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RECIPROCITY AS A CONDITION FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE PRIVATE INTERNATIONAL LAW OF SERBIA

ABSTRACT: In many national systems of private international law, reciprocity is still a condition for the recognition and enforcement of foreign judgments in civil and commercial matters. However, in the modern globalized economic and social context, where legal and natural persons enter into cross-border private law relationships and international transactions on a daily basis, the question is whether this condition is justified and necessary. Although many states have taken a more flexible approach to this issue in the last few decades, this condition still exists in the legislation of a certain number of states and is considered to be a major obstacle to the recognition and enforcement of foreign judgments. In the legislation of the Republic of Serbia, reciprocity is also one of the conditions for the recognition of foreign judgments. In order to be able to respond to the ever-increasing economic interest expressed through cross-border trade and investments, it would be desirable to consider amending our applicable legislation, as well as the Republic of Serbia's acceding to the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments. Namely, it has entered into force recently and is aimed at giving a truly global significance to the unification of conditions for the

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recognition and enforcement of judgments. At the same time, this would also eliminate the problem of reciprocity in relations between the Republic of Serbia and states party to the Convention, both in terms of difficulties related to the procedure for its establishment and the recognition of judgments of the courts of the Republic of Serbia in the states requiring diplomatic reciprocity in this respect.

Keywords: *reciprocity, 2019 Hague Convention, judicial cooperation, recognition of foreign judgments.*

1. Introduction

Reciprocity, i.e. the *do ut des* principle, is one of the oldest principles of the international law featuring in international relations even before the formation of the modern state (Southard, 1977, p. 327). Initially, it represented a principle of the international public law applied for the purpose of mutual recognition of certain rights and to induce cooperation between states, but also as a measure for retribution for a hostile action of another state (Michaels, 2009, p. 673).[1] In time, reciprocity has also become one of fundamental principles of the private international law, which is why nowadays it most often features in numerous legal systems as a condition for foreign nationals to enjoy their civil rights, as well as for the recognition and enforcement of foreign judgments.

However, in the modern globalised economic and social context, where legal and natural persons enter into cross-border private law relationships and international transactions on a daily basis, the question is whether the continued application of this condition is justified and necessary, both in practical and theoretical terms. The main practical problems in the procedure for establishing whether the reciprocity condition is met concern the procedure costs and length, as well as the difficulties relating to the interpretation of foreign regulations (in the case of legislative reciprocity) and case law (in the case of de facto reciprocity). The reciprocity condition has also been criticised from the theoretical point of view, as states have been using it as a retaliation measure in their mutual relations. In addition, it cannot always be considered acceptable when it comes to the interests and rights of private persons in

[1] An example of this is the 1629 *French Code Michaud, whose provisions made it impossible to recognise a judgment of a foreign court against French nationals. In response to that, certain states introduced a provision into their laws that made it impossible to recognise judgments of French courts.*

civil and commercial matters, given that the absence of reciprocity between states with respect to the recognition and enforcement of judgments directly affects private parties, as they cannot rely on the *res iudicata* principle as well as on a fundamental principle of legal certainty. In such a situation, due to the absence of reciprocity with regard to a certain issue, private parties are actually penalised and forced to reinitiate proceedings on the merits due to the policy pursued by the states involved. For this reason, the legal provision for the condition of reciprocity for the recognition of a foreign judgment was declared unconstitutional in Japan (Okuda, 2018, pp. 159–170).

In the Republic of Serbia, reciprocity is a condition for foreign nationals to enjoy certain civil rights[2] and features of international procedural law, such as the exemption of foreign nationals from the obligation to pay security for costs (Resolution of the Conflict of Laws with Regulations of Other Countries Act, 1980) (hereinafter: the RCLA) and costs of the proceedings (Court Fees Act, 1994). In the absence of an international treaty that would regulate the issues of private rights of foreign nationals, the rights and position of Serbian nationals in the respective state are first established based on the content of foreign law, which is followed by establishing the rights and position of foreign nationals in the Republic of Serbia. It is interesting that in the Republic of Serbia the condition of reciprocity also found its place in the area of international *litis pendentia*, which is unique in the contemporary private international law. The RCLA stipulates that proceedings shall be terminated by the court of the Republic of Serbia upon request of a party if there is an ongoing dispute before a foreign court on the same legal matter and between the same parties, on condition that the dispute before the foreign court had been instituted earlier, that there is no exclusive jurisdiction of the court of the Republic of Serbia and if there is reciprocity (Article 80 of the RCLA). In this area, the condition of reciprocity indirectly facilitates delivery of contradictory judgments on the same matter, this being to the detriment of legal certainty, a core principle of all legal systems, which seriously calls into question the justification and purposefulness of this legal solution. Moreover, reciprocity also features in the legislation of the Republic of Serbia as a condition for recognising foreign notarial deeds (Article 8 of the Public Notaries Act, 2011), as well as for the recognition and enforcement of foreign judgments, which will be discussed subsequently (Article 92 of the RCLA).

[2] Among other things, reciprocity is a condition for foreign natural and legal persons to acquire ownership on immovable property located in the territory of the Republic of Serbia (Articles 82a and 82b of the Property Relations Act, 1980).

Although the condition of reciprocity is criticised almost in all areas where it appears, this paper will only look at its application with respect to the recognition and enforcement of foreign judgments. The necessity of applying reciprocity in the area is called into question particularly because of the importance of economic interests, international trade and foreign investments. A free flow of judgments is considered a key factor, as it enables parties to rely on the legal system of a certain foreign state and properly manage potential risks that they may encounter when entering into cross-border civil or commercial relationships, investments or trade transactions.

2. Comparative law perspective of reciprocity as a condition for the recognition and enforcement of foreign judgments

In the last few decades, difficulties surrounding the establishment of reciprocity and interests of international cooperation and economy have made many countries start taking a more liberal approach to the issue of reciprocity as a condition for the recognition of foreign judgments. By modernising their rules in the area of private international law and adopting new codifications, some countries have entirely excluded the condition of reciprocity in this respect. According to the research conducted by Elbalti, (2017), this may be noticed on the example of Switzerland,[3] Venezuela (Parra-Aranguren, 1999, p. 341), Lithuania (Krasnickas, 2008, p. 498; Mikelenas, 2005, p. 180), Bulgaria (Jessel-Holst, 2007, p. 383), Poland (Czernis & Mickiewicz, 2013), Spain (Ramos Romeu, 2004, p. 945), North Macedonia (Deskoski, 2008, p. 456) and Montenegro (Kostić-Mandić, 2014/2015, p. 438). On the other hand, in some other states where the condition of reciprocity stayed in force, its application is narrow and is required only in certain areas of law or for certain categories of persons (Article 15 of the Private International Law Act of the Czech Republic, 2012),[4] whereas some countries have introduced the rebuttable presumption of reciprocity (Article 92 of the RCLA; Article 101 of the Private International Law and Procedure Act of Slovenia, 1999).

Nevertheless, reciprocity still exists in many national legislations as a condition for the recognition and enforcement of foreign judgments. This is supported by the research conducted by Yeo (2021), which reviewed the

[3] Under the Swiss Federal Act on Private International Law, reciprocity was only required for the recognition of foreign judgments declaring bankruptcy (Article 166(1)(c)), but the provision was deleted when the Act was amended in 2019.

[4] In the Czech Private International Law Act (Article 10), the condition of reciprocity is only imposed when the recognition of a judgment is required against a Czech national.

legislation of 108 states and established that 34 states (31.5%) still require reciprocity as a condition for the recognition and enforcement of a foreign judgment, while eight states (less than 8%) require diplomatic reciprocity. This means that a foreign judgment cannot be recognised unless there is an international treaty regulating mutual recognition and enforcement of foreign judgments.

However, some case law examples indicate that the states with the most closed 2systems so far, where the recognition of a foreign judgment was virtually impossible (except if there is an international treaty in place), have started to take a more flexible approach to the interpretation of this principle and legal provisions governing it.

China is one of the best examples in that respect. A foreign judgment may be recognised in China based on an international treaty or reciprocity (Zhang, 2014, p. 96). In the absence of an international treaty, reciprocity was interpreted very strictly and required a specific decision of a foreign court recognising the judgment of the Chinese court, which was often very difficult to prove. In practice, Chinese courts tended to refuse to recognise a foreign judgment on a regular basis, even when there was an international treaty in place with a certain state on mutual recognition and enforcement of judgments, explaining such a decision by the absence of de facto reciprocity (Zhang, 2014, p. 96) or by another reason not specified in the international treaty (Tsang, 2017, p. 32). Things have started to change, which is supported by a decision of the Chinese court from 2016 whereby the judgment of the court of Singapore was recognised based on reciprocity, in view of the fact that a judgment of the Chinese court had previously been recognised in Singapore in 2014.[5] In 2022, the Supreme People's Court of China adopted a document (Conference Summary of the Symposium on Foreign-Related Commercial and Maritime Trials of Courts Nationwide) providing new guidance for the establishment of reciprocity with a foreign state with respect to the recognition and enforcement of foreign judgments. In accordance with the guidance, apart from the strict de facto reciprocity, this condition shall also be deemed fulfilled if there is legislative (*de iure*) reciprocity, i.e. if the legislation of the foreign state allows for the possibility of having a judgment of the Chinese court

[5] Judgment of the Nanjing Intermediate People's Court of Jiangsu Province, 2018, Kolmar Group AG v. Jiangsu Textile Industry (Group) Import & Export CO Ltd, 4 CMCLR 17. Similarly, it was based on reciprocity that in 2013 the Chinese court recognised a German order in a case related to the capacity of a foreign bankruptcy administrator nominated by a German court, giving an explanation that the German court had previously recognised the judgment of a Chinese court in 2006 (Elbalti, 2017, p. 203).

recognised, and also if there is reciprocal understanding or consensus between China and the respective foreign state (Li, Cen & Yu, 2024). Based on this guidance, the Maritime Court of Shanghai has recognised a judgment of the English court and opened a new chapter when it comes to the recognition and enforcement of foreign judgments in China.[6]

In addition to China, the Russian Federation is also an example of a state where a foreign judgment could not be recognised without an international treaty in place (Article 409 of the Civil Procedure Code of the Russian Federation, 2002). However, the case law in the last 20 years indicates that the existence of an international treaty, i.e. diplomatic reciprocity, is no longer the only ground for the recognition and enforcement of foreign judgments in the country (Elbalti, 2017, p. 197). This is supported by the cases in which courts in the Russian Federation took a position that the judgments of English courts may also be recognised if there is de facto reciprocity (Decision of the Federal Commercial Court of the Moscow District of 22 February and 2 March 2006), i.e. if the judgments of Russian courts are recognised in practice in a foreign state or if there is an international treaty in place. In the latter case, the recognition of judgments does not have to be expressly regulated by the treaty. Instead, it will suffice if it regulates the right to access to court, which indirectly includes the recognition of a judgment of the state. That is how the Supreme Court of Arbitration of Russia enforced a judgment of the English court referring to the practice of English courts (which quite often recognise and enforce judgments of foreign courts), as well as the economic cooperation agreement concluded between the two states in 1992 and the 1997 Agreement on Partnership and Cooperation between the Russian Federation and the EU (Grishchenkova, 2013, p. 439; Yekini, 2021, p. 34).

The recognition and enforcement of foreign judgments is also burdensome in the Netherlands. Under its legislation (Article 431 of the Civil Code of the Netherlands, 1988), no foreign judgments may be enforced, unless this is stipulated by an act or an international treaty. In such a situation, new proceedings will have to be instituted before a court in the Netherlands. However, a 2014 judgment of the Supreme Court of the Netherlands took a position that in a situation like that a judge may use a foreign judgment as evidence and virtually base their decision on it, checking only the conditions examined when recognising the foreign judgment (Fernhout, 2020, p.

[6] Spar Shipping AS v Grand China Logistics Holding (Group) Co. Ltd, (2018) Hu 72 Xie Wai Ren No. 1.

153; Requejo Isidro, 2024). That is why some authors call this a "pseudo-enforcement proceedings" (Elbalti, 2017, p. 211).

In Norway and Sweden, foreign judgments are not recognised if there is no international treaty regulating the issue. Despite that, a foreign judgment has a certain impact in the proceedings, which is not negligible. A foreign judgment shall be eligible for recognition in Sweden if the foreign court applied its own rules, complying with the conflict-of-laws rules of Sweden (Berglund, 2000, p. 529). A foreign judgment shall be considered acceptable in Norway if it was given by a court that would have had jurisdiction in accordance with the rules of the country's private international law. Other circumstances may also be considered in this procedure, including the due process, quality of justice, intrinsic reasonableness, etc. (Boye, 2011).

Interestingly, courts of some states have started concluding agreements on mutual recognition and enforcement of judgments in the last few years. These were concluded because there had been no prior international (interstate) treaties in place between those states regulating the issue. The examples include agreements concluded by the Supreme Court of Singapore with courts in Abu Dhabi (Abu Dhabi Global Market Courts), Dubai (Dubai International Financial Centre Courts), Qatar (Qatar International Court and Dispute Resolution Centre), PR China (Supreme People's Court of the People's Republic of China), Myanmar (Supreme Court of the Union, Republic of the Union of Myanmar) and Rwanda (Supreme Court of Rwanda), as well as the agreements concluded by the Dubai International Financial Centre with various courts in Malesia, Hong Kong, Zambia, China, Australia, the USA and Kenia.[7]

3. International cooperation as a response to the reciprocity problem

In parallel with the developments in national systems of private international and procedural law, many countries have taken steps in the last few decades to improve their mutual cooperation and facilitate mutual recognition and enforcement of judgments by concluding international treaties and thus overcoming problems concerning reciprocity in their mutual relations.

[7] DIFC Courts. Downloaded 2025, June 15 from https://www.difccourts.ae/about/memoranda/judicial

The best example is the European Union and its system of private international law, where very important regulations were adopted governing exceptionally facilitated (the so-called automatic) recognition and enforcement of foreign judgments, but only among member states. With respect to judgments originating from third states, national legal rules apply if the EU has not concluded a separate international treaty (Regulation (EU) No. 1215/2012). To that effect, the EU concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention of 30 October 2007) with Denmark, Iceland, Norway and Switzerland (members of the European Free Trade Association – EFTA). Many other regional instruments regulating the issue have been concluded on a global scale between the South America states,[8] Australia and New Zealand,[9] the Middle East[10] and the Commonwealth of Independent States.[11] One should have in mind that these agreements were concluded between regionally connected states with a high degree of mutual trust and common economic interests, which is why there have been no major difficulties for the unification of rules at that level.

Contrary to that, the negotiating process to create a convention that could be acceded by all states in the world and that would unify rules on the recognition and enforcement of foreign judgments at a global level lasted for nearly 30 years and was far from an easy task. Within the framework of the Hague Conference on Private International Law (hereinafter: the Hague Conference), the negotiation resulted in the adoption of 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil and

[8] A series of international treaties on the recognition and enforcement of foreign judgments has been concluded within the Organisation of American States and MERCOSUR. The most important one is the 1979 Montevideo Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards and the 1992 Protocol on Judicial Cooperation and Assistance in Civil, Commercial, Labour and Administrative Matters.

[9] The 2008 Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement (Agreement). It entered into force on 11 October 2013.

[10] Riyadh Arab Agreement of 6 April 1983 for Judicial Cooperation. It entered into force on 30 October 1985 and is in force in: Algiers, Bahrein, Egypt, Iraq, Jordan, Yemen, Qatar, Kuwait, Lebanon, Libya, Marocco, Mauritania, Oman, Palestina, Saudi Arabia, Somalia, the Sudan, Syria, Tunisia, the United Arab Emirates and Djibouti.

[11] Several international treaties have been concluded within the Commonwealth of Independent States, the most important ones for the recognition of judgments being the Kiev Treaty on the Settling of Disputes Related to Commercial Activities of 20 March 1992 (which entered into force on 19 December 1992) and the Moscow Treaty on Mutual Enforcement of Judgments of Arbitration, Business and Commercial Courts in the Territory of CIS Member States of 6 March 1998.

Commercial Matters (hereinafter: the 2019 Hague Convention), which has recently entered into force.[12] This convention unifies the procedure for recognition and enforcement of foreign judgments in civil and commercial matters, and has a very wide scope of application (Articles 1 and 2 of the 2019 Hague Convention), which is why, if acceded by a large number of states, it could ensure a free flow of judgments at a global level and overcome problems related to the establishment of reciprocity. The scope of application includes judgments in civil and commercial matters excluding: revenue, customs and administrative matters, the status and legal capacity of natural persons, maintenance obligations, other family matters, wills and successions, insolvency, the carriage of passengers and goods, the transboundary marine pollution, liability for nuclear damage, the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs, the validity of entries in public registers, privacy, defamation, intellectual property, anti-trust (competition) matters, activities of armed forces, law enforcement activities, sovereign debt restructuring through unilateral State measures. Arbitration and related procedures are also excluded. During the negotiation on the 2019 Hague Convention, some experts pointed out that certain states would not be willing to accede to the Convention, as that would establish relations with all states party to the Convention, including even those whose judicial systems they do not find acceptable. For this reason, the 2019 Hague Convention provides for a possibility of making declarations, both in terms of the scope of application of the Convention and the States party to the Convention with which they do not wish to establish relations.

The authors of the 2019 Hague Convention were not able to reach agreement on the grounds for direct international jurisdiction. Instead, it contains criteria that have to be met so a judgment of a foreign court could be recognised and enforced. In a part of our theory of the private international law, it is considered that the criteria specified do not represent the so-called mirror system, but that they are "jurisdictional filters," i.e. criteria of indirect international jurisdiction (Jovanović & Marjanović, 2024, p. 930). The mirror system means that the acceptability of the jurisdiction of a foreign court is evaluated by the requested State in accordance with its own national regulations, meaning that if it is stipulated in the national regulations that the national court shall have jurisdiction according to the defendant's place of residence, then the jurisdiction of the foreign court established according

[12] From the perspective of international law, it entered into force on 1 September 2023.

to the same criterion (the defendant's place of residence) will be considered acceptable (Stanivuković & Živković, 2024). The criteria are universally accepted in the legislation of a large number of states and are aimed at ensuring a certain connection between the defendant and/or the subject of dispute and the country of origin. Article 5 of the 2019 Hague Convention states that there are thirteen grounds for indirect international jurisdiction, which Jovanović & Marijanović (2024) divide by three criteria: 1) grounds concerning the connection between the person against whom recognition or enforcement is sought to the state of origin of the judgement – habitual residence of the person against whom recognition or enforcement is sought in the state of origin of the judgment at the time when they became a party to the proceedings; finding the principle place of business of the person against whom recognition or enforcement is sought – natural person at the time when they became a party to the proceedings, and the judgment concerns their business activity; the circumstance that the person against whom recognition or enforcement is sought was the plaintiff in the proceedings in which the judgment whose recognition is requested was given; 2) grounds concerning the defendant in the proceedings before the court which gave the judgment whose recognition is requested– at the time when the defendant became a party to the proceedings, he maintained a branch, agency, or other establishment without separate legal personality in the State of origin, and the judgment concerns the actions of the branch, agency or other establishment; the defendant argued on the merits before the court of origin without contesting jurisdiction within the timeframe provided in the law of the State of origin, unless it is evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law; 3) grounds concerning certain ways for establishing special jurisdiction of the court which gave the judgment whose recognition is requested – the 2019 Hague Convention expressly lists grounds for jurisdiction for certain types of disputes: from contractual obligations (grounds being the place of fulfilment of the obligation under dispute); lease of immovable property (grounds being the location of the real property); contractual obligations secured by a right in rem in immovable property located in the State of origin (grounds being the location of the real property; non-contractual liability arising from death, physical injury, damage to or loss of tangible property, (grounds being the place of act or omission to act in order to avoid harm); validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing (grounds being the jurisdiction designated in the trust instrument or the principal place of administration of the trust); rights in rem in immovable property (grounds

being the location of real properties); counterclaims; if the jurisdiction arises from a written agreement of the parties, unless that is a prorogation agreement establishing the exclusive jurisdiction of the court selected.

The Convention also sets out clear reasons for the refusal of recognition and enforcement (Article 7 of the 2019 Hague Convention), which are not binding. Article 7 of the 2019 Hague Convention allows for the possibility of refusing recognition and enforcement if the defendant had not been notified in sufficient time and in such a way as to enable them to arrange for their defence. Equal to that is the situation when the method of service of document which instituted the proceedings to the defendant is incompatible with fundamental principles of the requested State concerning service of documents. If the judgment was obtained by fraud or if it is manifestly incompatible to the public policy of the requested state, recognition and enforcement may be refused by the court. The same goes if the judgment is inconsistent with a judgment given by a court of the requested State in a dispute between the same parties or is inconsistent with an earlier judgment given by a court of another State between the same parties on the same subject matter, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State (*res iudicata*). The 2019 Hague Convention (Article 10) gives a discretionary power to courts to refuse the recognition and enforcement of foreign judgments awarding damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered. This means that, despite the presence of a certain reason for refusal, court may decide to recognise and enforce a foreign judgment. Except in the cases relating to rights in rem in immovable property, the 2019 Hague Convention expressly provides for the possibility of applying national legislation in the event that the criteria stipulated in the Convention are not fulfilled (Article 15 of the 2019 Hague Convention).[13] This provision reflects the *favor recognitionis* principle. Its importance is all the greater if one bears in mind that this is an indirect way to ensure the fulfilment of the diplomatic reciprocity condition, even when the specific judgment which originates from the state party to the 2019 Hague Convention cannot pass the Convention's recognition and enforcement test. Namely, if a foreign judgment does not meet the recognition criteria under the provisions of the 2019 Hague Convention, the state party to the Convention in which recognition is sought may apply

[13] This provision was inspired by Article 7 of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 New York Convention), which makes it possible for the state party to the Convention to apply its national law in the process of recognition of a foreign arbitral award if it is more advantageous than the rules laid down in the Convention.

the rules of its own national legislation governing the recognition of foreign judgments. If the national law provides for diplomatic reciprocity as one of the conditions for the recognition of a foreign judgment, then the condition must be considered to be met in the specific case, as the transition to the national legislation path was in fact ensured by the 2019 Hague Convention itself. Further, Article 18 of the 2019 Hague Convention allows for the possibility that member states make a declaration that if they accede to the Convention, it will not be applied to certain matters (beyond the matters already excluded from the scope of its application). A state party to the Convention shall also have the possibility of giving notification that the Convention shall not be applied in relations with a certain state party to the Convention (Article 29 of the 2019 Hague Convention). All of this is indicative of the fact that when considering whether to accede to the Convention states have at their disposal different options, both in terms of the scope of application and the states with which they are to establish relations.

4. Reciprocity as a condition for the recognition and enforcement of foreign judgments in the Republic of Serbia

In the private international law of the Republic of Serbia, one of the conditions for the recognition and enforcement of foreign judgments also includes reciprocity with the state of origin of the judgment (Article 92 of the RCLA). This condition has been considerably relaxed by the introduction of the (rebuttable) legal presumption of reciprocity. If rebutted, it shall suffice to establish de facto and material reciprocity. In private international law, reciprocity appears in various forms that may be divided by the method of origination and its content. When it comes to the method of origination, reciprocity may be diplomatic, legislative and de facto. Diplomatic reciprocity is established between two states by an international treaty, be it bilateral or multilateral. In this way, they undertake to mutually recognise judgments in certain matters. Legislative reciprocity means that mutual recognition of judgments arises from the respective foreign state's legislation, while de facto reciprocity requires that judgments of the requested state be recognised in practice in the state of origin of the judgment. With regard to legal content, there is formal and material reciprocity. Formal reciprocity means that judgments of the courts of the requested state may be recognised in the state of origin of the judgment, and material reciprocity means that a judgment of the court of the requested state may be recognised in the state of origin of the judgment under the same or similar conditions as laid down in its legislation.

The Republic of Serbia has diplomatic reciprocity in place with a certain number of states, with which it has concluded bilateral treaties governing the issue of mutual recognition and enforcement of judgments,[14] as well as with states party to certain multilateral treaties governing the issue, but the application of these multilateral treaties is mostly limited to a certain, relatively narrow subject matter of private international law. The existence of these treaties is very important, because at the moment they represent the only certain legal grounds for the Republic of Serbia for the recognition of judgments of domestic courts in the states which expressly require in their legislation that there should be an international treaty in place as a condition for recognising a foreign judgment.

In the absence of an international treaty governing the issue, the establishment of reciprocity is sometimes difficult in the practice of our competent authorities. Under national legislation, an opinion about reciprocity with a certain state is given by the ministry in charge of justice affairs (Article 92 of the RCLA), which does so by interpreting the regulations of a certain state governing the subject matter of recognition and enforcement of foreign judgments. However, if the issue is not governed by law in the respective state,[15] then it has to be determined whether the judgments of Serbian courts are recognised in the state in practice, i.e. whether there is de facto reciprocity, which very often turns out to be a very long and complicated procedure.

To establish reciprocity, the competent authority usually submits a request for information on regulations and case law to a foreign state. Although Article 13 of the RCLA only stipulates two ways in which a court or another competent authority may establish the content of foreign law, it does not exclude the use of other means, such as texts of regulations from official publications, expert opinions on the content of foreign law, and judgments and other decisions of the foreign court that may serve as evidence of the way in which foreign courts act and apply a certain regulation. This approach may be justified by legal certainty and the fact that it is only in this way (if confirmed by the competent foreign authority) that the court may know with certainty whether the regulation is in force in the foreign state at the time. On the other hand, such an interpretation may result in a delay to the

[14] The recognition and enforcement of judgments is governed by bilateral treaties on legal assistance with Bulgaria, Cyprus, the Czech Republic, Hungary, Poland, Romania and the United Arab Emirates, as well as special treaties on the recognition and enforcement of judgments with Greece and France. Besides, special treaties governing the recognition and enforcement of maintenance decisions have been concluded with Austria and Belgium.

[15] That is the case in the countries with the common law system.

procedure in case when the competent foreign authority fails to respond to the request for notification submitted by national authorities for a long time. The request is made to a foreign state in accordance with the rules of international legal assistance, which means through diplomatic channels[16] or in accordance with international treaty, if it is in place with the respective state. This type of communication involves several competent authorities, both national and those of the foreign state, which inevitably results in these procedures taking a long time. What may also happen is that the requested foreign state fails to respond to the request for a certain reason. In such a situation, there is no way to force the respective state to give its response, and the only thing possible is to resubmit the request and intervene through the diplomatic and consular channels in that country. According to the information of the Ministry of Justice – Department of International Legal Assistance in Civil Matters, for an unknown reason it took nearly two years to get the information on the regulations of the British Virgin Islands governing the issue of security for costs. However, political events in a certain state may sometimes make it very difficult to get an information on the content of law. In practice, that was the case with the request of the Ministry of Justice for information on the regulations of Libya governing the acquisition of the property rights. Despite several interventions, the regulations were impossible to get because of current events in the country, change of government and the entire legislative system.

Apart from that, when establishing material reciprocity, it needs to be determined whether the limitations placed by the foreign state on the recognition and enforcement of foreign judgments are the same as or similar to the ones placed in the national legislation. This means that there may be difficulties in interpretation and evaluation whether the reciprocity condition has been met, particularly if this involves different legal systems and different understanding of certain legal principles and notions.[17]

[16] The diplomatic way of communication involves submission of a request for information on regulations to the diplomatic and consular authority of the requesting state in the requested state, which then submits the request to the ministry of foreign affairs of the requested state, which in turn submits the request to the competent authority of the requested state (most often, it is the ministry of justice, which then sends the request to the authority in charge of notification under the national law).

[17] The requested state sometimes only forwards the text of the law without any explanations, which makes it difficult for the ministry to interpret the foreign regulation without any additional guidance. That is why requests have to be resubmitted or additional information has to be requested, which all leads to a delay to the procedure.

In the context of the afore-mentioned difficulties, primarily in the economic field, it is important to consider the possibilities available to the Republic of Serbia to overcome the problems encountered.

Difficulties surrounding the establishment of reciprocity by competent authorities might be resolved by amending applicable regulations. The new draft law that ought to modernise the existing provisions of the RCLA, including, inter alia, provisions on the recognition of foreign judgments, was prepared as far back as in 2014 (hereinafter: the Draft PILA).[18] The Draft PILA contains the condition of reciprocity but only in certain areas: rights in rem, securities held through intermediaries, intellectual property, contractual and non-contractual obligations.[19] The reciprocity presumption was also retained, but the burden of its rebuttal was placed on the defendant in the recognition proceedings.[20] Furthermore, the Draft PILA provides for new ways of proving reciprocity, meaning that in addition to the opinion of the competent ministry, it is also possible to submit documents and expert opinions on the content of foreign law. This is how a compromise was reached among the working group members who were in favour of retaining the reciprocity condition and those who supported its elimination (Stanivuković, 2014, p. 294). A solution was proposed involving the equal application of the reciprocity condition regardless of whether recognition is requested by a domestic or foreign national, thus eliminating the discriminatory character of the current solution, which stipulates that the lack of reciprocity is not an impediment if recognition is requested by a domestic national.[21]

There is no doubt that the Draft PILA represents improvement in the existing legal solutions as to reciprocity as a condition for the recognition and enforcement of foreign judgments, but given that it has not been adopted for more than ten years, we will obviously still have to wait for more advanced solutions.

[18] The Working Group set up by the Ministry of Justice of the Republic of Serbia finished working on the Draft PILA in June 2014. The draft version is available on the website of the Ministry of Justice: https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php

[19] Under the provisions of the RCLA, reciprocity is not requested only in a marital dispute and in a dispute concerning paternity or maternity, while under the Draft PILA exemption from application was extended to all status, family and inheritance relations.

[20] It is in this way that the Ministry of Justice would be relieved of some duties, as it would have an auxiliary role in this case. Additionally, the reciprocity presumption would be more clearly regulated in these provisions and the burden of proof would be placed on the party having a legal interest in proving the absence of reciprocity.

[21] Discrimination on the basis of citizenship is contrary to the fundamental principles of the European Union, with which the legislation of the Republic of Serbia has to be brought into line.

On the other hand, the accession of the Republic of Serbia to the 2019 Hague Convention needs to be considered. This Convention unifies the procedure for recognition and enforcement of foreign judgments in civil and commercial matters, and has a very wide scope of application, unlike the other Hague conventions, which the Republic of Serbia has ratified and which mostly govern the matters of family law. It sets up a simple, efficient and predictable system for the recognition and enforcement of foreign judgments, which, depending on the number of state parties, ought to ensure a free flow of judgments at a global level, and, by extension, a higher degree of legal certainty in cross-border exchange, trade and investments. At the same time, it should eliminate the problem of diplomatic reciprocity, which some states impose as a condition for the recognition of foreign judgments.[22]

The European Union has already acceded to the 2019 Hague Convention, which afterwards entered into force from the perspective of international law on 1 September 2023. The United Kingdom of Great Britain and Northern Ireland, where the convention entered into force on 1 July 2025, followed suit. The United States of America (hereinafter: USA)[23] and the Russian Federation have signed the convention and are seriously considering its ratification. It has managed to attract even the interest of China, whose system of private international law, as already mentioned, is well-known for a burdensome system of recognition and enforcement of foreign judgments, and yet it is contemplating acceding to the convention. Of the states of South East Europe, the 2019 Hague Convention was signed by Montenegro (21 April 2023), North Macedonia (16 May 2023) and Albania (12 September 2024). As for the Republic of Serbia, its ratification will also emerge as an issue in the context of its being a candidate for membership in the EU. The same is expected from other countries with this status.

5. Conclusion

In view of the presented criticisms and difficulties with respect to the principle of reciprocity, it would be desirable if the Republic of Serbia took certain steps to address them and modernise its system of private international law. One of the possibilities certainly includes amending applicable legislation, whose provisions are outdated and far outmatched in many segments. The new

[22] Of the EU member states, these include the Netherlands, Finland, Denmark and Austria.

[23] The USA signed the 2019 Hague Convention on 2 March 2022, but it has not entered into force there yet.

law has already been drawn up, but has not been adopted yet, even though its solutions have significantly improved the existing provisions on all issues, including reciprocity and the procedure for its establishment. Besides, it is important to consider the Republic of Serbia's accession to the 2019 Hague Convention, which is a global convention for the recognition and enforcement of judgments, with a very wide scope of application. So far, it has entered into force in all EU member states, Ukraine, Uruguay, and recently in the United Kingdom. In 2026, it will enter into force in Andorra, Montenegro and Albania. The Republic of Serbia has still not ratified this convention, although that would ensure diplomatic reciprocity with certain EU states that make the recognition and enforcement of foreign judgments conditional upon that, and thereby also the recognition of judgments of the Republic of Serbia in those states. For the reasons stated, the author believes that accession to the global instrument regulating the issue of recognition and enforcement of foreign judgments would be very beneficial for the Republic of Serbia.

Conflict of Interest
The author declares no conflict of interest.

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UZAJAMNOST KAO USLOV ZA PRIZNANJE I IZVRŠENJE STRANIH SUDSKIH ODLUKA U MEĐUNARODNOM PRIVATNOM PRAVU REPUBLIKE SRBIJE

APSTRAKT: Postojanje uzajamnosti u mnogim nacionalnim sistemima međunarodnog privatnog prava i dalje opstaje kao uslov za priznanje i izvršenje stranih sudskih odluka u građanskoj i trgovinskoj materiji. Međutim, u savremenom globalizovanom ekonomskom i socijalnom kontekstu, u kome pravna i fizička lica svakodnevno stupaju u prekogranične privatnopravne odnose i međunarodne transakcije, postavlja se pitanje opravdanosti i neophodnosti ovog uslova. Iako su u proteklih nekoliko

decenija mnoge države zauzele fleksibilniji stav po ovom pitanju, ovaj uslov je i dalje prisutan u zakonodavstvu određenog broja država i smatra se jednom od glavnih prepreka za priznanje i izvršenje stranih sudskih odluka. Postojanje uzajamnosti je i u zakonodavstvu Republike Srbije predviđeno kao jedan od uslova za priznanje stranih sudskih odluka. Kako bi se iz ugla postupka utvrđivanja uzajamnosti odgovorilo na sve važniji ekonomski interes iskazan kroz prekograničnu trgovinu i investicije, bilo bi poželjno razmotriti izmene našeg važećeg zakonodavstva, kao i pristupanje Republike Srbije Haškoj konvenciji o priznanju i izvršenju stranih sudskih odluka iz 2019. godine. Naime, ona je nedavno stupila na snagu i teži da unifikacija uslova za priznanje i izvršenje sudskih odluka koja je njome postignuta dobije na istinskom globalnom značaju. Time bi se ujedno otklonio i problem uzajamnosti u odnosima Republike Srbije i država ugovornica te konvencije, kako u pogledu teškoća vezanih za postupak njenog utvrđivanja, tako i u pogledu priznanja odluka sudova Republike Srbije u državama koje u ovom pogledu zahtevaju postojanje diplomatske uzajamnosti.

Ključne reči: *uzajamnost, Haška konvencija 2019, pravosudna saradnja, priznanje stranih sudskih odluka.*

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