

## On the Forthcoming Legislation for International Judicial Jurisdiction on Personal Status Litigations and Adjudications of Family Relations; a Judge's View (summary)

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Japanese Family Courts dispose of a wide range of cases relating to personal status and family, such as divorces, inheritance and guardianship and so on. A considerable amount of those cases include international elements; one of the parties or a part of property in question may be abroad. Judges, then, have to decide, when confronted with such cases raised, whether they come within the limit of the Japanese international judicial jurisdiction at the very outset of the procedure; otherwise, judges cannot find out whether they can deliberate on the merit of the cases further.

In Japan, however, we have had few statutory rules and quite a limited number of Supreme Court's judgments on the international jurisdiction on personal status litigations and adjudications of family relations so far. Thus, litigants and parties have had great difficulty in predicting whether they can properly solve disputes on family relations in Japan or not.

Under these circumstances, the Legislative Council, the advisory board to Minister of Justice on legal system has started preparation for the future legislation on this issue in April 2014. So far, the secretarial bureau of the Council has published documents proposing the draft Bill with options for many of the provisions. At the time of writing, the Council has had meetings 5 times and exchanged opinions based on the draft.

The purpose of this article is to assess the feasibility of the proposals and options shown in the draft as well as of the discussion so far held by the Council from the viewpoint of a practising judge, with special emphasis on the practical operability when the Bill comes into force. To that end, the argument of this article attaches great importance to (1) clarity of the provisions, (2) rationality of the rules, (3) welfare for those young or handicapped people and (4) practical usability of the system.

In this article, the author first makes his opinions clear on a couple of general issues so as to preface the assessment on provisions for particular issues. The author supports the draft Bill in that it regulates Japanese Family Courts' direct jurisdiction when litigations

and adjudication are raised as well as foreign courts' indirect jurisdiction when they are examined for recognition in Japan. However, the author does not support the provisions proposed as options in the draft Bill on *lis pendens*, which ask judges to predict whether foreign courts' judgments are to be recognized in the future, and would complicate too much the disposal of internationally concurring litigations in practice.

Then the article goes on to the international jurisdiction of divorce litigations. The author stresses that, with the lack of efficient international cooperation system on civil litigations, the principal forum should be the court of the nation where the defendants reside. The author also suggests the idea that, once a court's jurisdiction over divorce litigations is confirmed, it should be able to decide on the attribution of parental authority over minor children, so as to resolve disputes between husbands and wives at once.

Next, on guardianship, the author points out that the draft Bill is unclear on whether or not, and in which conditions, foreign adjudications shall be recognized in Japan. The author suggests that, at least in practice, timely and flexible protection for wards may be better awarded by the courts of the nation where they reside without recognizing foreign courts' adjudications to them.

Finally, the article refers to inheritance. Division of heritage, especially when only part of it is situated in the nation of the court, often raises difficult questions both in theory and practice. The author proposes provisions that allow such a court to exercise its jurisdiction only in relation to the heritage within its domain of the nation in order not to complicate the division of the rest of it in foreign nations.

The author hopes that this article contributes to the discussion of the forthcoming legislation, and finally to the proper exercise of international jurisdiction by Family Courts, whose tasks have much to do with the life of people from their start to end.