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Application Dilemma of the Principle of Reciprocity in the Recognition and Enforcement of Foreign Judgments

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Abstract. With the continuous advancement of the "Belt and Road" Initiative (hereinafter referred to as "B&R"), the issue of the recognition and enforcement (hereinafter referred to as R&E) of foreign court judgments in our country has gradually become the focus of judicial practice and theoretical research. The principle of reciprocity (hereinafter referred to as PoR) plays a key balancing role in safeguarding national judicial sovereignty and promoting international judicial cooperation. This paper systematically studies the application dilemmas of the PoR in China, with a focus on discussing the legitimacy foundation of the PoR and who bear the responsibility of proof reciprocal relationships. The research finds that the PoR not only safeguards the equality of national sovereignty, but also promotes the construction of judicial trust, and guarantees the predictability of international commercial AC. T The ambiguity and inconsistency issues in the current judicial practice on how the burden of proof is divided are revealed, and it is clarified that the first burden of proving the existence of a reciprocal connection should rest with the applicant. In response to the existing issues, a systematic improvement scheme is proposed: at the legislative level, to clarify diversified qualification standards and rules of proof; at the judicial level, to construct a tiered review mechanism; at the level of international cooperation, to weaken reciprocal reliance through treaties; and to build a cross-border shared databases from the perspective of technical assistance.

Keywords: principle of reciprocity, recognition and enforcement of foreign judgments, burden of proof, the "Belt and Road".

1. Introduction

In the process of the in-depth advancement of the B&R Initiative, the economic and trade cooperation between our country and the countries along the route has become increasingly frequent. Against this background, cross-border civil and commercial disputes become the norm, and the R&E of foreign judgments is gradually becoming the key focus of judicial practice and academic theoretical research. In the legal system of China, the principle of reciprocity serves as an important institutional foundation, requiring courts to examine whether the other country maintains the same recognition attitude towards the Judgments of our country's courts when deciding whether to recognize foreign judgments. This principle aims to achieve judicial reciprocity and uphold mutual respect for national sovereignty and legal effect [1]. Previously, a large number of studies

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have conducted in-depth discussions on the theoretical foundation of the principle of reciprocity, foreign experiences, and the system of recognition and enforcement in our country. For example, regarding the question of whether the principle of reciprocity should exist, there has been extensive and intense debate in academic circles both domestically and internationally. On the one hand, the majority of scholars recognize its significant value in safeguarding national sovereignty, limiting the jurisdiction of foreign courts, and promoting international judicial cooperation. On the other hand, there are also critical voices arguing that the principle of reciprocity may severely harm the rights of the parties to the original judgment, create judicial obstacles to the termination of judgments, and become a impediment to transnational judicial collaboration [2]. In China, although the majority of scholars acknowledge the reasonableness and necessity of the principle of reciprocity, there remains a significant divergence concerning who has to provide evidence, with the divergence primarily focused on the determination the bearer of proving the reciprocal relationship [3]. On the one hand, there exists the view that "he who asserts must prove" should be followed, whereby the claimant bears the burden of proving the existence of the reciprocal relationship, and if the proof is insufficient, the claimant shall bear the adverse consequences; on the other hand, there are also opinions that the respondent should prove that there is no reciprocal relationship between the two countries, and if such proof cannot be provided, the existence of the reciprocal relationship shall be presumed, thereby facilitating the cross-border circulation of judgments [4, 5]. In addition, there are views advocating that the court shall actively exercise its rights to investigate and qualify the reciprocal relationship, and bear the burden of proof [6]. These divergences directly lead to differences in the judicial application of PoR and reflect the theoretical and practical issues in the current system of R&E of foreign judgments that urgently require specification and improvement. Based on this, this paper adopts methods of literature analysis, comparative research, and case analysis, aiming to take the legitimacy of the principle of reciprocity as the starting point, and attempt to clarify the subject of proof of reciprocity against the background of the Belt and Road era. Through the review of theoretical research results, it attempts to clarify who bears the responsibility of proof the reciprocal relationships and analyze its coordination relationship with the international cooperation framework.

2. Literature review

Regarding the research on the principle of reciprocity, there exists extensive and in-depth discussion in academic circles both domestically and internationally.

The discussion primarily revolves around whether to abolish PoR. Relevant scholars argue that the PoR possesses certain objective necessity in safeguarding country sovereignty and preventing interference by foreign judicial bodies, reflecting the foundation of judicial mutual trust between countries [7]. However, other scholars contend that the principle of reciprocity is a manifestation of isolationism, pointing out that reciprocity requirements have hindered the free circulation of transnational judgments and are no longer suitable for modern international judicial cooperation [8]. Some scholars note that Germany once regarded the PoR as a prerequisite for the R&E of the foreign judgments, but with the development of judicial cooperation, Germany has gradually relaxed the application of the PoR to accommodate flexible demands in practice [9]. Some scholars have commented that Japan's reciprocity system is gradually shifting from strict legal reciprocity to a more flexible application, while criticizing the negative impacts caused by certain countries' retaliatory use of the reciprocity principle [10].

Second, related to distributing the burden of proof the relationship, there are also significant divergences in academic circles. Some scholars support "he who asserts must prove," arguing that

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the claimant must prove whether there is a reciprocal relationship between the two countries [4]. Other scholars, from the perspective of promoting the circulation of cross-border judgments, contend that the respondent should prove there is no reciprocal relationship between the two countries [11].

In summary, current theoretical research reveals the complexity of the reciprocity principle in global judicial cooperation, emphasizing the need to balance and innovate the system by combining the protection of national interests with the promotion of transnational judicial efficiency. This provides a valuable reference for China to improve its foreign-related laws.

3. Analysis of the principle of reciprocity

3.1. Academic exploration on the legitimacy of the principle of reciprocity

The academic circle has long been engaged in a value dispute over the principle of reciprocity. Supporters argue that it embodies the spirit of equality and mutual benefit in international law, serves as a barrier to safeguarding the judicial sovereignty of a counter, not only prevents damage to domestic interests and limits excessive foreign jurisdiction through reciprocal attitudes, but also encourages international judicial cooperation through the reciprocal relationship of consideration. However, critics point out that strict reciprocity easily triggers a mutual defection scenario, leading to a vicious cycle of mutual refusal and harming the interests of the persons concerned in cross-border judicial remedies; moreover, its application standards are inconsistent, creating uncertainty in judicial practice, and under the backdrop of globalization, it may also hinder the resolution of transnational commercial disputes and the development of international trade and investments [12]. Notwithstanding the existence of disputes, the legitimacy of the principle of reciprocity has a profound theoretical foundation. From the perspective of sovereign equality and judicial cooperation, it embodies the Principle of Sovereign Equality in the United Nations (UN) Charter, guarantees the equality of judicial cooperation among countries through the mechanism of reciprocal recognition, prevents powerful countries from eroding the judicial sovereignty of weaker parties, and the reciprocal relationship itself constitutes the institutional foundation of judicial cooperation. From the perspective of building trust in international commercial transactions, it provides a predictable legal environment for cross-border transactions, reduces transaction costs and risks, promotes mutual trust among the systems of law and justice of various countries, and particularly in the context of the B&R Initiative, contributes to the establishment of a judicial trust network among countries along the route, providing judicial guarantees for regional economic integration.

3.2. Disputes over the subject of proof of reciprocal relationships

3.2.1. Doctrinal comparison between the theory of the burden of proof borne by the parties and the theory of ex officio investigation by the court

On the issue of the distribution of the burden of proof under the PoR, the academic community has primarily formed two major theoretical schools: the idea of parties has to prove the relationship in court and the concept of the court investigating on its own.

Divergences exist within the theory of parties has to prove the relationship in court. One perspective suggests that it is the responsibility of the claimant to provide proof, asserting that the fundamental principle of civil litigation, "he who asserts must prove," should be strictly adhered to. The applicant claims that there is a reciprocity relationship so that the judgment can be recognized

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and should bear the corresponding responsibility of proof; failure to provide proof results in the consequences of losing the lawsuit. This viewpoint emphasizes procedural justice and the clarity of the burden of proof, which is conducive to maintaining the stability of litigation order. Another view advocates the reversal of the burden of proof, requiring the respondent to prove the absence of a reciprocal relationship between the two countries. This view holds that a reciprocal relationship, as the norm in international judicial cooperation, should be presumed to exist unless contrary evidence is presented by respondents. This practice is conducive to promoting the termination of foreign judgments and saving judicial resources.

The theory of ex officio investigation by the court maintains that the qualification of a reciprocal relationship involves judicial policies and diplomatic relations between countries, constituting an issue of law application rather than factual qualification, and should be actively investigated and determined by the court ex officio. Supporters point out that the existence of a reciprocal relationship often requires comprehensive consideration of multiple factors, including treaty provisions, judicial practices, and foreign policies, which the parties may find difficult to fully grasp. Active investigation by the court better aligns with the requirements of judicial efficiency and fairness. In addition, the ex officio investigation by the court contributes to the unification of judicial standards and avoids the inconsistency of judgments caused by the differences in the ability of the parties to present evidence.

3.2.2. Evaluation of the utilization of the different distribution theory in judicial practice

In China’s judicial precedents, the issue of burden of proof distribution presents obvious ambiguity and inconsistency. Through the analysis of typical cases, this issue becomes more prominent.

In the case No. (2016) Gan 01 Min Chu 354, Chu Xi applied for the R&E of a U.S. court judgment, the applicant voluntarily assumed the liability to prove the reciprocity relationship between China and U.S. and presented the case where Chinese enterprises such as China Gezhouba Group Sanlian Industry Co., Ltd. sued the U.S. Robinson Helicopter Company. The court was recognized and enforced by a U.S. federal court, which supported the claim that there was a reciprocity relationship between China and the United States. However, the court finally qualified that "there is no international treaty concluded or acceded to between China and the United States for the reciprocal R&E of court judgments and orders, nor has a corresponding reciprocal relationship been established", and rejected the application of the applicant.

Similarly, in the case of Hermansson's application for recognition of a divorce judgment of a US court in the case No. 0104 of Changzhongmin Tazi (2009), the court also qualified that "At present, China and the United States have not concluded or jointly participated in international treaties on mutual R&E of judgments of their respective courts, so there is no reciprocity", and the judgment shall not be recognized and enforced.

The core issues reflected in these two cases are as follows: First, there is no clear subject of proof in Chinese law, and the applicant takes the initiative to produce evidence but the standards are unclear; Second, there is a lack of unified standards for the qualification of the reciprocity relationship, and there are differences on whether the recognition and enforcement practice of a single individual case can constitute a reciprocity relationship; Third, the court uses the method of investigation by rights to qualify that there is no reciprocity relationship, but there is a lack of transparent investigation procedures and standards. This ambiguous state not only increases the litigation costs of the parties but also affects the authority and predictability of judicial judgments.

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4. Exploration on the improvement of the application mechanism of PoR

4.1. Legislative level: clarify the qualification standards and burden of proof rules for reciprocity

In response to the current problems in the utilize of the principle of reciprocity in China, such as vague standards and unclear burden of proof, the improvement at the legislative level should be the primary task. First, a diversified system of qualification standards for reciprocal relations should be established. As scholars have pointed out, the qualification standards for legal reciprocity, presumed reciprocity, and factual reciprocity each have their own advantages and disadvantages, and a single standard is difficult to give play to the incentive effect of the principle of reciprocity. China should clearly stipulate in its legislation that when judging whether it is possible for foreign courts to adopt the PoR in the judgment made by Chinese courts in the future, it can be measured by reviewing the prevailing practices such as laws, regulations, judicial judgments, or customary laws of other countries, and there is no need to make the existence of precedents in other countries a prerequisite.

Regarding how the burden of proof is distributed, legislation should clearly stipulate that the applicant shall first bear the liability to prove the possibility, and then Chinese courts shall consider the qualification of the reciprocity relationship. According to "he who asserts must prove" and Rosenberg's "Die Normtheorie", it has a solid theoretical foundation and practical feasibility for the applicant must provide proof for the existence of the reciprocity relationship [13]. If the applicant claims to apply the qualification standards of factual reciprocity or presumed reciprocity, it shall provide the court with precedents where the foreign country has recognized or judgments of Chinese courts may be recognized and enforced in the future; if the determination standard of legal reciprocity is advocated, it is necessary to find out whether the provisions on reciprocity in the domestic laws of both countries are consistent.

Meanwhile, legislation should expand the scope of exceptions to the application of PoR. For foreign judgments involving identity relationships, non-litigious issues, and issues involving non-national or non-corporate persons, Chinese courts may directly recognize and enforce them without using the existence of reciprocity as the standards for the R&E of judgments [14]. This exception mechanism can not only improve judicial efficiency but also guarantee judicial independence of Chinese courts, and at the same time, it helps to reduce the dissatisfaction of the involved countries with China's judicial practice [15].

4.2. Judicial aspect: establishing a hierarchical reciprocity review mechanism

In judicial practice, a hierarchical reciprocity review mechanism should be established to address the differentiated needs of different types of issues and different countries. This mechanism should include three levels: preliminary review, in-depth investigation, and comprehensive qualification. At the preliminary review stage, the court should conduct a formal review of the evidence of reciprocity relationship provided by the applicant to determine whether the basic standards of burden of proof are met. At the in-depth investigation stage, the court may conduct supplementary investigations on bilateral relations, relevant treaties, judicial practices, etc. in accordance with its rights, but should not bear the primary burden of liability for proof. At the comprehensive qualification stage, the court should make a final judgment by applying diversified qualification standards in combination with the results of the preliminary review and the in-depth investigation.

The core of the hierarchical review mechanism lies in flexibility and pertinence. Priority should be given to the application of treaties with States that have concluded judicial treaties without regard

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to the existence of reciprocity; for the countries along the B&R, the standards for qualifying reciprocity may be appropriately relaxed, and the existence of reciprocal relations may be presumed; for developed countries with relatively sound systems of law and justice, the possibility of legal reciprocity may be mainly reviewed. Such differential treatment will help safeguard national sovereignty and promote the common progress of international justice at the same time.

4.3. At the level of international cooperation: weakening reliance on reciprocity through treaties

The improvement at the level of international cooperation should focus on weakening excessive reliance on the principle of reciprocity by negotiating treaties. In the process of the development of the B&R, the agreement on mutual R&E of civil and commercial judgments should be actively negotiated and signed by China and the countries along the B&R, so as to provide strong judicial guarantees for regional economic integration. Through the treaty mechanism, a more stable and predictable framework of the law can be established, and the legal risks and transaction costs of the parties concerned can be reduced.

Specifically, China can draw on the advanced experience of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, and clearly stipulate in the treaties the conditions, procedures and exceptional circumstances for the recognition of judgments, so as to reduce disputes and uncertainties in judicial practice [16]. Meanwhile, a mechanism for regular assessment and adjustment shall be established in the treaty. Relevant clauses shall be updated in a timely manner in accordance with the development of bilateral relations and changes in judicial practice to ensure the effectiveness and applicability of the treaty.

For situations that cannot be resolved through the treaty for the time being, China may consider establishing an informal judicial cooperation mechanism in the form of judicial memorandums, cooperation agreements, etc., to lay a foundation for the signing of a formal treaty. This incremental cooperation model can not only take into account the concerns of all countries but also promote the gradual deepening of international judicial cooperation.

4.4. Technical assistance level: establish a cross-border judicial cooperation database

At the technical assistance level, emphasis should be placed on establishing a cross-border judicial cooperation database to provide information-based support for the qualification of reciprocal relationships. This database should contain information such as relevant laws and regulations, typical cases, judicial practices, treaties and agreements of various countries, so as to achieve centralized storage, retrieval and analysis of information [16]. Through big data technology, a more accurate and comprehensive decision-making basis can be provided for the courts, and the efficiency and quality of judicial review can be improved.

The construction of the database should adopt open-ended architecture, allowing relevant institutions and scholars to contribute data and research results, and form a collaborative mechanism with multi-party participation. At the same time, a data update and maintenance mechanism should be established to ensure the timeliness and accuracy of the information. In terms of technological implementation, artificial intelligence technology can be used to conduct intelligent analysis on massive judicial information, providing auxiliary decision-making support for judges.

In addition, the database should also have the function of international AC, realizing data sharing and information exchange with relevant systems in other countries, and providing a technological foundation for the establishment of a global judicial cooperation network. By means of science and

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technology, the cost of qualifying reciprocal relationships can be effectively reduced, the efficiency of cross-border judicial cooperation can be improved, and judicial wisdom can be contributed to the judicia progress in countries along the B&R.

5. Conclusion

This article uses the literature analysis method, comparative research method, and case analysis method to explore the application dilemma of the PoR in the process of China's R&E of foreign court judgments under the B&R Initiative, and summarizes the internal balance mechanism of the principle of reciprocity between safeguarding the country's judicial sovereignty and promoting international judicial cooperation, as well as the theoretical controversies and practical dilemmas regarding the distribution of the burden of proof.

Against the background of increasingly frequent international civil and commercial transactions, the existence of the principle of reciprocity not only protects the rights of the parties but also protects international judicial cooperation and progress. Its necessity and legitimacy have a profound theoretical foundation. The principle of reciprocity reflects the specific application of the principle of sovereign equality established in the UN Charter in the judicial field. By establishing a reciprocal recognition mechanism, it ensures the equal status of countries in transnational judicial cooperation and provides a predictable legal environment for international commercial exchanges. When dealing with the issue of the distribution of the burden of proof under the principle of reciprocity, in order to balance sovereignty protection and judicial efficiency, the basic principle of "he who asserts must prove" should be followed. The applicant shall bear the initial burden of proof to demonstrate the existence of a reciprocal relationship, and at the same time, the court shall be allowed to conduct supplementary investigations ex officio when necessary.

The research further points out that the issues such as the vague qualification standards, unclear burden of proof, and inconsistent judicial practices in the current utilization of the principle of reciprocity in China need to be resolved through systematic institutional improvement. It is recommended to clarify the standards for qualifying diversified reciprocal relationships and the rules of burden of proof at the legislative level, and the scope of exceptions to the application of the PoR needs to be expanded; construct a hierarchical reciprocal review mechanism at the judicial level to achieve differentiated treatment; weaken the excessive reliance on the principle of reciprocity by negotiating treaties at the level of international cooperation; and construct a cross-border judicial cooperation database at the level of technological assistance to provide information - based support for the qualification of reciprocal relationships.

In the future, with the in - depth implementation of the BoR Initiative and the development of global economic integration, on the foundation of upholding the legitimacy of the principle of reciprocity, China should actively explore a more flexible and practical application mechanism, and through institutional innovation and international cooperation, construct a more complete cross - border judicial cooperation system.

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