

The Practice of International Family Law in China with Relation to Japan (summary)

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This article aims to study International Family Law of China from a perspective of Private International Law, by examining the practice in courts as well as family registrations on foreign-related family affairs. Moreover, necessary surveys as well as comments are made on relevant family registration practice and judicial decisions in Japan.

Firstly, Article 147 of the General Principles of the Civil Law of China, a conflict of laws rule, applies *lex loci celebrationis* rule to the formation and formalities of marriage between a Chinese citizen and a foreigner. In practice this rule is also applied to marriage between two foreigners; their marriage registration is accepted by the marriage registration office of China, provided that at least one of them resides in China. In this case, however, the foreign couples are required to submit additional documents to prove that a Chinese marriage registration is recognized as valid formality in their own State.

It is also recognized in practice that a marriage validly entered into under the law of the State of celebration is generally considered valid in China. This approach is consistent with Article 9 of Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages, to which China is not a contracting State.

Secondly, the above-mentioned Article 147 also provides the conflict of law rule for divorce, the *lex fori* rule. Besides divorce judgment, Chinese law provides divorce by consent and divorce by mediation arranged by court. However, the method of divorce by consent is only available to those marriages that were celebrated in China.

As for jurisdiction to divorce, notwithstanding a wide rule including defendant's forum as well as plaintiff's forum is adopted by law, there is a trend in Courts to distinguish between cases that only involve Chinese natives and cases that involve foreign spouse. To the latter, Courts examine and exercise jurisdic-

tion more cautiously, especially in cases that both parties are foreigners. This tendency is illustrated in several recent cases in which the courts limited the use of jurisdiction based on plaintiff's habitual residence.

Since China has the system of consent divorce, a foreign divorce by consent can be recognized in China without much difficulty. As for the recognition of foreign divorce judgment, the part of the judgment that dissolves a marriage is recognized in so far as it satisfied the requirements of (1) jurisdiction, (2) proper service, (3) *res judicata*, (4) public order. To the contrary, the part of the judgment that contains judicial decisions on parental authority, distribution of property and maintenance needs to meet the reciprocity requirement in order to be recognized. It is known that Chinese courts recognize reciprocity only in case there exists convention between a foreign State and China, or there is precedent in that foreign State in which Chinese judgment was recognized. Such practice creates significant obstacles to the recognition of foreign divorce judgment and shall be modified to my opinion.

Thirdly, conflict of law rules of establishing the parent-child relationship where the child is legitimate or illegitimate and rules of adoption are briefly surveyed in this article. It shall be noted that the precondition for the foreign adoptive parents to adopt a child in China is to acquire the permission of their own States to ensure that the adoption established in China shall be recognized in those States.

In conclusion, Chinese practice, particularly on the marriage registration between two foreigners, the jurisdiction to divorce for foreign couples and the adoption by foreign adoptive parents in China, is carefully limited in consideration of the possibility of recognition in the own States of the foreign parties. The policy to avoid a limping family status is prevailing over that of the convenience of foreign parties. A reassessment shall be necessary to examine whether these two policy consideration is appropriately balanced.