



Takafumi Sato

*International Maintenance and
Child Support Enforcement*

The Third International Convention of the Rights of the Child

Bath, England

9:00-10:30 Friday, September 21, 2001

International Maintenance and Child Support Enforcement:

Do we need a new Convention?

Takafumi Sato

Attorney at Law

Hiroshima, Japan

Good morning, ladies and gentlemen. It is a great privilege for me to address you. My name is Takafumi Sato. I am a sole practitioner in Hiroshima. I have practiced law for nearly twenty years. My resume is on page 61. Please take a look at it.

1. There are the following manners on the child support when a husband and a wife divorce each other in Japan. Please keep in mind that we can divorce without deciding on the child support and that we have a sole custody system, not a joint custody system, after the divorce.

- (1) They do not decide on the child support at all. Because they hate each other very much, and because a custodial parent sometimes does not want to be supported by other parent and a non-custodial parent does not want to pay.

Once I had a client, whose name was Mr. Stonehedge, for example. He said to me, "Mr. Sato, I have lost the battle about the custody of my daughter against my wife. I paid the considerable fee to you in vain. Why do I have to lose more? Why must I pay to my ex-wife for the child support?" I answered him, "Mr. Stonehedge, you will not pay your ex-wife, but you will pay your beloved daughter. You had built a tall hedge between you and your ex-wife together, as you know. Will you build a hedge between you and your dear daughter, again? If you continue to pay your daughter, then you will get a lot of respect, love, and care from your daughter when you become old. So paying is not losing, at all. Paying is a long-term investment. Regarding the initial fee which I received from you, I have a few words. In a week, I will purchase a mansion. Your money might be turned into one of the cornerstones of my mansion. So paying is never losing. Do you understand, Mr. Stonehedge?" Mr. Stonehedge responded to me, "I feel I am forced to agree with you. I will pay."

- (2) They make an oral agreement. They believe that an oral agreement is a sincere promise between a gentleman and a lady. But very often it is not.
- (3) They make an agreement in writing themselves. For instance, "I promise to pay ¥35,000 (about two hundred pounds) to you for our seven year-old-daughter every month"
- (4) A notary makes the agreement in writing before them. Now I am circulating a copy of the agreement made by a notary. I have a few words about a notary. In Hiroshima City whose population is about one million, there are only eight notaries. They are former judges, former high ranking prosecutors. Therefore, Japanese notaries are privileged people and receive high reputation.
- (5) They go to a family court and make an agreement before three mediators, including a judge. An applicant must file for mediation with a respondent's venue. This is not convenient for an applicant. A judge appears only when mediation finishes, regardless it ends successfully or in vain because a judge is very busy.
- (6) In case the mediation fails, then a judge renders the decision or order.

2. If an obligator does not pay, a dependent can seize the obligator's movable and/or immovable properties or attach the obligator's bank account or salary, in cases of (4) through (6), that is, by a written agreement, or by a mediation agreement, or by a judge's order. However, the problem is how to find the obligator's bank account and properties. A judge may not order the obligator to reveal the information on the assets.

A few years ago, I had a young woman whose name was Mrs. Simpson, for instance. I represented her in the mediation with the Hiroshima Family Court. The mediation lasted for eight months and failed. Then a judge made the order in favor of her. But her ex-husband did not pay. So she called me to come to my office and said to me angrily, "Mr. Sato, Why didn't you get a lump sum payment from my ex-husband? Go to the judge's chamber and require him to get the money from my ex-husband." I answered her, "Mr. Simpson was poor when the judge made the order. So we could

not get the lump sum payment. He inherited his father's estate after the order. Well, legal system is very complicated, Mrs. Simpson, not Mrs. Simpleton. My job was to get the judge's order for you. My initial fee covers only getting the judge's order. I mentioned this when you retained me. Please go to a sheriff's office by yourself. However, keep in mind that a Japanese sheriff has neither uniform nor gun. He has little power. And it's almost impossible to find your ex-husband's assets because a judge has no power to have him reveal the information about the assets. On the contrary, in USA or Canada, a judge may order a non-custodial parent to reveal the information about the assets with the sanction of perjury or the contempt of court. There is almost no sanction at all in Japan."

3. Ladies and gentlemen, let me explain how weak the child enforcement system is in Japan. Credit companies may not be informed of unpaid child support. Any licenses, including the driving license cannot be suspended or revoked because of unpaid child support. A passport cannot be revoked. Default does constitute no crime at all. A judge may not confine a default party in jail even in a single moment, even though a party has not paid for five or even ten years. Willful default is a federal crime in USA. See this wanted list. This is a wanted list for an ex-husband, not a terrorist. I have got this list from the Internet. If you produce and circulate such a wanted list, then you may be arrested in Japan. The child support enforcement is very, very weak in Japan

4. This makes big difference, whether a child is born in Japan or USA, Canada, or UK. I believe that this is not fair. Therefore, not only Japan needs to have a special law for the child support enforcement, but also a new Convention should be hold. Such a law or Convention needs the following contents:

- (1) A judge may order the obligator to reveal the information on the assets
- (2) A child support should be given priority in garnishment process and bankruptcy procedure.
- (3) Venue of mediation must be an applicant's venue.
- (4) Sheriff should have more power, with no gun.

Thank you very much.