

by a Japanese father only after birth could not get Japanese nationality either by nature, based on Art. 2, Para.1 because of the question of the timing of the affiliation, nor by the notice to the Minister of Justice based on Art. 3, Para. 1, regardless of having a legal parent-child relationship to a Japanese father, unless his parents married each other subsequently. Some children in that situation have been insecure, being afraid of the probability of forced repatriation to the mother's home country and of a breakup of the family.

The amended clause, complying with the intent of the Supreme Court's judgment on June 4, 2008, removed the requirements: "marriage of his or her parents" and "legitimated by his or her parents' marriage". Although it seems, apparently, to be a minimum hastily-formed revision in order to eliminate the unconstitutionality, allowing the acquisition of Japanese nationality under the requirements of affiliation and notice is very epoch-making. This revision leads our country to go along with some Western countries which respect the rights of children.

Added to this, Art. 20 is newly provided in the amendment stating that a person making a false notification shall be punished by not more than one year of imprisonment with work or a fine of not more than two hundred thousand yen. In the past, we did not have any penal provisions in the Law of Nationality, but in the future, some persons without a blood parent-child relationship will probably affiliate a child and make a false notification. The new penal provisions needed to be sought, in preparation. From now on, like the collateral resolution to the amendment bill by the both Houses, in order to administer the amendment clauses correctly, the Ministry of Justice has to deal delicately, in enforcing the cooperation of each body and in issuing some instructions.

4. Law of Civil Procedure and Bankruptcy

The Act of Civil Jurisdiction against the State

Law No. 24, April 24, 2009 (effective April 1 2010)

Background:

In December 2004, the United Nations Convention on Jurisdictional Immunities of States and Their Property that adopts “Limited Jurisdictional Immunity” (Seigen-Menjo Shugi), was adopted. In January 2007, Japan also became a signatory.

In Japan, Taishin-in December 28 1928 (7 (12) MINSHU 1128) adopted “Absolute Jurisdictional Immunity” (Zettai-Menjo Shugi), but the Supreme Court 2nd P. B., July 18 2006 (60 (6) MINSHU 2542) overruled the decision of the Taishin-in, and adopted “Limited Jurisdictional Immunity” (Seigen-Menjo Shugi). However, the concept of Limited Jurisdictional Immunity lacks clarity. That is the reason why “The Act of Civil Jurisdiction against the State” was enacted.

Main Provisions:

(1) Definition of “the State”

The Act defines “the State” (Art. 2). “The State” includes “the State and the its various organs of government” (Art. 2 (1)), “the constituent units of a federal State or the political subdivisions of the State, which are entitled to perform acts in the exercise of sovereign authority, and are acting in that capacity” (Art. 2 (2)), “agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of the sovereign authority of the State” (Art. 2 (3)), “representatives of the State acting in that capacity” (Art. 2 (4)).

(2) Scope of Japanese Jurisdiction

As a general rule, a State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention (Art. 4).

However, the Act provides some exceptions. For example, there are “Express consent to exercise of jurisdiction” (Art. 5), “Effect of participation in a proceeding before a court” (Art. 6), “Counterclaims” (Art. 7), “Commercial transactions” (Art. 8), “Contracts of employment” (Art. 9), “Personal injuries and damage to property” (Art. 10), “Ownership, possession and use of property” (Art. 11), “Intellectual and industrial property” (Art. 13), “Participation in companies or other collective bodies” (Art. 14),

“Ships owned or operated by a State” (Art. 15), and “Effect of an arbitration agreement” (Art. 16).

(3) State immunity from measures of constraint in connection with proceedings before a court

The act includes “State immunity from pre-judgment measures of constraint” and “State immunity from post-judgment measures of constraint”. There are provisions of “the Effect of consent to jurisdiction to measures of constraint” (Art. 17), and “Specific categories of property” (Art. 18).

(4) Miscellaneous provisions

Miscellaneous provisions include “Service of process” (Art. 20), “Default judgment” (Art. 21), “Privileges and immunities during court proceedings” (Art. 22).

Editorial Note:

“Limited Jurisdictional Immunity” is the trend of the world, but since the Taishin-in December 28, 1928 (7 (12) MINSHU 1128) adopted “Absolute Jurisdictional Immunity”, the supreme court has applied it.

The Supreme Court 2nd P. B., July 18, 2006 (60 (6) MINSHU 2542), however, overruled the decision of the Taishin-in, and adopted “Limited Jurisdictional Immunity”.

“The Act of Civil Jurisdiction against the State” clarifies the concept-for instance, its scope, range and procedure etc.- of “Limited Jurisdictional Immunity”. It prohibits interference in the state-functions that should be protected, but in fact the act is very abstract. That is the reason why we should pay attention to its future interpretation.

5. Criminal Law and Procedure

Law for the punishment and treatment of acts of piracy

Law No. 55, June 24, 2009 (effective on July 24, 2009)

Background:

Japan is a very big island nation, which is surrounded by sea, and for-