

AWARD OF POST-DIVORCE SPOUSAL SUPPORT IN JAPAN

*Marcelo de Alcantara**

I.THE DECISION TO AWARD SPOUSAL SUPPORT.....	631
II.THE AMOUNT OF SPOUSAL SUPPORT	633
III.DURATION OF THE AWARD	635
IV.MODIFYING OR TERMINATING THE AWARD.....	636
V.GOVERNMENT POLICIES IMPACTING THE NEED FOR POST-DIVORCE SUPPORT.....	637

In Japan, family law matters are governed by the Civil Code (*minpō*).¹ Although the Japanese Civil Code contains no spousal support provision relating to post-divorce, courts have awarded spousal support to one of the former spouses in certain circumstances.² In divorces by mutual consent, the parties may enter into a spousal support agreement with no court involvement.³

According to the Japanese Civil Code, a husband and wife

* Associate Professor, Ochanomizu University, Tokyo, Japan. Email: marcelo.de.alcantara@ocha.ac.jp.

1. See The Editors of Encycopaedia Britannica, *Japanese Civil Code*, ENCYCLOPAEDIA BRITANNICA (Mar. 1, 2018), <https://www.britannica.com/topic/Japanese-Civil-Code> (stating that the Japanese civil code is *Minpō*, and that family law is covered in one of the code's five sections).

2. See Mikiko Otani & Masami Kittaka, *Family Law in Japan: Overview*, REUTERS (May 1, 2019), [https://uk.practicallaw.thomsonreuters.com/w-009-5907?transition-Type=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-009-5907?transition-Type=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1) (discussing that courts consider post-divorce spousal support in circumstances where one party cannot support themselves).

3. See, e.g., *infra* note 67.

shall live together and provide mutual cooperation and assistance during the marriage.⁴ In the case of divorce, one party may claim a distribution of marital property from the other party.⁵ If the parties do not, or cannot, agree on a settlement with regard to the distribution of marital property, either party may make a claim in the family court within two years from the date of divorce.⁶ The family court shall determine whether to make a distribution, and the amount and method of that distribution, taking into account the amount of property obtained through the cooperation of both parties and all other circumstances.⁷

The award of spousal support is considered one of the three elements comprising the marital property distribution system (*zaisan bunyo*).⁸ The concept of marital property distribution encompasses (1) the assessment of the contributions of each spouse to the acquisition of the property (*seisanteki zaisan bunyo*), (2) spousal support (*fuyōteki zaisan bunyo*), and (3) compensatory damages (*isharyōteki zaisan bunyo*).⁹ The family courts comprehensively consider all three elements in determining an equitable distribution, which is essential for the financially disadvantaged spouse.¹⁰ In fact, courts consider

4. MINPŌ [MINPŌ] [CIV. C.] 1896, art. 752, *translated in* (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp> (Japan).

5. *Id.* art. 768.

6. *Id.* art. 768(2).

7. *Id.* art. 768(3).

8. Yoshioka Mutsuko, *Reform of Japanese Divorce Law: An Assessment*, 45 *Jiyu to Seigi* 47, 54 (1994), *translated in* English Supplement 11 (U.S.–Japan Women's Ctr. Janel Anderberg Callon trans., 1996). The Supreme Court of Japan has decided that the purpose of the marital property distribution system is to evaluate and distribute the community property acquired during the marriage, and also to maintain a spouse's standard of living after divorce. Saikō Saibansho [Sup. Ct.] Jul. 23, 1971, 25.5 MINSHŪ 805 (Japan).

9. *Id.* Courts will usually award compensatory damages for emotional distress in cases of marital misconduct such as adultery, abandonment, abusive behaviors, or domestic violence. See RONTEN TAIKEI HANREI MINPŌ 9 SHINZOKU 138 (Yoshihisa Nōmi and Shintarō Katō, eds. 2012). However, there are divergent views on whether or not the compensatory damages should be included as an element of the distribution of marital property. *Id.* at 137, 139–40.

10. See MINPŌ [MINPŌ] [CIV. C.] 1896, art. 768(3), No. 89, *translated in* (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp> (Japan) (discussing that the family court shall consider property distribution considering the amount of property obtained through the cooperation of both parties and all other circumstances).

spousal support more as supplementary to marital property and compensatory damages, so spousal support is usually awarded after receiving marital property and compensatory damages, when one spouse is still unable to become economically independent and self-sufficient.¹¹

I. THE DECISION TO AWARD SPOUSAL SUPPORT

The decision to award spousal support is essentially based on the financial needs and abilities of the spouses.¹² For this reason, courts consider the financial resources of the party claiming support or the difficulty to reenter the workforce after a long absence due to age or physical condition in awarding spousal support.¹³

In one example, in an appeal from a judgment for property division and spousal support, the appeals court refused to award spousal support after considering the financial condition and needs of the wife.¹⁴ The couple married in 1978, when the husband was sixty-six years old and the wife was fifty years old.¹⁵ It was the second marriage for both parties.¹⁶ They both had children and property from the previous marriage.¹⁷ They were married for 15 years before they separated in 1993.¹⁸ The husband was a former principal of several schools and after retiring he became a member of the board of trustees of a school.¹⁹ The sum of his pensions was 5,910,000 yen (\$59,100) a year.²⁰ During the marriage, the wife stayed at home and managed the

11. See Otani & Kittaka, *supra* note 2 (describing that post-divorce maintenance is supplementary in nature, where the court will implement maintenance when a party cannot support him or herself after divorce).

12. See Mutsuko, *supra* note 8, at 57 (listing elements used to determine appropriate level of payments including income and mental and physical conditions).

13. *Id.*

14. Tokyo Kōtō Saibansho [Tokyo High Ct.] Mar. 18, 1998, 1690 HANREI JIHŌ [HANJI] 66 (Japan).

15. Yokohama Chihō Saibansho [Yokohama Dist. Ct.] Jan. 22, 1997, 1618 HANREI JIHŌ [HANJI] 109 (Japan).

16. *Id.* at 110.

17. *Id.* at 110–11.

18. *Id.* at 112.

19. *Id.* at 110.

20. *Id.* at 114. For simplicity, it is assumed that the exchange rate is \$1 = 100 yen.

household finances.²¹

In 1997, the Yokohama District Court awarded the wife half of the husband's lump-sum retirement allowance (*taishokukin*) to be paid when he retires from the board of trustees.²² It also awarded her 3,000,000 yen (\$30,000) in compensatory damages for emotional distress (*isharyō*).²³ Furthermore, the husband was ordered to pay 150,000 yen (\$1,500) per month in spousal support until the wife's death.²⁴ The court noted that the wife had not worked during the marriage and noted that because of her age, at sixty-nine years old, it would be difficult for her to become self-supporting.²⁵ Additionally, the husband had enough income to pay spousal support.²⁶ The husband appealed, and in 1998 the Tokyo High Court refused to award spousal support to the wife, but affirmed part of the decision of the lower court pertaining to the compensatory damages and retirement allowance.²⁷ The appeals court noted that prior to their marriage the wife had owned assets (bank accounts, stocks etc.) worth 20,000,000 yen (\$200,000) and the assets remained untouched during the marriage.²⁸ Also, the wife had in her possession pieces of jewelry worth 15,000,000 yen (\$150,000) purchased during the marriage.²⁹ Consequently, the appeals court found the wife was not in financial need for spousal support after the divorce.³⁰

In another case involving property division and spousal support, a Japanese court decided to enforce a judgment issued by a court in the United States that awarded the wife spousal support.³¹ After marrying in 1965, the Japanese physician

21. *Id.* at 111–12.

22. *Id.* at 114.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. Tokyo Kōtō Saibansho [Tokyo High Ct.] Mar. 18, 1998, 1690 HANREI JIHŌ [HANJI] 66 (Japan).

28. *Id.* at 69.

29. *Id.*

30. *Id.*

31. Yokohama Chihō Saibansho [Yokohama Dist. Ct.] May 30, 2000, 1059 HANREI TAJMUZU [HANTA] 235 (Japan).

couple moved to California where they divorced in 1990.³² In 1992, a California court awarded the wife a share of the marital property and spousal support of \$10,000 per month for five years from January 1, 1993.³³ However, after that judgment, the husband moved back to Japan and the wife was unable to receive the payments.³⁴ She also returned to Japan and requested the Yokohama District Court to order the execution of the California court's judgment.³⁵ The court denied the husband's argument that the enforcement of the California judgment would be contrary to public policy in Japan.³⁶ It noted that the husband's monthly salary was more than \$43,000 at the time of divorce, and after returning to Japan he opened a hospital that generated enough income to pay the support.³⁷

However, the husband appealed, and the appeals court reversed the Yokohama District Court's ruling on the grounds that the California judgment was contrary to public policy in Japan.³⁸ The appeals court noted that the California judgment awarding spousal support based its decision on the wife's necessity to obtain training and education in order to get a U.S. medical license to become self-sufficient, but after returning to Japan this condition had changed.³⁹

II. THE AMOUNT OF SPOUSAL SUPPORT

Japanese courts have broad discretion to determine the amount of spousal support and shall consider the following: (1) how much of the marital property and compensatory damages the claimant spouse received and; (2) how much more would be necessary for the claimant spouse to become economically independent and self-sufficient.⁴⁰

32. *Id.* at 236.

33. *Id.*

34. *Id.* at 238.

35. *Id.*

36. *Id.*

37. *Id.* at 238–39.

38. Tokyo Kōtō Saibansho [Tokyo High Ct.] Feb. 8, 2001, 1059 HANREI TAIMUZU [HANTA] 232 (Japan).

39. *Id.* at 235.

40. See Otani & Kittaka, *supra* note 2 (discussing that the court has discretionary

Some courts have awarded spousal support in the form of exclusive use and possession of the family residence.⁴¹ For example, in a dispute involving marital property division and spousal support, the Nagoya High Court decided in 2006 to award the husband the sole title of the family residence, but ordered the husband to gratuitously give the use and possession of it to the wife and their children for a certain period of time.⁴² The couple had three children and when they divorced by mutual consent in 1999 their children were thirteen years old, eleven years old, and five years old.⁴³ The husband moved out of the marital residence they had bought during the marriage, and the wife remained living there with their three children.⁴⁴ After the divorce, the husband continued to make monthly house payments of about 225,000 yen (\$2,250), which included mortgage payments, maintenance fees and property taxes.⁴⁵ The husband was a university professor with annual earnings of 11,700,000 yen (\$117,000).⁴⁶ The wife had annual earnings of 4,920,000 yen (\$49,200) which included her full-time job with annual earnings of 2,100,000 yen (\$21,000), a monthly child support of 189,000 yen (\$1,890), and social security benefits (child benefit payments) from the government.⁴⁷ Because only the husband's name was on the mortgage and continued to make mortgage payments after the divorce, the Nagoya High Court awarded him the title of the apartment and awarded her the use and possession of the apartment from the date of divorce in 1999 until 2007, when their second daughter was due to graduate from high school and their son from elementary school.⁴⁸

power to consider the distribution of marital property and all other circumstances where one party cannot support themselves).

41. MINPŌ [MINPŌ] [CIV. C.] 1896, art. 593, No. 89, *translated in* (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp> (Japan).

42. Nagoya Kōtō Saibansho [Nagoya High Ct.] May 31, 2006, 59.2 KATEI SAIBAN GEPPŌ [KAGETSU] 134 (Japan).

43. *Id.* at 138.

44. *Id.* at 137–38.

45. *Id.* at 148.

46. *Id.*

47. *Id.* at 147–48.

48. *See id.* at 139–40 (explaining that the court did not award part of the family residence to the wife because the value of the remaining mortgage balance was higher

On the other hand, in a different case, the Nagoya High Court decided in 2009 to award the wife the right to lease the husband's share of their family residence.⁴⁹ The couple married in 1994 and their daughter was born in 1996.⁵⁰ They separated in 2004 after 10 years of marriage.⁵¹ The husband filed a suit against the wife asking for divorce and division of marital property.⁵² They had an apartment where the wife and their daughter had been living since the couple's separation.⁵³ The mortgage was in the husband's name and he was making the payments.⁵⁴ The Nagoya High Court declared the divorce, recognized the marital fault of the husband, and awarded the wife 4,000,000 yen (\$40,000) compensatory damages for emotional distress.⁵⁵ It also ordered the husband to pay 90,000 yen (\$900) per month as child support.⁵⁶ Regarding the marital property, the Nagoya High Court noted that it would be difficult to calculate and determine the wife's part of the husband's lump-sum retirement allowance and pension as that would not take effect until 15 years later when the husband turns sixty years old.⁵⁷ Accordingly, the court did not include it in the marital property distribution, but, taking that fact into account, the court decided to award the wife as spousal support the right to lease the husband's share of their family residence for a monthly rental of 46,148 yen (\$461) until their daughter graduated from high school.⁵⁸

III. DURATION OF THE AWARD

Spousal support can be received in the form of a lump sum or

than the market value of their apartment).

49. Nagoya Kōtō Saibansho [Nagoya High Ct.] May 28, 2009, 2069 HANREI JIHŌ [HANJI] 50 (Japan).

50. *Id.* at 55.

51. *Id.* at 56.

52. *Id.* at 52.

53. *Id.* at 56.

54. *Id.* at 53.

55. *Id.* at 59.

56. *Id.*

57. *Id.* at 58.

58. *Id.* at 58–59.

in the form of monthly payments.⁵⁹ If the award is in the form of monthly payments, it is possible for payments to be for an indefinite term and to continue until the death of the receiving spouse.⁶⁰ This is more common in cases of advanced age or ill health.⁶¹

Courts will usually award spousal support for a limited period of time, for example, until the remarriage of the receiving spouse or until he or she becomes economically independent and self-sufficient.⁶² Also, courts can determine a specific date related to the child, such as attaining a specific age or graduating from school.⁶³

Some authors suggest that the duration of the award should be proportional to the length of the marriage.⁶⁴ Others say that this method would be inappropriate as there are marriages of longer duration in which the amount of support needed is lower, and marriages of shorter duration in which the amount of support needed is higher.⁶⁵ Supporting the latter view, some courts have awarded spousal support in marriages that ended in less than one year after considering the claimant spouse's age, physical condition, and other circumstances.⁶⁶

IV. MODIFYING OR TERMINATING THE AWARD

A party requesting a modification or termination of spousal support must demonstrate that there has been a change in circumstances of either party after the divorce, such as an increase or reduction in the supporting spouse's ability to pay or an increase or decrease in the receiving spouse's need. Factors that could have an impact on the award are the supporting

59. Mutsuko, *supra* note 8, at 57.

60. *See generally id.*

61. *See id.* (describing that senior citizens and spouse with illness may need to be provided with post-divorce maintenance for a long period of time).

62. Shūhei Ninomiya & Fujiko Sakakibara, RIKON HANREI GAIDO 138–39 (1994).

63. *See* Masanori Takeda, *Problems of Enforcing Child Support Orders Between the U.S. and Japan*, 74 RYUKYU L. 171, 176 (2005) (discussing that the child support obligation extends until the child becomes an adult at 20 years old).

64. Ninomiya & Sakakibara, *supra* note 62, at 139.

65. *Id.*

66. *Id.*

spouse's obligation to a second family, the obligation to support one's elderly parents, the change in the supporting spouse's ability to pay, whether the receiving spouse remarried, and a change in income.⁶⁷

For example, in 2015 the Tokyo District Court examined whether a husband that had his income reduced significantly should continue to pay post-divorce spousal support.⁶⁸ The couple married in 1969 and divorced in 2012.⁶⁹ They entered into an agreement, signed a few weeks before their divorce by mutual consent, that gave the wife spousal support of 220,000 yen (\$2,200) a month.⁷⁰ However, their agreement did not specify the duration of spousal support.⁷¹ The husband made the monthly payments until June 2013.⁷² From July 2013 to March 2014, he made only partial payments for a total of approximately 310,000 yen (\$3,100).⁷³ For this reason, the wife sought an order requiring the husband to pay approximately 1,600,000 yen (\$16,000) in unpaid spouse support.⁷⁴ The Tokyo District Court denied the request on the grounds that the husband's income was significantly lower than what it was at the time of the divorce.⁷⁵ Additionally, the court noted that the husband had already paid more than 2,000,000 yen (\$20,000) in spousal support since the divorce, and, in general, spousal support is awarded on a temporary basis and will usually not be paid for a long period of time.⁷⁶

V. GOVERNMENT POLICIES IMPACTING THE NEED FOR POST-DIVORCE SUPPORT

In Japan, there are some government programs that may help

67. Tokyo Chihō Saibansho [Tokyo Dist. Ct.] Jan. 16, 2015, TKC Law Library, LEX/DB, Ref. n. 25524677.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

to reduce the need for support of a spouse after divorce.⁷⁷ For example, child allowance (*jidō teate*) is a program designed to provide financial support to families with a domicile in Japan raising children under high school age.⁷⁸ The amount of the allowance is 15,000 yen (\$150) per month for children under 3 years old and 10,000 yen (\$100) for children from age 3 until the third year of junior high school.⁷⁹

Alternatively, child support allowance (*jidō fuyō teate*) is a program designed to provide financial support to single-parent families with children under the age of 18.⁸⁰ The amount of the child support allowance depends on family income and the number of children.⁸¹ It ranges from 10,120 yen (\$101) to 42,910 yen (\$429) per month.⁸²

A similar assistance program is the child care allowance (*jidō ikusei teate*).⁸³ This is also a program designed to provide financial support to single-parent families with children under the age of 18.⁸⁴ The amount of the allowance is 13,500 yen (\$135) per month.⁸⁵ Additionally, one program provides financial assistance for rental housing and for medical expenses.⁸⁶ For example, single-parent family medical support (*hitori oya kateitō iryōhi josei*) is a program designed to cover part of the medical expenses for single-parent families with children under the age of 18.⁸⁷ Nevertheless, most single-parent households in Japan, especially single-mother households, still experience substantial social and

77. See e.g., CIVIL LIFE GUIDEBOOK 2019, ASHIKAGA CITY 33 (2019), <http://www.city.ashikaga.tochigi.jp/uploaded/attachment/51925.pdf> (describing the child support allowance program for single parent households).

78. *Id.*

79. *Id.*

80. *Id.*

81. See *id.* (illustrating that for one child the full allowance ranges from 42,900 yen, 10,140 yen for a second child, and 6,080 yen for a third child).

82. *Id.*

83. Chieko Akaishi, *Single Mothers Today*, in TRANSFORMING JAPAN: HOW FEMINISM AND DIVERSITY ARE MAKING A DIFFERENCE 123 (Minata Hara trans., Kumiko Fujimura-Fanselow ed., 2011).

84. FOREIGNER HANDBOOK, MUSASHINO CITY 67 (2018), http://www.city.musashino.lg.jp/_res/projects/default_project/_page_/001/019/033/foreignerhandbook.pdf.

85. *Id.*

86. *Id.* at 67–68.

87. *Id.* at 67.

economic disadvantages.

