

How to obtain Parental Rights in Japan (except the Hague Convention issues) (text)

Hello everyone, I am Shogo Yamagami, an attorney at law in Japan.

This time, I would like to explain how to obtain parental rights in Japan while you get a divorce. However, this issue is related to Japanese legal practice only, it is not related to the Hague Convention issues.

By the way, we have another video about three important things (points) of divorce in Japan, so if you have time, please watch it.

Parental rights include a custodial right, rights to decide children's education, health, residence and so on. But in many cases the custodial right is most important for both parties. And the custodial right means that which of spouses has a right to live together with his/her children after divorced.

Japan does not have a joint custody system, only has a sole custody system, so both spouses need to decide which of spouses has parental rights after they get a divorce.

In case that both spouses cannot reach an agreement to decide it, I think that they need to bring the case to a court to be decided.

And for example, both spouses live in Japan and one of spouses is Japanese national, they can bring the case to a Japanese family court and Japanese laws shall be applied to the case.

Japanese family court has some standards to decide this issue, so I would like to introduce such standards.

No.1. Which spouse mainly takes care of their children

This standard is considered as the most important thing by the Japanese court.

So I think it has been traditional in Japan that a father works outside and a mother takes care of children, so there were many cases so far in Japan that finally the mother obtained parental rights after divorced.

But if a father mainly takes care of children, he has a chance to get parental rights and custodial rights of his children.

Of course, evidence is needed to prove this fact, so pictures or movies of children's daily life, a diary describing how you have taken care of children etc. are considered as evidence.

No.2. Will of children

In court case, an investigator of family court will have an interview and confirm the will of children.

However, it is not an absolute standard, because generally speaking, a younger child tends to listen to the wish of one spouse to whom he/she lives together with.

No.3. No separation between brothers and sisters

This standard means that brothers and sisters need to live together if possible.

No.4. Situation of initiation of custody

If one of the spouses forcibly takes the children from the other spouse to start custody, this fact is not in favor of the taking spouse.

No.5. Whether he/she allows the other spouse's visitation of children

For example, if one of spouses does not allow the other spouse's visitation of children for a long time even though the other spouse pays child support continuously, this fact is not in favor of the spouse who currently takes care of children.

No.6. Whether there are supporters to take care of children

One of spouse's parents (children's grandfather and grandmother) are examples of supporters.

No.7. The mother's priority

In Japan it is not so important. No.1 above is more important.

No8. Other standards

Japanese court also will consider policy and environment of education, daily life of the children and so on.

Of course the spouse who abuses children cannot obtain parental rights.

Japanese family court will take every standards above into consideration to decide which party has parental rights of children.

Thank you very much for your reading this website.

Please Note: Your use of this website is governed by the laws of Japan and any dispute arising out of or in connection with the use of any information or materials from this video shall be subject to the exclusive jurisdiction of the Tokyo District Court in Japan. Our services shall be provided in Japan only. We do not guarantee any courts or any authorities make decisions same as this website. We do not assume and accept any responsibility or liability regarding this website.

参考文献:判例タイムズ No.1100「親権者の指定・変更の手續とその基準」(清水 節)