

The Principle of “*révision au fond*” and the Public Policy Requirement in the Japanese System of Recognition of Foreign Judgments (summary)

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1. (1) This article analyses the impact of the principle of “*révision au fond*” (Art.24 (4) of Japanese Civil Execution Act) on the public policy requirement for the recognition of foreign judgments (Art.118 (3) of Japanese Code of Civil Procedure: hereinafter JCCP).

There is a certain consensus that examining the public policy requirement does not violate the principle of “*révision au fond*” unless it judges whether the foreign court decided the case properly. However, there still is found the expression that the requirement of public policy would be the exception of the principle or the concern that it would violate the principle, especially when the requirement is examined looking concretely into their facts.

(2) In Japan, the system of the enforcement of foreign judgments was first set out and then followed by the recognition system. The requirements for the recognition were built based on those for the enforcement by receiving some modifications. The principle of “*révision au fond*” already existed in the enforcement system and was left in the recognition system.

The public policy requirement derives from one of the requirements for the enforcement: the action to be enforced should be the one that is allowed to impose. To judge that requirement, it was not necessary to go into the details from the substantial aspects, so there had been no discussions about the possible conflict between that clause and the principle of “*révision au fond*”.

Judging from the drafting materials, the reason for modifying that clause into the public policy clause is not apparent, and there is no argument about the possibility of conflict with the principle of “*révision au fond*”. In contrast, Art.328 of the German Code of Civil Procedure (Zivilprozeßordnung), which was later accepted by the Japanese enforcement and recognition system, argued on this point in its first drafting stage.

2. Gebhard's first draft adopted two new requirements: non-recognition of the judgments ordering “Privatstrafe” or putting the German party at a disadvantage. Gebhard considered these two requirements would cause a conflict with the principle of “*révision au*

fond" since they need the examination of foreign judgments from the substantive aspect. Therefore he deleted the principle from Gebhard's first draft.

However, Gebhard incorporated the principle of "*révision au fond*" into his second draft again, despite the public policy clause's additional introduction. The main reason for Gebhard's decision was that Prussia Draft, which was referred to in the drafting history of the enforcement system of foreign judgments in Germany, also had the public policy clause together with the principle. Considering the importance of the principle in Germany's enforcement system's historical development, Gebhard decided to keep it in the recognition system in his second draft.

3. Viewed in this light, the principle of "*révision au fond*" in Gebhard's draft can be divided into two groups regarding its meaning: on the one hand, it means that it strictly prohibits the substantive examination of foreign judgments as we can see in the first draft. On the other hand, it just expresses the general importance of the system under which foreign judgments are recognized and enforced based on the foreign judgments themselves with some exceptions without requiring any other hearing, as we can see in the second draft.

Considering the drafting history in Japan, the principle of "*révision au fond*" should be understood in the second meaning; therefore, the examination of foreign judgments from the substantive aspect for judging the public policy requirement should not be regarded as a violation of the principle.