Sovereignty and National Civil Procedure: An Analysis of State Practice in Japan

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Advanced telecommunication technologies enable us to employ new methods for judicial acts in the national civil procedure, such as facilitating evidence through a video-link system. However, before implementing these methods in the national proceedings for cases with foreign elements, it is necessary to elucidate the relationship between sovereignty and judicial acts of courts, including the validation of these new methods. This is because judicial acts by courts are considered to fall within the purview of the exercise of sovereignty from a Japanese perspective. From the analysis on Japanese state practices to date, it is recognized that Japan has strictly abided by the principle of territoriality under public international law. Nevertheless, reconsidering the meaning of sovereignty, Japan can adopt a more liberal and tolerant policy. In particular, Japan can become more tolerant of other countries’ judicial acts, which may be conducive to the better delivery of justice in transnational civil and commercial dispute settlements.

Keywords
Sovereignty, Civil Procedure, State Practice, Japan, Service of Process

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I. Introduction

In Japan, one of the current issues before private lawyers is sovereignty in the national civil procedure. From the Japanese perspective, individual judicial acts of courts effecting national civil procedures, such as the service of process and the procedure of obtaining evidence by a court, are considered exercises of sovereignty. A national court should not infringe on other states’ sovereignty in carrying out such acts when handling a case with foreign elements, such as a defendant resident in a foreign country.

Technological developments especially in the area of information and communication enable us to employ novel methods for judicial acts. E.g., parties and witnesses can be examined via a video-link system. These methods certainly facilitate court proceedings, and parties in such proceedings benefit from their use. Although the Japanese Code of Civil Procedure (hereinafter the Code) provides judicial acts using these technologies, such methods are currently only available for judicial acts within Japan. It is certainly true that new technologies are more valuable for cases with foreign elements than for purely domestic ones. As a result, some Japanese lawyers have advocated the application of these methods in Japanese court proceedings for the cases involving foreign elements. Nevertheless, before implementing these new methods in national proceedings for cases with foreign elements, it is necessary to elucidate how these methods affect other states’ sovereignty not to infringe it.

The primary purpose of this research is to introduce and analyze Japanese state practice regarding sovereignty and national civil procedure. First, Japanese state practice regarding the service of process from Japanese courts upon foreign-residing persons, and upon residents in Japan will be introduced. Then, Japanese state practice regarding the service of process from Japanese courts upon foreign-residing persons, and upon residents in Japan will be introduced. Then, Japanese state

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5. The video-conference system for Japanese court proceedings only enables connections between the rooms of Japanese courts specially equipped for use of the system. See Yoshiyuki Mori et al., *Examination of witnesses through Video Conference System* テレビ会議システムによる証人などの尋問, 986 LAW TIMES REPORTS 判例タイムズ 111 (1999).
6. Supra note 1, at 19-20.