International Jurisdiction on Parent-Child Matters (summary)

Yukiko ODA

Professor of law, Nihon University Law School

I made a presentation on the issue of international jurisdiction on parent-child relationship and child custody disputes on June 1, 2014. There I summarized a draft of proposed rules made by a study group on the international jurisdiction on the matters relating to personal status, and commented upon it. More specifically, I pointed out the following on the draft: 1) whether the categorization by the substantive law in Japan is appropriate or not, 2) various issues arising from the principle of defendant-residence as an important factor, 3) a doubt on the jurisdiction based upon the nationality of parties, and 4) the importance of the best interest of the child in jurisdictional decisions.

Then these issues are discussed extensively at the divisional committee of the Law Reform Council in the Justice Department, which issued an interim draft on March 19, 2015.

As regard to the parent-child issues, there are no clear gap between the draft by a study group and this new interim draft by the Law Reform Council. If you see it closely, however, you notice some important points of difference between them.

First, the new interim draft introduced a new term called "Tan'i-jiken-ruikei" (an issue type). Parent-child disputes are classified into ten issue types. Categorizing is based not only upon the substantive laws of Japan, but also the counterparts of foreign laws, which direction is basically good. One point of concern is, however, that adoption issues are divided into 5 types, so complicated that the application of the rule may be difficult.

Second, the interim draft shows two alternatives A and B. Under A plan, the defendant-residence principle is a basis but added some other jurisdictional bases. Under B plan, one party residence is the most important to decide on the jurisdictional issue so that it may be possible to give the relief to the plaintiff who asks for the truth of parent-child relationship. I would support the latter simpler plan, although each has its own merits and demerits.

Third, the interim draft seems somewhat to put weight on the nationality than before. But the defendant-residence principle and the preference for nationality on jurisdiction is theoretically incompatible or incoherent. How to accommodate these two is a big issue to

remain.

Finally, I would like to again emphasize the importance of the best interest of the child. Which court is more suitable and accessible to the situation of the child? Also which court is less burdensome towards the child with regard to examination and hearing? These issues are heavily important to decide on the jurisdiction in international disputes. How this consideration could be included into the decision-making of appropriate jurisdiction is a tough question.