

Family Law in Germany and Respect for Child's Will

—Cooperation between the Constitution and Civil Law, Substantive Law and Procedural Law, Justice and Welfare—

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This research will show how the child's will should be respected while in the care of child by his/her parents. This involves the guarantee of the child's independent participation in procedures that concern him/her in comparison with German Law, based on the principle of respect for the child's will in Convention on the Rights of the Child. There are fundamentally few viewpoints recognizing a child as the subject of rights in Japanese Law. In contrast, German Law has a system that adequately respects the child's will in the regulation of child custody in Civil Law and Family Procedural Law, based as it is on the fundamental human rights described in the Constitution, such as the respect for the individual's will and the free development of the person's own personality.

The hearing of the child's opinion by a judge in "FGG" includes the objective of guaranteeing the fundamental rights of children as well as the objective of collecting the basis for a decision on establishing the facts.

Moreover, the system of "Verfahrenspfleger " so-called advocate for the child was established from the viewpoint of the guarantee of child's rights by the Family Law-revision in Germany. This system intended that children shall not be the object in procedures. Civilian agencies with Verfahrenspfleger coordinate for smoother practice, giving a professional training to members, and acting as go-between for the court and "Jugendamt" for the welfare of children.

All this is to say that there are three levels of cooperation among the Constitution and Civil Law, Substantive Law and Procedural Law, and Justice and Welfare in Germany, because the idea of guaranteeing the fundamental rights of children as stipulated in the Constitution, is reflected not only in law systems, but also in the practice of court and institutions of the welfare.

※FGG ... Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit

=Law of Procedure in Non-Contentious Cases

※Jugendamt ... a consultation office for children in Germany