

## Rethinking about Foreign States Immunity (summary)

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The object of this article is to examine in which cases civil proceedings and executions should be made against foreign states in Japan.

Since the beginning of the 20th century, states have become one of the principal actors in international transactions, and it has been discussed whether each state could exercise its jurisdiction against foreign states engaging private activities. In Japan, while the possibility of civil proceedings against foreign states has been relatively well discussed, that of execution against foreign states' properties situated in Japan have not as often discussed. One of the reasons for such the lack of discussion as regards execution may be that the Japanese case law had until recently maintained the "absolute immunity" principle as regards civil proceedings. Another reason may be that there have been almost no specific cases in Japan with regard to execution against foreign states' properties.

However, Japanese Supreme Court is nowadays changing the direction from absolute immunity to restrictive immunity as regards civil proceedings, thus the possibility of execution against foreign states' properties situated in Japan is becoming more important than before. In addition, there may be even now a case in which a foreign state has voluntarily renounced its immunity, appeared before a Japanese court and then lost on the merits, or in which a foreign state has lost in an international arbitration. In these cases, the possibility of execution against foreign states' properties situated in Japan is to be examined, regardless of the position the Supreme Court would take as regards civil proceedings. In particular, it seems to be a very important problem, in practice, in which cases a Japanese court should order the execution against bank accounts or securities held by foreign states in Japan.

Thus, this article deals mainly with the executive aspect concerning state immunity. In my opinion, this problem should be examined not only from the viewpoint of international law as the problem of state immunity, but also from the viewpoint of conflict of laws (international civil procedure law). In examining it from the latter's viewpoint, a rule should be pursued which would be in accor-

dance with internal legal system, in particular with other rules in relevant fields. As regards civil proceedings against foreign states, the criterion to determine the justiciability of each case should be whether the legal relationship upon which the claim is based would be "civil" or not. As regards execution against foreign states' properties situated in Japan, from the comparison with the execution against our government's properties, it results that foreign states' property which can be protected from execution should not comprise money debts, and that execution should be made against properties which would be regarded as *res in commercio*. Such conclusions are not so new, but it seems significant to emphasize that it is necessary to examine this problem from the viewpoint of conflict of laws. The examination on this paper would be also applied in cases in which a foreign private person takes an civil action against Japanese government.