

AKTUELLE RECHTSENTWICKLUNG

Forthcoming Legislation

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THE REFORM OF THE PROCEDURE OF HANDLING FAMILY LAW MATTERS

The reform of the procedure for handling family law matters is now being contemplated. The sub-committee on the civil procedure and the procedure for personal action of the Legislative Advisory Council has recently published an interim draft of the proposed reform.

Currently, family law matters fall within the jurisdiction of both the family court and the district court. The procedure at the family court is regulated by the Family Matter Adjudication Law, while the procedure at the ordinary court is covered by the Law on the Procedure for Personal Actions, which dates back to 1898. The Family court is a product of the post-war period and handles adjudication as well as conciliation. In fact, in many cases there is a mandatory conciliation procedure.

For example, if one of the parties does not agree to a divorce, the party that seeks divorce must apply for conciliation at the family court (if both parties agree, there is no court involvement). If the conciliation is unsuccessful, there will be an adjudication by the family court. If the party is not content with the outcome, then – and only then – the party may bring an action at the district court. Some have questioned whether this change of jurisdiction from the family court to the district court after family court conciliation and adjudication was too cumbersome for the parties. There were also some instances where the jurisdiction of both courts overlapped.¹

The proposed reform, which is part of the review of the judicial system, shifts the jurisdiction over various types of litigation involving family matters – including divorce, recognition of paternity, claim for moral damages, and adoption – from the district court to the family court. In a divorce proceeding, the entire procedure from conciliation to litigation is to be handled by the family court. The claim for damages arising from divorce, which has been handled by the district court, will also come under the jurisdiction of the family court.

After taking into consideration the comments from various quarters, the reform bill is expected to be submitted to Parliament next year.

¹ A. OMURA, *Kazoku-hô* [Family Law], Tokyo 1999, at 278.