

Personal Status Litigation Act (Not yet enforced Article 35 etc. (Tentative translation))

(Act No. 109 of July 16, 2003)

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Chapter I General Provisions

Section 1 General Rules

(Purpose)

Article 1 This Act establishes the special provisions and other measures referred to in the Code of Civil Procedure (Act No. 109 of 1996) for personal status litigation proceedings.

(Definitions)

Article 2 The term "personal status litigation" as used in this Act means litigation related to any of the following actions or to any other action through which a person seeks a change in the status of a familial relationship or a declaratory judgment as to whether a familial relationship exists (hereinafter referred to as a "personal status action"):

- (i) an action to have a marriage declared void, action to rescind a marriage, divorce action, action to have a divorce by agreement declared void, action to rescind a divorce by agreement, or action seeking a declaratory judgment as to whether a marital relationship exists;
- (ii) an action to rebut the presumption of legitimacy, action for filiation, action to have an acknowledgment of parentage declared void, action to rescind an acknowledgment of parentage, action to establish paternity pursuant to the provisions of Article 773 of the Civil Code (Act No. 89 of 1896), or action seeking a declaratory judgment as to whether a biological parent and child relationship exists; and
- (iii) an action to have an adoption declared void, action to rescind an adoption, action to dissolve an adoptive relationship, action to have the dissolution of an adoptive relationship by agreement declared void, action to rescind the dissolution of an adoptive relationship by agreement, or action seeking a declaratory judgment as to whether an adoptive parent and child relationship exists.

(Rules of the Supreme Court)

Article 3 Beyond what is prescribed in this Act, the Rules of the Supreme Court provide for the necessary particulars relevant to personal status litigation proceedings.

Section 2 The Courts

Subsection 1 Jurisdiction of the Japanese Courts

(Jurisdiction over Personal Status Actions)

Article 3-2 A personal status action may be filed with a Japanese court if it falls under any of the following items:

- (i) if the action is being filed against one party to a familial relationship and that party is domiciled in Japan (or resides in Japan, if the party has no domicile or the party's domicile is unknown);
- (ii) if the action is being filed against both parties to a familial relationship and either party or both parties are domiciled in Japan (or reside in Japan, if they have no domicile or their domiciles are unknown);
- (iii) if the action is being filed by one party to a familial relationship and the other party was domiciled in Japan at the time of their death;
- (iv) if both parties to a familial relationship have died and either party or both parties were domiciled in Japan at the time of their deaths;
- (v) if both parties to a familial relationship are Japanese nationals (including if either or both were Japanese nationals at the time of their death);
- (vi) if the action is being filed by one party to a familial relationship who is

domiciled in Japan, and the parties to the familial relationship were last domiciled together in Japan; or

(vii) if the action is being filed by one party to a familial relationship who is domiciled in Japan and there are found to be special circumstances because of which conducting a trial and reaching a judicial decision in a Japanese court will help achieve equity between the parties or ensure a fair and speedy trial, such as if the other party is missing or if the final and binding judicial decision on an action concerning the same familial relationship that was filed in the country where the other party is domiciled is not effective in Japan.

(Jurisdiction Due to Consolidation of Related Claims)

Article 3-3 If a single action involves a claim that is subject to personal status litigation and a claim for damages arising from facts that constitute a cause of action associated with such a claim, the action may be filed with a Japanese court, but only if the Japanese courts have jurisdiction over the claim that is subject to that personal status litigation.

(Jurisdiction Over Cases Involving Judicial Decisions to Settle Matters Related to Child Custody)

Article 3-4 (1) If a Japanese court has jurisdiction over an action to rescind a marriage or a divorce action, it has jurisdiction over the case that involves the judicial decision referred to in Article 32, paragraph (1) to designate the custodial parent and settle other such matters related to child custody, and it has jurisdiction over the case that involves the judicial decision referred to in paragraph (3) of that Article to designate the parent with parental authority.
(2) If a Japanese court has jurisdiction over an action to rescind a marriage or a divorce action, it has jurisdiction over the case that involves the judicial decision to settle matters related to the equitable distribution of property, if that case falls under any of the items of Article 3-12 of the Domestic Relations Case Procedure Act (Act No. 52 of 2011).

(Dismissal Without Prejudice Due to Special Circumstances)

Article 3-5 Even if the Japanese courts have jurisdiction over an action, a court may dismiss all or part of that action without prejudice if it finds there to be special circumstances because of which conducting a trial and reaching a judicial decision in a Japanese court would be inequitable to either party or prevent a fair and speedy trial, in consideration of circumstances such as the nature of the case, the degree of burden that the defendant would have to bear in responding to the action, the location of evidence, or the interests of any children of the parties to the familial relationship that the action concerns who

have not yet attained the age of majority.

Subsection 2 Jurisdiction

(Jurisdiction Over Personal Status Actions)

Article 4 (1) A personal status action falls under the exclusive jurisdiction of the family court of jurisdiction in the place that constitutes the general venue for the party to the familial relationship that the action concerns, or the place that constituted the general venue for that party at the time of their death.

(2) If a court with jurisdiction under the provisions of the preceding paragraph is not established, the personal status action falls under the exclusive jurisdiction of the family court that has jurisdiction over the place specified by the Rules of the Supreme Court.

(Jurisdiction Over Joint Claims)

Article 5 Notwithstanding the provisions of the preceding Article, if multiple claims by or against multiple persons seeking changes in the status of multiple familial relationships or a declaratory judgment as to whether multiple familial relationships exist are filed in a single personal status action, the action may be filed with a family court that has jurisdiction over one of those claims pursuant to the provisions of the preceding Article; provided, however, that this is limited to the cases specified in the first sentence of Article 38 of the Code of Civil Procedure.

(Handling Under Extended Jurisdiction by the Family Court Before Which the Conciliation Case Was Pending)

Article 6 Notwithstanding the provisions of Article 16, paragraph (1) of the Code of Civil Procedure, even if a family court finds that all or part of a suit in personal status litigation is not under its jurisdiction, the court may itself conduct proceedings and make judicial decisions for all or part of that personal status litigation upon petition or by its own authority, if a case under conciliation that was petitioned for in connection with the relevant personal status litigation case pursuant to the provisions of Article 257, paragraph (1) of the Domestic Relations Case Procedure Act was pending before that court, and if the court finds it particularly necessary to do so in light of the progress of the conciliation, the opinions of the parties, and other such circumstances.

(Transfers to Avoid Delay)

Article 7 Even if personal status litigation is under the jurisdiction of a family court, the court may transfer all or part of that litigation to another court with jurisdiction upon petition or by its own authority if it finds this to be necessary

in order to avoid a substantial delay in litigation or in order to help achieve equity between the parties, in light of the addresses of the parties and the witnesses to be examined and other such circumstances.

(Transfer of Litigation Involving Related Claims)

Article 8 (1) On petition, a court of first instance before which there is pending litigation involving a claim for damages arising from facts that constitute a cause of action in personal status litigation that is pending in a family court may transfer the litigation involving the claim for damages to the family court, if it finds this to be reasonable. In such a case, the family court to which the litigation is transferred may conduct its own trial and make its own judicial decisions regarding it.

(2) A family court to which litigation involving a claim for damages is transferred pursuant to the provisions of the preceding paragraph must order the consolidation of oral arguments for the personal status litigation case that is referred to in that paragraph and the transferred case.

Subsection 3 Court Advisors

(Court Advisors)

Article 9 (1) If a family court finds it necessary, it may have a court advisor attend a trial or be present for an attempt to arrange a settlement, and hear their opinions on the case.

(2) There is at least one court advisor for each case.

(3) A court advisor is designated by the family court for each case from among persons appointed in advance by the family court every year.

(4) The Rules of the Supreme Court prescribe the qualifications and number of persons to be appointed pursuant to the preceding paragraph and other necessary matters relevant to appointing them as referred to in that paragraph.

(5) A court advisor is paid travel expenses, a daily allowance, and lodging fees in the amounts specified by the Rules of the Supreme Court.

(6) When a family court has a court advisor attend a trial or attempt to arrange a settlement pursuant to the provisions of paragraph (1), if the court finds it appropriate, the family court may, after hearing the opinions of both parties, have the court advisor attend the trial or attempt to arrange a settlement and take action on the relevant date, as provided for by the Rules of the Supreme Court, by a method that enables the family court and both parties to simultaneously communicate with the court advisor by audio transmission.

(Disqualifying or Challenging a Court Advisor)

Article 10 (1) The provisions of Articles 23 to 25 of the Code of Civil Procedure

apply mutatis mutandis to court advisors.

- (2) Once a petition to disqualify or challenge a court advisor is filed, the advisor may not participate in the case with respect to which the petition has been filed until the ruling on the petition becomes final and binding.

(Sanctions for Unlawful Disclosure of Confidential Information)

Article 11 If a current or former court advisor divulges a personal secret learned in connection with something handled in the course of duty, they are subject to imprisonment for not more than one year or a fine of not more than 500,000 yen.

Section 3 The Parties

(Standing as a Defendant)

Article 12 (1) Except as otherwise provided, in a personal status action that is filed by one party to the familial relationship that the action in question concerns, the other party to the familial relationship is to be named as the defendant.

- (2) Except as otherwise provided, in a personal status action that is filed by a person other than a party to the familial relationship that the action in question concerns, both of the parties to the familial relationship are to be named as defendant; if one of the parties has died, the other party is to be named as the defendant.

- (3) If a person that is to be named as a defendant in the relevant action pursuant to the provisions of the preceding two paragraphs dies and there is no other person that is to be named as a defendant, the public prosecutor is to be named as the defendant.

(Capacity to Sue or Be Sued in Personal Status Litigation)

Article 13 (1) The provisions of Article 5, paragraphs (1) and (2) of the Civil Code and of Article 9, Article 13, and Article 17 of that Code, as well as the provisions of Article 31 of the Code of Civil Procedure and of Article 32, paragraph (1) (including as applied mutatis mutandis pursuant to Article 40, paragraph (4) of that Code) and Article 32, paragraph (2) of that Code do not apply to procedural acts in personal status litigation proceedings.

- (2) If a person whose capacity to engage in procedural acts has been limited seeks to engage in procedural acts under the preceding paragraph, the presiding judge may appoint an attorney as the person's counsel, on petition, when the judge finds this to be necessary.

- (3) If a person whose capacity to engage in procedural acts has been limited does not file the petition under the preceding paragraph, the presiding judge may

order someone to appoint an attorney as that person's counsel, or may appoint an attorney as that person's counsel on its own authority.

- (4) The amount that the court finds to be reasonable is to be used as the amount of remuneration that a person whose capacity to engage in procedural acts has been limited is to pay to the attorney that the presiding judge has appointed as their counsel pursuant to the provisions of the preceding two paragraphs.

Article 14 (1) If a person who is to stand as the plaintiff or defendant in a personal status action is an adult ward, the guardian may sue or be sued in their stead; provided, however, that this does not apply if the guardian is the other party to the litigation connected with that action.

- (2) In the case referred to in the proviso to the preceding paragraph, the adult guardianship supervisor may sue or be sued instead of the adult ward.

(Intervention by Interested Parties)

Article 15 (1) In personal status litigation in which the public prosecutor is named as the defendant, if the court finds it necessary to have a third party whose rights of inheritance are compromised as a result of the litigation (hereinafter referred to as an "interested party") intervene in the litigation, the court may issue a ruling to have the interested party intervene in the litigation in order for the interested party to assist the defendant.

- (2) Before issuing the ruling referred to in the preceding paragraph, the court must hear the opinions of the parties and of the interested party.
- (3) The provisions of Article 45, paragraph (2) of the Code of Civil Procedure do not apply to interested parties who, based on an application as referred to in Article 43, paragraph (1) of the Code of Civil Procedure or based on a ruling as referred to in paragraph (1) of this Article, have intervened in personal status litigation in which the public prosecutor is named as the defendant.
- (4) The provisions of Article 40, paragraphs (1) through (3) of the Code of Civil Procedure (for paragraph (3) of that Article, this is limited to the part concerning the suspension of court proceedings) apply mutatis mutandis to interested parties referred to in the preceding paragraph.
- (5) The court may revoke an order under paragraph (1) of this Article.

Section 4 Court Costs

Article 16 (1) In personal status litigation that has the public prosecutor as a party, the court costs that the public prosecutor would be required to bear if the circumstances were governed by the provisions of Articles 61 through 66 of the Code of Civil Procedure are borne by the national treasury.

- (2) The provisions of Articles 61 through 66 of the Code of Civil Procedure apply

mutatis mutandis to the bearing of court costs if an interested party, based on an application as referred to in Article 43, paragraph (1) of the Code of Civil Procedure or a ruling as referred to in paragraph (1) of the preceding Article, has intervened in personal status litigation in which the public prosecutor is named as the defendant.

Section 5 Court Proceedings

(Consolidation of Related Claims)

Article 17 (1) Notwithstanding the provisions of Article 136 of the Code of Civil Procedure, both a claim that is subject to personal status litigation and a claim for damages arising from facts that constitute a cause of action associated with that claim may be brought in a single action. In such a case, the family court that has jurisdiction over the claim that is subject to personal status litigation may itself conduct a trial and render a judgment in the litigation involving the claim for damages.

(2) In addition to the cases provided for in the preceding paragraph, an action to claim damages arising from facts constituting a cause of action that is subject to personal status litigation may be filed with the family court before which that personal status litigation is already pending. In such a case, the provisions of the second sentence of the preceding paragraph apply mutatis mutandis.

(3) The provisions of Article 8, paragraph (2) apply mutatis mutandis to both the personal status litigation case referred to in the preceding paragraph and the case involving the claim for damages referred to in that paragraph, in a situation as referred to in that paragraph.

(Changes to an Action; Counterclaims)

Article 18 (1) Notwithstanding the provisions of Article 143, paragraphs (1) and (4) of the Code of Civil Procedure and of Article 146, paragraph (1) and Article 300 of that Code, in personal status litigation proceedings, a plaintiff may amend a claim or cause of action, and a defendant may file a counterclaim, up until the conclusion of the oral arguments in the first or second instance.

(2) If the Japanese courts would have no jurisdiction over the claim subject to personal status litigation resulting from the amendment of a claim, the plaintiff may amend a claim pursuant to the provisions of the preceding paragraph only if in the resulting claim the plaintiff seeks to change the status of the same familial relationship as the one involved in the pre-amendment claim or seeks a declaratory judgment as to whether that familial relationship exists.

(3) If the Japanese courts have no jurisdiction over a claim as set forth in one of

the following items that is the subject of a counterclaim, the defendant may file a counterclaim under the provisions of paragraph (1) only in the case specified in that item:

- (i) a claim subject to personal status litigation: if the subject of the counterclaim is a claim through which the defendant seeks to change the status of the same familial relationship as the one involved in the claim subject to personal status litigation that is the subject of the principal action or a claim through which the defendant seeks a declaratory judgment as to whether that familial relationship exists; or
- (ii) a claim for damages arising from facts constituting a cause of action that is subject to personal status litigation: if the relevant personal status litigation is already pending before a Japanese court.

(Exclusion from Application of the Provisions of the Code of Civil Procedure)

Article 19 (1) The provisions of Article 157 of the Code of Civil Procedure and of Article 157-2, Article 159, paragraph (1), Article 207, paragraph (2), Article 208, Article 224, Article 229, paragraph (4), and Article 244 of that Code, as well as the part of the provisions of Article 179 of that Code concerning facts admitted by a party in court, do not apply to court proceedings in personal status litigation.

(2) The provisions of Articles 266 through 267-2 of the Code of Civil Procedure do not apply to the subject matter of the suit in personal status litigation.

(Fact Finding on the Court's Own Authority)

Article 20 In personal status litigation, the court may take facts which are not asserted by the parties into consideration and examine evidence on its own authority. In such a case, the court must hear the opinions of the parties regarding the facts and the results of the examination of the evidence.

(Ordering Parties to Appear)

Article 21 (1) In personal status litigation, if the court will examine a party first hand, the court may order the party to appear on a court date.

(2) The provisions of Articles 192 through 194 of the Code of Civil Procedure apply mutatis mutandis if a party ordered to appear pursuant to the provisions of the preceding paragraph does not appear and is without legitimate grounds for not appearing.

(Suspending Open Proceedings to Examine the Parties)

Article 22 (1) The court may issue a ruling to conduct an examination concerning a particular matter in camera if a party to personal status litigation or their legal representative (hereinafter collectively referred to as a "party or

representative" in this paragraph and the following paragraph) or a witness is to be examined regarding a matter that is the basis for the familial relationship status change or declaratory judgment as to whether a familial relationship exists that is the subject matter of the suit being litigated, and that concerns a deep personal secret from the private life of the person subject to examination, when the court finds unanimously that the party, representative, or witness would be unable to provide a sufficient statement regarding that matter in open court because it is clear that doing so would substantially interfere with their life in the community, and that the court cannot make an appropriate judicial decision on the status change or declaratory judgment in question in the absence of such a statement, based solely on the other evidence.

- (2) Before issuing the ruling referred to in the preceding paragraph, the court must hear the opinions of the party or representative and the witness.
- (3) If a court will conduct an examination concerning a particular matter in camera pursuant to the provisions of paragraph (1), it must declare this and indicate its reason for doing so before having the public leave the courtroom. Once the examination concerning the matter in question has ended, the court must allow the public to re-enter the courtroom.

(Participation of Public Prosecutors)

- Article 23 (1) In personal status litigation, the court or an authorized judge or commissioned judge may have the public prosecutor attend a court date and state an opinion on the case if they find this to be necessary.
- (2) If the public prosecutor attends a court date pursuant to the provisions of the preceding paragraph, they may assert facts or offer evidence.

(Scope of Persons Subject to the Effect of Final and Binding Judgments)

- Article 24 (1) Notwithstanding the provisions of Article 115, paragraph (1) of the Code of Civil Procedure, a final and binding judgment in personal status litigation is effective against third parties.
- (2) Notwithstanding the provisions of the preceding paragraph, if a claim has been filed to rescind a marriage due to violation of the provisions of Article 732 of the Civil Code, a final and binding judgment dismissing the claim with prejudice is effective against a spouse from an earlier marriage only if that spouse has intervened in the litigation involving that claim.

(Prohibition on the Filing of Actions Concerning Personal Status After a Judgment Becomes Final and Binding)

- Article 25 (1) After a judgment in personal status litigation (excluding a judgments dismissing an action as not in accordance with the law; the same

applies in the following paragraph) becomes final and binding, the plaintiff may not file a personal status action concerning the same familial relationship based on facts that the plaintiff could have asserted by amending the claim or the cause of action in that litigation.

- (2) After a judgment in personal status litigation becomes final and binding, the defendant may not file a personal status action concerning the same familial relationship based on facts that the defendant could have asserted by filing a counterclaim in that litigation.

(Continuance of Litigation Proceedings and Substitution)

Article 26 (1) If both of the parties to the familial relationship that an action related to personal status concerns are named as defendants pursuant to the provisions of Article 12, paragraph (2) and one of them dies, litigation proceeds with the other party as the defendant. The provisions of Article 124, paragraph (1), item (i) of the Code of Civil Procedure do not apply in such a case.

- (2) In a case as referred to in Article 12, paragraph (1) or (2), if all of the defendants die, litigation proceeds with the public prosecutor as the defendant.

(Termination of Personal Status Litigation Due to the Death of the Parties)

Article 27 (1) Except as otherwise provided, personal status litigation is terminated by operation of law if the plaintiff dies while it is pending.

- (2) Notwithstanding the provisions of paragraph (2) of the preceding Article, personal status litigation in which the subject matter is a divorce, rebuttal of the presumption of legitimacy (excluding cases where the father is the defendant), or the dissolution of an adoptive relationship is terminated by operation of law if the defendant dies while it is pending.

Section 6 Auxiliary Provisions

(Notifying Interested Parties of Pending Litigation)

Article 28 The court is to issue notice that litigation has become pending before it to a party who has an interest in an action concerning personal status that has been filed and who is specified by the Rules of the Supreme Court as a person whom it is appropriate to notify, such as the child of the father in question in the event that an action for filiation has been filed after the father has died; provided, however, that this is limited to cases in which the interested party's name and domicile or residence are found in the case record.

(Application of the Code of Civil Procedure)

Article 29 (1) The provisions of Articles 3-2 through 3-10, Article 145, paragraph (3), and Article 146, paragraph (3) of the Code of Civil Procedure do not apply

to a personal status action.

(2) The provisions of Chapter VII of the Code of Civil Procedure do not apply to personal status litigation proceedings

(3) With regard to the application of the provisions of the Code of Civil Procedure to personal status litigation proceedings, the terms and phrases listed in the middle column of the table below in the provisions of the Code of Civil Procedure listed in the left-hand column of the table are respectively replaced with the terms and phrases listed in the right-hand column of the table.

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| Article 25, paragraph (1) | The judicial decision on the disqualification of or challenge against a judge who is a member of a judicial panel or against a single district court judge is reached in the form of a ruling by the court to which the judge belongs, and the judicial decision on the disqualification of or challenge against a summary court judge is reached in the form of a ruling by the district court of jurisdiction in that locality |
| | The judicial decision on the disqualification of or challenge against a judge who is a member of a judicial panel or against a single family court judge is reached in the form of a ruling by the court to which the judge belongs |
| Article 25, paragraph (2), Article 132-2, paragraph (1), Article 185, paragraph (1) and paragraph (2), Article 235, paragraph (2) and paragraph (3), Article 269, paragraph (1), Article 329, paragraph (3), and Article 337, paragraph (1) | district court |
| | family court |
| Article 281, paragraph (1) | against a final judgment that a district court has entered as the court of first instance, or against a final judgment entered by a summary court |
| | against a final judgment entered by a family court |
| Article 311, paragraph (2) | a final appeal may be filed directly with the Supreme Court against a district court judgment, and may be filed directly with a high court against a summary court judgment |
| | a final appeal may be filed directly with the Supreme Court against a family court judgment |
| Article 336, paragraph (1) | a district court or summary court |
| | a family court |

(Special Provisions for Jurisdiction Over Orders for Provisional Remedies)

Article 30 (1) Notwithstanding the provisions of Article 12, paragraph (1) of the Civil Provisional Remedies Act (Act No. 91 of 1989), a case involving an order

for provisional remedy in which personal status litigation constitutes the primary suit falls under the jurisdiction of either the court with jurisdiction over the primary suit or the family court that has jurisdiction in the locality of the property subject to provisional attachment or the subject matter in dispute.

- (2) If both a claim that is subject to personal status litigation and a claim for damages arising from facts that constitute a cause of action associated with that claim may be brought in a single action, a petition seeking an order for a provisional remedy in connection with that claim for damages may be filed with the family court that has jurisdiction in the locality of the property subject to provisional attachment or the subject matter in dispute.

Chapter II Special Provisions for Marital Relationship Litigation

Section 1 Jurisdiction

Article 31 If the parties to a marriage that is subject to an action to rescind a marriage or a divorce action have a child who has not yet reached adulthood, the family court must take into consideration the domicile or residence of that child in applying the provisions of Article 6 and Article 7 to the litigation connected with that action.

Section 2 Disposing of Associated Matters

(Judicial Decisions Disposing of Associated Matters)

Article 32 (1) On petition, in a judgment upholding a claim relating to an action to rescind a marriage or a divorce action filed by either the husband or the wife against the other, the court must make a judicial decision designating the custodial parent and disposing of other such matters related to child custody; disposing of matters related to the equitable distribution of property; or disposing of matters under the provisions of Article 78-2, paragraph (2) of the Employees' Pension Insurance Act (Act No. 115 of 1954) (hereinafter collectively referred to as "disposing of an associated matter").

(2) In a case as referred to in the preceding paragraph, the court, in the judgment referred to in that paragraph, may order a party to hand over a child or to provide an economic or other benefit, including by paying money.

(3) The provisions of the preceding paragraph apply mutatis mutandis to a case in which the court makes a judicial decision designating the person with parental authority in a judgment upholding the claim in an action to rescind a marriage or a divorce action.

(4) In order to make a judicial decision as referred to in paragraph (1) designating the custodial parent and disposing of other such matters related to child custody, or a judicial decision as referred to in the preceding paragraph

designating the person with parental authority, the court must hear the child's statement, if the child is at least 15 years of age.

(Factual Investigation)

- Article 33 (1) In order to make a judicial decision disposing of an associated matter as referred to in paragraph (1) of the preceding Article or a judicial decision designating the person with parental authority as referred to in paragraph (3) of that Article, the court may conduct a factual investigation.
- (2) If the court finds it appropriate, it may issue an order to the members of a panel or issue a commission to a family court or summary court and have those members or that court conduct the factual investigation referred to in the preceding paragraph (hereinafter simply referred to as a "factual investigation").
- (3) If an authorized judge or commissioned judge conducts a factual investigation pursuant to the provisions of the preceding paragraph, the duties of the court and of the presiding judge are performed by that judge.
- (4) If the court sets a hearing date and hears one party's statements in order to conduct a factual investigation, the other party may attend the hearing; provided, however, that this does not apply if the other party's attendance risks hindering the factual investigation.
- (5) The proceedings in a factual investigation are not open to the public; provided, however, that the court may permit observation by a person whom it considers to be appropriate.
- (6) If a court finds it to be reasonable, the court may, after hearing the opinions of both parties, perform procedures on a hearing date referred to in paragraph (4) by a method of communication that enables the court and both parties to simultaneously communicate with one another by audio transmission as provided for by the Rules of the Supreme Court.
- (7) A party who does not appear on a hearing date referred to in the preceding paragraph and participates in the proceedings is deemed to have appeared on that hearing date.

(Factual Investigation by Family Court Investigators)

- Article 34 (1) The court may have a family court investigator conduct a factual investigation.
- (2) In urgent circumstances, the presiding judge may have a family court investigator conduct a factual investigation.
- (3) A family court investigator is to report the results of a factual investigation to the court orally or in writing.
- (4) A family court investigator may add an opinion to a report under the preceding paragraph.

(5) A family court investigator may, in lieu of a paper report under the provisions of paragraph (3), as provided for by the Rules of the Supreme Court, make a report by recording the matters to be stated in the document in a file on a computer used by the court (simply referred to as a "file" in Article 35, paragraph (2) and Article 35-2, paragraph (2)) by means of electronic data processing systems (meaning electronic data processing systems that connect a computer (including input and output devices; hereinafter the same applies in this paragraph) used by the court and the computer used by the other party of the proceeding over telecommunication lines; the same applies in Article 35, paragraph (2), item (ii)) specified by the Rules of the Supreme Court or by submitting recording media with electronic or magnetic records (meaning any record which is produced by electronic, magnetic or any other means unrecognizable by natural perceptive senses and is used for information processing by a computer; the same applies in paragraph (3) of that Article) of the matters to be stated in the report.

(Disqualification of Family Court Investigator)

Article 34-2 (1) The provisions of Article 23 and Article 25 of the Code of Civil Procedure (excluding the parts concerning challenging court officials) apply mutatis mutandis to family court investigators.

(2) If a petition to disqualify a family court investigator is submitted, that investigator may not participate in the case in connection with which the petition was filed until an order on the petition becomes final and binding.

(Inspecting Parts of Case Records Concerning Factual Investigations)

Article 35 (1) A person may file a request for inspection, etc. of case records (meaning inspection, etc. of case records prescribed in Article 92, paragraph (1) of the Code of Civil Procedure; the same applies in this Article hereinafter) with respect to a part of the case record that concerns a factual investigation (hereinafter referred to as the "part of the record concerning an investigation" in this Article and paragraph (1) of the following Article) only if the court gives its permission pursuant to the provisions of paragraph (3) or paragraph (4).

(2) Notwithstanding the provisions of the preceding paragraph, a party may file a request with the court clerk for inspection, etc. of case records concerning those portions of the part of the record concerning an investigation set forth below without obtaining the court's approval.

(i) paper documents, etc. (meaning a paper document, transcript, extract, authenticated copy, or duplicate of a document, a duplicate of a bill or note, or any other paper or other tangible object into which information that can be perceived with the human senses, such as characters and shapes, has been entered; hereinafter the same applies), audiotapes, or videotapes

- (including objects on which certain matters are recorded by any means equivalent thereto) submitted by the party;
- (ii) matters recorded in a file using an electronic data processing system specified by the Rules of the Supreme Court by the party pursuant to the provisions of this Act or other laws and regulations;
 - (iii) if the matters stated or recorded in a paper document, etc. or recording media submitted by the party were recorded in a file by the court clerk pursuant to the provisions of Article 132-13 of the Code of Civil Procedure applied by replacing terms pursuant to the provisions of paragraph (3) of the following Article, those matters; or
 - (iv) regarding the matters set forth in the preceding two items, if measures are taken to output the particulars to a document or to record those particulars in a different recording medium pursuant to the provisions of paragraph (1) of the following Article or Article 92, paragraph (9) of the Code of Civil Procedure, that document or recording medium.
- (3) If a party files a petition for permission for inspection, etc. of case records with respect to a part of the record concerning an investigation, the court must permit it; provided, however, that as it relates to a part of the record concerning an investigation for which it is found that the following risks could arise from the party having inspection, etc. of case records, the court may permit that access only if the court finds this to be appropriate:
- (i) a risk of harming the interests of a child the parties have who has not yet reached adulthood, if applicable;
 - (ii) a risk of disrupting the private life or business of a party or a third party;
- or
- (iii) the risk that revealing a deep personal secret from the private life of a party or a third party could substantially interfere with their life in the community or cause substantial harm to their reputation.
- (4) If a third party makes a prima facie showing of interest and files a petition for permission for inspection, etc. of case records with respect to a part of the record concerning an investigation, the court may permit it if it finds this to be appropriate.
- (5) An immediate appeal may be filed against a judicial decision dismissing a petition as referred to in paragraph (3).
- (6) If it is found that the immediate appeal under the provisions of the preceding paragraph has been filed for the purpose of unjustly delaying personal status litigation procedures, the court of first instance must dismiss it.
- (7) An immediate appeal may be filed against an order under the provisions of the preceding paragraph.
- (8) No appeal may be entered against a judicial decision to dismiss the petition referred to in paragraph (4).

(9) The provisions of Article 133-2 and Article 133-3 of the Code of Civil Procedure do not apply to the part of a record concerning an investigation.

(Security Control Measures for the Part of a Record Concerning an Investigation)

Article 35-2 (1) When a court makes a decision referred to in Article 133, paragraph (1) of the Code of Civil Procedure and determines that it is necessary, the court may output to a document the particulars of the portion of electronic or magnetic case records (meaning electronic or magnetic case records prescribed in Article 91-2, paragraph (1) of that Code; the same applies in this Article hereinafter) recording concealed information (meaning concealed information prescribed in Article 133, paragraph (2) of that Code; the same applies in this paragraph hereinafter) within the part of the record concerning an investigation or any particulars that can identify by inference any concealed information or record those particulars in other recording media and take measures to erase those portions from the electronic or magnetic case records and other measures specified by the Rules of the Supreme Court as necessary and appropriate for the security control of those portions.

(2) If measures are taken to erase information from electronic or magnetic case records under the provisions of the preceding paragraph and a subsequent judicial decision to cancel the order referred to in that paragraph becomes final and binding or the court otherwise determines that it is no longer necessary to take the measures, the court clerk must record that portion in a file.

(3) Regarding the application of the provisions of Article 132-13 of the Code of Civil Procedure to matters stated or recorded in a paper document, etc. or recording media containing electronic or magnetic records submitted to the court in accordance with the provisions of this Act or other laws and regulations in a factual investigation, in item (iv) of that Article, the phrase "under the provisions of Article 133-3, paragraph (1)" is deemed to be replaced with "referred to in Article 133, paragraph (1)," the phrase "of the decision" is deemed to be replaced with "that", the phrase "and containing electro or magnetic records" is deemed to be replaced with "or that" and "the particulars" is deemed to be replaced with "concealed matters (meaning concealed matters prescribed in paragraph (2) of that Article; hereinafter the same applies in this item) or any particulars that can identify by inference any concealed information."

(Judicial Decisions Disposing of Associated Matters in Cases of Termination of Marriage Other Than by Judgment)

Article 36 In litigation involving an action to rescind a marriage or a divorce action, if the marriage that is the subject of that action has been terminated

other than by a judgment, but a petition to dispose of an associated matter has already been filed and the associated matter in question was not provided for when the marriage was terminated, the court in charge of the case must conduct the trial and make a judicial decision to dispose of this.

Section 3 Settlements; Waiver and Acknowledgement of Claims

Article 37 (1) Notwithstanding the provisions of Article 19, paragraph (2), the provisions of Article 266 of the Code of Civil Procedure (excluding the part related to the acknowledgement of a claim in paragraph (2)) and of Article 267 and 267-2 of that Code apply to a settlement (limited to a settlement by which a divorce is effected; hereinafter the same applies in this Article) and the waiver or acknowledgement of a claim in litigation connected with a divorce action; provided, however, that, with regard to the acknowledgement of claims, this is limited to cases in which it is not necessary to make a judicial decision as referred to in Article 32, paragraph (1) disposing of an associated matter or a judicial decision as referred to in paragraph (3) of that Article designating the person with parental authority.

(2) A settlement under the provisions of Article 264 and Article 265 of the Code of Civil Procedure may not be effected in litigation connected with a divorce action.

(3) The parties referred to in Article 89, paragraph (3) and Article 170, paragraph (4) of the Code of Civil Procedure may not effect a settlement or acknowledge a claim on the date provided in Article 89, paragraph (2) and Article 170, paragraph (3) in litigation connected with a divorce action; provided, however, that this does not apply if the proceedings on that date are conducted by a method that allows both the court and the parties to communicate with an awareness of one another's state of being, through audio and visual transmissions.

Section 4 Ensuring Performance

(Issuing Recommendations to Perform)

Article 38 (1) If requested by the right holder in connection with an obligation established through a judicial decision under the provisions of Article 32, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article; the same applies hereinafter), the family court that made that judicial decision (or the family court constituting the court of first instance, if it was an appellate court that made that decision) may investigate the status of performance of the obligation and issue the obligor a recommendation to perform it.

- (2) The family court referred to in the preceding paragraph may commission another family court to conduct the investigation or issue the recommendation under the provisions of that paragraph.
- (3) The family court referred to in paragraph (1) or the family court that has been commissioned as referred to in the preceding paragraph may have a family court investigator conduct the investigation or make the recommendation under the provisions of paragraph (1).
- (4) The provisions of the preceding three paragraphs apply mutatis mutandis to the performance of an obligation that may be established through a judicial decision under Article 32, paragraph (1) or (2) but that has been established through a settlement in litigation connected with an action to rescind a marriage or with a divorce action.

(Issuing Orders to Perform)

- Article 39 (1) At the request of the right holder, if a person has neglected to perform an obligation to pay money or provide any other such economic benefit that has been established through a judicial decision under the provisions of Article 32, paragraph (2), the family court that made that decision (or the family court constituting the court of first instance, if it was an appellate court that made the decision) may issue an order to the obligor to perform it, specifying a reasonable period for performance. In such a case, the court is to issue the order for all or part of the obligation that the obligor has neglected to perform by the time of the order.
- (2) The family court referred to in the preceding paragraph must hear a statement from the obligor in order to issue an order to perform the obligation pursuant to the provisions of that paragraph.
 - (3) The provisions of the preceding two paragraphs apply mutatis mutandis to an obligation to pay money or provide any other such economic benefit that may be established through a judicial decision under the provisions of Article 32, paragraph (2) but that has been established through a settlement in litigation connected with an action to rescind a marriage or with a divorce action.
 - (4) If a person ordered to perform an obligation pursuant to the provisions of paragraph (1) (including as applied mutatis mutandis pursuant to the preceding paragraph) does not comply with the order and is without legitimate grounds for their non-compliance, the family court that ordered performance of the obligation issues a ruling imposing a civil fine of not more than 100,000 yen.
 - (5) An immediate appeal may be filed against the ruling referred to in the preceding paragraph.
 - (6) The provisions of Article 189 of the Code of Civil Procedure apply mutatis mutandis to the ruling referred to in paragraph (4).

Article 40 Deleted

Chapter III Special Provisions for Litigation Involving Biological Relationships

(Parties to an Action to Rebut the Presumption of Legitimacy)

- Article 41 (1) If a father dies before the birth of a child, or dies within the period specified by Article 777 (limited to the part related to item (i)) or Article 778 (limited to the part related to item (i)) of the Civil Code without filing an action to rebut the presumption of legitimacy, a person whose right of inheritance is harmed because of the child, or any other blood relative of the father's within the third degree of kinship, may file an action to rebut the presumption of legitimacy only within one year from the day on which the father died.
- (2) If a father dies after filing an action to rebut the presumption of legitimacy, a person permitted to file an action to rebut the presumption of legitimacy pursuant to the provisions of the preceding paragraph may be substituted in the court proceedings within six months from the day of the father's death. In such a case, the provisions of the second sentence of Article 124, paragraph (1) of the Code of Civil Procedure do not apply.
- (3) If a former husband specified in Article 774, paragraph (4) of the Civil Code files an action to rebut the presumption of legitimacy pursuant to the provisions of Article 775, paragraph (1) (limited to the portion related to item (iv) of that Code, if there is a person (other than the husband)) who marries the mother during the period from the time of conception to the time of the birth of the child after dissolution or cancellation of the mother's marriage to the former husband, an action to rebut the presumption of legitimacy naming those persons as defendants must be filed by joining with the action to rebut the presumption of legitimacy.
- (4) The oral arguments and judicial decisions in an action to rebut the presumption of legitimacy filed by joining pursuant to the provisions of the preceding paragraph must not be separated from one another.

(Notice of Judgment in an Action to Rebut the Presumption of Legitimacy)

Article 42 When a judgment in an action to rebut the presumption of legitimacy concerning a child whose paternity has been established pursuant to the provisions of Article 772, paragraph (3) of the Civil Code becomes final and binding, the court provides notice of the particulars of the judgment to the former husband (limited to a person whose name and domicile or residence are indicated in the case record) referred to in Article 774, paragraph (4) of that Code.

(Parties to an Action for Denial of Filiation)

Article 43 (1) The provisions of Article 41, paragraphs (1) and (2) apply mutatis mutandis to an action for denial of filiation referred to in Article 786 of the Civil Code. In this case, the term "father" in Article 41, paragraph (1) and (2) is deemed to be replaced with "person who acknowledged filiation" and the phrase "Article 777 (limited to the part related to item (i)) or Article 778 (limited to the part related to item (i))" in paragraph (1) of that Article" is deemed to be replaced with "Article 786, paragraph (1) (limited to the part related to item (ii))."

(2) If a child dies during the period prescribed in Article 786, paragraph (1) (limited to the part related to item (i)) of the Civil Code without filing an action for denial of filiation, the child's lineal descendant or legal representative may file an action for denial of filiation. In this case, the action must be filed within one year from the day on which the child died.

(3) If a child dies after filing an action for denial of filiation during the period prescribed in Article 786 paragraph (1) (limited to the part related to item (i)) of the Civil Code, a person permitted to file an action for denial of filiation pursuant to the provisions of the preceding paragraph may be substituted in the court proceedings within six months from the day of the child's death. In this case, the provisions of the second sentence of Article 124, paragraph (1) of the Code of Civil Procedure do not apply.

(Parties to an Action for Filiation)

Article 44 (1) In an action for filiation, the alleged father or mother is to be named as the defendant; in an action for filiation after the alleged father or mother has died, the public prosecutor is to be named as the defendant.

(2) The provisions of Article 26, paragraph (2) apply mutatis mutandis if a father or mother is named as the defendant pursuant to the provisions of the preceding paragraph, and that person then dies.

(3) If a child dies after filing an action seeking filiation, the child's lineal descendant or legal representative may be substituted in the court proceedings after the period specified in the proviso to Article 787 of the Civil Code has passed, within six months from the day on which the child died. In such a case, the provisions of the second sentence of Article 124, paragraph (1) of the Code of Civil Procedure do not apply.

(Parties to an Action to Establish Paternity)

Article 45 (1) A child, mother, or the mother's spouse from an earlier or later marriage may file an action to establish paternity pursuant to the provisions of Article 773 of the Civil Code.

- (2) In an action as referred to in the preceding paragraph that a person set forth in one of the following items files, the person specified in that item is to be named as the defendant; after the person in question has died, the public prosecutor is to be named as the defendant:
- (i) the child or mother: the mother's spouses from an earlier and later marriage (or, after one of them has died, the other one);
 - (ii) the mother's spouse from an earlier marriage: the mother's spouse from a later marriage; or
 - (iii) the mother's spouse from a later marriage: the mother's spouse from an earlier marriage.
- (3) The provisions of Article 26 apply *mutatis mutandis* if a person specified in one of the items of the preceding paragraph is named as a defendant pursuant to the provisions of the preceding paragraph and then dies.

Chapter IV Special Provisions for Litigation Involving Adoptive Relationships

Article 46 The provisions of Article 37 (excluding the proviso to paragraph (1)) apply *mutatis mutandis* to a settlement in litigation connected with an action to dissolve an adoptive relationship (limited to a settlement through which the adoptive relationship is dissolved) as well as to the waiver or acknowledgement of a claim in that litigation.