

## **Modernization of Japanese Private International Law – Family Relations, General Provisions, etc. – (summary)**

**Yoshiaki OHMURA**

Professor of Law, Chuo Gakuin University

In this article, I express my opinions about amendment of Horei (Application of Law General Act) now (at the beginning of June 2006) in progress in the National Diet.

The amendment of Horei this time is originally required, in the 3-year plan of the government in 2001, in order to amend the article 12 of the present Horei. However, in the 3-year plan of the government in 2004, amendment of the whole of Horei was taken into consideration. I cannot understand why we shall amend the whole of Horei at present. If the amendment this time is for making national acts easy for people to understand, I think it is not necessary to substantially amend so many provisions of Horei.

Concerning judicial ability (present article 3), I agree with the draft article 4 which maintains the principle of law of nationality. Concerning guardianship (present article 4), I cannot agree with the draft amendment (article 5) which changes the present provision and says that the requirements and effects of guardianship shall be governed by the Japanese Law, because I think that if we change the principle of law of nationality we shall argue about it taking into consideration the balance between other provisions which also use laws of nationality as applicable laws.

As to the form of marriage, the draft provision maintains the present provisory clause of the present article 13 (article 24 of the draft) which says that when one of the spouses has a Japanese National and the marriage is celebrated in Japan, the form shall be governed by the Japanese Law. Moreover, the draft also maintains the present provisory clause of the article 16 (article 27 of the draft). I cannot agree with those amendments, because those provisions deviate from the principle of law of nationality etc., which the draft maintains as a whole.

As to the provision of renvoi (present article 32), draft article 41 maintains the present principle. However, nowadays there are many logical criticisms against

renvoi, so I cannot agree with the draft.

Concerning the provisions to apply (geographically or personally) unified laws (present article 28III and 31, draft article 38III and 40), I believe that we shall amend those articles so that they can directly determine the applicable law of each cases, not the law of nationality of the person concerned.