

Child Custody Issues When Divorcing a Japanese Citizen

By Rudy Wartella

Child Custody issues have been in the spotlight more than ever before in Japan¹. With approximately 100 active cases in Japan involving left-behind parents, there has been a lot of pressure for Japan to revise their domestic laws in addition to signing the Hague Convention on the Civil Aspects of International Child Abduction as all of the other G-7 countries have done. The U.S. State Department and other developed countries are working diligently with members of the Japanese Diet to get Japan to sign the treaty and to modify their domestic laws. It is even more important for international couples to understand the cultural differences when it comes to marriage, divorce, settling child custody, visitation, and support issues.

At a recent conference involving several U.S. consulates in Japan, 10 or 11 left-behind parents gave brief accounts of how they were deprived of custody and or visitation by the Japanese-citizen parent (or grandparent). These accounts were all heart-wrenching. One parent had not seen his daughter for over six years. One parent is only allowed to see his child for 24 hours a year. Another parent is allowed to visit his child for five hours a month. Another parent is in a custody battle with the grandparents (the mother is deceased).

The Hague Convention spells out the procedures to be used in parental kidnapping cases. Without going into the specifics of the convention, one thing is clear: countries that are signatories to the Hague have fewer unresolved international parental kidnapping cases. But signing the treaty is only a part of the solution. Enforcement of the Treaty is also problematic. Under Japanese culture and Japanese domestic law, a divorce of a spouse usually involves divorcing the family. In other words, the non-custodial parent never sees or visits the children. This is totally different than most U.S. states. Joint custody is common and visitation is encouraged. When the parties cannot agree, most U.S. courts decide custody and visitation based on the "best interest of the child."

U.S. Citizens may take it for granted that in a divorce they will be given joint custody or at least reasonable visitation; in Japan the opposite presumption is true, especially in an international divorce. There has been at least one reported case when the US person was given legal custody under Japanese law, but the Japanese citizen spouse refused to deliver custody and there was no Japanese agency that would take responsibility for enforcement. More common are cases where the U.S. person is given custody under U.S. law and the Japanese parent takes the child to Japan against the U.S. Court order and refuses to return the child to the United States. In these cases, the Japanese government does virtually nothing to enforce the U.S. court order. Most

common is where the couple divorces in a Japanese court and the U.S. Citizen is not given custody, and little or no visitation.

Although the diplomats are looking for a legal solution for the left-behind parents, the problem lies in the cultural differences. Most marriages, including international marriages, are based on love. Most couples do not anticipate divorce or losing their parental rights if they have children. Keeping in mind that the U.S. mindset is joint custody or visitation, while the Japanese mindset is sole custody without visitation, a cultural shift needs to be made. The best way for this cultural shift to happen is for the couple to believe that it is in the best interest of the children for both parents to be involved in the children's lives, even after a divorce. It is up to the U.S. parent to find the best way to do this. Having a good relationship with the in-laws may be helpful as Japanese spouses frequently return home or are assisted by their family members when they decide to take a child. February, 2011.

ⁱ See CRS Report for Congress, Japan-U.S. Relations: Issues for Congress, January 13, 2011, page 7, International Child Custody Disputes

The issue of overseas Japanese women in failed marriages taking children to Japan without the consent of the foreign husband or ex-husband has become an issue in bilateral relations. Sometimes, these women have acted in contravention of foreign custody settlements and, after arriving in Japan, have prevented the children from meeting their fathers. With cases involving over 269 children, the United States reportedly has the largest number of such disputes with Japan.³ Legally, Japan only recognizes sole parental authority, under which only one parent has parental rights, and there is a deep-rooted notion in Japan that the mother should assume custody. Japanese officials say that, in many cases, the issue is complicated by accusations of abuse or neglect on the part of the foreign spouse, though a senior U.S. State Department official has said that there are "almost no cases" of substantiated claims of violence.⁴

On September 29, the House of Representatives passed a resolution (H.Res. 1326) calling on Japan to address the problem, provide access to the children to the parents, and join the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The increased publicity has raised awareness of the issue in Japan, particularly among Diet members. In December 2009, the Ministry of Foreign Affairs created a new "parental rights of children" office staffed by nine officials in charge of Europe and America and international treaties. The new office will not only deal with cases at issue with other countries, but will also be responsible for studying Japan's accession to the treaty in the future. A report by a council of vice-ministerial-level officials on joining the convention is due in March 2011.