Application of Religious Law to International Marriage and International Divorce, and Private International Law

1. Introduction

My expertise is in private international law. "Private international law" refers to the judicial field for regulating cross-border legal issues concerning individuals and corporations, such as international marriage, international divorce, and international transactions. In today's world where, with the progress of globalization, individuals can freely travel beyond national boundaries, international marriages and divorces are no longer unusual. Today, I would like to talk about how, when legal issues over international marriage and divorce occur, the religious law of the denomination to which an individual belongs may apply, by taking the private international law of Japan as an example. In fact, concerning issues involving international families such as international marriage and divorce, there are court cases in which each denomination's unique religious law, was applied instead of the civil code, which is a set of rules established by Japan.

2. Regulations for Cross-border Legal Issues concerning Individuals, and Private International Law

First of all, which law does each country apply when a cross-border legal issue concerning individuals, for example international marriage and divorce, occurs?

When a couple wants to get married, their marriage is usually an issue regulated by the civil code of the country in question. In today's world, however, there is no uniform civil code corpus. The current situation is that each country establishes its own civil code to regulate issues of marriage between its own nationals. For example, the Japanese civil code applies to the marriage of a Japanese couple in Japan, and the German civil code applies to the marriage of a German couple in Germany. Furthermore, the requirements for the formation of marriage varies in each country's civil code. However, a couple planning an international marriage will be entering into a cross-border marriage, and thus they will be uncertain as to which country's established civil code should be followed in order to make sure that their international marriage is acknowledged as legally valid. In cases like this, the Japanese court selects the civil

code of Japan or the civil code of a foreign country on a case-by-case basis, and applies it to the international marriage or divorce in question. This field of law in which a country determines whether to select its own civil code or the civil code of a foreign country for application to cases of international marriage and divorce, etc. is called "private international law." The national law that has been selected in this manner pursuant to private international law is called the "applicable law" or "governing law." In the case of Japan, the criteria for selecting the applicable or governing law are stipulated in the Law on General Rules for the Application of Law (*Hônotekiyônikansurutsûsokuhô*), which is the Japanese private international law (hereinafter abbreviated as the "JPIL").

For example, Art. 24, para. 1 of the JPIL provides that the requirements for the formation of a marriage be governed by the national law of each spouse respectively. For example, if a Japanese national and French national plan an international marriage, it is sufficient for each of the parties concerned to satisfy the requirements for formation of marriage as stipulated in the civil code of his or her respective country. As such, if the Japanese national satisfies the formation of marriage requirements as stipulated in the Japanese civil code, and the French national satisfies the requirements for the formation of marriage requirements as stipulated in the French civil code, the international marriage between the two is legally established in effect.[1]

3. Application of Law of Country without a Uniform Personal Law

Now, what about cases where the country of either party concerned is a so-called Country without a Uniform Personal Law? A "Country without a Uniform Personal Law" is a country which had adopted a legal system in which different laws are applied to different ethnic groups and religions to which the people belong within a single country. For example, in India, people believe in many different religions, including

[1] Example case of international marriage: A 20 year-old Japanese man wants to marry a Chinese woman who is also 20. According to Japanese law, a man who has attained 18 years of age and a woman who has attained 16 years of age may enter into marriage, whereas Chinese law requires men to be a minimum of 22 years old and women 20 years old in order to marry. Thusly, the couple will be able to marry in Japan, because the requirements of Chinese law should be satisfied by the Chinese woman and the requirements of Japanese law should be satisfied by the Japanese man.

Hinduism, Islam, Christianity, Parsi (a denomination of Zoroaster), and Judaism. The followers of each religion are subject to the marriage law and family law under the religious law of their respective affiliation. A country which accepts such legal systems is called a Country without a Uniform Personal Law, examples of which are India, Indonesia, Malaysia, Pakistan, Iran, Iraq, Egypt, and Libya.

If, in the case of an international marriage, the law of a Country without a Uniform Personal Law is selected as the national law of one of the parties concerned pursuant to Art. 24, para. 1 of the JPIL, the problem to be considered is which law of which denomination within such country should be applied to the case. For example, in India, there are the Hindu Marriage Act, the Muslim Law, the Indian Christian Marriage Act, etc., each of which is acknowledged as being the personal law for the respective religious community, and furthermore, there also co-exists the Special Marriage Act of India, which is a general law. As such, if an Indian man plans to marry a Japanese woman in Japan, it is necessary to decide, with regard to age and other requirements for formation of marriage, which personal law should be applied as the Indian law, as the national law of the one of the parties concerned (Art. 24, para. 1, JPIL). This point is provided for in Art. 40, para. 1 of the JPIL.

Art. 40, para. 1 of the JPIL stipulates that "where a party concerned has nationality in a country where different laws are applied depending on a person's status, his/her national law shall be the law designated in accordance with the rules of the country (in the absence of such rules, the law with which the party is most closely connected)." Accordingly, in the case where a party has nationality of a Country without a Uniform Personal Law, first of all the "law designated in accordance with the rules of the country" is considered to be the national law of such party. The "rules of such country" are interpreted as the rules of the interpersonal law that, when different laws applicable to different categories of persons co-existing within a country, determine which law should be applicable. Such interpersonal laws are diverse in their nature, and since most of the details have yet to be put in a statutory form, it is difficult to settle on which law is the applicable one. For example, in India, there are no such uniform rules, with rules scattered among the Hindu Marriage Act, the Indian Christian Marriage Act and other personal laws, as well as the Special Marriage Act and other special laws. Furthermore, if there are no such clearly stated rules, the matter is solved by relying on letters of patent and orders, etc. from the British colonial period.

In cases where there are no rules of interpersonal law in a Country without a Uniform Personal Law, the perspective of Japanese private international law is taken, and the law with which the person concerned is most closely connected is applied as the national law of him or her. The law which is most closely connected to such party is determined based on criteria such as race and religious affiliation. As such, in cases where international marriage involving an Indian national or Malaysian national becomes a problem in Japan, the law of the denomination to which such person belongs is in actuality applied to the international marriage.

However, the application of a religious law concerning international marriage is not always followed through. In a case involving the validity of an international marriage between Japanese and Egyptian nationals, since the personal law of the denomination to which the Egyptian national belonged prohibited marriage with a follower of a different religion, it was argued whether the marriage would be nullified by application of the personal law by considering the same to be that party's national law. The Japanese court did not agree to the application of the Egyptian law, by stating that the application of the Egyptian law, which prohibited marriage between followers of different religions, is against the public order of Japan[2], and thus the marriage came into effect by application of the Japanese civil code. As such, in cases where the nature of the personal law of a denomination is against the basic principles of the Japanese law, the application of that personal law may not be accepted.

4. Conclusion

As described above, in the field of private international law, if a party to an international marriage or divorce has the nationality of a Country without a Uniform Personal Law, the marriage or divorce will be accepted in Japan by applying the personal law of the religious society to which such party belongs. However, this is true only if the party concerned has the nationality of a Country without a Uniform Personal Law, and is predicated on the country having adopted a legal system which agrees to the application of different laws according to the ethnic group and religion to which people belong. Today, my talk was about the cases in which religious law may be applied to the

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[2] Art. 42 of the JPIL stipulates that "where a foreign law is to apply but its application would be contrary to public policy, is shall not apply."

formation of international marriage. Thank you for listening.