

New York's Appellate Division Holds that Chinese Judgment Should Not Be Denied Enforcement on Systemic Due Process Grounds

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Should courts in the United States refuse to recognize and enforcement Chinese court judgments on the ground that China does not provide impartial tribunals or procedures compatible with the requirements of due process of law? Last April, a New York trial court said yes in *Shanghai Yongrun Investment Management Co. v. Kashi Galaxy Venture Capital Co.*, relying on State Department Country Reports as conclusive evidence that Chinese courts lacked judicial independence and suffered from corruption. As Professor Wenliang Zhang and I pointed out on this blog, the implications of this decision were broad. Under the trial court's reasoning, no Chinese judgment would ever be entitled to recognition in New York or any of the other U.S. states that have adopted Uniform Acts governing foreign judgments. Moreover, U.S. judgments would become unenforceable in China because China enforces foreign judgments based on reciprocity. But on March 10, just three weeks after oral argument, New York's Appellate Division answered that question no, reversing the trial court's decision.

As background, it is important to note that the recognition and enforcement of foreign country judgments in the United States is generally governed by state law. Twenty-eight states and the District of Columbia have enacted the 2005 Uniform Foreign-Country Money Judgments Recognition Act. In nine additional states, its predecessor, the 1962 Uniform Foreign Money-Judgments Recognition Act, remains in effect. At the time of the trial court's decision, the 1962 Uniform Act governed in New York, but it was superseded by the 2005 Uniform Act on June 11, 2021. Both Uniform Acts provide for the nonrecognition of a foreign judgment if "the judgment was rendered under a judicial system that does not

provide impartial tribunals or procedures compatible with the requirements of due process of law.”

This systemic lack of due process ground for nonrecognition comes from the U.S. Supreme Court’s 1895 decision in *Hilton v. Guyot*, issued at a time when lawyers routinely distinguished between civilized and uncivilized nations. It was incorporated in the 1962 Uniform Act at the height of the Cold War, and included in the 2005 Uniform Act without discussion, apparently to maintain continuity with the 1962 Act. Despite its codification for nearly sixty years, fewer than five cases have refused recognition on this ground. The leading case is *Bridgeway Corp. v. Citibank*, involving a Liberian judgment issued during its civil war, when the judicial system had almost completely broken down.

Shanghai Yongrun involved a business dispute between two Chinese parties, which was submitted to a court in Beijing under a choice-of-forum clause in the parties’ agreement. The defendant was represented by counsel, presented its case, and appealed unsuccessfully. Nevertheless, the New York trial court held that the Chinese judgment was not enforceable because China lacks impartial tribunals and procedures compatible with due process. The court relied “conclusively” on China Country Reports prepared by the State Department identifying problems with judicial independence and corruption in China.

In a brief order, the Appellate Division reversed. It concluded that the trial court should not have dismissed the action based on the Country Reports. These Reports did not constitute “documentary evidence” under New York’s Civil Practice Law and Rules. But more fundamentally, reliance on the Country Reports was inappropriate because they “primarily discuss the lack of judicial independence in proceedings involving politically sensitive matters” and “do not utterly refute plaintiff’s allegation that the civil law system governing this breach of contract business dispute was fair.”

On this, the Appellate Division was clearly correct. The State Department prepares Country Reports to administer provisions of the Foreign Assistance Act denying assistance to countries that consistently engage in gross violations of human rights, not to evaluate judicial systems for other purposes. See 22 U.S.C. §§ 2151n & 2304. The Reports themselves warn that they “they do not state or reach legal conclusions with respect to domestic or international law.” Moreover, if these Reports were used to determine the enforceability of foreign judgments,

China would not be the only country affected. An amicus brief that I wrote and fourteen other professors of transnational litigation joined noted that State Department Country Reports expressed similar concerns about judicial independence, corruption, or both with respect to 141 other countries, including Argentina, Brazil, Italy, Japan, Mexico, South Korea, and Spain.

The Appellate Division concluded that “[t]he allegations that defendants had an opportunity to be heard, were represented by counsel, and had a right to appeal in the underlying proceeding in the People’s Republic of China (PRC) sufficiently pleaded that the basic requisites of due process were met.” By focusing on the facts of the specific case, the Appellate Division appears to have taken a case-by-case, rather than a systemic, approach to due process. Such a case-by-case approach is expressly permitted under the 2005 Uniform Act, which adds as a new ground for nonrecognition that “the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.” Such a case-specific approach avoids the overinclusiveness of denying recognition on systemic grounds when there are no defects in the judgment before the court.

The Appellate Division’s decision in *Shanghai Youngrun* continues the growing trend that Professor Zhang and I have noted of U.S. decisions recognizing and enforcing Chinese judgments. Just two months before this decision, in *Yancheng Shanda Yuanfeng Equity Investment Partnership v. Wan*, a U.S. district court in Illinois recognized and enforced a Chinese judgment in another business dispute. The court expressly rejected the New York trial court’s holding in *Shanghai Yongrun*, noting “the multiple federal cases ... where American courts enforced Chinese court judgments and/or acknowledged the adequacy of due process in the Chinese judicial system.” One hopes that this trend will continue.