

First Case of Reciprocal Commitment: China Requests Azerbaijan to Enforce its Judgment Based on Reciprocity

It has been a hot topic to explore the recognition and enforcement of judgments between China and other countries. The core issue of the topic is the role of reciprocity under Chinese law and practice concerning the recognition and enforcement of foreign judgments in China. Reciprocity was narrowly interpreted by Chinese courts in the past, blocking the circulation of lots of foreign judgments in China. Encouragingly, China's Supreme People's Court (SPC) is adopting new rules to interpret reciprocity, which is now far more favorable to establishing the reciprocal relationship between China and foreign countries. Then it is up to lower Chinese courts to follow up and the new reciprocity rules established by the SPC are tested in practice.

This piece of comment is written by Dr. Meng Yu, lecturer at China University of Political Science and Law, and co-founder of China Justice Observer.

In 2019, in the Zhou et al. v. Vusal case, China's request to Azerbaijan for judgment recognition and enforcement was accompanied by its reciprocal commitment through a diplomatic note, marking the first time China made a reciprocal commitment to a foreign country regarding recognition and enforcement of foreign judgments.

Key takeaways:

- In the field of recognition and enforcement of foreign judgments (REFJ), the new reciprocity criteria in China include three tests, namely, de jure reciprocity, reciprocal understanding or consensus, and reciprocal commitment.

- In 2019, in the *Zhou et al. v. Vusal* case, China's request to Azerbaijan for judgment recognition and enforcement was accompanied by its reciprocal commitment through a diplomatic note, marking the first time China made a reciprocal commitment to a foreign country regarding REFJ.
- A reciprocal commitment is essentially a unilateral promise that takes effect upon being made.
- Before making such a commitment, China's Supreme People's Court (SPC) examines and decides on the matter. This is logically consistent with the requirement from the Conference Summary that Chinese courts need to examine, on a case-by-case basis, the existence of reciprocity, on which the SPC has the final say.

Reciprocity is not new but reciprocal commitment is.

Readers familiar with the topic of recognition and enforcement of foreign judgments (REFJ) will undoubtedly be familiar with the concept of "reciprocity". Although its manifestations and extent vary, the principle of reciprocity serves as the basis or precondition for REFJ in many countries, including China.

However, few countries have developed the concept of reciprocity as creatively as China, which has had at least five different standards for its determination—*de facto* reciprocity, presumptive reciprocity, *de jure* reciprocity, reciprocal understanding or consensus, and reciprocal commitment.

Among these, Reciprocal Commitment, as the most recently developed reciprocity criterion, often leaves people puzzled. What exactly is this unicorn-like criterion?

In 2019, in the case of *Zhou et al. v. Vusal* (hereinafter the "Vusal Case"), China requested Azerbaijan to recognize and enforce a judgment, making a commitment through diplomatic notes. This was the first reported case in which China made a reciprocal commitment to a foreign country regarding REFJ. This case will unveil to us the nature of Reciprocal Commitment.

I. What is "Reciprocal Commitment"?

Since the 2000s, reciprocity criteria have evolved significantly, reflecting China's efforts to liberalize its REFJ rules.

Over a decade, the early, high-threshold reciprocity criterion—*de facto* reciprocity, was abandoned. One after another, more pragmatic and flexible criteria such as presumptive reciprocity and *de jure* reciprocity have emerged in the form of judicial policies, declarations, and memoranda. Following the release of the “Conference Summary of the Symposium on Foreign-related Commercial and Maritime Trials of Courts Nationwide” (hereinafter the “Conference Summary”) of the Supreme People’s Court (SPC), a new generation of more open reciprocity criteria[1] has been established.

The new reciprocity criteria include three tests, namely, *de jure* reciprocity, reciprocal understanding or consensus, and reciprocal commitment, which also coincide with possible outreaches of legislative, judicial, and administrative branches.

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It then begs the question, what exactly is reciprocal commitment?

According to the Conference Summary, the test of reciprocal commitment means that when trying a case applying for recognition and enforcement of a foreign judgment or ruling, the people’s court may recognize the existence of reciprocity, if “the country where the judgment-making court is located has made reciprocal commitments to China through diplomatic channels or China has made reciprocal commitments to the country where the judgment-making court is located through diplomatic channels, and there is no evidence that the country where the judgment-making court is located has refused to recognize and enforce a Chinese judgment or ruling on the ground of lack of reciprocity”.

For a while, reciprocal commitment was like a mysterious unicorn—because there were almost no cases or reports mentioning it. In contrast, the other two reciprocity tests have well-known instances, including the SPAR case, which involved the *de jure* reciprocity, where an English judgment was recognized and enforced in China for the first time[4]; the China-Singapore MOG, which

demonstrated reciprocal understanding[5]; and the Nanning Statement, which involved reciprocal consensus[6].

One year after the Conference Summary, the first public document on reciprocal commitment finally appeared. This is the Vusal case, which was introduced as a typical case of reciprocal commitment in “Understanding and Application of the *Conference Summary*” authored by the SPC’s Fourth Civil Division, published in June 2023.

II. The Case of Vusal: First Case of Reciprocal Commitment

In July 2018, Yiwu Primary People’s Court, Zhejiang (the “Yiwu Court”), issued a first-instance civil judgment (2018) Zhe 0782 Min Chu No. 8836, in the case of a sales contract dispute between Zhou et al. and the defendant Vusal (a national of Azerbaijan). The judgment ordered the defendant Vusal to pay the plaintiffs Zhou et al. for the goods. The defendant Vusal failed to appear in the court after being duly summoned, and did not appeal during the appeal period. The judgment became effective in August of the same year.

After the judgment took effect, Vusal refused to satisfy the judgment, and the plaintiff applied to the court for enforcement of the judgment. The Yiwu Court filed the case for enforcement but did not find any of Vusal’s enforceable asset in China.

In October 2019, the Yiwu Court reported to the SPC to request the competent court of the Republic of Azerbaijan to recognize and enforce the judgment.

Upon review, SPC decided to submit the judicial assistance request to Azerbaijan, and to make a reciprocal commitment.

Finally, when making a judicial assistance request, the Chinese Embassy in Azerbaijan made a commitment to Azerbaijan in a diplomatic note that “it will provide equal assistance to Azerbaijan under similar circumstances in accordance with the law”.

III. Comments

This case marks the first time that China has proactively made a reciprocal commitment to a foreign country regarding REFJ. It is still unclear whether Azerbaijan has acted on China’s judicial assistance request for REFJ. There is also

no available report or discussion on how Azerbaijan views the reciprocal commitment made by China through diplomatic notes.

One thing is certain: combined with the Vusal case, the meaning and application of reciprocal commitment have become clearer.

First, a reciprocal commitment is essentially a unilateral promise that takes effect upon being made. This “unilateral” commitment can be made by a foreign country (the future country where the judgment-making court is located) to China (the future requested country), or by China to the foreign country, as exemplified by China’s commitment to Azerbaijan in the Vusal case.

Second, a reciprocal commitment can be regarded as a presumption of the existence of reciprocity. Since the commitment is unilateral and differs from the bilateral reciprocity understanding or consensus, the making of such a commitment does not automatically prove the existence of reciprocity. Instead, reciprocity is presumed unless there is evidence to the contrary (i.e., the other country has previously refused to recognize and enforce a Chinese judgment on the grounds that a reciprocal relationship does not exist).

Third, reciprocal commitments are made through diplomatic channels, as in the Vusal case where the Chinese Embassy in Azerbaijan made the commitment through a diplomatic note. Before making such a commitment, the SPC examines and decides on the matter. This is logically consistent with the requirement from the Conference Summary that Chinese courts need to examine, on a case-by-case basis, the existence of reciprocity, on which the SPC has the final say.

[1]

<https://conflictoflaws.net/2022/chinas-2022-landmark-judicial-policy-clears-final-hurdle-for-enforcement-of-foreign-judgments/>

[2]

<https://www.chinajusticeobserver.com/a/breakthrough-for-collecting-judgments-in-china-series-3>

[3]

<https://conflictoflaws.net/2022/chinas-2022-landmark-judicial-policy-clears-final-hurdle-for-enforcement-of-foreign-judgments/>

[4]

<https://www.chinajusticeobserver.com/a/chinese-court-recognizes-english-commercial-judgment-for-the-first-time>

[5]

<https://www.chinajusticeobserver.com/p/memorandum-of-guidance-between-china-supremecourt-and-singapore-supremecourt-on-recognition-and-enforcement-of-money-judgments>

[6]

<https://www.chinajusticeobserver.com/p/nanning-statement-of-the-2nd-china-asean-justice-forum>