

Party Autonomy in International Family and Succession Law (summary)

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Recently, there have been significant developments concerning party autonomy in international family and succession law. Hague Conference of Private International Law adopted two conventions (matrimonial property regimes and succession) and one protocol (maintenance obligation) and European Union four regulations (maintenance obligation, divorce, succession and matrimonial property regimes), which allow party autonomy. In addition, some countries also have introduced party autonomy into its national private international legislation. However, in Japanese law, party autonomy is used only in the field of matrimonial property regime. Then, it should be discussed whether introduction of party autonomy into Japanese law is possible or not.

As in international contract law, it is questioned on which grounds party autonomy in international family and succession law is allowed. Firstly, the theoretical grounds are: autonomy in substantial law, difficult to decision of the most closely connecting factor, and individual rights or freedom. Secondly, the practical grounds are: flexibility, predictability and legal certainty, avoidance of qualification or adaptation problem, and enrichment or simplicity of proceedings. It is pointed out that in our country, with globalization, there are increasing cases in which uniform decision of the most closely connection is difficult. In fact, the number of foreigners living in Japan and Japanese living abroad have increased dramatically. The said problem could be resolved by party autonomy very well. It is the best way to ensure predictability and legal certainty.

Although party autonomy in international family and succession law have been expanded, there are exceptions regarding filiation and formation of marriage. Firstly, in the field of filiation, most important interest is child's one. Also, minors could not decide their most closely connection by themselves but rather their parents would do so. Due to possible infringements of child's interest, here is one of the field in which party autonomy could not be allowed. Secondly, future spouses could not choose the applicable law to formation of their marriage except for in Sweden, while introduction of party autonomy was discussed in some opportunities. It concerns each countries' public interests seriously. In Japanese practice of family registration, party autonomy would give rise to more difficult

problems also.

In our country, there are increasing cases with globalization to which the law of the most closely connected state does not apply due to the inflexible rules. Introduction of party autonomy is the most appropriate way to improve that situation. However, there are questions which should be considered in each partial field: which law could be chosen by the parties, in which form the parties should choose the applicable law, and which restriction should be imposed.