Cultural Identity in Private International Family Law

The era of globalization is characterized by the dynamic movement of people across borders and migration in various parts of the world. The juxtaposition and coexistence of different ethnic, cultural or religious groups within society poses the challenge of accommodating divergent legal, religious and customary norms. Of key concern is how far the fundamental values of the receiving state ought to be imposed on all persons on the soil, and to what extent the customs, beliefs and the cultural identity of individuals belonging to minority groups should be respected. This challenge arguably requires reconsidering and reevaluating the conventional methods of private international law that are grounded in the territorial "localization" of legal relationships. Against this background, *Yuko Nishitani* (Professor at Kyoto University, Japan) envisaged studying various conflict of laws issues from the viewpoint of cultural identity in private international family law and delivered a lecture at the Hague Academy of International Law on "*Identité culturelle en droit international privé de la famille*", which has been published in *Recueil des cours,* Vol. 401 (2019), pp. 127-450.

In her lecture, Nishitani first analyzes the notion and meaning of cultural identity in private international law, after comparatively delineating legal developments in major legal systems (Chapter I). The author posits that, while the notion of cultural identity should not be understood as its own legal category, it serves as a guiding principle and theoretical foundation in justifying certain solutions in private international law (Chapter II).

In multiethnic and multicultural societies, the belonging of individuals to states, regions, communities or other groups is gradually relativised and redefined. In light of the recent effects of globalization, the author contemplates the appropriate methods for determining the personal law to cater for the cultural identity of individuals, overcoming the

conventional dichotomy between the principle of nationality and the principle of habitual residence (Chapter III). Considering the multiplication of relevant legal and social norms, the author also considers the interaction between state law and customary, religious or cultural non-state norms to seek solutions for "conflict of norms" in a broader sense (Chapter IV).

On the other hand, for the sake of coherence and security of the legal system, the state exercises control, where necessary, to preclude effects of foreign legal institutions. It is essential to define the functioning of public policy and fundamental rights so as to set limits to respect for cultural identity (Chapter V). Finally, the author reflects on alternative conflict of laws methods geared toward administrative and judicial cooperation between sovereign states, with a view to accommodating the cultural identity of individuals (Chapter VI).

At the end of her lecture, the author highlights the importance of constructive dialogue between different cultures, given that humanity has a long history of success in mutually developing, exchanging and enriching its diverse cultures.

More information about the author and the book are available here (in French).