

Problems of Applying the Principle of Reciprocity in the Recognition and Enforcement of Arbitral Awards (Comparative Legal Analysis)

Problemy stosowania zasady wzajemności przy uznawaniu i wykonywaniu orzeczeń arbitrażowych (analiza prawnoporównawcza)

Abstract

Within the scope of the article, the author has presented and analyzed the peculiarities of the recognition and enforcement of arbitral awards, as well as judicial assistance to arbitration, based on the principle of reciprocity. By comparing and contrasting the main features of arbitration legislation and legal practice in countries with different legal systems, the author has found that the application of the principle of reciprocity in the case of recognition and enforcement of arbitral awards is conditional. It is emphasized that reciprocity can be applied both when a ratified international agreement is absent between the two states, and for the purpose of ensuring more favorable conditions for allowing the recognition and enforcement of arbitral awards than those provided by Convention regulations. On the basis of complete or partial reciprocity, courts should not only refrain from refusing the recognition and enforcement of arbitral awards rendered outside the territory of the Republic of Armenia, but the presumption of reciprocity predetermines the recognition of all arbitral awards rendered outside the territory of the Republic of Armenia, unless there are instances of the courts of that state refusing to recognize and enforce arbitral awards conducted in the territory of the Republic of Armenia. Based on the principle of reciprocity, courts can provide judicial assistance to foreign arbitration, and this should be carried out by applying the presumption of reciprocity, which will ensure a more favorable environment for the protection of parties' rights and interests through arbitration.

Refusing the recognition and enforcement of arbitral awards based on the principle of reciprocity in states participating in the New York Convention cannot be considered lawful. Consequently, under the current legal regulations, the refusal of recognition and enforcement of arbitral awards or the provision of judicial assistance on the basis of reciprocity is permissible in the Republic of Armenia if a claim for recognition and enforcement of an arbitral award or provision of judicial assistance is submitted in relation to an arbitration conducted in the territory of a state that is not a participant in the New York Convention or any framework agreement, and even then, only in identical or similar cases (partial reciprocity), which will minimize the risks of disregarding or violating the private interests of

the claimant party in the arbitration.

KEYWORDS: reciprocity, presumption, refusal of exequatur, provision of assistance, complete or partial reciprocity.

SŁOWA KLUCZOWE: wzajemność, domniemanie wzajemności, odmowa exequatur, udzielanie pomocy sądowej, wzajemność pełna i częściowa.

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1 | Introduction

The adoption of the Law “On Commercial Arbitration” in 2006 initiated the implementation of systemic arbitration reforms in the Republic of Armenia (hereinafter: the RA), aimed at increasing the efficiency of the arbitral form of rights protection, unburdening the judicial system, and so forth^[1]. Furthermore, the need to ensure favorable regulatory and empirical conditions for arbitration stemmed from international obligations undertaken by the RA, which, in turn, subsequently predetermined the directions of legislative development and the formation of arbitration practice. In particular, according to Article 86 of the “Partnership and Cooperation Agreement” concluded between the Republic of Armenia and the European Community on 22 April 1996, which entered into force on 1 July 1999, the parties should encourage the resolution of disputes arising from commercial and cooperation transactions by arbitration, as well as the application of alternative rules for arbitration and dispute resolution of the UN Commission on International Trade Law (UNCITRAL) and countries that are members of the 1958 New York Convention “On the Recognition and Enforcement of Foreign Arbitral Awards.”

The 1958 New York Convention “On the Recognition and Enforcement of Foreign Arbitral Awards” (hereinafter also referred to as the Convention) entered into force for the Republic of Armenia on 29 March 1998. Under these conditions, the recognition and enforcement of foreign arbitral awards were guar-

¹ <https://www.e-draft.am/en/projects/5203/justification> [accessed: 9.08.2025]; <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=7601&Reading=0> [accessed: 9.08.2025]; <https://www.arlis.am/documentview.aspx?docid=119018> [accessed: 9.08.2022].

anteed in the territory of the RA, which was one of the concrete manifestations of the advantages of the arbitral form of rights protection. Consequently, a situation was created where international agreements, which are a constituent part of the domestic legal system, guaranteed and encouraged the arbitral form of protecting subjective rights in the RA, but the domestic sectoral legislation did not provide the necessary and sufficient conditions for the implementation of the Convention's and other international treaty provisions.

The above-mentioned situation necessitated both the adoption of the RA Law "On Commercial Arbitration," based on the 1985 UNCITRAL Model Law on International Commercial Arbitration, and the continuous amendments to the arbitration legislation. These changes, in my opinion, although aimed at reforming the institution of arbitration, could not fully ensure the realization of this goal, as the legislator primarily focused on the problem of unburdening the judicial system[2], rather than increasing the functional effectiveness of the arbitration mechanisms.

Among the most important recent legislative amendments, one can highlight the provision for the issuance of a writ of execution by permanent arbitral institutions for the compulsory enforcement of arbitral awards involving property claims not exceeding five million drams in the territory of the RA. As a result, the party objecting to the compulsory enforcement of the arbitral award was factually deprived of the opportunity to refer to the grounds provided for by the Convention for refusing recognition and enforcement of the award in court[3].

In this case, the legislator did not even prioritize the legal possibility for the court to reject the compulsory enforcement of an arbitral award based on grounds aimed at protecting public interests (e.g., the subject matter of the dispute is not capable of settlement by arbitration, or the recognition or enforcement of the award would be contrary to the public policy of the Republic of Armenia). Instead, the decision on the compulsory enforcement of an arbitral award was entrusted to permanent arbitral institutions if the parties to the arbitration are citizens of the Republic of Armenia or legal entities registered

² Law of the Republic of Armenia on Amendments and Supplements to the Law "On Commercial Arbitration", art. 35, as supplemented by HO-584-N (23 December 2022).

³ Law of the Republic of Armenia on Amendments and Supplements to the Law "On Commercial Arbitration", as amended by HO-158-N (3 May 2023).

in the Republic of Armenia[4].

It should be noted that the state's verification of the existence of grounds for refusing the compulsory enforcement of an arbitral award, and consequently the recognition of the possibility of enforcement, is a legitimate form of state control over arbitration. The state's recognition and assurance of the compulsory enforcement of an arbitral award as an institutional mechanism for the sanctioning of state coercion is applied in countries with both continental and common law legal systems, including the United Kingdom, Germany[5], Sweden[6], the USA[7], and others. Consequently, the mentioned legal regulation is alien to countries with progressive legal systems.

2 | The Principle of Reciprocity as a Basis for the Recognition and Enforcement of Arbitral Awards

The introduction of the principle of reciprocity alongside the regulations of the 1958 New York Convention into the system of recognition and enforcement of arbitral awards is considered a key recent legislative innovation in the legal system of the Republic of Armenia. Specifically, according to Parts 1 and 3 of Article 35 of the RA Law "On Commercial Arbitration," an arbitral award rendered in the territory of the Republic of Armenia or in the territory of any other state member of the New York Convention "On the Recognition and Enforcement of Foreign Arbitral Awards" shall be recognized as binding and, upon written motion to the appropriate court, shall be enforced in the manner prescribed by law[8]. Arbitral awards rendered outside the territory of the Republic of Armenia shall be recognized and enforced in the territory of the Republic of Armenia

4 Law of the Republic of Armenia on Commercial Arbitration, art. 35, pt. 4.

5 German Arbitration Act: Tenth Book of the Code of Civil Procedure (Arbitration Procedure), §§ 1025–1066, <https://sccarbitrationinstitute.se/sites/default/files/2022-11/german-arbitration-act.pdf> [accessed: 3.04.2025].

6 The Swedish Arbitration Act (SFS 1999:116), as updated by SFS 2018:1954, https://sccarbitrationinstitute.se/sites/default/files/2022-11/the-swedish-arbitration-act_1march2019_eng-2.pdf [accessed: 3.04.2025].

7 The Federal Arbitration Act (USA), <https://sccarbitrationinstitute.se/sites/default/files/2022-11/the-federal-arbitration-act-usa.pdf> [accessed: 3.04.2025].

8 Law of the Republic of Armenia on Commercial Arbitration, art. 35, pts. 1 and 3; Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), 1958.

on the principle of reciprocity, in accordance with the law, other legal acts, and international treaties of the Republic of Armenia. Furthermore, reciprocity is presumed to exist unless proven otherwise^[9].

The aforementioned legal regulation gives rise to a number of conclusions and questions. Thus, reciprocity is applied exclusively in the case of recognition and enforcement of foreign arbitral awards, which includes but is not limited to arbitral awards rendered in the territories of states party to the New York Convention. Therefore, it is first necessary to clarify how justified the application of reciprocity is in the case of recognition and enforcement of arbitral awards.

- Is reciprocity applied in parallel with the New York Convention? Does it imply an application that deviates from the logic of the Convention's regulations, or not?
- The RA Law has established the presumption of reciprocity; consequently, is the application of negative reciprocity possible?
- Does the principle of reciprocity refer exclusively to the recognition and enforcement of arbitral awards, or does it encompass a wider range of issues such as decisions on arbitration, assistance to arbitration, or legal matters?

It should be noted that the recognition and enforcement of foreign arbitral awards based on the principle of reciprocity in the territory of the RA is not only a novelty for the domestic legal system but is also unprecedented in other member states of the New York Convention with developed arbitration practices, including the countries of the European Union, the British Commonwealth, and others^[10].

The application of the principle of reciprocity for the recognition and enforcement of arbitral awards is also alien to theoretical literature. In legal literature, the principle of reciprocity is primarily considered in the case of the exequatur (recognition and enforcement) of foreign court judgments, where the requesting state links the recognition and enforcement of a foreign judicial act to the possibility or fact of recognition and enforcement of its own judicial acts in the corresponding foreign state^[11]. Therefore, in the case of exequatur,

⁹ Law of the Republic of Armenia on Commercial Arbitration, art. 35, as amended by HO-584-N (23 December 2022) and HO-158-N (3 May 2023).

¹⁰ Code of Civil Procedure (Poland), Book V, Title VIII; Act No. 216/1994 Coll. (Czech Republic); ZPO (Germany), Tenth Book, §§ 1061–1065; Code of Civil Procedure (France), Book IV, art. 1514 et seq.; Arbitration Act (Sweden), secs. 52–60.

¹¹ *Enforcement of Foreign Judgments Worldwide*, ed. Charles Platto, W. G. Horton (London: Graham & Trotman, 1993), 2–4.

the discussion is about the mutual authorization of recognition and enforcement of acts of justice rendered in the name of the respective state within the limits of sovereign jurisdiction by different states, which exclusively relates to acts issued by state organs (courts). Such an approach is conditioned by the reality that states are responsible for the actions of their own bodies and perform a purely regulatory function in the case of activities of bodies operating outside the state system. Hence, in the case of recognition and enforcement of arbitral awards, reciprocity can be applied with a conditional reservation, based on the logic that the RA recognizes and enforces arbitral awards rendered in the territory of another state, unless it is proven that the respective state has a case of refusing the recognition and compulsory enforcement of an arbitral award rendered in the territory of the RA.

3 | Peculiarities of the Application of the Principle of Reciprocity and the Presumption of Reciprocity

While establishing the presumption of reciprocity, the Law of the Republic of Armenia did not in any way foresee the procedure for the application of this principle, namely: whether reciprocity applies if there is no ratified international treaty, or whether it is also applicable in the presence of a corresponding international treaty. In the case of permitting the recognition and compulsory enforcement of foreign judicial acts, reciprocity is, as a rule, applicable in the absence of a corresponding international treaty.

Furthermore, the basis for applying reciprocity can be accepted as either:

1. The existence of cases of recognition and enforcement of judicial acts of the requesting state in the foreign judicial practice (Peru, China); or
2. The legal possibility and compatibility with domestic legislation to recognize and enforce judicial acts of another state in the foreign state's legislation based on the principle of reciprocity (Germany, Turkey); or
3. Conditioning reciprocity on the absence of confirmed cases of refusal to recognize and compulsorily enforce the requesting state's judicial acts in the territory of the foreign state (presumption of reciprocity) (Armenia, Ukraine, Macedonia, etc.).

In our opinion, to correctly determine the procedure for applying the principle of reciprocity, it is first necessary to clarify whether, under RA legislation, we view reciprocity from the perspective of refusing recognition and enforcement,

or from the perspective of allowing recognition and compulsory enforcement. These two approaches differ significantly and predetermine the effect of requiring a corresponding international treaty when applying reciprocity. Furthermore, a unified approach to this issue has not yet been formed in legal literature or in legal practice^[12].

For example, in Ukraine, foreign judicial acts are recognized and permitted for enforcement if their recognition and enforcement are provided for by an international treaty ratified by the Verkhovna Rada of Ukraine, or on the principle of reciprocity^[13]. Based on this formulation, authors in procedural science argue that the principle of reciprocity is applicable exclusively in the absence of a relevant international treaty, or that the existence of a treaty makes the application of the principle of reciprocity inappropriate^[14].

However, when reciprocity is viewed as a ground for refusing the recognition and compulsory enforcement of an award, its application is in no way conditioned by the presence or absence of a corresponding international treaty. Moreover, the application of the principle of reciprocity with this interpretation has been criticized in legal literature, as it allows the requesting state to refuse the recognition and enforcement of an act rendered by or in the territory of a state that has already demonstrated such conduct. Furthermore, Russian courts have, as a result of applying the principle of reciprocity, refused the recognition and compulsory enforcement of foreign acts on the grounds that cases of recognition of Russian court acts were not recorded in the foreign state (presumption of lack of reciprocity or negative reciprocity)^[15].

The above allows us to identify two legal problems simultaneously. First, it cannot be considered lawful to refuse the recognition and compulsory enforcement of the acts of any state in response, if this leads to a violation of Convention obligations. It follows that if one state has violated the Convention requirements, the requesting state repeats the same violation.

It is even more arguable to refuse the recognition and enforcement of a foreign state's judicial acts if there are no cases of that state recognizing the

¹² Léon Julliot de la Morandière, *Travaux de la Commission de réforme du Code civil (année 1949–1950)* (Paris: Librairie Sirey), 770–773.

¹³ Civil Procedure Code of Ukraine of 18 March 2004, art. 390.

¹⁴ See G. Yu. Fedoseeva, *International Private Law*, 4th ed. (Moscow: Eksmo, 2007), 324; A. I. Muranov, *Enforcement of Foreign Judicial and Arbitral Decisions: Competence of Russian Courts* (Moscow: Yusticinform Legal House, 2002), 63–65.

¹⁵ R. V. Zaitsev, *Recognition and Enforcement of Foreign Judicial Acts in Russia* (Moscow: Wolters Kluwer, 2007), 146–147.

judicial acts of the requesting state. This means that, on the one hand, the state has undertaken the Convention obligation to ensure the protection of subjective rights and the realization of the right to a fair trial, including the right to compulsory enforcement^[16], but does not fulfill that obligation because evidence confirming cases of recognition of its own judicial acts in the foreign state has not been presented.

In this regard, Germany's experience is quite interesting and unique: it rejected the exequatur of Belarusian court acts because Belarusian legislation did not provide for the possibility of recognizing foreign judicial acts on the basis of reciprocity, and no corresponding international treaty existed between the parties^[17].

This is particularly crucial in the case of the recognition and enforcement of foreign arbitral awards. If a state party to the New York Convention groundlessly refuses the recognition and compulsory enforcement of an arbitral award rendered in the territory of the RA, the RA courts may gain the possibility to refuse the recognition and compulsory enforcement of arbitral awards rendered in the territory of the corresponding state through the application of reciprocity, regardless of the existence of Convention grounds for refusing recognition and enforcement.

It is no secret that refusing the recognition and compulsory enforcement of foreign acts on the principle of reciprocity primarily contradicts private interests. Refusing to recognize and permit the enforcement of foreign arbitral awards primarily violates the rights and interests of the individuals (natural and legal) regarding whose substantive rights and obligations the award was rendered, and those individuals bear no fault that a ratified agreement does not exist between the place of arbitration and the requesting state.

The application of reciprocity to refuse the recognition and compulsory enforcement of arbitral awards even in the presence of a ratified agreement is also problematic. This is because the requesting state rejects the protection of the rights and interests of a party to the arbitration in its territory, either because cases of the state of the place of arbitration refusing the recognition and compulsory enforcement of the requesting state's arbitral awards have been recorded, or because the existence of reciprocity has not been established.

¹⁶ *Hornsby v. Greece*, no. 18357/91 (European Court of Human Rights, 19 April 1997), § 40.

¹⁷ O. Tolochko, „Consideration of Civil Cases with a Foreign Element” *Judicial Power* (Minsk), no. 3 (1998).

Moreover, it should be noted that the grounds for refusing the recognition and compulsory enforcement of an arbitral award provided for by the New York Convention can be conditionally classified into two groups:

1. Grounds aimed at protecting private interests, where the burden of proof is borne by the party objecting to the recognition and enforcement or seeking annulment (grounds provided for in Article 5, Part 1 of the Convention).
2. Grounds aimed at protecting public interests, the existence of which the court determines ex officio (grounds provided for in Article 5, Part 2 of the Convention).

In this regard, when applying reciprocity, the court must necessarily consider the extent to which the party to the arbitration acted lawfully and properly fulfilled their burden of proof in court. Otherwise, it would mean that as a result of the improper conduct of a party to the arbitration, negative consequences could be extended to other individuals who should not bear responsibility for the incomplete or erroneous realization of the parties' procedural rights and obligations in the court of the place of recognition and enforcement of the arbitral award.

In our opinion, for the application of reciprocity, discriminatory or improper conduct by the court of the corresponding state should be established. Even then, the retaliatory actions of the requesting state's court in the context of refusing to protect private interests are not justified in any way.

It is precisely for this reason that it is proposed in procedural science that states define specific grounds for refusing the recognition and compulsory enforcement of both foreign judicial acts and arbitral awards, which would be aimed at ensuring the lawfulness of granting exequatur and would balance public and private interests^[18]. That is, these grounds would operate regardless of the existence of an international agreement or reciprocity.

It is characteristic that in the practice of international civil procedure, there is currently a tendency to either completely abandon the principle of reciprocity or limit its application, considering the operation of various international agreements aimed at protecting fundamental human rights and the priority of fulfilling Convention obligations without any conditions.

¹⁸ P. M. North, J. J. Fawcett, *Cheshire and North's Private International Law* (London: Butterworths, 1999), 499–502; *European Commentaries on Private International Law: Brussels I Regulation*, ed. Ulrich Magnus, Peter Mankowski (Munich: Sellier European Law Publishers, 2007), 539–541; Alan Redfern, Martin Hunter, *Law and Practice of International Commercial Arbitration* (London: Sweet & Maxwell, 1999), 99–108.

Therefore, the first thing that needs to be clarified is whether, in the logic of the RA Law “On Commercial Arbitration,” the principle of reciprocity is a ground for recognizing and enforcing arbitral awards, or a ground for refusing *exequatur* (recognition and enforcement).

Part 3 of Article 35 of the RA Law “On Commercial Arbitration,” by establishing the presumption of reciprocity (reciprocity is presumed to exist unless proven otherwise), stipulates it as a basis for the recognition and compulsory enforcement of an arbitral award rendered outside the territory of the RA (Arbitral awards rendered outside the territory of the Republic of Armenia shall be recognized and enforced in the territory of the Republic of Armenia on the principle of reciprocity, in accordance with the law, other legal acts, and international treaties of the Republic of Armenia).

Moreover, this view is also supported by the fact that when considering the issue of recognition and compulsory enforcement of arbitral awards based on the principle of reciprocity, courts take as their basis the absence of the grounds provided for in Article 36 of the RA Law “On Commercial Arbitration” and Article 5 of the New York Convention. That is, the court recognizes and permits the compulsory enforcement of the arbitral award if the legislative or conventional grounds for refusing recognition and compulsory enforcement – which do not foresee reciprocity – are absent. The same approach is enshrined in Article 329 of the RA Civil Procedure Code, which stipulates that the grounds for refusing the recognition and compulsory enforcement of a foreign arbitral award are provided for by the Law of the Republic of Armenia “On Commercial Arbitration.”

A systemic analysis of the legal regulations under discussion shows that the principle of reciprocity is a ground for the recognition and compulsory enforcement of foreign arbitral awards, and in the presence of an international agreement, it cannot be interpreted in the context of refusing *exequatur*.

The next important question to clarify is whether the recognition and compulsory enforcement of arbitral awards on the basis of reciprocity is possible only in the absence of a corresponding international treaty.

We believe it is necessary to deviate from the stereotype that reciprocity, as a ground for recognition and compulsory enforcement, is applicable only in the absence of a corresponding international convention. Considering that 172 states have ratified the New York Convention^[19], it is practically rare to

¹⁹ New York Convention, <https://www.newyorkconvention.org> [accessed: 20.09.2025].

encounter a situation where a request is made in the RA for the recognition and compulsory enforcement of an arbitral award rendered in the territory of a non-Convention member state. Modern trends in globalization and the development of international trade and economic relations show that commercial turnover occurs mainly between states that have ratified the Convention, as the presence of effective mechanisms for resolving disputes arising from international commercial relations is a vital additional incentive for the development and stability of those relations.

A logical question thus arises: why should the principle of reciprocity be applied for the recognition and enforcement of an arbitral award if a corresponding international treaty already exists? Furthermore, how should reciprocity be interpreted and applied so that its application is lawful and does not contradict the obligations undertaken by the RA and the fundamental provisions for ensuring private rights?

As already noted, the arbitration law provides for positive reciprocity, which, in the presence of a corresponding international treaty, can be applied exclusively for the purpose of ensuring more favorable conditions to guarantee the recognition and compulsory enforcement of arbitral awards.

Accordingly, ensuring more favorable conditions for the recognition and compulsory enforcement of arbitral awards through the application of the principle of reciprocity not only justifies the practical significance of this principle but also does not contradict the very logic of the Convention. Specifically, according to the second paragraph of Article 3 of the Convention, the recognition and enforcement of arbitral awards to which the Convention applies shall not be subjected to *substantially more onerous conditions* (emphasis added by the author) or higher fees or charges than are imposed on the recognition and enforcement of domestic arbitral awards.

That is, while the Convention prohibits the application of onerous conditions, it does not simultaneously preclude the possibility of ensuring more favorable conditions for the recognition and compulsory enforcement of foreign arbitral awards. Therefore, reciprocity can be applied both in the case where a ratified international agreement is absent between two states (the probability of which is minimal in the case of the New York Convention), and for the purpose of ensuring more favorable conditions for permitting the recognition and compulsory enforcement of arbitral awards than those provided for by the Convention's regulations, provided it does not conflict with the imperative norms of national legislation.

Specifically, the application of reciprocity may relate to the exercise of the court's discretionary or evaluative powers.

For instance, courts typically refuse the recognition and compulsory enforcement of an arbitral award if they find that a Convention ground for refusal exists. Nevertheless, courts may also permit the enforcement of an arbitral award even in cases where the existence of a Convention ground for refusal has been established, provided those grounds amount to minor or non-material violations of the arbitral proceedings. This means the *de minimis* rule is applied, where courts, relying on Article 5(1) of the Convention (which states that recognition and enforcement of an arbitral award may be refused), exercise discretion when allowing compulsory enforcement, by assessing the nature and impact of the violation leading to the refusal.

For example, the High Court of Hong Kong, in one case, held that the court, even with the existence of a ground for refusing compulsory enforcement of an arbitral award, can permit its enforcement if the committed violation did not affect the outcome of the case (specifically, materials not submitted to the arbitral tribunal would still not have changed the tribunal's position on resolving the dispute). In another case, the court found that although the respondent did not waive their right to object to the arbitral tribunal's lack of jurisdiction, the arbitral award was still subject to compulsory enforcement because the respondent's rights were not substantially violated during the arbitration[20]. In cases seeking to annul an arbitral award based on procedural violations, courts effectively evaluate the importance of the violated requirements and the consequences of such a violation.

In this scenario, reciprocity may manifest in granting exequatur despite the existence of grounds for refusing the recognition and compulsory enforcement of an arbitral award, which is unequivocally interpreted as ensuring more favorable conditions for the recognition and compulsory enforcement of arbitral awards.

4 | Provision of Judicial Assistance on the Principle of Reciprocity

Reciprocity can also be manifested in the matter of providing judicial assis-

²⁰ UNCITRAL, *Digest of Case Law on the Model Law on International Commercial Arbitration* (2012), 174, para. 9.

tance to arbitration, which may imply both the recognition and enforcement of interim decisions of a foreign arbitration, as well as obtaining judicial assistance at the request of a party. Specifically, Article 6 of the RA Law “On Commercial Arbitration” and Article 332, Part 1 of the RA Civil Procedure Code regulate the grounds and procedure for providing judicial assistance to arbitration. They stipulate that a party or the arbitral tribunal may apply to the court of the place of arbitration, which factually limits the possibility of seeking judicial assistance for foreign arbitration in the territory of the RA. The only exception is the application of interim measures for a claim, as, according to Article 17, Part 3 of the RA Law “On Commercial Arbitration,” interim measures requested or ordered by an arbitral tribunal through an interim award may be recognized, enforced, or annulled by the court, provided the requirements established by RA legislation are met.

It follows that in all cases where the territory of the Republic of Armenia is not the place of arbitration, a party is restricted from obtaining judicial assistance in RA courts. For instance, when it is necessary to request evidence or certain documents from the arbitral party or other persons, obtaining the corresponding judicial assistance based on a foreign arbitral award becomes problematic.

In our opinion, it would be logical to adopt the principle of applying to the court of both the place of arbitration and the place of enforcement of the arbitral award as a basis for obtaining judicial assistance. This would allow a party to apply to an RA court for assistance even in the case of a foreign arbitration. Notably, the mechanism for obtaining judicial assistance is not provided for even by the New York Convention. Of course, the Convention could be interpreted broadly, encompassing all arbitral decisions within the scope of recognition and enforcement, but the issue becomes complicated in all cases where a party applies for assistance without a corresponding arbitral decision (for example, seeking assistance regarding the tribunal’s jurisdiction as a preliminary matter).

The only option for resolving the issue at present is providing judicial assistance based on the principle of reciprocity, which cannot fully guarantee the protection of private interests. In cases where the state of the place of arbitration has refused to provide judicial assistance, RA courts would gain the possibility to reciprocally refuse assistance. We must also remember that Article 35, Part 3 of the RA Law “On Commercial Arbitration” speaks only of reciprocally recognizing arbitral awards, which excludes the issues of providing

judicial assistance from its regulatory scope.

We find that RA courts can provide judicial assistance to foreign arbitration based on the principle of reciprocity, but this should be done by applying the presumption of reciprocity. This approach would not only be consistent with the RA's Convention obligations but would also provide a more favorable environment for protecting the rights and interests of the parties through arbitration. Therefore, reciprocity can be considered applicable in matters of recognizing and enforcing arbitral acts, as well as providing judicial assistance to arbitration, only for the purpose of ensuring conditions more favorable than those provided for by the Convention and legislative regulations.

5 | Types of Reciprocity

Furthermore, in the case of foreign arbitration, the limits of the application of the types of reciprocity deserve separate attention. Two types of reciprocity are distinguished in legal literature: complete and partial^[21]. In the first case, the requested state refuses to recognize a judicial act of a foreign state's court if the judicial practice of the latter includes instances of refusing the recognition and enforcement of judicial acts of its own court in any case. In the presence of partial reciprocity, the court of the requested state will refuse to recognize the foreign judicial act if the foreign court has refused the recognition and enforcement of a judicial act issued by its own courts in a similar case.

Since, for the purposes of the RA Law "On Commercial Arbitration," the principle of reciprocity, in the presence of a ratified international agreement, cannot be interpreted as a ground for refusing the recognition and compulsory enforcement of arbitral awards, and considering the establishment of the presumption of reciprocity, the application of full or partial reciprocity in this case acquires a different meaning and significance, demonstrating completely different characteristics compared to the procedure for granting exequatur for foreign judicial acts.

Specifically, based on full or partial reciprocity, RA courts should not only refrain from refusing the recognition and compulsory enforcement of arbitral

²¹ Eszter Papp, Nobumichi Teramura, „Enforcing Singapore Judgments in Cambodia: Reciprocity Under the Loupe” *Asian Journal of International Law* 15, no. 2 (2025): 252–280; Clyde & Co, *Recognition and Enforcement of Foreign Court Judgments in the PRC* (2025).

awards rendered outside the territory of the RA, but the presumption of reciprocity predefines the recognition of all arbitral awards rendered outside the territory of the RA, unless there are cases where the courts of that specific state have refused the recognition and compulsory enforcement of arbitral awards carried out in the territory of the RA.

It turns out that partial reciprocity does not operate in this case, as the presumption of reciprocity has given a general nature to the granting of exequatur. The presumption of reciprocity and partial reciprocity are in opposition in the context of arbitration because partial reciprocity is applied exclusively to allow the recognition and compulsory enforcement of arbitral awards in similar or identical cases, which implies the existence of an obligation for the requesting party to refer to an established case of recognition of an arbitral award carried out in the territory of the requested state by a court of the corresponding state, contrary to the logic of the presumption of reciprocity.

Moreover, the wording of the presumption of reciprocity in the Arbitration Law is such that, in the absence of a corresponding agreement, it allows the court to apply reciprocity both as a ground for recognition and as a ground for refusing recognition and compulsory enforcement.

Specifically, if the court discovers a case where the recognition of an arbitral award carried out in the territory of the requesting state was refused, it can, in turn, refuse the recognition of an arbitral award carried out in the territory of the corresponding state, applying the principle of partial reciprocity. Partial reciprocity is applicable in this case if the corresponding state is not a party to the New York Convention, which minimizes the disregard or violation of the private interests of the party seeking recognition of the arbitral award.

Therefore, refusing the recognition and compulsory enforcement of arbitral awards on the basis of reciprocity is permissible in the RA only if a request is made for the recognition and compulsory enforcement of an arbitral award carried out in the territory of a state that is not a party to the New York Convention, and then only for identical or similar cases (partial reciprocity).

Of course, from the perspective of ensuring private interests, it would be more appropriate for the RA legislation to establish general grounds for refusing the recognition and enforcement of arbitral awards that would be applicable to granting exequatur for all arbitral awards carried out outside the territory of the RA, regardless of whether the state is a party to the New York Convention. However, the codification of the principle of reciprocity factually limits this possibility. It must also be considered that the number of states that

have ratified the Convention practically renders the principle of reciprocity meaningless (unless, of course, it is used as a ground for refusing recognition), and it primarily gains practical significance in the context of providing judicial assistance to arbitration.

6 | Conclusion

In summary, the principle of reciprocity may be applied both in the absence of a ratified international treaty between two states and for the purpose of ensuring more favorable conditions for the recognition and enforcement of arbitral awards than those prescribed by the relevant convention framework, provided that such application does not contravene mandatory norms of national legislation.

On the basis of reciprocity, domestic courts may extend judicial assistance to foreign arbitral proceedings. This assistance should be grounded in a presumption of reciprocity, thereby fostering a more favorable legal environment for the protection of the rights and legitimate interests of parties through arbitration.

The courts of the Republic of Armenia should not refuse recognition and enforcement of arbitral awards rendered outside the territory of the Republic of Armenia on the grounds of complete or partial reciprocity. Rather, the presumption of reciprocity implies that arbitral awards rendered abroad are to be recognized and enforced, unless there is evidence that the courts of the state in which the award was rendered systematically refuse recognition and enforcement of arbitral awards issued in the territory of the Republic of Armenia. Furthermore, refusal of recognition and enforcement of arbitral awards on the basis of reciprocity in respect of states that are parties to the 1958 New York Convention cannot be regarded as legally justified.

Accordingly, under the current legal framework of the Republic of Armenia, refusal of recognition and enforcement of arbitral awards, or denial of judicial assistance on the basis of reciprocity, is permissible only where the relevant arbitration was conducted in a state that is not a party to the New York Convention or to another applicable framework agreement. Even in such cases, reciprocity may be invoked solely in identical or substantially similar circumstances (partial reciprocity), thereby minimizing the risk of undue interference with or violation of the claimant's private interests in arbitration proceedings.

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