Current Status and Problems of the System of Recognition and Enforcement of Foreign Judgments in Property Matters in Japan (summary)

Eiji ADACHI
Professor, Rikkyo University

This report provides an overview of the current status and future challenges of the system of recognition and enforcement of foreign judgments, referring to the current trends, changes in the law, Supreme Court precedents and theories that have emerged in the period from 1996 to the present, which have resulted in court decisions refusing to recognise US judgments (Justzkonflikt mit den USA). In the current era of the Heisei Civil Procedure Act 1996, the confrontational attitude towards US judgments has ceased and an increasing number of court decisions have allowed the recognition and enforcement of foreign judgments. The exceptions are judgments from Chinese courts, where reciprocal recognition is denied. The development of case law during this period has been particularly striking. Supreme Court precedents have provided clear criteria for the application of the various recognition requirements of Article 118, which have been consistently applied in practice. From the perspective of the need for clear rules, the significance of Japan's participation in the Hague Judgment-Recognition Convention 2019 is not great.

However, even with the current status of the Law on Recognition and Enforcement of Foreign Judgments, which appears to be in a period of stability following Supreme Court precedents, challenges remain upon closer examination. In particular, this report focuses on the issues contained in the Supreme Court's judgment of 18 January 2019 (Hondaya Judgment I), which addresses whether the failure to serve a foreign judgment on a defendant is consistent with Japanese public policy (Article 118(3)). The Supreme Court held that the guarantee of the right to appeal in foreign proceedings constitutes a ordre public, which obliges the courts of the recognising state to consider the existence of such a substantive guarantee. In my view, the Supreme Court's understanding and method of determining procedural ordre public is questionable, as it requires the courts of the recognising state to undertake an unnecessary and excessive examination of the requirements. In this report I explore how this problem can be resolved by reformulating the concept of procedural ordre public, drawing on European discussions.