# The Identity of Cases in International Lis Pendens (summary)

Yuka USHIRO
Lecturer, Kobe City University of Foreign Studies

In this modern world, more and more international disputes are brought to courts in more than one jurisdiction, which is so-called "international lis pendens". In Japan, there is no provision that directly addresses this situation, although it was considered to expressly regulate it in the process of the amendment of Code of Civil Procedure (CCP) in 2011. As there has been no judgment of the Supreme Court, this matter remains controversy. On the other hand, one of the new provisions, Article 3-9 of CCP, which stipulates that the Japanese court may dismiss the whole or part of an action without prejudice if it finds that there are special circumstances (Tokubetsu no Jijo) even when the Japanese courts have jurisdiction over an action, is notable in this context. It is considered that the article succeeded to so-called "the doctrine of special circumstances (Tokudan no Jijo Ron)", which was used for declining the jurisdiction of Japanese court. Courts tend to take a foreign parallel proceeding into consideration under the article recently.

As a premise of these arguments, it is essential to define the identity of two cases pending in courts in Japan and in a foreign country. Although this is the starting point of the discussion, it has been clear neither in judgments nor in doctrines. Therefore, this paper aims to clarify how to identify two international cases.

In order to accomplish this purpose, I found it useful to compare Japanese legal circumstances with those of EU and Germany. EU has provisions on international lis pendens both between member states and between a member state and a third state. As for Germany, the dominant doctrine to regulate international lis pendens, according to which a suit in Germany is dismissed when the judgment resulting from the prior competing foreign suit would be presumably recognized in Germany, strongly affected the correspondent in Japan.

Through this comparative legal approach, it is concluded that the interest to sue (Uttae no Rieki) ought to be the criteria for identifying the cases. To be specific, the domestic suit should be dismissed due to the lack of the interest to receive a judgment on the merits, that is the interest to sue, when it would merely lead to the effect which is equal to or less than the effect the resulting foreign judgment would presumably have in Japan, when the

foreign action was brought earlier than the Japanese one and the resulting foreign judgment would be presumably recognized in Japan. When the court is not convinced that the suit has no interest to sue, it does not exclude the possibility that the suit might be regulated in another framework including Article 3-9 of CCP.