

扶養義務の準拠法に関する法律

Act on the Law Governing Duty to Support

(昭和六十一年六月十二日法律第八十四号)

(Act No. 84 of June 12, 1986)

(趣旨)

(Purpose)

第一条 この法律は、夫婦、親子その他の親族関係から生ずる扶養の義務（以下「扶養義務」という。）の準拠法に関し必要な事項を定めるものとする。

Article 1 This Act provides the particulars necessary for the law governing the duty to support based on the relationship between a husband and wife, parents and their child(ren), and other kinships (hereinafter referred to as "duty to support").

(準拠法)

(Governing Law)

第二条 扶養義務は、扶養権利者の常居所地法によつて定める。ただし、扶養権利者の常居所地法によればその者が扶養義務者から扶養を受けることができないときは、当事者の共通本国法によつて定める。

Article 2 (1) The duty to support is governed by the law of the habitual residence of the support obligee; provided, however, that if the support obligee is unable, under the law of their habitual residence, to receive support from the support obligor, it is governed by their common national law.

2 前項の規定により適用すべき法によれば扶養権利者が扶養義務者から扶養を受けることができないときは、扶養義務は、日本法によつて定める。

(2) If the support obligee is unable, under the law which is applicable pursuant to the provisions of the preceding paragraph, to receive support from the support obligor, the duty to support is governed by Japanese law.

(傍系親族間及び姻族間の扶養義務の準拠法の特例)

(Special Provisions for the Law Governing Duty to Support between Collateral Relatives and between Relatives by Marriage)

第三条 傍系親族間又は姻族間の扶養義務は、扶養義務者が、当事者の共通本国法によれば扶養権利者に対して扶養をする義務を負わないことを理由として異議を述べたときは、前条の規定にかかわらず、その法によつて定める。当事者の共通本国法がない場合において、扶養義務者が、その者の常居所地法によれば扶養権利者に対して扶養をする義務を負わないことを理由として異議を述べたときも、同様とする。

Article 3 (1) Notwithstanding the provisions of the preceding Article, a duty to support between collateral relatives or between relatives by marriage is

governed by the law of their common national law if the support obligor states an objection on the grounds that they do not have a duty to support the support obligee under their common national law. The same applies where the support obligor do not have their common national law and the support obligor states an objection on the grounds that they do not have a duty to support the support obligee under the law of the habitual residence of support obligor.

2 前項の規定は、子に対する扶養義務の準拠法に関する条約（昭和五十二年条約第八号）が適用される場合には、適用しない。

(2) The provisions of the preceding paragraph do not apply to cases where the Convention on the Law Applicable to Maintenance Obligations Towards Children (Treaty No. 8 of 1977) is applicable.

（離婚をした当事者間等の扶養義務の準拠法についての特則）

(Special Provisions for the Law Governing Parents' Obligation to Support between Divorced Parents)

第四条 離婚をした当事者間の扶養義務は、第二条の規定にかかわらず、その離婚について適用された法によつて定める。

Article 4 (1) Notwithstanding the provisions of Article 2, the obligation to support their children between divorced parents is governed by the law which is applicable to their divorce.

2 前項の規定は、法律上の別居をした夫婦間及び婚姻が無効とされ、又は取り消された当事者間の扶養義務について準用する。

(2) The provisions of the preceding paragraph apply mutatis mutandis to the obligation to support their children between a husband and wife who are legally separated or between the parents whose marriage is declared void or revoked.

（公的機関の費用償還を受ける権利の準拠法）

(Law Governing the Public Bodies' Right to Receive Reimbursement of Costs)

第五条 公的機関が扶養権利者に対して行つた給付について扶養義務者からその費用の償還を受ける権利は、その機関が従う法による。

Article 5 The right of a public body to receive reimbursement of the costs from the support obligor, which were paid to the support obligee by the public body, is governed by the law which the body follows.

（扶養義務の準拠法の適用範囲）

(Coverage of the Law Governing Duty to Support)

第六条 扶養権利者のためにその者の扶養を受ける権利を行使することができる者の範囲及びその行使をすることができる期間並びに前条の扶養義務者の義務の限度は、扶養義務の準拠法による。

Article 6 The coverage of persons who may exercise the right of a support obligee

to receive support and the period during which the right may be exercised, as well as the scope of the obligation of the support obligor set forth in the preceding Article, is governed by the Law Governing Duty to Support.

(常居所地法及び本国法)

(Law of Habitual Residence and Relevant National Law)

第七条 当事者が、地域的に、若しくは人的に法を異にする国に常居所を有し、又はその国の国籍を有する場合には、第二条第一項及び第三条第一項の規定の適用については、その国の規則に従い指定される法を、そのような規則がないときは当事者に最も密接な関係がある法を、当事者の常居所地法又は本国法とする。

Article 7 Where a party has habitual residence in a country where the applicable law differs depending on the region or personal attribute, or where a party has nationality of the relevant country, with regard to the application of the provisions of Article 2, paragraph (1) and Article 3, paragraph (1), the law designated in accordance with the regulations of that country, or in the absence of such rules, the law most closely related to the party, is the law of their habitual residence or their national law.

(公序)

(Public Order)

第八条 外国法によるべき場合において、その規定の適用が明らかに公の秩序に反するときは、これを適用しない。

Article 8 (1) Where foreign law governs, if the application of the provisions of the foreign law is obviously contrary to public order, it does not apply.

2 扶養の程度は、適用すべき外国法に別段の定めがある場合においても、扶養権利者の需要及び扶養義務者の資力を考慮して定める。

(2) Even in the case where it is otherwise provided for in the applicable foreign law, the amount of financial support is determined by taking into consideration the needs of the support obligee and the financial resources of the support obligor.