

## Some Problems of International Garnishment (summary)

Hajime SAKAI

Professor of Law, Ritsumeikan University

### I Introduction

(1) Stable judicial system is an essential element of international transaction. Borderless Transaction needs a worldwide execution system. International civil judicial system is not build yet. Each nation has each judicial system. Of course there is no international executive organization for civil rights.

Many problems about recognition and execution of foreign judgement were already discussed in many literatures. But there is scarce discussion about international execution. In the field of international transaction a garnishment might be most important.

(2) There are two situations; creditor may apply for garnishment at the court of Japan. On the other hand foreign courts where creditor has applied execution request for judicial assistance to Japanese court. Further effect of execution by foreign states may be discussed in Japanese court (eg. recognition of foreign execution). In this article some problems in the executive procedure at Japanese court are dealt with.

### II Execution at Japanese court

#### 1. International jurisdiction

In literatures we might find three different approaches about international garnishment jurisdiction; debtor basis, garnishee basis and jurisdiction for claim of garnished-debt basis. But this classification is not adequate because of substantial ground for jurisdiction. For Example a scholar has drawn a debtor basis because garnishment order has been aimed to debtor. Another scholar has also concluded a debtor basis because a credit has been in the place of creditor. But a writ of garnishment is issued not only to a debtor but also to a garnishee. Apparently the place of credit is a fiction. We should analyze the procedure of execution.

The ground of international jurisdiction of execution is territorial restriction against the executive jurisdiction. We must find sovereign reputation not only in

a writ of garnishment but each action of execution.

In my view jurisdiction for claim of garnished-debt basis is adequate and useful as a result.

## 2 . Laws applicable

Additionally there is a problem about applicable laws; a scope of garnished debt, assignment of debt, the order of dividend and so on.

The protection of the garnishee is a most urgent subject. The garnishee must not be obliged to double or multiple payment to his creditor that is debtor of executed debt one hand and other to the creditors of executed debt. We must consider how garnishee protects his right.

## III Conclusion

It needs more several months to send a writ of garnishment for garnishee. Does this situation make international garnishment useless?

It is needless to say that protection of rights at the international transaction is most important. But now there are no international treaties for international execution of civil right. Of course there is no executive organ which acts worldwide. We should get along with interpretation of each statute that is international execution law for civil right in Japan.