depending on its type and content of business. That would be better, sometimes, than the existing way in the light of the child's interests. And so, on this revision, we admitted the possibility to appoint a juridical person as a guardian of a minor in consideration of some matters including the type and content of business, etc. (Article 840, Paragraph 3).

In the pre-revised Article 842, it was stipulated that 'there shall be no more than one guardian of a minor', at a fear that the minor's interests would be harmed in cases where multiple guardians had different opinions. However, it was pointed out that if guardianship was be charged by only one person, it would be difficult to find a guardian because of its heavy duties, and that it was more reasonable to have multiple guardians

than one with respect to work efficiency. And so, on this revision, we admitted the appointment of multiple guardians (Article 840, Paragraph 2), and provided the details about the execution of their functions in order to avoid any confusion among them (Article 857-2).

3. Others

(1) Effects of parental authority

With more attention to preventing increasing child abuse, we added ‘for the child’s interests’ to Article 820 referred to as the general provision for the physical custody of children, and manifested that parental authority should be executed for the child’s interests (Article 820).

In the pre-revised Article 822, Paragraph 1, ‘a person who exercises parental authority may discipline the child to the extent necessary’; it did not specifically clarify to what extent parents may do it. And so, laying weight on the fact that abusing parents will try to justify their own conduct on the pretext of the right of discipline in the article, in this revision, we provided ‘a person (snip) may discipline the child to the extent necessary to care and educate the child pursuant to Article 820’, by which it is clearer that discipline must be admitted to the extent necessary to care and educate the child for the sake of the child’s interests.

In addition, in the pre-revised Article 822, Paragraph 1, ‘A person (snip) may (snip) enter the child into a disciplinary institution with the permission of the family court’; this sentence in Paragraph 1 was deleted and that in Paragraph 2 about the upper limit of the staying period was wholly deleted, since there had not been such a disciplinary institution, in fact (Article 822).

(2) Determination of matters regarding the custody of a child after divorce etc.

In the pre-revised Article 766, Paragraph 1, in divorce by agreement, parents shall determine the matter of who will have custody over a child and ‘any other necessary matters regarding custody’, pursuant to which sentence, the visitation between children and parent not having custody and the sharing of child support had been considered. However, it had been noted that in divorce by agreement, the visitation or sharing of child support had not sometimes been determined clearly between the parents.

And so, on this revision, we added ‘the visitation and other contacts of each parent with the child’ and ‘the sharing of child support’ as tangible

examples of ‘any other necessary matters regarding custody’ and ‘in the agreement, the child’s interests shall be considered as the paramount consideration.’, by which parents who are going to divorce by agreement should talk focusing on the child’s interests and make an agreement about the matters regarding custody, including the examples newly prescribed in it (Article 766, Paragraph 1).

4. Law of Civil Procedure and Bankruptcy

Partial Revision of the Code of Civil Procedure and the Civil Execution Act

Law No. 36, May 2, 2011 (effective on April 1, 2012)

Background:

Under the terms of the Code of Civil Procedure prior to the revision by this Act, there were no provisions concerning jurisdiction applicable to an international dispute, although there were provisions for domestic territorial jurisdiction. In practice, the structure of the jurisdiction of international disputes has been essentially equivalent to the provisions for domestic territorial jurisdiction, but has denied Japanese jurisdiction in special circumstances. Additionally, judicial precedents, such as the judgments of October 16, 1981, 35(7)MINSHU 1224, and November 11, 1997, 51(10)MINSHU 4055, have been a source of guidance for determining this matter. However, in order to increase parties’ possibility of presupposition and the stability of legal relationships in international civil disputes, the Code of Civil Procedure has been amended, to provide clear and accurate rules. This amendment is believed to contribute to expeditious and appropriate dispute resolution.

The need for improvement in the law on international jurisdiction was highlighted repeatedly and provisions regarding property disputes were examined in 1996, when the Code of Civil Procedure was significantly amended. Nevertheless, this move was suspended as the Hague Conference on Private International Law was held at that time, aiming to provide a treaty which covered a broad area of international jurisdiction.