

The scope of exclusivity in Article 6 of the 2019 Hague Judgments Convention: Analysis of “rights *in rem* in immovable property” in ECJ Judgments (summary)

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This article aims to clarify the scope of Article 6 of the 2019 Hague Judgments Convention, which will enter into force in September 2023. The Convention aims to facilitate the circulation of foreign judgments and establishes indirect jurisdiction as basic requirement for recognition and enforcement. Article 6 provides sole exclusive jurisdiction in the Convention, covering “rights *in rem* in immovable property”, and prohibits the circulation of the judgments rendered outside the situs. If Article 6 of the Judgments Convention is applied in Japan, the impact would be limited, partly due to the existence of Article 5(3) of the Convention, and partly because Article 3-5(2) of the Japanese Code of Civil Procedure provides for exclusive jurisdiction of Japanese courts on immovable property registration claims. However, ratification of the Convention could be disadvantageous to circulation of Japanese judgments, since CCP does not include the provisions setting for the exactly same exclusive jurisdiction as Article 6. A judgment rendered in a Japanese court having direct jurisdiction could not be recognized and enforced in a foreign court for the reason that the Japanese court did not have indirect jurisdiction. Clarifying the scope of Article 6 is therefore one of the important factors to consider Japan’s ratification of the Convention.

In order to clarify “rights *in rem* in immovable property” in Article 6, this article analyzes those of Brussels Regime interpreted by ECJ Judgments. There is a close resemblance between Article 6 of the Judgment Convention and the provisions in the Brussels Regime in the grounds and criteria, comparing the official Report of the Judgments Convention with the ECJ judgments, related to the rights *in rem* in immovable property. Thus, the concept of “rights *in rem* in immovable property” in both is considered to be identical, and actions ruled within the scope of Brussels Regime could be ruled as actions within the scope of Article 6 of the Convention.

As a result of analysis of the ECJ judgments, actions for removal of immovable property register and some actions based on rights *in rem* under the law of a state where the property is situated fall into the scope. It is considered that the existence of registration was a key

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factor in determination of rights *in rem* which have *erga omnes* effect. In contrast, actions for avoidance of fraudulent and mixed actions based on both rights *in personam* and rights *in rem*, such as actions for the annulment of immovable property sales contract, do not fall into the scope. These actions help to determine whether an action relating to immovable property falls under that relating to “rights *in rem* in immovable property” of the Convention, drawing the line of the scope of Article 6. Given that mixed action is eliminated from the scope, Article 6 would be interpreted more narrowly, which is more difficult to be a negative factor in consideration of Japan’s ratification.