Rethinking the *Lex Patriae* in Japanese International Family Law and Succession (summary)

Takami HAYASHI
Professor, Doshisha University

Over the past four decades, Japan has experienced a significant shift in its foreign resident demographics. The marked decline in Special Permanent Residents and the rise in permanent residents signal a broader transition toward long-term settlement by foreign nationals. Against this demographic backdrop, the continued reliance on nationality as a primary connecting factor in Japanese private international family law and succession warrants re-examination. This paper analyzes the historical development, legislative rationale, and judicial application of the principle of the *lex patriae* and questions its relevance within an increasingly globalized and mobile society.

The analysis reveals that no compelling rationale can be found to justify the continued application of nationality as a primary connecting factor. During the legislative process, the application of law to Japanese nationals residing abroad appears to have been prioritized over that for foreign nationals residing in Japan. However, under current jurisdictional provisions, Japanese courts generally have international jurisdiction over inheritance cases when the decedent's domicile is in Japan. In practice, this entails that the principal scenarios in which the Act on General Rules for Application of Laws (*Ho-no-tekiyo-ni-kansuru-tsūsoku-hō*) apply are inheritance cases involving persons domiciled in Japan, rather than those who hold Japanese nationality and have resided abroad.

Under the former 1898 Act on Private International Law (*Horei*), there have been numerous cases in which the *lex patriae* of foreigners has not ultimately been applied because of the *ordre public* clause, *renvo*i, and other conflict-of-law mechanisms. The growing number of dual nationals has undermined the stability of this principle, as the law designated as "the *lex patriae*" may fail to capture an individual's cultural or social identity. These outcomes raise questions about the continued appropriateness of the principle of nationality, particularly in light of the shifting significance of nationality and the growing tendency to respect individual identity and legal affiliation.

In response, this paper draws comparative insights from the EU Succession Regulation,

which prefers habitual residence as a connecting factor and introduces limited party autonomy. By emphasizing proximity and allowing choice of law, the Regulation offers a flexible alternative that avoids privileging either nationality or habitual residence.

Cultural, social, and economic affiliations to a legal system—be it one's nationality, habitual residence, or a third country—constitute a deeply personal matter, not readily captured by external indicators. It may be more appropriate to develop tailored choice-of-law rules for each legal relationship. It is timely to reconsider the choice-of-law rules governing family and succession matters, which have remained largely static since the 1989 amendment. More attention should be directed toward the application of law to foreign residents living in Japan, prompting a critical reassessment of the principle of nationality.