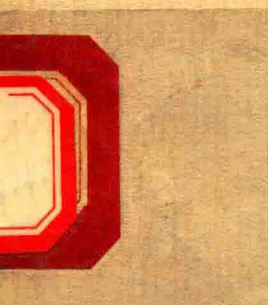


# Thirty-two Years of the Family Courts of Japan

—Growth and Activities in Retrospect—

GENERAL SECRETARIAT  
SUPREME COURT OF JAPAN

1982



## PREFACE

A brief description of the Family Courts' growth and a short statistical review of their activities covering principally the period from 1949 to 1980 are the main subject matters of this pamphlet.

For a general description of the philosophy, background, organization and procedure of the Family Court, the reader is referred to the "Guide to the Family Court of Japan", a booklet in English, published for free distribution by the General Secretariat of the Supreme Court of Japan. For more detailed information, it is necessary to examine the related statutes. Court organization is regulated by the Constitution of Japan and the Court Organization Law together with its auxiliary regulations and Supreme Court Rules. Basic statutes that govern the jurisdiction and the procedure of the Family Court are the Law for Determination of Family Affairs and the Juvenile Law, and the former is supplemented by the Supreme Court's Rules for Determination of Family Affairs, while the latter by the Rules of Juvenile Proceedings. English translation of the texts of these Laws and Rules are contained in the "Statutes on Family Justice of Japan", another publication of the Supreme Court's General Secretariat. Matters of the substantive law are mostly to be found in the Civil Code and the Criminal Code.

In writing this booklet, special care has been taken to make it as understandable as possible to those who are not familiar with the Japanese legal system. However, the limited space has hindered us from going too far in the explanation of technical intricacies. If the reader has any question about this pamphlet, the Director of the Family Bureau of the General Secretariat will be glad to answer it.

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## Thirty-two Years of the Family Courts of Japan

### I. The Beginning

For three years after the end of World War II had passed, Japan was still suffering from the scars of the war. The people were hungry and many had no dwelling or even shelters worthy of such names. Necessaries of life were extremely short. The hard living and the so-called post-war moral chaos were causing many family troubles. War orphans and neglected children were many, turning into delinquents very easily.

Towards the end of that year, 1948, however, vigorous efforts were being made to set up a nation-wide Family Court System in Japan. The Family Court, unifying the Family Affairs Determination Department of the District Court and the Juvenile Inquiry and Determination Office, was to handle both family disputes and juvenile delinquency as a judicial organ with administrative functions, and help coping with those pressing social problems democratically, scientifically and judicially.

The persons concerned worked hard day and night, often in shabby, unheated chambers, with no hearty meals.

Their efforts were not in vain. Forty-nine Family Courts and a number of their branch offices began functioning on January 1, 1949.

## II. The Growth

### 1. Manpower and Branch Offices

When the Family Court System started functioning, the personnel of the Family Courts consisted of 3,531 people, including 159 Judges, 625 Court Clerks, 405 Juvenile Protection Officers (now called Family Court Probation Officers) and a number of the other secretarial or auxiliary employees. By 1981, the total number has increased to 5,553 comprising 345 Judges, 1,203 Court Clerks, 1,517 Family Court Probation Officers, 50 Medical Officers, 50 Nurses and 2,388 secretarial or auxiliary employees. In addition to these full time officials, there are now 38 Medical Officers and 10 Nurses who work on a part-time basis.

The number of branch offices has increased from 228 to 242. In addition, 34 sub-branch offices were established in remoter towns in 1951, which now number 96.

### 2. Councillors and Conciliation Commissioners of Family Affairs

In order to take advantage of the experience and wisdom of citizens in various courses of life for the settlement of family problems, participation of the layman in the Family Court's handling of family affairs cases has been adopted. Councillors and Conciliation Commissioners of Family Affairs are such participants. Councillors take part in the determination proceedings while Conciliation Commissioners of Family Affairs play important roles in the conciliation process.

They are chosen from among the general public, usually upon the recommendation of the community authorities, bar associations, and other citizens organizations. 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 honor.

Many citizens from various courses of life are eagerly and ably serving as Councillors and Conciliation Commissioners. In 1980 the total number of Councillors reached 6,044 and that of Conciliation Commissioners were 9,467.

Note should be taken of the importance of women Councillors and particularly of women Conciliation Commissioners of Family Affairs. For, in the majority of family affairs cases, one party is a woman and participation of a woman Conciliation Commissioner of Family Affairs serves to ensure the commission 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 most pleasing that the number of women Councillors and Conciliation Commissioners of Family Affairs has steadily been increasing. In 1980 the number of women serving as Conciliation Commissioners of Family Affairs amounted to about 40% of the total number of the Commissioners.

### **3. Family Court Probation Officers**

The office of the Family Court Probation Officer was created on June 1, 1954, unifying the functions of the former Juvenile Protection Officer and the Family Affairs Investigation Officer. The post of this Juvenile Protection Officer was set up on January 1, 1949, and that of the Family Affairs Investigation Officer on April 1, 1951. The reason for establishing these two separate posts with functions essentially the same, had only been historical. The unification was materialized as a large step forward for achieving one of the Family Court's goals, i.e., a whole-sale settlement of family problems regardless of whether the most conspicuous symptom happens to be a juvenile case or a domestic relations case.

#### **a. *Duties and Functions***

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

After investigation, he reports the results to the Judge in a written form or orally. He may, and in certain cases must, express his opinion about the case to the Judge, relying upon the results of his investigation.

Where necessary, the officer may engage himself in certain adjustment activities, such as counselling a party or juvenile and coordinating the services of social welfare authorities concerned. He may also observe and supervise the conduct of a juvenile placed under probation, or take measures to ensure the performance of obligations determined through conciliation and determination processes. His duties are quite comprehensive and important.

#### **b. *Training***

Thus, the task of a Family Court Probation Officer is not an easy one, and much of it involves special activities as a case-worker. In view of this, intensive

programs of in-service training are offered to qualified officers to develop their professional ability and skill.

At first, such training was given by the Legal Training and Research Institute (an establishment for the training of legal apprentices and the researches by judges) or the Institute for the Training of Court Clerks, but a new, separate institute, the Research and Training Institute for Family Court Probation Officers, was set up in 1957 by the Supreme Court.

The Institute offers four-months basic course after first appointment of officers. Then officers shall be apprenticed to the Family Court for twelve-months. After the apprenticeship, the Institute offers eight-months practical course. The Institute also offers several refresher courses for senior officers. Furthermore, there are also short-term advanced programs on special subjects such as marriage counseling, new methods of psychological testing, family case-work, etc. By the end of 1980 an aggregate of about 10,865 officers had a chance to participate in such training.

#### 4. Family Court's Clinic

Social investigation by the Family Court Probation Officer has been the most valuable source information for the court's scientific handling of the cases. Also examination services of the Juvenile Detention and Classification Center are available in the case of a detained juvenile.

However, a few years' experience of the Family Court made it keenly felt that there is need of an auxiliary organ of the court for scientific examination and diagnosis. As a result, Family Court's Clinics were opened in 1951 in 11 major Family Courts. They were welcomed very much and more were opened in rapid succession. Today, all of the principal offices of the 50 Family Courts and 10 larger branch offices have such 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.

### III. The Activities

#### 1. Trend of Family Affairs Cases

##### a. *General Review*

The number of the family affairs cases received by the Family Courts throughout the country during the thirty-two year period from 1949 to 1980 totals about 10.32 million as shown in Table 1.

Annual breakdown shows a gradual decrease of the yearly total since 1954 until 1969, then a tendency to increase thereafter. This is mainly due to the change of the numbers of determination cases. The conciliation cases, getting into the level of 40,000 cases in 1954 and amounting over 50,000 in 1965, reached 70,000 in 1972 and topped 83,064 in 1980.

Counselling service for domestic affairs at the Family Court is a voluntary service rendered by competent members of the personnel in response to the request of the general public. Persons with various family troubles just step in and the adviser on duty listens to them and help them to find what their problems really are. If necessary, as is often the case, he informs them who to file what application or petition where.

This practice provides a way of easier access to the regular services of the Family Courts (and of other social welfare agencies, too), and is very popular as the fact that 307,840 people ask for such advice in 1980 shows.

Now let us turn to little more detailed analysis of the trends of determination and conciliation cases respectively.

##### b. *Determination Cases*

Determination cases are those disposed of through the determination process. The categories of them are enumerated mainly under Article 9 of the Law for Determination of Family Affairs. They are classified into two classes, A and B, by the same article. Cases of Class A are of a non-contentious nature and decided upon only through the determination process. Cases of Class B, which usually involve some grade of dispute, may be handled either through determination proceedings or through conciliation process, but ordinarily conciliation is tried first.

A determination case comes to an end when an order of determination, which is a court decision, is issued by the Court. This is in contrast to the conciliation proceedings where the court merely approves or disapproves the mutual agreement reached between the parties.



### (i) Reception

Yearly total of newly received Determination cases had been on a gradual decrease after having reached a peak in 1954, but the tendency has again begun to increase a bit since 1970. Table 2 shows the changes in the number of received cases of certain representative types.

As seen there, the “Renunciation of Succession” cases show a particularly marked decrease for recent years. The remarkably low death-rate of adults of recent years may account for this to some extent. But the changing attitude of the people to succession seems to be a more important cause. Succession under the “old Civil Code”, abolished in 1947, was a transfer of the whole of a family property from one generation to the next generation. Legally, all the rights and obligations of the deceased were succeeded to the sole legal heir, usually the eldest son, only, and other children and relatives (even the wife of the deceased) had no individual shares. Under the “new Civil Code”, as the existing law is called, children have equal shares and the wife is always a successor. But even after the new Code came into effect, many wives and children other than the eldest son renounced the succession, so that the eldest son might obtain the whole of the deceased’s property. Now the practice seems to have begun losing its popularity, and successors claim their shares in full in more and more cases, thus reducing the number of the “Renunciation” cases.

Applications for permission to adopt minors have been on a decrease ever since the first year of the Family Courts. The recent decrease of birth-rate and the resultant, relatively small population of small children must be one of the causes, but many other factors are also considered to be contributing. Generally stabilized financial conditions of the citizens and better protection extended to homes without a father through social security have eliminated considerably those cases where a parent or parents, unable to raise a baby, give it up for adoption. Also the rapid disappearance of the consciousness of “house” which has been proceeding since its legal abolition under the “new Civil Code”, seems to be diminishing cases of adoption of minors for the sake of the “house”, that is, adoption by a childless couple not primarily for the welfare of the child but for the purpose of maintaining the genealogical continuity from the ancestors to the posterities belonging to the same “house”.

Cases of appointment of guardians as well as creation of entries on the family register show also a marked tendency of decrease after 1955. This seems to reflect the fact that the settlement of post-war problems such as the grant of pensions for children of the war-dead and the adjustment of the family register