

# **CHILD PARTICIPATION IN FAMILY AND CHILD PROTECTION MATTERS IN JAPAN**

## **Japanese Association of Juvenile and Family Court Judges**

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in family and protection matters. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Japan.

Key words: child participation; family law; child protection; children's rights; justice system; Japan.

### [Outline of the Justice System of Japan]

Before answering the questions, we would like to provide an outline of the justice system of Japan, which forms the basis for our answers.

#### 1. Age of majority

As of May 2021, the age of majority in Japan is 20 years of age (Article 4 of the Civil Code). As a result of the recent legal amendment, the age of majority will become 18 years of age effective as of April 1, 2022.

#### 2. Outline of dispute resolution procedures in Japan

In Japan, disputes between private persons are generally resolved through civil litigation proceedings. In principle, civil litigation proceedings are conducted publicly (Article 82, paragraph (1) of the Constitution), and the court is not authorized to examine evidence without any party's request, except as specified by law.

There are special provisions regarding personal status litigation, a type of civil litigation which is related to a marital relationship, a natural parent-child relationship or an adoptive parent-child relationship, or related to other actions seeking the formation, or a declaration of the existence or non-existence, of a family relationship (Article 2 of the Personal Status Litigation Act). For example, under certain conditions, personal status litigation proceedings may be conducted in camera (Article 22 of the same Act), and the court may take facts

which are not asserted by the parties into consideration and examine evidence by its own authority (Article 20 of the same Act). In personal status litigation, when making a judicial decision on a disposition regarding the custody of a child or on the designation of a person who is to have custody of a child, the court may conduct examination of facts by its own authority, which is not open to the public (Article 33 of the same Act).

In addition to civil litigation proceedings, there is another type of proceedings to resolve disputes regarding family affairs, which is called domestic relations case proceedings. Domestic relations case proceedings are not open to the public without exception (Article 33 of the Domestic Relations Case Procedure Act), and the court may examine facts and evidence by its own authority (Article 56 and Article 258, paragraph (1) of the same Act). Domestic relations case proceedings are divided into two categories: conciliation of domestic relations and adjudication of domestic relations. Conciliation of domestic relations is a proceeding in which the conciliation committee *attempts* to encourage the parties to reach an agreement and solve their dispute voluntarily; if the parties fail to reach an agreement, the family court will draw a conclusion on the dispute through proceedings for adjudication of domestic relations or litigation proceedings. In some cases for adjudication of domestic relations, the family court makes a decision as a guardian of the public, with regard to matters involving public interest, such as renunciation of inheritance, permission for the change of a name, appointment of a guardian of an adult, and permission to adopt.

By defining that a specific situation concerns the child, does he/she become a party to the proceedings?
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1. In Japan, a minor may become a party to civil litigation proceedings or domestic relations case proceedings involving his/her rights and obligations or legal relationships, as in the case of an adult, but may not perform any procedural act except through his/her statutory agent, in principle (Article 31 of the Code of Civil Procedure). Unless otherwise provided, a person who exercises parental authority over a minor (Article 824 of the Civil Code) or who is a guardian of a minor (Article 859 of the same Code) serves as a statutory agent of the minor.

2. In some personal status litigation cases or domestic relations cases, a minor may perform procedural acts without representation by his/her statutory agent. In such cases, a minor may participate in proceedings as an adult does, and the court conducts proceedings in the same manner as conducting proceedings in which all parties are adult. A minor may perform procedural acts without representation by his/her statutory agent in the following cases.

A. Personal status litigation

In personal status litigation, a minor may perform procedural acts without representation by his/her statutory agent (Article 13, paragraph (1) of the Personal Status Litigation Act). Cases in which a minor can be a party include, for example, an action seeking a declaratory judgment of the existence or nonexistence of a natural parent-child relationship and an action seeking the dissolution of an adoptive relationship.

However, a minor who lacks mental capacity may not perform procedural acts even in personal status litigation unless represented by his/her statutory agent. "Mental capacity" mentioned here is a psychological capacity that is sufficient to recognize the consequence of one's own act. Whether a minor is found to have mental capacity varies depending on the case, but the age of 15 years is considered to be a standard age at which a minor is equipped with mental capacity (see Article 815 of the Civil Code).

B. Domestic relations cases

In some cases for adjudication of domestic relations and cases for conciliation of domestic relations, a minor may perform procedural acts without representation by his/her statutory agent.

(a) Adjudication of domestic relations

As in personal status litigation, a minor may perform procedural acts without representation by his/her statutory agent in the following cases for adjudication of domestic relations if he/she has mental capacity: (i) an adjudication case for a disposition on matters regarding the custody of a child, such as the designation of a person who is to have custody of the child and the visitation and other contact between the father or mother and the child (excluding a case seeking the provision of property benefits; Article 151, item (ii) of the Domestic Relations Case Procedure Act); (ii) an adjudication case for permission to adopt (Article 161, paragraph (2) of the same Act); (iii) an adjudication case

regarding parental authority, such as the loss or suspension of parental authority and the designation or change of a person who has parental authority (Article 168 of the same Act); (iv) an adjudication case regarding a guardian of a minor, such as the appointment or dismissal of a guardian of a minor (Article 177 of the same Act); (v) an adjudication case regarding the disinheritance of a presumptive heir (Article 188, paragraph (2) of the same Act) and an adjudication case regarding the acceptance or renunciation of inheritance (Article 201, paragraph (4) of the same Act); and (vi) an adjudication case prescribed in the Child Welfare Act, such as a family court's approval to be granted when a child guidance center takes temporary custody of a child due to circumstances such as where a child is being abused by his or her guardian (Article 235 of the Domestic Relations Case Procedure Act). In the adjudication case mentioned in (ii), a minor must be at least 15 years of age in order to perform procedural acts without representation by his/her statutory agent.

(b) Conciliation of domestic relations

As in personal status litigation and cases for adjudication of domestic relations, a minor may perform procedural acts without representation by his/her statutory agent in conciliation cases, such as those for a disposition regarding the custody of a child (excluding a case seeking the provision of property benefits) and for the designation or change of a person who has parental authority, if the minor has mental capacity (Article 252, paragraph (1) of the Domestic Relations Case Procedure Act).

(c) Intervention as an interested party

In cases where a minor may perform procedural acts without representation by his/her statutory agent, in addition to participating in proceedings as a party to the proceedings, a minor may also intervene in proceedings as an interested party, that is, a party who could be directly affected by the outcome of adjudication or conciliation, with permission from the family court (Article 42, paragraph (2) and Article 258, paragraph (1) of the Domestic Relations Case Procedure Act). In this case, the family court may have a minor intervene in proceedings for adjudication or conciliation by its own authority if necessary (Article 42, paragraph (3) and Article 258, paragraph (1) of the same Act). For example, in an adjudication or conciliation case regarding the designation or change of a person who has parental authority or for a disposition

regarding the custody of a child, the child's parents stand as the parties, and their minor child may intervene in proceedings as an interested party.

3. In practice, however, it is rare for a minor to participate in proceedings of personal status litigation or a domestic relations case as a party to the proceedings or an interested party intervener under the systems set forth above.

On the other hand, there are other systems provided in order to understand the intention of a child in proceedings of personal status litigation or a domestic relations case in which the child's parents stand as the parties. It is a common practice to employ these systems and have the child's intention reflected in proceedings.

In personal status litigation, when making a judicial decision on a disposition regarding the custody of a child or a judicial decision on the designation of a person who is to have parental authority, the court must hear the child's statements if the child is at least 15 years of age (Article 32, paragraph (4) of the Personal Status Litigation Act).

In the following cases for adjudication of domestic relations, the court must hear the statements of a minor child if the child is at least 15 years of age: (i) an adjudication case for a disposition on matters regarding the custody of a child (excluding an adjudication case for a disposition regarding the sharing of expenses required for the custody of a child; Article 152, paragraph (2) of the Domestic Relations Case Procedure Act); (ii) an adjudication case for permission to adopt (Article 161, paragraph (3), item (i) of the same Act); (iii) an adjudication case regarding parental authority, such as the loss or suspension of parental authority and the designation or change of a person who has parental authority (Article 169 of the same Act); (iv) an adjudication case regarding a guardian of a minor, such as the appointment of a guardian of a minor (Article 178, paragraph (1), item (i) of the same Act); and (v) an adjudication case prescribed in the Child Welfare Act, such as a family court's approval for temporary custody of a child (Article 236, paragraph (1) of the Domestic Relations Case Procedure Act).

In addition to the cases for adjudication of domestic relations mentioned above, in cases for adjudication or conciliation of domestic relations the outcome of which would affect a minor child, the family court must endeavor to understand the intention of the child by hearing statements from the child, having a family court investigating officer conduct an examination or using any other appropriate

methods, and to take the child's intention into consideration in adjudicating the case, according to the child's age or degree of development (Article 65 and Article 258, paragraph (1) of the Domestic Relations Case Procedure Act).

Does he/she have the right to legal representation by a lawyer?

1. As explained below, a minor who is a party to the proceedings may appoint an attorney at law as his/her legal representative as an adult party does.

2. In personal status litigation or a domestic relations case in which a minor may perform procedural acts without representation by his/her statutory agent, and the minor performs or intends to perform procedural acts, the presiding judge may, upon petition or by his/her own authority, appoint an attorney as the minor's counsel (Article 13, paragraph (2) and (3) of the Personal Status Litigation Act; Article 23, paragraphs (1) and (2) of the Domestic Relations Case Procedure Act). Such an attorney appointed to represent a child's interest is called a "children's counsel."

3. In cases where a minor may not perform procedural acts except through his/her statutory agent, the statutory agent decides on behalf of the minor whether to retain an attorney as a legal representative.

Are there limits to the intervention of this lawyer in comparison with the other parties?

An attorney who represents a minor has the same power as that vested in an attorney who represents an adult.

The lawyer has an ethical duty to represent only the child's opinion, including cases where he/she does not consider the child's opinion in accordance with his or her best interests?

A "children's counsel" is to perform his/her duties respecting the wishes of a child who is his/her client (Article 22, paragraph (1) of the Basic Rules on the Duties of Practicing Attorneys), and thus, is not supposed to play a role of

changing the child's wishes. At the same time, a "children's counsel" in most cases is expected to support a child in making decisions by providing the child with information and advice regarding the child's objective interest and the prospect of the outcome of the child's case. Such activities carried out by a "children's counsel" are considered beneficial in helping the child understand and accept the subsequent proceedings and the outcome thereof.

In general, an attorney has an ethical duty to endeavor to realize the rights and legitimate interests of the client conscientiously (Article 21 of the Basic Rules on the Duties of Practicing Attorneys), and this also applies when an attorney represents a child. Accordingly, if the wishes expressed by a child are deemed contrary to the child's objective interest, an attorney who represents the child may need to express the attorney's own view to the court, while explaining the situation to the child as appropriate.

How does the child participate in Court proceedings? Directly, in front of the judge, or through an intermediary, either the lawyer or another professional? If it is another professional, can you identify it and specify its responsibilities, please?

1. If a minor is a party to the proceedings or an interested party intervener

A. In cases where a minor may perform procedural acts without representation by his/her statutory agent

As in the case of an adult, a minor may attend proceedings as a party to the proceedings or an interested party intervener or have his/her legal representative attend proceedings.

Both in civil litigation (including personal status litigation) and a domestic relations case, no person other than an attorney may serve as a legal representative, in principle (Article 54, paragraph (1) of the Code of Civil Procedure; Article 22, paragraph (1) of the Domestic Relations Case Procedure Act).

B. In cases where a minor may not perform procedural acts without representation by his/her statutory agent

In such cases, a minor usually does not attend proceedings because it is impossible for the minor to perform any valid acts in the proceedings. Instead, the

minor's statutory agent or the legal representative appointed by the statutory agent attends proceedings.

2. If a child's wishes need to be reflected in proceedings

As mentioned above, in some personal status litigation cases or domestic relations cases in which a child does not directly participate in proceedings as a party to the proceedings, it is required by law to endeavor to understand the intention of the child by hearing statements from the child. There are no particular restrictions by law on how this should be done.

A child may express his/her intention verbally by stating opinions, or non-verbally in the form of his/her awareness or behavior in response to the situation he/she is in. In addition to hearing statements from the child, the court employs many other appropriate methods to understand the intention of the child thus expressed non-verbally, such as having a family court investigating officer conduct investigation.

A family court investigating officer is a family court official who has expertise supported by knowledge and theories in behavioral science and interview techniques based thereon. The court may have a family court investigating officer examine facts (Article 34 of the Personal Status Litigation Act; Article 58 and Article 258, paragraph (1) of the Domestic Relations Case Procedure Act).

Careful handling is required in the case of hearing the intention of a child under 15 years of age, and such case is often assigned to a family court investigating officer. Since most children aged 15 or older can express their intentions verbally, it may be sufficient to require the submission of a document in which the child's intention is stated. If it is necessary for the judge to directly confirm the child's true intention, the judge directly hears statements from the child during the hearing, but basically, the process of hearing statements from a child aged 15 or older is also assigned to a family court investigating officer.

If the participation is direct, is it voluntary? In this case, who consults the child if and how he/she wants to participate? Are there any institutional protocols on how to do that? Are there any informative materials specially



prepared for children about its participation? Can you share it with our members?

If the child does not want to participate directly, what alternatives are there in your country to ensure indirect participation? If there are doubts about what the child really wants or if his/her opinion is really expressed, what's the solution in your country?

1. In cases where a minor may perform procedural acts without representation by his/her statutory agent, the minor may attend proceedings voluntarily, although this is rare in practice.

2. There are no provisions of law regarding the method to be employed by the family court to hear or understand the intention of a child in personal status litigation or a domestic relations case. In practice, the methods mentioned above are employed, but it is left to the family court to determine on a case-by-case basis which method is appropriate to understand the intention of the child.

Therefore, when a child does not or cannot show his/her wishes regarding the method to be employed to enable the child to express his/her intention, the family court understands the intention of the child by employing an appropriate method; and even when a child shows his/her wishes regarding such method, the family court determines at its discretion the method to be employed to understand the intention of the child, while taking the child's wishes into account. Efforts are being made to understand the true intention of a child by assigning this task to a family court investigating officer who has expert knowledge and skills. There is no institutional protocol regarding how to hear the intention of a child.

In cases of direct participation, in what procedural phase does it take place? Is there a quantitative limit on consultation with the child? The child participates in this delimitation? How? When the opportunity to participate in the child is offered, what is the extent of options available to the child? I mean, should the child be limited to the aspects considered important by the adults or can the child bring other questions and possibilities?

1. In cases where a minor may perform procedural acts without representation by his/her statutory agent, if the minor attends proceedings, he/she is treated in the same manner as an adult, although it is rare in practice for a minor to attend proceedings.

2. In personal status litigation or a domestic relations case, even when the family court directly hears statements from a child to understand the child's intention without employing methods such as having a family court investigating officer conduct investigation, there are no provisions regarding the procedural phase in which the court should hear statements from the child, how many times consultation with the child should be held, and by which method and on which topics the child's statements are sought, and it is left to the family court to decide these matters. If a child shows his/her wishes with regard to any of these matters, the family court decides on the matter at its discretion, taking the child's wishes into account.

How is the courtroom where participation takes place? And the formalities of the child's participation in front of the judge? Is the participation taking place in the regular courtroom or in the office? Who is present in the courtroom/cabinet? How are the people dressed? Can you present a photo of such an atmosphere?

1. In cases where a minor may perform procedural acts without representation by his/her statutory agent, proceedings in which a minor participates as a party or an interested party intervener are treated in the same manner as proceedings in which all parties are adults; however, it is rare in practice for a minor to participate in proceedings.

2. There are no provisions of law or regulations regarding the details of the procedure through which the family court hears statements from a child to understand the child's intention in personal status litigation or a domestic relations case, such as where the hearing procedure is held, who attends the procedure, how the person in charge of hearing is dressed, or the formalities of the procedure.

When a family court investigating officer conducts investigation in order to understand the intention of a child, the officer chooses an appropriate method

depending on such factors as the age or degree of development of the child, and interviews the child in a children's room instead of a meeting room in the court building in some cases. A children's room is a playroom where toys, dolls, simple games and an indoor garden are provided so that children can relax and play freely. In other cases, a family court investigating officer visits a child at his/her home. In principle, a family court investigating officer interviews a child by separating the child from his/her parent who has custody in order to eliminate the influence of the parent.

Is there a protocol on how to address questions to the child in family and child protection issues? Who developed it? Can you share it with our members? If there is not, how do you do it?

Who is allowed to ask questions the child? Are the questions asked directly by the party or are they intermediated by the judge? What are the concerns adopted by the judge to avoid questions that may embarrass or violate the rights of the child? How does the debate unfold around the regularity of questions if the child is present in the atmosphere?

1. In cases where a minor may perform procedural acts without representation by his/her statutory agent, proceedings in which a minor participates as a party or an interested party intervener are treated in the same manner as proceedings in which all parties are adults; however, it is rare in practice for a minor to participate in proceedings.

2. When the family court intends to understand the intention of a child in personal status litigation or a domestic relations case, the court endeavors to understand the child's intention by an appropriate method chosen on a case-by-case basis, and it is left to the family court to decide which method is appropriate.

Also when the judge directly hears statements from a child to understand the child's intention, it is left to the family court to determine at its discretion whether to allow each party to ask the child questions, and if it is decided to allow each party to ask the child questions, the questioning procedure is conducted by a method that the family court deems appropriate, with either the party directly asking the child questions or the court intermediating and asking the child the questions from the party.

When a family court investigating officer conducts investigation in order to understand the intention of a child, the officer considers a specific method for holding an interview with the child depending on such factors as the development stage of the child. For example, at the beginning of an interview, the family court investigating officer explains the purpose of the investigation to the child in an easily understood manner depending on the level of the child's ability to understand. In general, the family court investigating officer begins conversations with the child on topics that are familiar to the child, such as the child's everyday life and school life, and asks the child about their daily schedule so as to ascertain how the child actually spends his/her days. Since the language ability and other abilities vary depending on the child's age or among different children, the family court investigating officer prepares questions for the child according to the child's abilities to understand words and express his/her ideas with words, and sometimes uses illustrations as well.

There are studies by family court investigating officers and other experts with regard to methods and techniques for interviews with children, but there is no general protocol or the like that describes methods to be employed by judges and family court investigating officers to understand the intentions of children.

Is the decision taken in front of the child? If the child wants to, can he/she stay in the room?

1. In cases where a minor may perform procedural acts without representation by his/her statutory agent, the court renders a judgment or gives notice of a ruling to the minor, as in the case of an adult. In civil litigation (including personal status litigation), the court may render a judgment even if the parties are not present in court (Article 251, paragraph (2) of the Code of Civil Procedure), but the court does so with the parties present in court if they wish. In a case for adjudication of domestic relations, the court gives notice of a ruling by means considered appropriate (Article 74, paragraph (1) of the Domestic Relations Case Procedure Act), which is in general conducted by serving a written ruling on the parties.

2. If a child does not participate in court proceedings as a party but is only involved in court proceedings by making statements to the family court, there is

no statutory procedure through which the family court renders a judgment or ruling in front of a child.

Are there any special rules about the consideration of the child's opinion in the context of the reasons for the decision? What's the weight given to the child's opinion? Is it the age a criteria? Which one? If the child's degree of maturity is taken into account, how is this maturity assessed? By whom? What are the criteria considered?

As mentioned above, when making a judicial decision on a disposition regarding the custody of a child, for example, in personal status litigation or a domestic relations case, the court must hear the child's statements if the child is at least 15 years of age (Article 32, paragraph (4) of the Personal Status Litigation Act; Article 152, paragraph (2), etc. of the Domestic Relations Case Procedure Act). In addition, in cases for adjudication or conciliation of domestic relations the outcome of which would affect a minor child, the family court must endeavor to understand the intention of the child by hearing statements from the child, having a family court investigating officer conduct an examination or using any other appropriate methods, and to take the child's intention into consideration in adjudicating the case, according to the child's age or degree of development (Article 65 and Article 258, paragraph (1) of the Domestic Relations Case Procedure Act).

There are no specific criteria regarding matters such as the weight to be given to the child's opinion, how the child's age is taken into account, and how the child's maturity is assessed. These matters are determined by each judge on a case-by-case basis, basically taking into consideration the results of the investigation by a family court investigating officer.

How is the decision communicated to the child? Are there any protocols for this communication? If the child has doubts or questions, is he/she allowed to speak with the judge? How do you do that?

1. In cases where a minor may perform procedural acts without representation by his/her statutory agent, the court communicates a judgment to

the minor by the same method as that for communicating it to an adult. In the rendition of a judgment, the presiding judge reads aloud the main text of the judgment, and when finding it appropriate, the presiding judge may also read aloud the reasons for the judgment or orally provide a summary thereof (Article 155 of the Rules of Civil Procedure). Under the justice system of Japan, there is no statutory procedure through which the judge answers questions from the parties regarding the content of the judgment. If a child is represented by his/her counsel, the counsel is supposed to communicate the content of the judgment to the child using words that the child can easily understand.

2. If a child does not participate in court proceedings as a party but is only involved in court proceedings by making statements to the family court, there is no rule that requires the family court to communicate the content of the judgment to the child.

Does the child have the right to appeal the decision?
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In cases where a minor may perform procedural acts without representation by his/her statutory agent, the minor has the right to appeal, as in the case of an adult. However, if a child is involved in proceedings only by making statements to the family court, the child does not have the right to appeal.

#### 1.1. Attachments – photo gallery

# Japan

**Interview room (child)**



**Interview room (teenager)**

