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RECIPROCITY AS A CONDITION FOR THE RECOGNITION OF FOREIGN COURT DECISIONS: POLITICAL-LEGAL ASPECT AND MODERN SIGNIFICANCE IN DOMESTIC AND COMPARATIVE LAW

Abstract

This paper examines the institute of reciprocity as a condition for the recognition of foreign court decisions, with special reference to Serbian law and comparative legal trends, pointing out its political-legal significance in contemporary relations between states. Reciprocity is analyzed as a traditional mechanism for the protection of state sovereignty and the equality of states, but also as an instrument for regulating international legal cooperation. It starts from the distinction between legal, factual, and presumed reciprocity and their role in ensuring reciprocity in cross-border relations, while indicating a gradual transformation from a formal to a functional approach. The analysis of court practice and comparative law decisions shows an evolution from strict formal to material (factual) reciprocity and an increasingly pronounced tendency for reciprocity to be assumed, instead of being formally proven, whereby the center of gravity increasingly moves towards procedural guarantees, public order, and the principle of mutual trust. Special attention is paid to contemporary solutions in the law of the European Union and other legal systems, as well as the impact of

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the Hague Convention on the Recognition and Enforcement of Foreign Court Decisions from 2019 (Hague Judgments Convention 2019), which affirms a model based on procedural standards and not on formal reciprocity. Critical analysis shows that formal reciprocity in modern law is gradually losing its role as a general precondition for recognition and is increasingly giving way to functional models, which reflect the need for balancing between the protection of state sovereignty and the strengthening of international cooperation and trust. It is concluded that the domestic legal system already contains elements of this more modern approach, and that further development should be directed towards strengthening convention and supranational mechanisms of recognition, while retaining reciprocity as a subsidiary instrument in the protection of national interests.

Keywords: recognition of foreign judicial decisions, private international law, factual reciprocity, mutual trust, judicial practice

INTRODUCTION

Reciprocity represents one of the oldest institutions in private international law and, at the same time, one of the key conditions for the recognition of foreign judicial decisions and other legal acts in domestic law. Reciprocity also has a legal-technical character; it contains significant political and material elements, which make it a particularly sensitive institution in the field of international cooperation. Essentially, reciprocity implies mutuality in rights and obligations, that is, the willingness of one state to recognize the legal effect of decisions of another state, provided that the latter acts in the same manner. Over time, the conceptual role of reciprocity has evolved: from a classical instrument of formal mutuality and "reciprocation" to a mechanism that primarily ensures equal treatment in international legal relations (Pavić 2013, 85–86). In practice, this principle functions as a guarantee of mutual respect and balance in international legal relations. In this sense, it is not merely an instrument for the protection of national sovereignty, but also a means of promoting interstate cooperation (Marjanović 2019, 102).

In domestic law, the condition of reciprocity is particularly pronounced in the context of recognizing foreign judicial decisions, which is regulated both in the Law on the Resolution of Conflicts of Laws with the Legislation of Other Countries (Zakon o rešavanju sukoba zakona sa propisima drugih zemalja [ZRSZ] 2006), and it the 2014 draft Law on Private International Law (PIL) of 2014 (Ministarstvo pravde Republike Srbije 2014, čl. 87). In both instruments, reciprocity appears as one of the key procedural prerequisites for the recognition of a foreign judicial decision, while simultaneously providing a framework for comparison with other legal systems. The relevance of this topic is especially evident in light of European and global trends that increasingly move away from formal reciprocity and shift toward models based on mutual trust and standards of fair procedure.

In some jurisdictions, such as Germany, Austria, and Italy, reciprocity functions as a discretionary requirement, while in others, including Serbia, it remains a formal prerequisite for the recognition of foreign court decisions (Stojanović 2009, 54–57). The aim of this paper is to analyze the concept, role, and justification of reciprocity as a condition for the recognition of foreign judicial decisions in contemporary law, with particular attention to the Serbian legal order and comparative legal solutions. Special emphasis is placed on the question of whether this institution, in its traditional form, still retains a justified place or whether it is gradually being replaced by functional models based on material reciprocity and mutual trust. The analysis will cover the normative framework of applicable Serbian law, the draft of the new PIL, as well as relevant solutions in European states and international conventions. Particular attention will be paid to assessing the justification for maintaining the condition of reciprocity in modern law and exploring possibilities for its substitution by principles of mutual trust and international judicial cooperation.

The paper is based on normative, comparative-legal, analytical, and historical methods, with a systematic approach to the analysis of domestic legislation and judicial practice. Based on contemporary comparative legal trends and practices favoring material reciprocity and mutual trust, the paper's working hypothesis posits that the development of the law is likely to move away from strict formal reciprocity, and that for Serbia, the most appropriate model is one of limited, subsidiary reciprocity. In this sense, reciprocity cannot be seen exclusively as a legal institute, but also as a mechanism that reflects wider relations

between states and the balance between sovereignty and international cooperation.

CONCEPT AND LEGAL NATURE OF RECIPROCITY

Concept and Types of Reciprocity

In private international law, reciprocity represents a condition of mutuality that a state imposes as a prerequisite for the recognition of legal facts, foreign judicial decisions, or the legal status of natural and legal persons from another state. The concept is based on the idea of legal equality among states, where each state is willing to recognize the effects of foreign legal acts only if the other state grants the same level of recognition. "Reciprocity has traditionally been understood as an instrument for protecting state sovereignty, as it allows a state to recognize foreign decisions only to the extent that the other state recognizes its own. In this way, mutuality functions as a mechanism of balance among sovereign systems" (Singh 2023, 2–3).

According to Marjanović, "reciprocity represents the historically oldest and most widespread condition for the recognition of foreign judicial decisions, grounded in the idea of equality and mutuality among states" (Marjanović 2019, 102–104). It is not a sanction, but a mechanism for protecting sovereignty, aimed at ensuring that domestic decisions are not placed at a disadvantage relative to foreign ones. Modern theory distinguishes between the positive and negative aspects of reciprocity. Positive reciprocity serves as an incentive for interstate cooperation, whereas negative reciprocity arises when a state imposes restrictive conditions and refuses recognition if the other state does not act similarly. This results in significant differences in the application of the reciprocity institution worldwide. In domestic and comparative legal theory, three forms of reciprocity are commonly distinguished (Stanivuković i Živković 2003, 426–429). The first is legislative (*de iure*) reciprocity, which exists when a law or international treaty explicitly provides that the recognition of a foreign decision depends on mutuality, that is, when the provision stipulates that a foreign decision will only be recognized if that state also recognizes the decisions of our courts. The second form is factual (*de facto*) reciprocity, considered to exist when the law does not contain an explicit provision on mutuality, but the practice of the other state demonstrates that it actually recognizes our decisions. The

third form is presumed reciprocity, which assumes that mutuality exists unless proven otherwise (Kitić 2019, 290). In practice, this means that reciprocity is not actively proven but rebuttably presumed. Courts most frequently rely on factual reciprocity in practice, as proving the existence of formal (normative) reciprocity is often difficult, particularly when no bilateral treaty exists.

Functions and Legal Role

Reciprocity fulfills several important functions in private international law. First, it serves a protective role, ensuring the preservation of state sovereignty and equality of its citizens in international relations. Second, it operates as an incentive: it motivates states to cooperate and mutually recognize judicial decisions, as only in this way can they expect equal treatment. Finally, reciprocity contributes to legal certainty, as it increases the predictability of cross-border relations, particularly in areas such as commerce, family law, and the enforcement of foreign judgments. As Béligh Elbalti emphasizes, the historical role of reciprocity is closely linked to the protection of state sovereignty and the maintenance of equality among states. "Reciprocity functioned as an instrument to balance the fact that one state accepts the judicial authority of another state on its territory: the acceptance of the effects of a foreign judgment implied a willingness to provide identical treatment to the decisions of domestic courts in that foreign state. In this way, reciprocity operated as a mechanism protecting the prerogatives of a sovereign state, ensuring that acceptance of foreign judgments does not undermine its international legal position" (Elbalti 2008, 1). As Pavić notes, "reciprocity is a dynamic condition; its existence does not depend on declarations, but on the actual practice of the foreign state" (Pavić 2013, 87–88), which in practice means that the Court must examine not only legal provisions but also specific cases in which domestic decisions have been recognized in that state.

It can be argued that reciprocity continues to occupy a significant place within the system of private international law. Its value lies not only in the formal condition of mutuality but also in the broader framework that ensures balance among states and promotes legal certainty in cross-border relations. For this reason, understanding reciprocity must encompass both its normative aspect and its practical application, as it is only by connecting these dimensions that one can understand

why this institution, though often criticized, still represents one of the fundamental mechanisms of international judicial cooperation.

HISTORICAL DEVELOPMENT OF THE INSTITUTION OF RECIPROCITY

The idea of reciprocity as a legal principle is deeply rooted in the history of international relations and private law connections between states. Its origins can be traced back to Roman law, where, in relations with *peregrini*, the concept of mutual recognition of certain rights for foreigners appeared, provided that their own state offered the same treatment to domestic citizens. This early form of legal mutuality represented the embryo of the later-formulated institution of reciprocity in private international law (Pavić 2013, 47).

In the Middle Ages, with the expansion of trade and the establishment of the first bilateral agreements between city-states, reciprocity acquired a practical function in commercial law. Its primary purpose was to protect merchants and ensure legal certainty in cross-border transactions (Dicey, Humphrey, and Morris 2000, 22). During the 18th and 19th centuries, as modern nation-states were formed and civil codes codified, the institution of reciprocity became a common condition in laws recognizing foreign judicial decisions, as well as in matters of nationality and property rights of foreigners.

In the first half of the 19th century, the condition of reciprocity became one of the fundamental elements of private international law, particularly in continental Europe. Its essence lay in protecting state sovereignty and controlling the legal consequences of foreign decisions within the domestic legal system. Reciprocity represented a condition of mutuality in the legal protection of citizens, as well as a mechanism to defend the national judiciary from potential injustices of foreign courts. In this sense, the institution reflected the classical understanding of state independence and limited trust between states (Pavić 2013, 91).

In the second half of the 20th century, particularly in Europe, the role of international treaties and supranational mechanisms gradually increased, such as the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention 1968) and Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Lugano Convention 1988), which signaled a shift from formal reciprocity toward a model based on mutual

trust. Concurrently with the development of international cooperation, trade, and human rights, the strict requirement of reciprocity began to be gradually abandoned. Instead of formal reciprocity, factual or material reciprocity emerged, under which recognition may be granted provided there is no evidence of discriminatory treatment by the foreign state (Bogdan 2012, 89). This process led to the eventual abandonment of reciprocity in some states – such as France, Belgium, and Italy – where the principle of legal certainty and international judicial cooperation took precedence. In practice, reciprocity sometimes appears as a means of retaliation. A striking example is the case of the U.S. Supreme Court, *Hilton v. Guyot* (SCOTUS 159 U.S. 113, 1895), where the Supreme Court refused recognition of a French judgment precisely due to the absence of reciprocity" (Singh 2023, 2–3). In this case, the United States Supreme Court developed the concept of international judicial comity and conditional reciprocity, which remained a reference point in American doctrine for many years.

On the other hand, in states such as Germany and Croatia, the condition of reciprocity still exists, but in practice, it is applied moderately, with the presumption of its existence. This indicates that the institution has not been completely abandoned but has transformed into a mechanism that preserves sovereignty while respecting the principles of the international legal community.

In Serbian law, the institution of reciprocity has continuity from the Yugoslav period to the present.[1] Even in the 1982 Law on the Resolution of Conflicts of Laws with the Legislation of Other Countries, reciprocity was an explicit condition for recognizing foreign judicial decisions. However, in the more recent draft Law on Private International Law (Ministarstvo pravde Republike Srbije 2014), the emphasis has shifted toward a more flexible interpretation – either as presumed or factual reciprocity – while simultaneously strengthening the role of international treaties (Pavić 2013, 84–91).

[1] During the Socialist Federal Republic of Yugoslavia, reciprocity was explicitly prescribed in Article 87 of the *Law on the Resolution of Conflicts of Laws with the Regulations of Other Countries* (ZRSZ 1982, čl. 87). This provision stipulated that a foreign court decision could be recognized if "reciprocity exists" between Yugoslavia and the state whose decision was rendered. Such a solution was in line with the traditional understanding of sovereignty and mutuality in interstate relations, but over time, it revealed its limitations in the context of increasing international integration.

The historical development of the institution of reciprocity thus demonstrates a trajectory from strict formal mutuality toward a system based on trust and harmonization of legal orders. Today, in most states, reciprocity is no longer merely an instrument for protecting sovereignty but rather an indicator of equality and maturity of the legal system in international relations. It can be observed that reciprocity, although originally conceived as an instrument of state sovereignty, has over time evolved into a mechanism for enhancing international legal cooperation, particularly in the context of recognizing foreign judicial decisions.

RECIPROCITY IN DOMESTIC LAW

The institution of reciprocity in Serbian domestic law has a continuity that stretches from the Yugoslav period to contemporary legislation and represents a traditional yet evolving mechanism balancing the preservation of state sovereignty with the advancement of international legal cooperation. From the outset, it has been designed as an instrument of legal mutuality, ensuring equality among states in the recognition and enforcement of foreign judicial decisions, as well as in other legal relations with an international element (Marjanović 2019, 121–123).

After the dissolution of the SFRY, Serbia retained this model but has gradually modified it over time. The Law on the Resolution of Conflicts of Laws with the Legislation of Other Countries prescribes that a foreign judicial decision may be recognized "if reciprocity exists" (ZRSZ 2006, čl. 92). However, judicial practice has developed a more moderate approach – the presumption of reciprocity applies unless proven otherwise (Vrhovni kasacioni sud [VKS] 1695/2019; Stanivuković i Živković 2003, 452–453). This solution aligns with modern trends in private international law, where formal proof of reciprocity is increasingly replaced by the presumption of its existence. In this way, the formal condition gains practical flexibility, allowing courts to avoid refusal of recognition for purely formal reasons, except in cases where evidence indicates a discriminatory regime in the state of origin of the decision.

The Draft Law on Private International Law of 2014 envisaged maintaining the reciprocity requirement but stipulated that its existence need not be proven unless there is a justified doubt regarding its absence (Ministarstvo pravde Republike Srbije 2014, čl. 87). The draft explicitly

provided that the recognition of a foreign judicial decision could not be refused solely due to the absence of established reciprocity if the Court determines that decisions of Serbian courts are recognized in practice in the state of origin of the foreign decision (ZRSZ, čl. 94, st. 3). The draft retained reciprocity as a requirement but limited it to property and contractual disputes, while abolishing it in status-related, family, and inheritance matters. A presumption of reciprocity was established, shifting the burden of proof regarding its absence to the party opposing recognition. Reciprocity was also proposed regarding the jurisdiction of foreign courts. The draft introduced a so-called "mirror system," under which the Court of recognition verifies whether a domestic court would have jurisdiction on the same grounds. This increases predictability of outcomes and aligns with modern European approaches (Stanivuković 2014, 294–297). The draft PIL recognizes only those bases of international jurisdiction that also exist under Serbian law. Thus, for instance, the traditionally accepted exorbitant ground of the location of property (*forum rei sitae*) is retained, which means that decisions based on this criterion will be recognized only if they originate from states where the same basis of jurisdiction exists (e.g., Austria, Czech Republic, Denmark, Lithuania, Estonia, Finland, Germany, and the United Kingdom). In contrast, foreign court decisions based solely on the plaintiff's nationality will not be recognized, as this element is not accepted as an independent criterion of international jurisdiction under Serbian law. This particularly affects judgments from France, Luxembourg, Bulgaria, Czechia, Finland, or Malta, where nationality is the sole or dominant jurisdictional basis of the Court of origin (Stanivuković 2014, 294–297).

In the latter, this principle was further elaborated: reciprocity was defined as an instrument of international cooperation rather than a restriction on recognition of foreign judgments. The Serbian legislator thus accepted the view that reciprocity may be based on the factual conduct of another state, not solely on formal regulations, marking a departure from previous understanding and aligning with contemporary European standards. Literature emphasizes that the system of recognition of foreign judgments in Serbia, despite formally retaining the reciprocity condition, operates in practice as a "relatively liberal" regime, where the focus is on procedural guarantees, public policy, and jurisdiction rather than formal proof of mutuality. This confirms that in contemporary

Serbian law, reciprocity has a subsidiary role primarily, and is waived whenever legal certainty and international judicial.

The principle of reciprocity has gradually evolved in Serbian private international law from a strict formal requirement toward a more flexible instrument of international judicial cooperation. Contemporary Serbian legal doctrine accepts the view that reciprocity may be established not only through formal legal provisions but also through the actual conduct and practice of another state, which represents a departure from earlier understandings and aligns Serbian law with contemporary European standards. Literature further emphasizes that the Serbian system for the recognition of foreign judgments, although formally retaining the reciprocity requirement, functions in practice as a "relatively liberal" regime focused primarily on procedural guarantees, international public policy, and jurisdiction, rather than on strict proof of mutuality. This confirms that reciprocity in modern Serbian law has a subsidiary role predominantly and may be set aside whenever the interests of legal certainty and international judicial cooperation so require (Jovanović i Marjanović 2024, 927).

Judicial Practice

In practice, courts have repeatedly addressed the existence of reciprocity as a condition for recognizing foreign judgments. Such an approach is not new in Serbian legal practice: even the Supreme Court of Serbia, in certain cases (VKS 217/93; VKS 210/99), proceeded from the view that, when assessing the existence of reciprocity, the overall legal regime of the other state is relevant, rather than solely a formal confirmation by the competent authority. In a decision of the Supreme Cassation Court of the Republic of Serbia (VKS 123/2015), it was noted that "reciprocity between Serbia and State X is not formally established, but evidence indicates that the courts of State X recognize decisions of Serbian courts, and the condition is therefore fulfilled." This accepts the notion of factual reciprocity, consistent with contemporary comparative law trends. Similarly, the Appellate Court in Novi Sad (Apelacioni sud u Novom Sadu [ASNS] 3365/2018) concluded that "reciprocity is not necessarily a legal relation, but a real mutual recognition." Such

examples indicate a gradual shift in domestic judicial practice from strict formalism to functional interpretation.[2]

In modern Serbian doctrine, reciprocity is primarily understood as a mechanism of legal equality rather than as an obstacle to recognition of foreign decisions. According to Marjanović, reciprocity "should be understood as an instrument for protecting equality among states in legal dealings, not as a means to restrict recognition"; in this sense, it has more political than legal justification (Marjanović 2019, 212–214). Similarly, Pavić argues that "strict formal reciprocity represents an anachronism inconsistent with the contemporary concept of international cooperation," proposing the adoption of factual reciprocity as the standard criterion (Pavić 2013, 145–148).

Although in the field of recognition of foreign judgments reciprocity is increasingly interpreted as presumed or factual, in certain procedural matters it remains a formal requirement (e.g., security for costs, procedural costs, international legal assistance) (Jovičić i Marjanović 2025, 327–328). For instance, exemption of a foreign national from procedural costs is conditioned on proof that their state similarly protects Serbian citizens, while in international legal assistance, reciprocity is required in the service and obtaining of evidence. The practice of the Commercial Appellate Court (Privredni apelacioni sud [PAS], 1019/2018) also indicates that reciprocity is assessed based on general mutual conduct rather than formal confirmation, in line with the principle of factual reciprocity. These examples demonstrate that reciprocity in procedural law continues to function as an instrument of legal equality.

Under Serbian law, the existence of reciprocity is presumed; however, in cases of doubt the Court relies on evidence presented by the parties and on the opinion of the Ministry of Justice, reflecting the concept of so-called divisible reciprocity – an assessment of mutuality for

[2] A similar trend is observed in the case law of Bosnia and Herzegovina. An analysis of around 800 cases concerning recognition of foreign court decisions showed that approximately 80% of these cases involved family matters (divorce, child and family maintenance), while a smaller portion concerned civil and commercial disputes. In cases where courts explicitly examined whether formal requirements, including reciprocity, were met, practical reciprocity was primarily based on the existence of bilateral agreements on judicial cooperation with the countries of origin of the decisions (Deutsche Gesellschaft für Internationale Zusammenarbeit [GIZ] 2021, 53).

a specific type of decision rather than for all decisions in general (Pavić 2013, 80; Stanivuković i Živković 2003, 431). This position has been consistently confirmed in more recent case law of the Supreme Court of Cassation (VKS 2658/2020; VKS 3410/2020), which has explicitly stated in several cases that reciprocity in Serbian law is presumed and that its absence is established only if the party opposing recognition makes the contrary plausible.

Under the former Act on the Resolution of Conflict of Laws, the absence of reciprocity was not an obstacle to the recognition of decisions relating to marital disputes, disputes concerning paternity or maternity, as well as in cases where recognition was requested by a Serbian national (ZRSZ 2006, čl. 92). These exceptions have also been maintained in later practice, based on the principle of protecting personal and family rights as values of a higher order. As Belović points out, Serbian law presumes the existence of reciprocity, which is assessed as factual and may be "divisible," while in marital and paternity/maternity disputes it is not required at all (Belović 2018, 285). In practice, this principle has been affirmed through numerous decisions of first-instance courts, which in such cases do not require proof of reciprocity but instead proceed from the presumption that recognition does not jeopardize the public policy of the Republic of Serbia.

The practical application of this condition is most clearly reflected in judicial practice, where courts determine the existence of reciprocity based on the content of foreign law and information obtained from competent authorities. For example, in one case the Appellate Court in Belgrade established the existence of reciprocity with North Macedonia based on a report of the Ministry of Justice and an analysis of foreign legislation, concluding that formal, statutory reciprocity existed because the regulations of both states allowed for the same type of acquisition of property rights (Apelacioni sud u Beogradu [ASB] 2611/2021, p. 95). This decision clearly demonstrates that domestic courts combine a formal and a material approach to reciprocity, relying on opinions of the executive branch as an auxiliary means rather than as a crucial prerequisite for the recognition of a foreign decision.

Judicial practice confirms that the application of the institution of reciprocity in Serbia is generally moderate and aimed at preserving legal certainty. Thus, the Appellate Court in Novi Sad states that "reciprocity is presumed unless proven otherwise," emphasizing that "a strict formal application of this requirement would lead to legal uncertainty and

would run counter to the spirit of international cooperation" (ASNS 3565/2017). A similar position was adopted by the Supreme Court of Cassation, stressing that "the existence of reciprocity does not need to be specifically proven when it concerns states with which Serbia maintains developed diplomatic relations and a practice of mutual recognition of decisions" (VKS 1695/2019). In doing so, the Court accepted the principle of "factual reciprocity" as sufficient, thereby practically confirming the more liberal approach adopted in legal doctrine.

In another significant case, the Appellate Court in Belgrade examined the issue of reciprocity in the context of the acquisition of ownership rights over real estate by foreigners. The Court held that "the existence of formal (statutory) reciprocity is sufficient to conclude that the legal condition of reciprocity has been fulfilled," even when there is a lack of data regarding its factual application in the practice of the other state (ASB 1472/19). Such reasoning, supported by the opinion of the Ministry of Justice of the Republic of Serbia, confirms that reciprocity in domestic law is interpreted as presumed and that courts avoid formalistic refusals to recognize foreign judgments.

Judicial practice clearly shows that domestic courts no longer view reciprocity as a strict formal category, but rather as an instrument intended to ensure legal balance rather than to restrict the recognition of foreign judgments. By accepting presumed and factual reciprocity, courts have effectively eliminated the risk of unnecessary formalism and adopted an approach consistent with contemporary comparative law trends. This further confirms that the scope of reciprocity in Serbian law is primarily functional rather than doctrinal.

Evolution from Formal to Material Reciprocity – Judicial and Comparative Perspective

Traditionally, domestic and comparative law relied on a formal (legal) understanding of reciprocity, requiring an explicit legal basis – law, international treaty, or official confirmation by state authorities – establishing that another state recognizes Serbian decisions under the same conditions. This formal approach dominated Yugoslav law and earlier Serbian court practice. Recent practice of the Supreme Cassation Court and appellate courts demonstrates increasingly frequent use of material (factual) reciprocity, "which is not based on formal confirmation of mutuality, but on assessing whether, in the legal practice of the other

state, there is a willingness to recognize Serbian decisions" (Pavić 2013, 79).

In European law, the abandonment of formal reciprocity began with the landmark decision of the French Court of Cassation in *Munzer v. Munzer* (Cour de cassation, 1964, 344) which developed the exequatur model in which proof of reciprocity is no longer required; instead, only jurisdiction, respect for procedural rights, and public policy are examined. This approach was further developed in *Cornelissen* (2007) (Cour de cassation, 2007), where the Court condensed recognition criteria to international jurisdiction, respect for the right of defense, and public policy, definitively relegating reciprocity to the background.

The French Court assessed that compliance with fundamental procedural guarantees and public policy was more important than the question of mutuality. A similar development is observed in German law, where the concept of *Gegenseitigkeit* under §328 ZPO is no longer interpreted as a strict formal category, but as a practical assessment of the existence of mutual legal protection (*Zivilprozessordnung* [ZPO], § 328, and commentary in: Geimer/Schütze 2010, 602–604). The German Federal Court of Justice (BGH) repeatedly stated that "reciprocity exists if foreign judgments essentially enjoy equal treatment," even in the absence of an explicit agreement (Bundesgerichtshof [BGH], IX ZR 74/82, NJW 1983, 1559). This position was confirmed in BGH decisions, e.g., 4 June 1992 (BGH, IX ZR 149/91), where recognition of a U.S. judgment was granted based on substantive mutuality despite the absence of a formal bilateral treaty. Similarly, in BGH 20 June 2018 (BGH, XII ZB 285/17), in proceedings for recognition of a California maintenance judgment, it was explicitly determined that the procedure involved "formal reciprocity" under §64 AUG, with reciprocity deemed satisfied based on a publication by the Federal Ministry of Justice (BGH, XII ZB 285/17).

In European Union law, the concept of formal reciprocity has been almost entirely abandoned. A characteristic example is insolvency practice. In *Eurofood* (Court of Justice of the European Communities [CJEU], C-341/04) Court of Justice of the European Communities, Judgment of 2 May 2006, the Court of Justice assumed that the Court of the state where the debtor's center of main interests (COMI) is located is best positioned to open the main insolvency proceedings, and other member states must recognize its judgments, except in cases of manifest public policy violation. Thus, even in matters of considerable economic

and political sensitivity, the Court favors automatic recognition and narrowly interprets grounds for refusal.

In *Krombach v. Bamberski* (CJEU, C-7/98), the Court emphasized that recognition of foreign judgments within the EU is based on mutual trust rather than on a formal reciprocity requirement. This approach was reaffirmed in *Trade Agency v. Seramico Investments Ltd* (CJEU, C-619/10), where the Court stressed that Member States must presume mutual respect for legal standards except in cases involving serious violations of public policy. The jurisprudence of the Court of Justice thus confirms that automatic recognition constitutes the rule, while refusal remains the exception, with reciprocity no longer functioning as an independent precondition for recognition. Similar tendencies may be observed in the contemporary development of Serbian private international law, where reciprocity is increasingly understood as a flexible instrument of international judicial cooperation rather than as a strict limitation on the recognition of foreign judgments. This solution corresponds to the tendencies promoted within the Council of Europe and the principles developed by the Hague Conference on Private International Law. The transition from formal to material reciprocity, therefore, represents not merely a technical modification in the recognition of foreign judgments but also a broader transformation in the philosophy of international cooperation – from the protection of state sovereignty toward greater trust in foreign legal systems. "Although many states formally retain reciprocity, its application is increasingly mitigated; international judicial comity, treaties, and procedural guarantees prevail, while negative reciprocity is gradually marginalized" (Singh 2023, 2–3).

Overall, the development of the reciprocity institution in domestic law demonstrates a gradual shift from a formalist understanding of mutuality to a more flexible and material interpretation of its purpose. Although reciprocity is retained as a condition, its application is no longer rigid or restrictive, focusing instead on preserving legal certainty, predictability, and cooperation with foreign legal systems. This trend reflects both comparative law influences and the domestic practice's need to establish a functional system for recognizing foreign judicial decisions. It confirms that, in Serbian law today, reciprocity is primarily a subsidiary instrument rather than a barrier to international legal cooperation. The evolution from formal to material reciprocity represents one of the most significant steps in modernizing Serbia's

private international law system. This process mirrors broader European trends while simultaneously demonstrating domestic law's capacity to adopt principles that enhance legal certainty and promote international cooperation. In practice, this evolution signifies that the emphasis has gradually shifted from state interests to the protection of parties' legal rights – an attribute of contemporary and mature legal systems.

CONTEMPORARY SIGNIFICANCE AND FORMS OF RECIPROCITY IN COMPARATIVE LAW

Contemporary comparative law development shows a gradual shift from strict, formal reciprocity to a functional model that emphasizes legal certainty, predictability, and mutual trust between legal systems. Instead of an absolute "reciprocity" condition as a gatekeeping filter, an increasing number of legal systems accept presumed or factual (material) reciprocity, while supranational frameworks (EU) entirely replace this condition within their own sphere with the principle of mutual trust. This chapter systematizes current models and practices in key systems: European Union law (and its member states), Germany, France, Croatia, Italy, as well as in comparison with the Anglo-American approach (USA/UK), and the impact of the 2019 Hague Convention (Hague Judgments Convention 2019). Belović emphasizes that no legal system goes to extremes – neither towards complete international openness nor total sovereignty closure – but each system seeks a compromise that respects both international cooperation and the protection of domestic sovereignty (Belović 2018, 276).

In the mutual relations of EU member states, the reciprocity condition has been abandoned and replaced by the principle of mutual trust. The regime for the recognition and enforcement of judgments in civil and commercial matters is governed by Regulation (EU) No. 1215/2012 ("Brussels I Recast"), which abolished the exequatur and is based on almost automatic recognition, with narrow exceptions for public policy and procedural guarantees (Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 (Brussels I Recast), Arts. 36–45). The early case law of the Court of Justice of the EU contributed to the consistent application of this model. In *Hoffmann v. Krieg* (CJEU, C-145/86), the Court emphasized that decisions of member states concerning divorce and its property consequences are recognized automatically, and that reliance on public policy can only

be accepted exceptionally, in a narrow interpretation, when recognition would result in an obvious violation of the basic principles of domestic law.

German law still provides in § 328 ZPO for reciprocity (Gegenseitigkeit) as a condition for recognition of foreign judgments outside the EU framework, but the practice of the Federal Court of Justice (BGH) and provincial courts interprets it functionally: reciprocity exists if the foreign legal system essentially provides "equal or comparable" treatment to German judgments, without requiring formal (contractual or statutory) equivalence (ZPO, § 328). A stable de facto pattern of recognition is sufficient, rather than "mirror" identical conditions. Judges start from the presumption of reciprocity, which the foreign party can rebut by proving systemic refusal to recognize German judgments in the country of origin.

In Croatian law, positive legislation does not recognize reciprocity as a condition for the recognition of foreign court decisions. Under the 2017 Law on Private International Law of the Republic of Croatia (ZMPP 2023), recognition of foreign judgments is no longer conditioned on reciprocity but is based on standard negative presumptions (jurisdiction, right to defense, public policy, absence of conflicting judgments). According to the Croatian PIL Act (ZMPP 2023, čl. 65–73), recognition relies on standard negative presumptions, respect for the right of defense, international jurisdiction of the Court of origin, absence of conflicting judgments, and the preservation of public policy. Reciprocity is nowhere mentioned as a condition for recognition, placing the Croatian regime within the liberal European models. Certain forms of reciprocity are prescribed exclusively in the context of securing litigation costs (ZMPP 2023, čl. 61), but this institute does not affect the recognition of foreign judgments.

French doctrine and practice have abandoned the reciprocity requirement since the *Munzer* decision (Cour de cassation, 1964, 341). Recognition is conditioned by the five-part test of the French exequatur theory (international jurisdiction of the Court of origin, proper procedure and right of defense, validity of applicable law, absence of conflict with public policy, and absence of fraud/conflicting judgments). In later practice (e.g.,Cour de cassation, 05-14.082), this test was condensed to key elements: international jurisdiction, respect for the right of defense, and public policy (Cour de cassation, 05-14.082, 473). The French approach shows that reciprocity is not a condition for the recognition

of foreign judgments; rather, primacy is given to procedural guarantees and international public policy. In the well-known *Prieur* decision (Cass. 1re civ., 1981), the Court of Cassation confirmed that French courts primarily examine respect for the right of defense and international public policy, while reciprocity is not mentioned as an independent prerequisite for recognition (Cour de cassation, 1981). This direction was further confirmed in *Simitch* (Cour de cassation, 83-11.241), where the Court of Cassation accepted recognition of a foreign decision provided there was a sufficiently strong real connection with the state of origin, without requiring proof of reciprocity.

The Italian Law (No. 218/1995) sets out criteria for recognition of foreign judgments (jurisdiction of the Court of origin, procedural guarantees, public policy, absence of conflicting judgments, etc.), without requiring reciprocity as an independent condition (Legge n. 218/1995, Art. 64). Italian practice, influenced by France, insists on procedural correctness and international public policy, while reciprocity is of secondary importance.

In the United States, since the classic *Hilton v. Guyot* (1895) decision, reciprocity has not been a mandatory condition for recognition but is considered a criterion within the doctrine of international judicial comity, while contemporary recognition practice relies primarily on the uniform state laws (SCOTUS 159 U.S. 113 1895). Particularly interesting is the new approach to reciprocity developed in the latest U.S. draft laws. As Stanivuković notes, in this model, reciprocity does not appear as a classical prerequisite for recognizing foreign judgments, but as a mechanism to defend against non-reciprocity in international dealings. Despite the liberal recognition regime existing in the U.S. since 1962, U.S. court decisions in many countries still do not enjoy reciprocity regarding recognition and enforcement. Hence, it has been proposed that the reciprocity condition be used to encourage recognition of U.S. judgments abroad and for concluding international treaties. A key feature of this approach is the absence of discrimination: even when a U.S. citizen requests recognition of a foreign judgment, recognition will be denied if the decision originates from a country that does not recognize U.S. judgments. Another significant innovation is that the burden of proving non-reciprocity is shifted to the party invoking it, with detailed guidance on how the Court may determine that reciprocity truly does not exist (Stanivuković 2014, 292).

In the United Kingdom, common law exequatur (with Statutory Instruments in certain areas) also does not insist on formal reciprocity; the focus is on respecting jurisdiction, proper service, and public policy (Briggs 2021, 707–708). These systems influenced European trends of "de-formalizing" reciprocity.

The 2019 Hague Convention (Hague Judgments Convention 2019 Arts. 4–7 (grounds for refusal); Bonomi and Mariottini, 2021, 1–38) introduces a uniform, independent recognition regime globally, without requiring reciprocity as a condition. Priority is given to clearly defined grounds for refusal (public policy, procedural violations, conflicting judgments, jurisdictional limits). Although the rate of ratification is still gradual, this instrument establishes the long-term direction: reciprocity as a consequence of stable cooperation, not as a prerequisite.

A significant number of countries outside the European Convention area still formally maintain reciprocity as a condition for recognition, often in the form of a negative requirement (grounds for refusal). At the same time, certain countries apply a stricter model known as "diplomatic reciprocity," conditioning recognition on the existence of an international treaty (Stanivuković 2014, 291; Stanivuković i Živković 2003, 453). This fact has particular significance in the context of Serbia. As Stanivuković points out, the complete abolition of the reciprocity requirement in such relations would lead to legal inequality: "judgments from those countries could be recognized and enforced in Serbia, while the reverse would be impossible" (Stanivuković 2014, 291).

Serbian law is closer to the German model – it formally recognizes the condition but applies it flexibly in practice (Stanivuković i Živković 2003, 452–453). According to the Law on the Resolution of Conflicts of Laws with the Regulations of Other Countries, the recognition of foreign judgments is conditioned on the existence of reciprocity. However, the 2014 Draft Law on Private International Law introduces a modern formulation: the reciprocity condition is formulated functionally–the foreign judgment is recognized if the Court determines that Serbian court decisions in those matters are recognized in the state of origin; reciprocity is presumed unless proven otherwise (Ministarstvo pravde Republike Srbije 2014, čl. 185, st. 2 i 4).

Based on the comparative law review, three dominant models of reciprocity application can be observed. The first is formal, or normative reciprocity, which is rarely applied and requires the existence of an explicit, written legal basis proving reciprocity; this approach is

characteristic of older doctrine and still exists in some statutes. The second is material, or factual reciprocity, which is dominant in most systems outside the European Union and is based on assessing the practice of the state of origin of the judgment: formal contractual reciprocity is not necessary, as is visible in German and partially Serbian law. The third model, characteristic of the internal legal order of the European Union, is based on the principle of mutual trust, where the classical condition of reciprocity is completely replaced by almost automatic recognition of judgments, with very narrow exceptions concerning public policy and respect for basic procedural guarantees. The elimination of strict reciprocity within the EU and its functional interpretation in leading continental systems reduces cross-border justice costs, increases predictability, and accelerates enforcement. On the other hand, complete abandonment of reciprocity in relations with third states may, in exceptional situations, expose domestic residents to the risk of "non-reciprocity." Therefore, the most successful systems opt for presumed/factual reciprocity, as a safety valve activated only in cases of proven, systemic refusal to recognize our judgments in the state of origin. This balance, emphasizing legal certainty while maintaining a minimal reciprocity safeguard, proves optimal both from a comparative law perspective and in view of implementing the 2019 Hague Convention (Hague Judgments Convention 2019).

CRITICAL REEXAMINATION AND ALTERNATIVE MODELS

Although reciprocity has for centuries been one of the fundamental conditions for the recognition of foreign court judgments, contemporary trends in private international law show that this institution is increasingly losing its original function. Its normative logic, based on mutuality and balance among states, is today being tested in the context of growing interdependence and the globalization of legal relations. Instead of the principle of mutual formalism, modern international cooperation relies on the idea of trust in the legal systems of other states and on the common interest in maintaining legal certainty in cross-border relations (Marković-Bajalović 2022, 492).

Critics of the traditional understanding of reciprocity emphasize several key shortcomings. First, in practice, it often serves as a tool of political rhetoric rather than a legal necessity, as reciprocity is rarely

actually verified in specific cases (Marjanović 2019, 210). Second, the requirement to prove reciprocity can lead to legal uncertainty and procedural delays, especially when there are no official confirmations from ministries or diplomatic representations. Stevens shows that in U.S. practice, reciprocity has been gradually abandoned because it produces unpredictable and unequal outcomes: identical judgments may be recognized or refused solely due to the state of origin. Such an approach has been assessed as contrary to the principle of legal certainty and equality of the parties (Stevens 2002, 130–132). Third, formal reciprocity conflicts with the tendencies of modern private international law, which seeks to simplify procedures for recognition and enforcement of foreign judgments to promote trade and protect parties in cross-border relations (Jovičić i Marjanović 2025).

From the standpoint of contemporary theory, reciprocity has become a "relic of the sovereignist era," as Francesco Parisi calls it, because it presumes distrust among states, while 21st-century international law aims to build a system based on trust and harmonization (Parisi i Ghei 2003, 94). For this reason, in EU law, classical reciprocity has been replaced by the concept of mutual trust, as shown in the previous chapter.

As demonstrated in the comparative law review, some states have completely abandoned the reciprocity requirement, while others have reduced it to a flexible, presumed condition. Particularly interesting is the development of alternative models that gradually replace classical reciprocity in modern law. The first is the mutual trust model, which forms the basis of the European Union system and rests on the presumption that all member states respect fundamental principles of the rule of law and fair procedure. This model allows faster and more efficient recognition of foreign judgments but requires a high level of legal and institutional uniformity. The second is the convention-based model, which relies on international treaties, such as the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments. This instrument promotes a trust-based approach and harmonized rules, instead of bilateral reciprocity conditions (Hague Conference on Private International Law (2019). *Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*, art. 4–7).

The third model, known as the unilateral approach, is characteristic of legal systems such as Switzerland or Canada, where courts may

recognize foreign judgments even if the other state does not recognize its own, provided this does not conflict with public policy and the interests of justice. This approach is based on the principles of humanity and fairness, emphasizing the protection of parties and stability of legal transactions rather than inter-state balance.

Finally, literature increasingly refers to a hybrid model of reciprocity, which combines elements of mutuality and trust. It implies that recognition of a foreign judgment will not be denied solely due to the absence of formal reciprocity, but only if there is evidence of systemic violation of procedural guarantees in the state of origin. This approach has been adopted in the practice of several European countries, including the Czech Republic and Slovakia, and partially in Serbia through case law and opinions of the Ministry of Justice (Belović 2018, 284–286).

Supporting the view that complete abolition of reciprocity is not always justified is Stanivuković's analysis, which warns that many states apply a "diplomatic reciprocity" model, where recognition of judgments is allowed only if there is an international treaty (Stanivuković 2014, 291–292). Serbia has no concluded treaties with these states, which in practice would lead to legal inequality: foreign judgments would be recognized in Serbia, while Serbian judgments would be unrecognized in those states. Critical reexamination of the reciprocity institution thus shows that its fundamental function has undergone profound changes: from a mechanism for protecting state sovereignty to an instrument for promoting cooperation and trust among states. Instead of serving as a condition, it increasingly becomes a consequence of developed international cooperation and harmonization of legal systems. Hence, in contemporary doctrine and practice, the question is increasingly raised whether reciprocity as a formal condition is even necessary, or whether it is sufficient for a state, guided by the principle of legal certainty and respect for international standards, to approach recognition of foreign judgments as the rule, and refusal as the exception.

CONCLUSION

The institution of reciprocity, although historically regarded as one of the fundamental prerequisites for the recognition of foreign court judgments, today plays a far more complex and developed role in private international law. Its original function – protecting state sovereignty and ensuring balance among states – has gradually given way to the concept of legal certainty, harmonization of standards, and international trust. Modern legal systems, particularly under the influence of European law, increasingly abandon the formal proof of mutuality and turn to functional models in which procedural guarantees, public policy, and fairness of proceedings are primary.

In Serbian law, reciprocity is still normatively present in the Law on the Resolution of Conflicts of Laws with the Legislation of Other Countries, but judicial practice shows that it is increasingly interpreted as factual, material, or presumed. Courts assume reciprocity unless proven otherwise, thus softening the strict formalism of the Yugoslav period. Moreover, numerous exceptions in status, family, and personal matters indicate that domestic law already recognizes the idea that protecting the rights of parties is more important than proving formal reciprocity.

In comparative law, a clear trend of liberalization is evident. French law has completely abandoned reciprocity as a condition, while Germany formally retains mutuality but interprets it functionally, through actual legal protection. Within the European Union, the concept of mutual trust has replaced traditional reciprocity, and mechanisms such as the Brussels I bis regime (Regulation (EU) No. 1215/2012) limit control of recognition to public policy and procedural guarantees. The 2019 Hague Convention on Judgments further reinforces this model, emphasizing procedural standards rather than formal mutuality (Hague Judgments Convention 2019). A similar trust-based approach has developed in family and child-related matters under the Brussels II bis regime (Regulation (EU) No. 2201/2003), where the Court of Justice of the EU insists on rapid and automatic recognition, with narrow public policy exceptions.

Critical analysis shows that reciprocity, in its traditional form, is increasingly misaligned with the dynamics of global legal relations. It can pose an obstacle to faster and more efficient recognition of foreign judgments, especially in an era of growing international mobility and trade. Alternative models, such as presumed reciprocity, material

reciprocity, and the principle of mutual trust, have proven to be more functional and legally effective. These models provide greater flexibility, respect the procedural standards of other states, and foster a climate of legal certainty without abandoning the fundamental idea of preserving sovereignty.

The analysis confirms the initial hypothesis that modern development moves toward abandoning strict formal reciprocity and that the most appropriate model for the Republic of Serbia is limited, subsidiary reciprocity based on material mutuality and mutual trust. Accordingly, the optimal approach for Serbia is a concept of limited, subsidiary reciprocity in combination with convention-based and functional models of recognition. Formal reciprocity should no longer be a general prerequisite, but an exceptional protective mechanism applied exclusively in relations with states that themselves apply strict diplomatic reciprocity or systematically refuse to recognize foreign judgments. In dealings with states that have a more liberal approach or in practice recognize Serbian judgments, priority should be given to material and presumed reciprocity, as well as the mutual trust model.

Such a system would enable Serbia to simultaneously protect its own judgments in asymmetric international relations, strengthen legal certainty and predictability of the recognition process, and gradually align its regime with European standards and mechanisms, such as the 2019 Hague Convention (Hague Judgments Convention 2019). This functional restructuring of the institution of reciprocity represents a natural and necessary step toward modernizing Serbian private international law and integrating it more effectively into contemporary trends in international legal cooperation. This functional reorganization of the institute of reciprocity represents a natural and necessary step towards the modernization of Serbian private international law and its better integration into contemporary international legal cooperation. Viewed in a broader context, this transformation indicates that reciprocity in modern law has a pronounced political-legal significance, as it reflects the balance between the protection of state sovereignty and the need to strengthen international cooperation and mutual trust.

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РЕЦИПРОЦИТЕТ КАО УСЛОВ ПРИЗНАЊА СТРАНИХ СУДСКИХ ОДЛУКА: ПОЛИТИЧКО-ПРАВНИ АСПЕКТ И САВРЕМЕНИ ЗНАЧАЈ У ДОМАЋЕМ И УПОРЕДНОМ ПРАВУ

Резиме

У овом раду разматра се институт реципроцитета као услов признања страних судских одлука, са посебним освртом на српско право и упоредноправне трендове, указујући на његов политичко-правни значај у савременим односима између држава. Реципроцитет се анализира као традиционални механизам заштите државног суверенитета и равноправности држава, али и као инструмент уређивања међународне правне сарадње. Полази се од разликовања правног, фактичког и претпостављеног реципроцитета и њихове улоге у обезбеђивању узајамности у прекограничним односима, уз указивање на постепену трансформацију од формалног ка функционалном приступу. Анализа судске праксе и упоредноправних решења показује еволуцију од строгог формалног ка материјалном (фактичком) реципроцитету и све израженију тенденцију да се узајамност претпоставља, уместо да се формално доказује, при чему се тежиште све више помера ка процесним гаранцијама, јавном поретку и принципу узајамног поверења. Посебна пажња посвећена је савременим решењима у праву Европске уније и другим правним системима, као и утицају Хашке конвенције о признању и извршењу страних судских одлука из 2019. године, која афирмише модел заснован на стандардима поступка, а не на формалној узајамности. Критичка анализа показује да формални реципроцитет у савременом праву постепено губи улогу општег предуслова признања и све више

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уступа место функционалним моделима, који одражавају потребу за балансирањем између заштите државног суверенитета и јачања међународне сарадње и поверења. Закључује се да домаћи правни систем већ садржи елементе овог модернијег приступа, те да даљи развој треба усмерити ка јачању конвенцијских и наднационалних механизама признања, уз задржавање реципроцитета као супсидијарног инструмента у заштити националних интереса.

Кључне речи: признање страних судских одлука, међународно приватно право, фактички реципроцитет, узајамно поверење, судска пракса

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