

Recognition of Foreign Judgments Regarding Family-related Cases — Recognition of Judgments Ancillary to the Divorce Case and the Effects of Foreign Adoption Decree — (summary)

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As Act Partially Amending the Personal Status Litigation Act (PSLA) were adopted and promulgated on 25 April 2018 (entered into force on 1 April 2019), it became clear that the recognition of foreign judgments regarding family matters should be divided into two categories, ie, (a) the recognition of Personal Status Litigation judgment and (b) the recognition of Domestic Relations judgment, and they are subject to different provisions. More specifically, the former is subject to Article 118 of the Code of Civil Procedure (CCP), and the latter, to Article 79-2 of the Domestic Relations Cases Procedure Act (DRCPA). For this reason, in the recognition of foreign judgments regarding family-related cases, the question what is the scope of each provision seems to be increasingly important.

In Section 1 of this paper, I first focused on judgments ancillary to a divorce case, such as custody case, distribution of assets case, maintenance case ancillary to a divorce case, and discussed whether the ancillary judgements will be recognised according to Article 118 of the CCP or Article 79-2 of DRCPA. In this discussion, after summarizing Japanese scholarly writings, judicial precedents and family register practices, I also referred to the Brussels IIb Regulation (Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)) and the 1996 Hague Convention (Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children). In this section, I concluded that the judgments ancillary to a divorce case should be subject to Article 118 of the CCP, and the indirect jurisdiction of the ancillary judgements should be principally determined in accordance with Article 3-4 of the PSLA, which stipulates that if a Japanese court has jurisdiction over a divorce case, it also has jurisdiction over ancillary cases.

Next, in Section 2 of this paper, I focused on the effects of a foreign adoption decree,

such as whether the adoption will terminate the pre-existing parent-child relationship, and whether the adoptive parents will have the parental responsibility for the child. In this topic, I discussed whether the effect of a foreign adoption decree will also be subject to Article 79-2 of DRCPA. As in Section 1, after summarizing Japanese scholarly writings, judicial precedents, and family register practices, I also referred to the 1993 Hague Convention (Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption). My conclusion was that the recognition of a foreign adoption decree should include the recognition of, in addition to the legal parent-child relationship between the child and the adoptive parents, the termination of a pre-existing legal relationship, but should not include the parental responsibility of the adoptive parents for the child.