

Issues on Foreign Divorces: How is the Brussels II bis Regulation to be applied to a Japanese Spouse as a Third-State Citizen? (summary)

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As has been generally noted, the Brussels II bis Regulation is applied not only to nationals of the Member States of EU but also to the third-state citizens including a Japanese spouse. This article is to examine the Brussels II bis Regulation from the viewpoint of a Japanese spouse as a third-state citizen.

I. Jurisdictional Rule of Divorce in EU

The fifth and the sixth indent of Article 3 of the Brussels II bis Regulation allow a spouse to make a petition in a jurisdiction which may be highly inconvenient for the other spouse. Under those indents, a Japanese spouse may be sued within EU even if he or she has never been to any Member State. Furthermore, according to Article 6 and 7, a Japanese spouse who is not resident within EU may be proceeded under the residual bases of the petitioner's Member State of origin. Most Member States have adopted residual grounds of jurisdiction, some of which might be called as an exorbitant jurisdiction. A Japanese spouse is not protected from such exorbitant jurisdictions in the same way as EU respondents.

Since the situations are as stated above, a Japanese spouse who is not resident within EU may be proceeded in a Member State under two kinds of the jurisdictional rules: the Brussels II bis Regulation or the Member States' national law. Then there are two issues to be pointed out. First, both of these two kinds of rules could result in a Japanese respondent being proceeded against in a forum with which he or she had absolutely no connection. Secondly, though the procedural rules are much different between the two kinds of jurisdictional rules, either of these two rules should be applied is determined solely by the conduct of the petitioner: whether he or she resides in a Member State for six months or one year or more.

II. Consideration Based on a Model Case

In this article, these two issues are considered based on the following model case. This is

a divorce case between a British husband and a Japanese wife. A husband and a wife had their marriage life in Japan, and the wife has never been to any Member State. The husband left Japan, returned to England and then submitted a divorce suit for the wife.

III. Jurisdictional Rules of Japan

From the standpoint of Japan, there are two questions to be considered. One is concerning the recognition of the foreign decree of divorce. The recognition of the decree of divorce granted by a court of a Member State can be denied in Japan on jurisdictional ground. This is so, even when such a granting court has its jurisdiction under the Regulation. Therefore, it is important whether the fifth and the sixth indent of Article 3 should be recognizable or not under the Japanese rule of recognition of foreign divorce. The jurisdictional rules of the Member States' national law should also be examined in the same way.

The second question is whether the Japanese wife can submit a divorce suit in Japan for the husband who does not reside in Japan anymore. In this article, these questions are considered based on Japanese precedents.

IV. The Problems Yet to be Examined

The jurisdictional rules provided by the Rome III Proposal may be adopted by EU in the near future. Then, it should be examined whether such jurisdictional rules be recognizable in Japan.