

An Introduction to the Draft Bill of Belgian Private International Law (summary)

Mari NAGATA

Associate Professor of Law, Osaka University of Foreign Studies

In Belgium, at present, there is not yet an overarching body of law called “Droit International Privé” or “Private International Law”. There are some rules concerning conflict of laws and international jurisdiction. But some of them are so broad and vague, and others are so narrow and detailed that they have not been useful for solving problems. In order to cope with such situations, the Belgian government decided it needed to make the new Private International Law. The draft bill was presented to the Senate on July 1, 2002.

This draft bill covers all aspects of Belgian private international law, providing for almost all problems relating to conflict of laws, international jurisdiction and recognition and enforcement of foreign decisions. This draft bill is especially characterized by the following points.

Firstly, it has 13 chapters, and in each chapter rules are provided concerning conflict of laws, international jurisdiction and enforcement of decisions. This style of legislation was first adopted by Switzerland, and the Swiss law's influence is evident in this draft bill. Secondly, the draft bill contains rules for “relation de vie commune”, which is distinguished from marriage expressly. Currently, many countries in Europe are making rules for conflict of laws involving PACS or/and same-sex marriage, so by its inclusion of rules for “relation de vie commune” the draft bill is in keeping with this tide. However, “relation de vie commune” might cause problems of qualification because of the vagueness of the concept. For example, PACS in French civil law would necessarily be included, but it is not at all clear whether same-sex marriage would be included or not. Thirdly, “révision au fond” has disappeared in this draft bill. Belgium had been a minority country in its maintaining the system of “révision au fond” till nowadays, and this system had been criticized again and again. Fourthly, this draft bill creates new rules of international jurisdiction based on the place where the contractual obligation occurred. This jurisdictional base is very rare, and it might cause arguments about deciding the place of

contractual obligation when the contract is concluded between absents, as specified in article 7 of Japanese HOREI.

In general, it can be said that this draft bill is influenced by international conventions and legislation of many European countries, such as Switzerland, Germany and the Netherlands. Nevertheless, we cannot help but notice that this draft bill keeps strong individuality in places. In this respect, an overview of this draft bill helps us to reconsider about our own rules of private international law.