

Recognition and Enforcement of Certain Types of Foreign Judgments Including Injunctions (summary)

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1. Courts give many different kinds of measures of relief to those who apply for judgments so as to protect their rights. The kinds of measures that courts can grant, however, are not the same throughout the world. For example, on one hand, in Common law countries, courts can give “injunctive orders,” such as “freezing injunction,” “anti-suit injunction,” “injunction to prohibit the continuation of patent infringement,” etc., in certain situations. On the other hand, in Japan, courts can issue injunctive orders in more limited cases.

The object of this article is not to reexamine the 2014 decision of the Supreme Court of Japan, but to answer some questions which we have long contemplated.

2. Our questions are as follows:

1) In general, the efficiency of injunctive orders by courts of common law countries are considered to be assured by the existence of the institution of “contempt of court” in those countries. A party to whom a court order was addressed, can be fined or even be put in prison, when the party does not obey a court order and is sanctioned through the proceedings of “contempt of court.” From this premise, our first question is whether an injunction, whose efficacy/efficiency is assured by such a powerful system of “contempt of court,” can belong to the domain of “criminal” judgment or not. Here, this classification (civil vs. criminal) is relevant, because in many countries including Japan, judgments of a criminal matter cannot be recognized or enforced outside of the country whose courts issued the judgment.

2) Furthermore, the effects of such deterrents associated with being held in “contempt of court” brings forth our second question: If, thanks to the system of “contempt of court,” an extraterritorial injunctive order by a court of a common law country can be almost always effective, is there any necessity for the other countries to recognize such a foreign injunctive order and assist in it being effective outside of the jurisdictional territory of the issuing court?

3) Thirdly, our last question is related to the nature of injunctive orders. Injunctive orders - or Injunctions - are sometimes called as “non-monetary judgments” and can be

treated differently from “monetary judgments.” The ways of enforcing non-monetary judgments is not so simple even in pure domestic cases. In cross-border injunction cases, things can be more complicated.

It certainly seems that there are more difficulties to enforce cross-border injunctions issued by foreign courts than to enforce foreign judgments which order defendants to pay a certain amount of money. Our third question is whether or not it is really possible, for foreign cross-border injunctions to be appropriately enforced in countries other than the one whose court issued the injunction.

3. Regarding our first question, a potential answer could be found by examining one aspect of the *Cour de cassation* (Supreme Court) of France’s decisions. The court ruled that freezing injunctions and anti-suit injunctions should be considered “civil” decisions, apart from the system of “contempt of court.”

4. As to our second question, we could find an answer that it is still necessary to maintain ways of making a cross-border injunctions effective. This could be achieved by the recognition/enforcement in a country other than the one of an issuing court, because even the powerful system of “contempt of court” is not almighty.

5. Of our three questions, we found the last to be the most intriguing and significant, and is what we focused on the most. In order to search for an answer to the third question, we could have some suggestions; what Dr. Burkhard Hess has once stated in *the Heidelberg Report on the Application of Regulation Brussels I in 25 Member States*, from a preliminary ruling of the Court of Justice of the EU (Case C-235/09, *DHL Express France v Chronopost SA*, 12 April 2011) and from Article 54 of the Brussels I bis Regulation. Also, some interesting examples were evidenced in cases where the effects of cross-border freezing injunctions were recognized both in France and Switzerland. Indeed, in order that a cross-border injunction can be effective in countries outside of the issuing court’s jurisdiction, Professor Hess suggested that “the implementation (and *adaptation) of the foreign title to the legal requirements” in the country of enforcement is necessary (note* : the underline is added by the present author).

We conclude that we should construct a framework of *exequatur* proceedings which could accommodate “adaptation” of a foreign title, especially when the foreign decision being recognized and enforced is an injunctive order. However, further examination on how foreign titles should be adapted in certain situations, and to what extent they can be adapted, may be necessary.