

Family Courts and Family Affairs Conciliation System in Japan

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I. Family Courts in Japan

The family court is a court which specializes in handling such family disputes as divorces or trouble involving inheritance or cases of juvenile delinquency. It was established in 1949. There are 50 family courts throughout Japan, with 203 branch court offices and 77 local court offices. The slogan of family courts is "Light to families and love to juvenile". Now, I would like to discuss about the family affairs conciliation system.



The statue of Mother and Child (Kyoto Family Court) (Casted in May, 1965).

The motto of the Family Court "*Give Right to Families, give love to juveniles*" is read on the pedestal.



TOKYO FAMILY COURT

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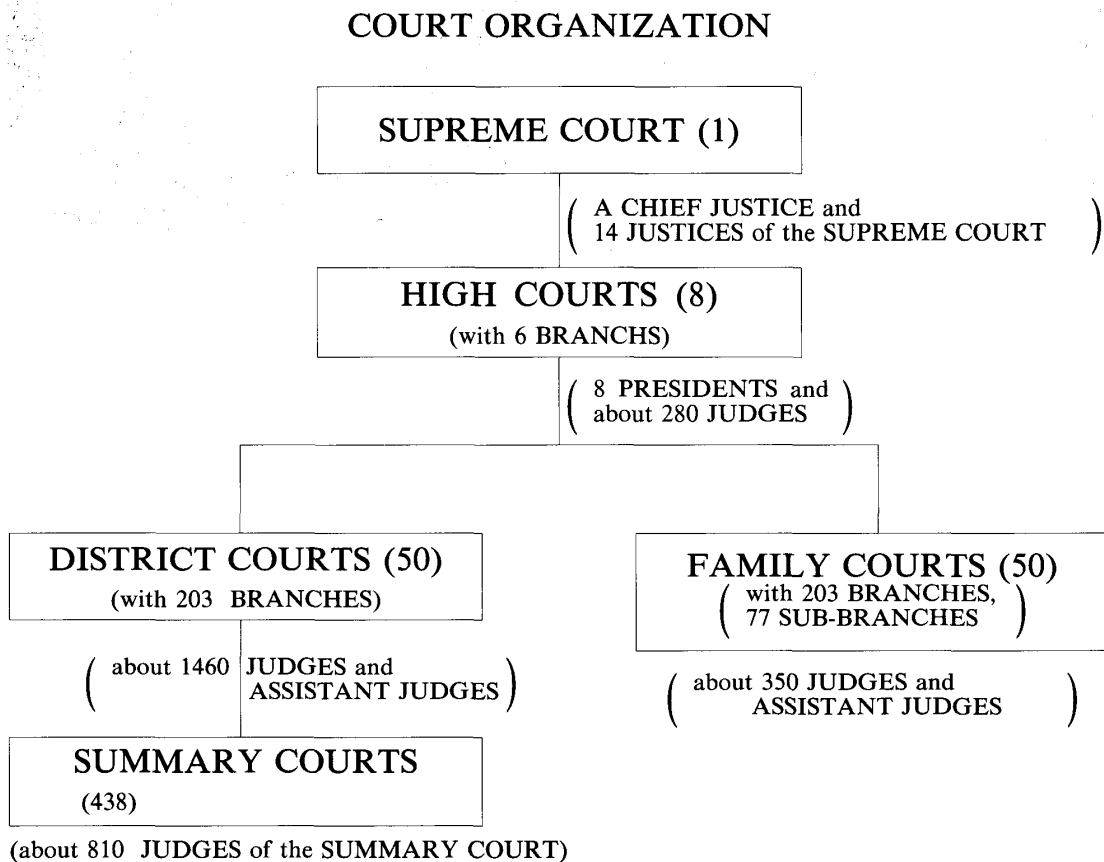
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II. The Significance of Family Affairs Conciliation

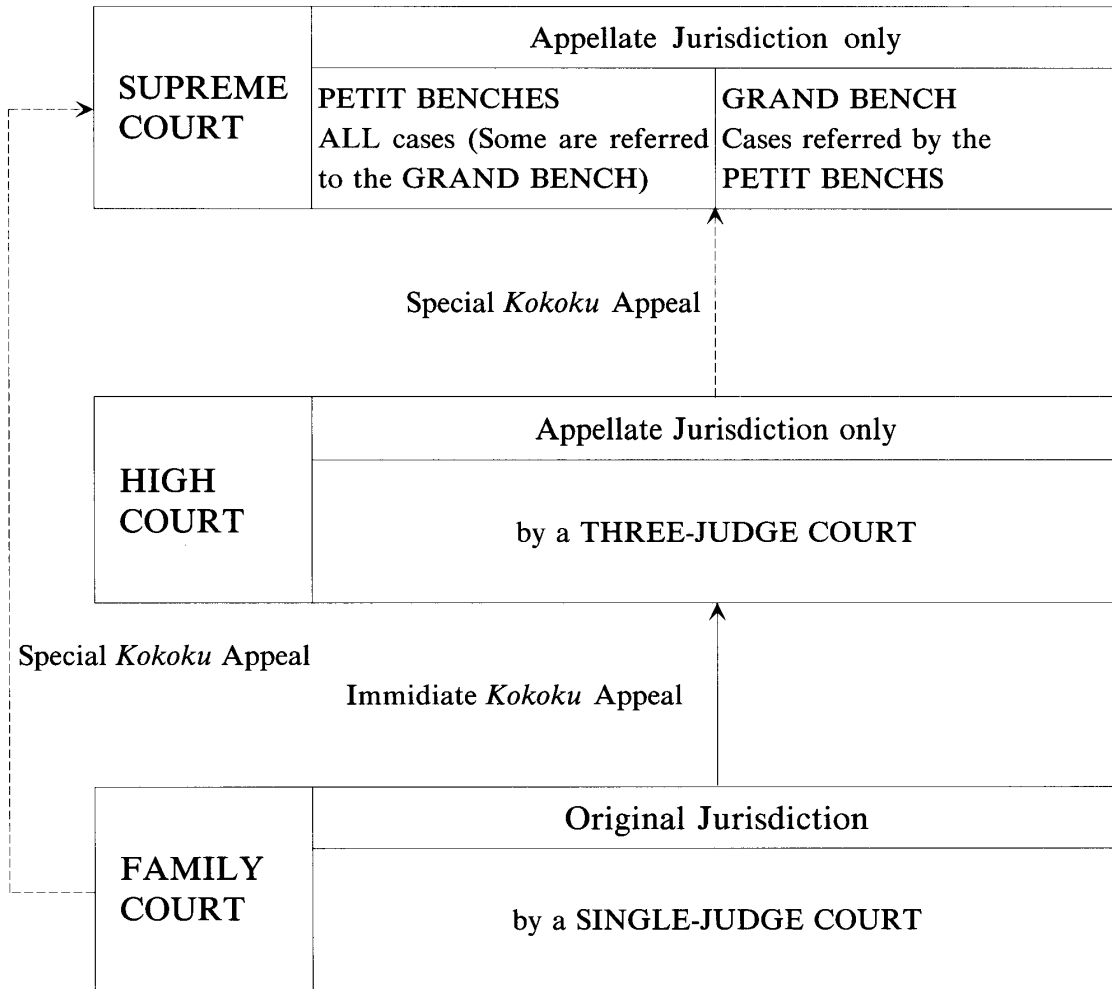
The family affairs conciliation is a system in which a family affairs conciliation machinery mediates an appropriate and reasonable agreement for the voluntary settlement of a family dispute according to an ideology which hold: "Striving for the maintenance of peace in the family and sound family communal life on the basis of the dignity of the individual and the essential equality of the sexes."

Since the disputes in a family include trouble between man and wife, between parent and child, and between brothers and sisters, it is desirable to solve the problems by mutual agreement after adequate consultation and complete understanding between the parties through private and informal proceedings rather than by the decisive settlement of law. The family affairs conciliation system is the very system that meets these requirements.

With the drastic change in social conditions in recent years, there is an increasing tendency toward the nuclear family, a decrease of the number of children in a family, a changing sense of values and a rise of awareness of rights in the family. All this has resulted in increased and more complicated disputes between family members.



FLOW OF FAMILY AFFAIRS DETERMINATION CASES



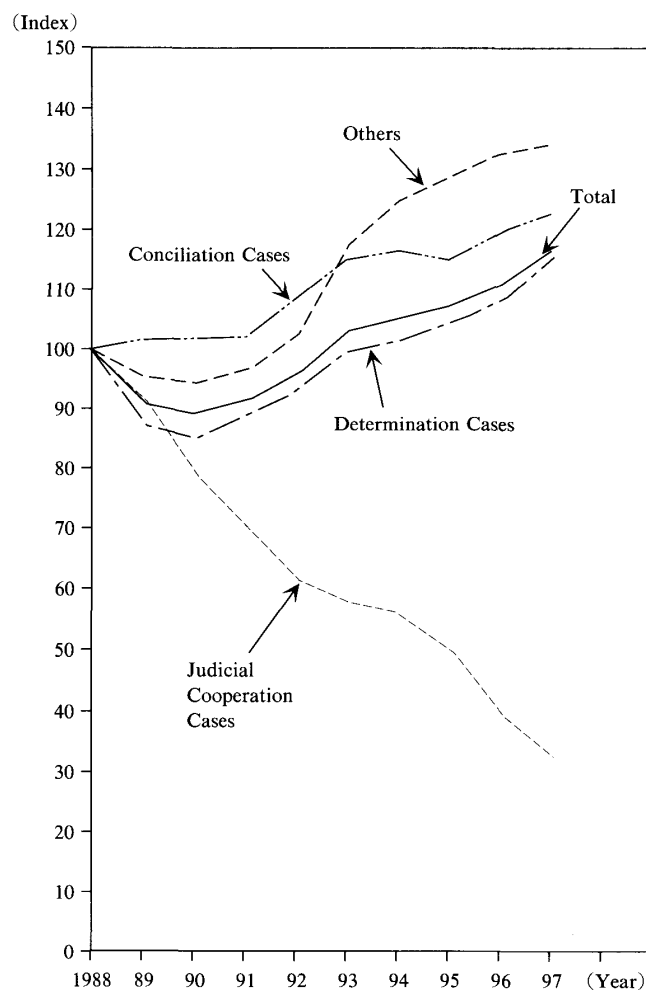
Note: An immediate *Kokoku* appeal may be made within two weeks only when the Supreme Court Rules permit.
 A special *Kokoku* appeal may be made to the Supreme Court from a judgement of the High Court or the Family Court when the appellants claim the unconstitutionality of the judgement.

In Japan the number of cases in family affairs conciliation newly pleaded in a year reached 108,000 in 1998. This number is more than twice the number in 1965.

Annual Comparison of Number of Newly Received Family Affairs Cases

Category Year	Total	Determination cases	Conciliation cases	Judicial cooperation cases	Others
1988	382,814	286,183	83,292	3,015	10,324
1989	350,542	252,587	85,219	2,767	9,969
1990	342,998	245,609	85,099	2,416	9,874
1991	352,102	254,809	85,112	2,119	10,062
1992	370,917	267,327	91,079	1,874	10,637
1993	396,546	286,843	95,837	1,741	12,125
1994	404,080	292,573	96,920	1,688	12,899
1995	412,031	301,133	96,099	1,504	13,295
1996	426,511	311,527	100,097	1,183	13,704
1997	449,164	332,009	102,322	1,003	13,830

Change of the Number of Newly Received Family Affairs Cases (Index) (1988 = 100)



Annual Comparison of Number of Newly Received Determination Cases

Case Category		1993	1994	1995	1996	1997
Grand Total		286,843	292,573	301,133	311,527	332,009
<i>Kō-type</i>	Total	279,336	285,278	293,707	303,927	324,001
	Permission of alteration of the surname of a child	124,874	129,337	132,798	137,676	148,069
	Permission of adoption	1,839	1,646	1,603	1,508	1,393
	Appointment of a special representative (Art. 826, 860 of the Civil Code)	14,436	14,486	14,362	13,484	12,522
	Appointment of the guardian	5,608	5,404	5,518	5,557	5,978
	Renunciation of succession	58,490	58,794	62,603	66,898	73,462
	Permission to change a name	7,967	8,626	8,162	7,900	7,484
	Appointment to a person responsible for care of mentally disordered person	24,924	24,966	25,154	25,273	26,417
	Others	41,198	42,019	43,507	45,631	48,676
<i>Otsu-type</i>	Total	7,507	7,295	7,426	7,600	8,008
	Share of expenses arising from marriage	692	725	782	774	842
	Designation of the legal custodian of a child and other measures relating to the legal custody of a child	1,148	1,135	1,319	1,381	1,517
	Designation of the parent to exercise parental power and alteration thereof	2,153	1,996	1,980	2,042	2,084
	Support	721	753	664	641	603
	Contribution to a decedent's property by the successor	578	588	590	671	697
	Partition of a decedent's estate	1,612	1,570	1,563	1,555	1,730
	Others	603	528	528	536	535

Annual Comparison of Number of Newly Received Conciliation Cases

Case Category		1993	1994	1995	1996	1997
Grand Total		95,837	96,920	96,099	100,097	102,322
<i>Otsu-type</i>	Total	31,250	31,950	32,205	33,468	34,781
	Share of expenses arising from marriage	2,904	3,136	3,274	3,606	3,941
	Designation of the legal custodian of a child and other measures relating to the legal custody of a child	9,421	9,950	10,300	10,459	11,156
	Designation of the parent to exercise parental power and alteration thereof	7,351	7,381	7,388	7,653	7,998
	Support	1,178	1,070	1,014	1,135	876
	Partition of a decedent's estate	8,284	8,298	8,165	8,639	8,568
	Others	2,112	2,115	2,064	1,976	2,242
Other than <i>Otsu-type</i>	Total	64,587	64,970	63,894	66,629	67,541
	Disputes between married couple	48,398	48,602	47,721	50,312	50,665
	Disputes between unmarried couple	1,288	1,282	1,189	1,153	1,121
	Disputes among relatives	3,077	3,063	3,035	3,162	3,302
	Cases of Article 23	4,188	4,286	4,234	4,224	4,493
Others	7,636	7,737	7,715	7,778	7,960	

III. The Characteristics of Family Affairs Conciliation

(1) Settlement by mutual agreement

Different from a lawsuit or a judgment, the family affairs conciliation is a system, which settles dispute according to mutual agreement between the parties concerned. As it is based on the consent of the parties concerned, it can be called a suitable system for settlement of family disputes. However, if the parties concerned do not consent to an appropriate and reasonable mediation plan, then there can be no compulsory settling of a dispute under such a mediation plan.

(2) The Participation of private citizens

In principle, the conciliation of family affairs is held by a conciliation commission composed of a judge called the "domestic relations judge" and mediators of family affairs selected from private sectors. Therefore, it is possible to aim at the flexible settlement of a problem relying on the best use of character of the mediators as well as their profound knowledge and wide experience in various fields.

(3) Simple procedure

The family affairs conciliation system is a simple and easy procedure. Unlike a lawsuit, no complicated proceedings are prescribed for this system. Hearing from the parties concerned or from interested parties as necessary making investigations of the fact, persuasion of the parties concerned and so forth are steadily carried out. Therefore, even those who are not familiar with the law can nevertheless make use of this procedure without difficulty. The application fee for the conciliation of family affairs is very low.

(4) Closed-door proceedings

Since the matters concerning the privacy of a family should not be open to a third party, the conciliation of family affair is not held in an open court like a lawsuit but is proceeded in a congenial atmosphere in a closed-door setting in a mediation room of the family court, to which no persons other than the parties concerned are allowed to enter.

(5) Preference of conciliation

The conciliation of family affairs is a process taking precedence over other methods for the settlement of disputes related to family affairs. As a rule, reconciliation of conjugal relations, divorce case, resolution of adoption, etc., must go through the conciliation of family affairs before being submitted to



MODEL VIEW OF A FAMILY AFFAIRS CONCILIATION PROCEEDING
1 Judge 2 Conciliation Commissioners of Family Affairs
3 Court Clerk 4 Family Court Probation Officer 5 Parties

the court.

Similarly, such judgment cases as the sharing of the expenses for marriage, distribution of property at the time of a divorce, designation of a person in parental authority for a minor, demand for expenses in bringing up children, and finally division of inherited property are also required to be put to conciliation first.

IV. Structure of Conciliation Committee

The Conciliation Committee is composed of a Judge and two family affairs Conciliation Commissioners, one of whom is usually a woman. The family court assigns the members of a Conciliation Committee to each case. A Conciliation Commissioner with specialised knowledge can be designated as a third member depending on the nature of the case. It is possible to increase the number of members of the Committee in the process of the conciliation. Usually conciliation is conducted by the committee, however it is possible to be conducted by a family court judge (single conciliation). If the parties applied for a conciliation proceedings by the committee, the case must be handled by the committee.

V. Staff of the Family Court

Efforts of many personnel are indispensable for an effective flow of cases through the family court. As any case brought to the family court is to include legal, social, economic, medical and emotional factors, the family court is equipped with many kind of family court personnel who are expected to work together to contribute the determination process and resolution process.

Fixed Number of Judges and Full Time supporting Personnel of the Family Court

Classification	round Numbers
Judges	350
Court Clerks	1,200
Family Court Probation Officers	1,500
Medical Officers	50
Nurses	50
Others	2,350

(1) Judges

Only persons possessing sufficient enthusiasm, ability and understanding to deal with family and juvenile cases are selected as judges of the Family Court. The judges of the Family Court are selected by the same method as District Court and High Court judges. They are appointed for a term of ten years after having been chosen by the cabinet from a list of candidates supplied by the Supreme Court.

(2) Court Clerks

Every Family Court has court clerks who are in charge of the preparation and custody of official documents such as case records. They are also responsible for taking care the proceedings go on smoothly as well as for making an auxiliary investigation of laws, precedents etc. for the judges to whom they are assigned. Their activities are as follows.

a) Before the conciliation

Examine the application form for the conciliation to make sure that all necessary documents are in order. Inform the date of conciliation fixed by the Judge to the Commissioners and the parties.

b) On the day of conciliation

Checking the attendance of the parties. Show the record and documents of the case to the commissioners. Draw up a report of the result of the conciliation.

c) After the conciliation

Keep the case record and provides it with the Judge.

(3) Family Court Probation Officers

The Probation Officer investigates the facts and background of the case assigned to him by the Judge. Matters covered by such investigations usually include the personality, behaviour, personal history, financial conditions, home environment, etc., of the parties, juveniles and the interested persons. It is required by law that such investigations should be conducted through scientific method, based upon medical science, psychology, sociology, pedagogy, economics and other branches of knowledge.

After investigation, he/she makes a report on the results to the Judge either in a written form or orally. He/she may, and in certain cases must, present his/her opinion about the case to the Judge, relying upon the outcome of his/her investigation.

Where necessary, the officer may engage himself in certain adjustment activities such as counseling a party or juvenile and co-ordinating the services of social welfare authorities concerned. He may also observe and supervise the conduct of a juvenile placed under his probation until the final decision is made, or take measures to ensure the performance of obligations determined through conciliation and determination processes on family affairs cases. His duties are quite comprehensive and important.

For achieving these expected functions, the Family Court Probation Officer are expected to have widely organized professional knowledge and skill of medical science, psychology, pedagogy, sociology and other sciences related to human beings. In view of this, intensive programmes of in-service training are offered to qualified officers to develop their professional ability and skill.

(4) Medical Officers

Every Family Court is equipped with a family court clinic which is an auxiliary organ of the court for scientific examination and diagnosis. Today, all of the principle offices of the 50 Family Courts and 10 larger branch offices have such a family court's clinics, where services of medical officers and

nurses are available for the medical examination, diagnosis and short-term treatment of parties or juveniles. The majority of medical officers are psychiatrists or specialists in internal medicine.

VI. Family affairs Mediators

In order to take advantages of the experienced and wisdom of citizens in various courses of the life for the settlement of family problems, participation of the layman in the Family Court's handling of family affairs cases has been adopted. Family affairs mediators are such participants. They are part-time government officers, and constitute an indispensable organ of the court. They are chosen from among the general public, usually upon the recommendation of the community authorities, bar associations and other citizens or organisations. The most important criterion for appointment is whether a candidate is a person of broad knowledge and experience and the appointment is a matter of great honour. In principle they should be between 40 and 70 years of age. Other requirements are: impartialness, ability to adjust and settle a dispute, honest and co-operative, in good health. Many citizens from various courses of life are eagerly and ably serving as mediators. In 1987 the total number of the mediators were 1 3, 1 63.

Note should be taken of the importance of women mediators. For, in the majority of family affairs cases, one party is a women and participation of a women mediator serves to ensure the committee an accurate understanding of the sentiment and position of a woman, as well as to secure the trust of the party, which is essential to a successful conciliation. In this sense, it is very encouraging that the number of women serving as mediators has reached about 50% of the total number of mediators.

VII. Procedure for Family Affairs Cases

Both determination and conciliation proceedings are commenced upon application of the person concerned. All hearings involved are not open and informal, which are quite different form litigation in a regular civil court. After the application is filed, the Family Court summons the parties and conducts a hearing.

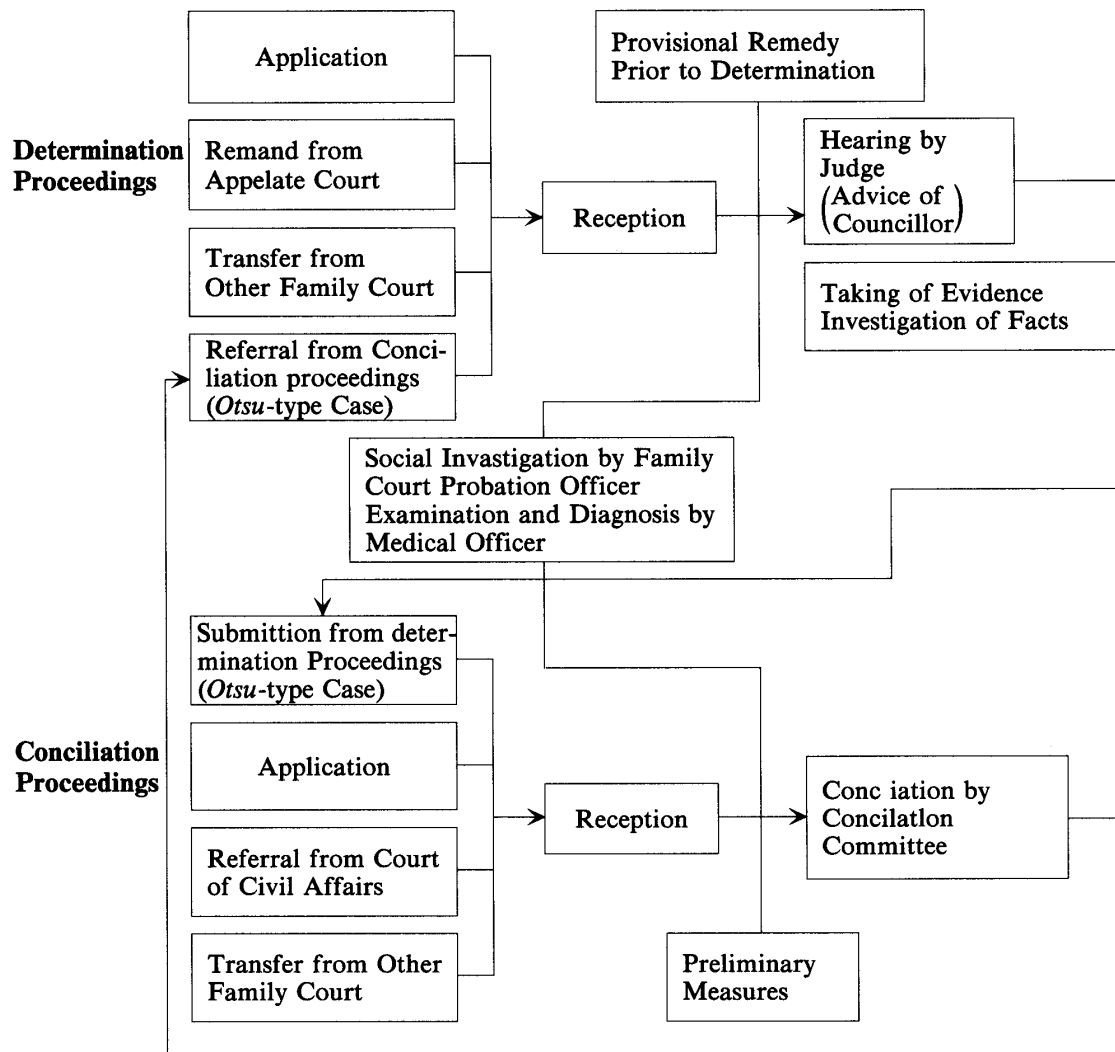
Conciliation seeks to settle a family dispute through the intervention of a court facilitating a compromise between the parties. The conciliation proceedings are conducted by a conciliation committee, which is normally composed of one judge and two mediators of family fairs, one of whom is usually a woman. As mentioned above, the parties are ordinarily summoned to the Family Court for a hearing. An attempt is then made through expert advice to guide the parties to reach a compromise which is just and fitted to the actual circumstances.

When the parties in the conciliation proceedings reach an agreement approved of by the conciliation committee, the agreement is entered in the court's case record and it has the same binding force as an absolute judgement or an order of determination. Cases most frequently subjected to conciliation are those involving divorce, designation of the parent to exercise parental power, partition of property inherited in co-ownership, custody of children, compensation on termination of *de facto* marriage, and support. Applications for divorce are submitted principally by wives, constituting over 70% of the total.

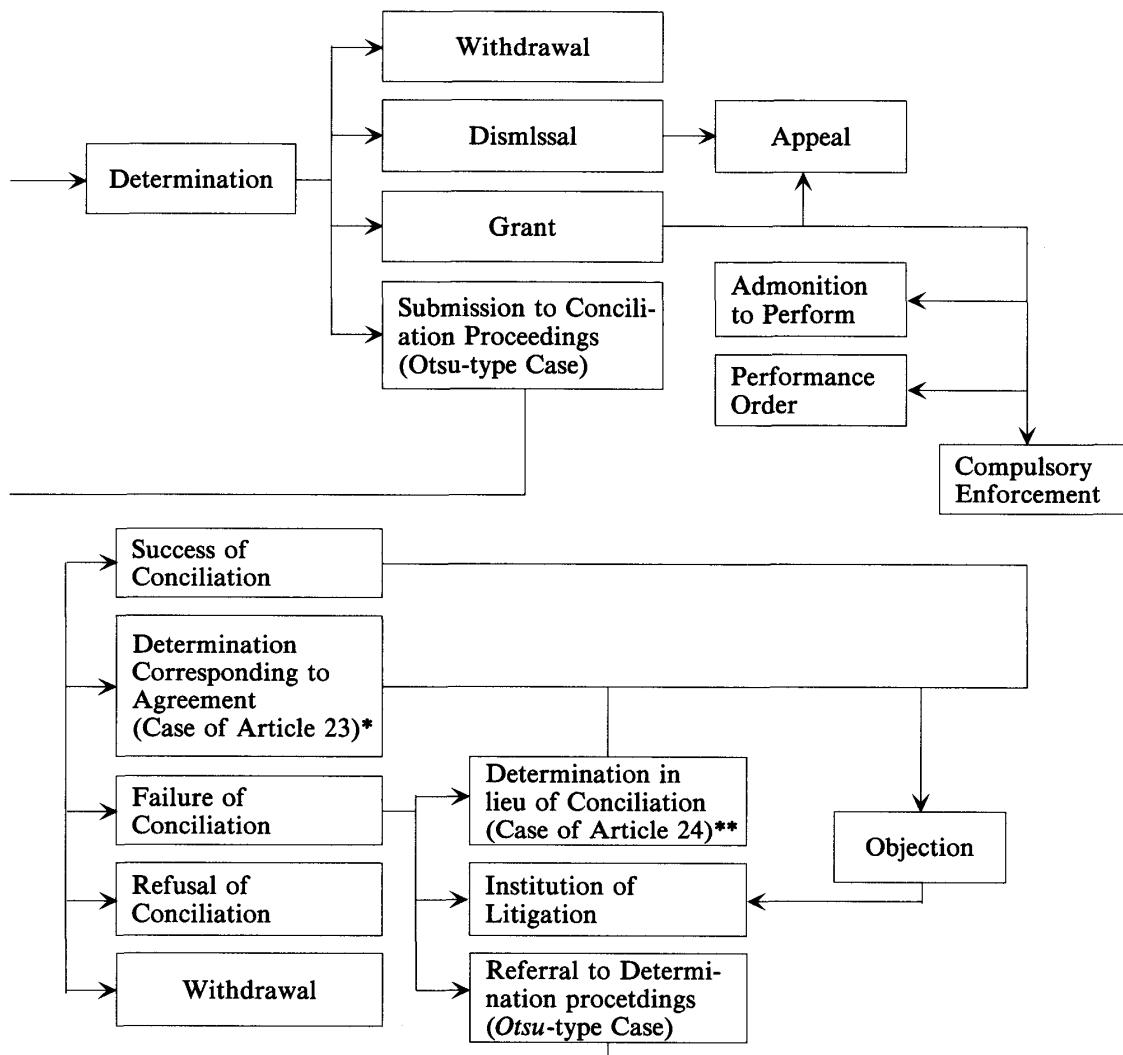
Since divorce¹ can be accomplished merely by a simple registration of an agreement between the spouses in Japan, only a portion of divorces reach the Family court. Most of the divorce cases appearing before the Family Court are disposed of there and only a very small number go on to the District Court's judicial divorce procedure. Though many of the divorce cases on the Family Court attain their aim, not a few number ends in reconciliation and rehabilitation of matrimonial relationship. If a divorce is effected, such matters as consolation money, support, distribution of matrimonial property, and the custody of children are also determined by the conciliation proceedings.

¹ Divorce rate per 1000): Japan: 1.65, US: 4.7, UK: 2.9, Germany: 1.9 (1991)

CHART OF FAMILY AFFAIRS PROCEEDINGS



*Article 23 of the Law for Determination of Family Affairs provides that in cases where, in conciliation proceedings before the conciliation committee concerning nullity or annulment of either marriage or adoption, etc., agreement has been reached between both parties and the existence or non-existence of a cause of nullity or annulment is not in dispute, and if the Family Court, after investigating necessary facts and hearing the opinions of the Conciliation Commissioners of Family Affairs of whom the conciliation committee shall consist and find the agreement proper, then the Court may render an order of determination corresponding to such agreement as regards nullity or annulment of marriage or adoption. These cases provided in Article 23 of the Law are usually called "Cases of Article 23".



****Article 24 provides that in cases where conciliation before the conciliation committee is unsuccessful, the Family Court, if it deems proper to do so, may render, on its own motion, upon hearing the opinions of the Conciliation Commissioners of Family Affairs of whom the conciliation committee shall consist and considering equity for parties and taking all the circumstances into consideration, an order of determination of divorce, dissolution of adoptive relations: or on any other matter necessary for the solution of the case, in so far as it is not inconsistent with the intent of the applications of the parties. These cases are called "Cases of Article 24".**

VIII. Judicial Reform in Japan

The Judicial Reform Council was established under, the Cabinet in July 1999. Its statutory mission is to consider fundamental measures necessary for the judicial reform and judicial infrastructure arrangement by defining the role of judicature in Japan in the 21st century. The agenda of the Council include the realisation of a more accessible and user-friendly judicial system, public participation in judicial system, the redefinition of the legal profession and the reinforcement of its function.

As we already mentioned the family affairs conciliation system has already taken the measurement of public participation. Recently the Supreme Court of Japan has suggested that all divorce cases should be dealt by the Family Court since it is equipped with family affairs specialists, therefore more suitable.

Additional note:

I presented an earlier version of this article at the International Society of family Law's 10th World Conference held in Brisbane, Australia on 10 July 2000.

Photographs, tables, graphs, parts of the explanation and such for the Tokyo Family Court and Model View of a Family Affairs Conciliation Proceeding that were explained in this thesis have been taken from "Guide to the Family Court of Japan," edited by the Supreme Court of Japan in Japan.