

Finland

Sini Tossavainen

Castrén & Snellman, Helsinki

sini.tossavainen@castren.fi

Iiona Karppinen

Castrén & Snellman, Helsinki

ilona.karppinen@castren.fi

1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

In Finland, the criteria for the enforcement of foreign judgments depend on whether the judgment falls within the scope of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I Regulation) or international treaties to which Finland is party. The general criteria are the set out below.

Brussels I Regulation

Under the Brussels I Regulation, foreign judgments from other EU Member States are generally recognised and enforced in Finland without the need for a separate exequatur procedure. The basic criteria for enforcement include the following:

- The judgment must be from a court in an EU Member State.
- The judgment must be civil or commercial in nature (excluding certain specific matters).
- The judgment must be final and conclusive, meaning it is no longer subject to ordinary appeal in the originating Member State.
- The judgment must not fall under any of the grounds for refusal specified in the Brussels I Regulation (eg, ordre public, improper service).

International treaties on enforcement

Finland has entered into certain treaties regarding the mutual recognition and enforcement of judgments. Most notably, Finland is party to: the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters signed in Lugano on 30 October 2007 and published in the *Official Journal* on 21 December 2007 (Lugano Convention); the Convention of 30 June 2005 on Choice of Court Agreements (Hague 2005 Choice of Court Convention); and the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019 Judgments Convention). The specific criteria and requirements for enforcement will depend on the provisions of each treaty. Where a foreign judgment does not fall within the scope of the Brussels I Regulation, an exequatur procedure is needed.

The criteria for allowing enforcement through an exequatur procedure generally include:

- The judgment must be final and enforceable in the country where it was rendered.

	<ul style="list-style-type: none"> • The court that rendered the judgment must have had jurisdiction over the case. • The judgment must not violate Finnish public policy. • The parties must have been properly served and given an opportunity to present their case. • The judgment must not conflict with any prior Finnish judgments on the same matter. <p>Foreign judgments falling outside the scope of Brussels I Regulation or international treaties on enforcement are, as a rule, not enforceable in Finland (see s 30(1) of the Finnish Act on International Legal Assistance and Recognition and Enforcement of Judgments in Civil and Commercial Matters (426/2015)). Instead, the matter will need to be re-examined in Finnish court proceedings in order to obtain an enforceable judgment. However, the foreign judgment rendered in the matter will be taken into account as evidence and it will generally carry significant weight in the re-examination of the matter in Finnish court proceedings.</p>
<p>2.</p>	<p>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?</p>
	<p>There is no special legislation in Finland on the enforcement of foreign judgments rendered against a state.</p> <p>Finland has not signed the European Convention on State Immunity of 1972. Finland has signed the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004 (UN Convention on Jurisdictional Immunities of 2004) in 2005 and accepted it in 2014, but the Convention has not yet entered into force.</p> <p>Notwithstanding the above, the Finnish courts have considered that both the European Convention on State Immunity of 1972 and the UN Convention on Jurisdictional Immunities of 2004 reflect principles of customary international law on sovereign immunity that are applicable also in Finland. For example, the Supreme Court held in its ruling KKO 1993:120 that the European Convention on State Immunity of 1972 is a source of customary international law. Similarly, in its ruling KKO 2007:49, the Supreme Court referred to both the European Convention on State Immunity of 1972 and the UN Convention on Jurisdictional Immunities of 2004.</p> <p>Therefore, Finnish courts are likely to take into consideration the provisions of the European Convention on State Immunity of 1972 and especially the more recent UN Convention on Jurisdictional Immunities of 2004 as sources of prevailing principles of customary international law regarding state immunity in enforcing a foreign judgment against a state.</p> <p>In Finnish court practice, it has been considered that service should be executed and the state in question should be given an opportunity to comment before a court will rule on the issue of state immunity. Finland applies the Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (EU Service Regulation). However, the EU Service Regulation does not apply to revenue, customs or administrative matters or to the liability of a Member State for actions or omissions in the exercise of state authority (<i>acta iure imperii</i>). In enforcement</p>

	<p>actions against contracting parties of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention), Finland applies the service channels provided therein. Again, the treaty only applies to civil or commercial matters. For matters not falling within the scope of these legal instruments, Finnish courts may apply the principles in Article 22 of the UN Convention on Jurisdictional Immunities of 2004 according to which service is transmitted through diplomatic channels to the Ministry of Foreign Affairs of the state concerned or by any other means accepted by the State concerned, if not precluded by the law of Finland.</p>
<p>3.</p>	<p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?</p>
	<p>As mentioned above, there is no special legislation in Finland on enforcement of a judgment against a state. However, Finnish courts recognise the doctrine of sovereign immunity as a matter of binding international law. This means that Finnish courts will generally refrain from exercising jurisdiction in a proceeding against another state and from post-judgment measures of constraint, such as attachment, arrest or execution, against property of another state.</p> <p>However, state immunity is not without limits. In legal practice, Finnish courts have adopted a restrictive approach to state immunity applying it only to public matters, but not to civil or commercial matters (Supreme Court precedents KKO 1993:120 and KKO 2007:49). In assessing whether a particular matter is civil or commercial instead of public by nature, special consideration should be given not only to the legal nature but also to the actual purpose of the activity in question.</p> <p>The mere fact that the state has participated in the court procedure underlying the foreign judgment does not exclude invoking state immunity in the enforcement phase. Instead, state immunity is to be assessed separately for the enforcement phase.</p> <p>As Finnish courts apply customary international law with regard to state immunity and have referred to, for example, the UN Convention on Jurisdictional Immunities of 2004 in this regard, it is possible that Finland would apply very similar restrictions regarding enforcement against states as set out in Article 19 and Article 21 of the said Convention.</p>
<p>4.</p>	<p>What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?</p>
	<p>When accepting the UN Convention on Jurisdictional Immunities of 2004, Finland made a declaration stating its understanding that the Convention does not apply to military activities, including the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, and activities undertaken by military forces of a state in the exercise of their official functions.</p> <p>Finland has also declared its understanding that the UN Convention on Jurisdictional Immunities of 2004 is without prejudice to any future international legal development concerning the protection of human rights.</p>

	<p>As reflected by the above-referred declarations, Finland will not apply the principles of state immunity under the UN Convention on Jurisdictional Immunities of 2004 to claims resulting from military actions, such as wars of aggression, but such activities remain subject to other rules of international law.</p>
<p>5.</p>	<p>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</p>
	<p>As described above, foreign judgments are only enforced on the basis of the Brussels I Regulation or international treaties to that effect. As a main rule, these enable the refusal of enforcement of foreign judgments if enforcement of the judgment would be contrary to Finnish public policy or due process requirements, especially if service requirements have not been met.</p> <p>For example, under the Brussels I Regulation, Lugano Convention and Hague 2005 Choice of Court Convention, if the judgment is manifestly contrary to public policy or based on improper service, enforcement may be refused.</p> <p>Generally, the threshold for refusing the enforcement of a foreign judgment is high in Finland. The basic standards of due process include being informed of any claims against the state and reserving adequate time for the preparation of the state’s defence. As mentioned above, Finnish courts will also respect state immunity on their own initiative. Otherwise, there are no specific legal provisions or established case law for the assessment of due process standards in the enforcement of a judgment against a state.</p>
<p>5a.</p>	<p>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</p>
	<p>As mentioned above, Finland applies the EU Service Regulation and the Hague Service Convention. For matters not falling within the scope of these legal instruments, Finnish courts may apply the principles in Article 22 of the UN Convention on Jurisdictional Immunities of 2004 according to service is transmitted through diplomatic channels to the Ministry of Foreign Affairs of the state concerned or by any other means accepted by the state concerned, if not precluded by the law of Finland.</p> <p>In accordance with these legal instruments, as a main rule, Finland accepts service in the original proceedings as long as it has been executed in accordance with the national law of the country of service. If service is for example, made by electronic message and such service is accepted in the country of service, Finnish courts are likely to accept the service as fulfilling necessary due process requirements.</p> <p>However, if the judgment is given in default of appearance, Finnish courts will also examine whether the service was executed so as to give the defendant sufficient time to arrange for its defence. For example, in a Supreme Court precedent KKO 2013:80, the Supreme Court accepted that the service in the original proceedings resulting in a default judgment had been completed in accordance with the laws of the country of service. However, the Supreme Court considered that upon enforcement of the default judgment, the lower courts should have taken into account whether the service had been executed in a manner that provided the defendant sufficient time to arrange for its defence. For this</p>

	<p>purpose, the Supreme Court held that the appellate court should have examined the defendant’s allegation that it had not actually received the served documents as they were not served to the defendant personally.</p>
5b.	<p>What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?</p>
	<p>There is no special legislation or established case law regarding service against states. As stated above, Finland applies the EU Service Regulation and the Hague Service Convention.</p> <p>For matters not falling within the scope of these legal instruments, Finnish courts may apply the principles in Article 22 of the UN Convention on Jurisdictional Immunities of 2004. For such matters and provided that conventional forms of service against a state are impossible, Finnish courts are likely to use other means that are accepted under the law of the state concerned, if not precluded by Finnish law.</p> <p>For example, the Finnish Code of Judicial Procedure offers some exceptions to personal service for situations where service by conventional means is not possible. In certain restricted circumstances, service in civil matters is possible by delivering the documents to a local police authority or by way of a public notice. If similar exceptions are applied by the state concerned, due process issues will not necessarily arise. However, this issue remains unsettled, and in case the state concerned does not comment, Finnish courts may separately examine whether the defendant state has been given proper opportunity to arrange for its defence and <i>de facto</i> received notice of the served documents.</p>
5c.	<p>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</p>
	<p>The right to representation is set out in Chapter 15 of the Finnish Code of Judicial Procedure. There is no general requirement of use of representation in Finnish civil proceedings and neither any absolute right to representation. However, a Finnish court will decide on a case-by-case basis if a party has had an effective possibility to present its case in accordance with due process requirements of the right to a fair trial.</p> <p>With respect to commercial parties, states or governmental parties, the threshold to consider non-representation as a hindrance to the right to a fair trial is likely to be high, provided that the state concerned has been given adequate time to arrange for its defence. Therefore, unless there are special circumstances, it is unlikely that a Finnish court would refuse enforcement of a foreign judgment on the ground that the state has lacked proper legal representation.</p>
5d.	<p>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</p>
	<p>As the Finnish Code of Judicial Procedure does not require the usage of legal representation, the state is free to choose not to be represented. Therefore, due process issues are not likely to arise simply by the state choosing not to acquire legal representation.</p>

	<p>If the matter <i>de facto</i> requires legal representation to ensure due process and no legal representation can be found, the situation may be somewhat different. However, in this regard, there is no settled legal doctrine or precedent.</p>
6.	What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?
	<p>As mentioned above, Finnish courts apply customary international law with regard to state immunity and have referred to for example, the UN Convention on Jurisdictional Immunities of 2004 in this regard. Therefore, despite the absence of any special statutory law, it is possible that Finland would apply very similar restrictions regarding enforcement against state property as set out in Article 19 and Article 21 of the UN Convention on Jurisdictional Immunities of 2004.</p> <p>It is likely that Finnish authorities would only accept enforcement against state assets located in Finland for which it has been established that the property is specifically in use or intended for use for other than government non-commercial purposes. Following the principles of the UN Convention on Jurisdictional Immunities of 2004, state assets that typically cannot be subject to enforcement measures would include the following: property which is used or intended for use in the performance of the functions of the diplomatic mission of the state or its consular posts; special missions; missions to international organisations and delegations to international conferences; property of a military character; property of the central bank or other monetary authority of the state; property forming part of the cultural heritage of the state or part of its archives and not placed or intended to be placed on sale; and property forming part of an exhibition of objects of scientific; cultural or historical interest and not placed or intended to be placed on sale.</p> <p>Furthermore, it is possible that it would be required that the state property has a connection with the state entity that was party to the original proceedings. However, a plea that property belongs to a third party, such as another state-owned entity, does not necessarily prevent the attachment of the property if it is observed that the position of the third party is based on a financial or other arrangement that has been given a legal form that does not correspond to the actual nature or purpose of the matter. It is further required that such legal form is apparently being used to avoid enforcement or to retain the property beyond the reach of the creditors.</p> <p>If a party alleges the exclusion of specific assets from enforcement, such party generally bears the burden of proof of the circumstances leading to the exclusion. However, as mentioned above, Finnish authorities will take into account state immunity at their own initiative if the state does not participate in the enforcement proceedings.</p>