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PART XIII

ENFORCEMENT

CHAPTER 3

ENFORCEMENT MECHANISM FOR CIVIL MATTERS IN CHINA

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1 INTRODUCTION

1 William Shakespeare's comedy 'As You Like It' and the German old saying 'Ende gut, alles gut' reveal some simple fact: the outcome of a story is the most significant part of it. In other words, successful judging means mostly making the right decision, but successful judgment demands more. The destiny of a civil judgment in the real world is primarily determined by its practical possibility of being enforced.[1] In case of the most popular relief sought for specific performance (*Leistungsurteil*)[2], for instance, some momentary payment arising out of a sale contract or a loan agreement,[3] evaluating the achievement of a practicing lawyer depends substantially, if not entirely, on the amount of money collected for its client.

2 Without the safeguard of being executed forcedly by some competent public (or a private[4]) authority, a civil judgment means nothing more than an ordinary public document or an authentic instrument. There could be with no doubt a presumption of authenticity of the civil judgment. Nevertheless, this official document has no impact on the *ex post facto* adjustment of private interests between the creditor and the debtor.[5]

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[1] Highlighting that Chinese court is most suitable to be look at from this aspect, see D C Clarke, 'Power and Politics in the Chinese Court System: The Enforcement of Civil Judgments' (1996) 10 Columbia Journal of Asian Law 1, 4–6; R Böhm and J Eberhardt, 'The Enforcement of U.S. Judgments in Europe: A U.S. Judgment Won't Be Worth Much in Europe if You Can't Enforce It' (2010) 21 Practical Litigator 57.

[2] K D Kerameus, 'Enforcement Proceedings' in M Cappelletti (ed), *International Encyclopedia of Comparative Law. Civil Procedure* (vol XVI, Mohr Siebeck 2014) para 10–82.

[3] The enforceability of a contract, although not pointing at the topic of this article and subject to the application of the substantive law, attracts also much attention. L Chen and L A DiMatteo, 'Inefficiency of Specific Performance as a Contractual Remedy in Chinese Courts: An Empirical and Normative Analysis' (2019) 40 Northwestern Journal of International Law and Business 275. Especially, according to the World Bank's methodology relating to areas of business regulation, 'enforcing contracts' contains the evaluation of the performance of enforcement proceedings in case that there are sufficient movable assets of the enforcement debtor. Doing Business, 'Enforcing Contracts Questionnaire' (2020) www.doingbusiness.org/content/dam/doingBusiness/pdf/db2020/DB20-Enforcing-Contracts-Questionnaire.pdf accessed 7 January 2024.

[4] In the sense of 'private firms offering post-judgment collection services', N Pajic, 'Avenues for Enforcement and Execution of Judgments in the United States' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability–Tradition and Reform* (Intersentia 2010) 237, 245.

[5] Indeed, the conclusion of litigation is by no means the end of the story. In the Chinese context, it could be argued that there are functions of raising legal awareness, attracting the interest of higher-level authorities and the seriousness of judges in confronting specific areas of law. B L Liebman, 'Class Action Litigation in China' (1998) 111 Harvard Law Review 1523, 1541.

The limits of adjudication[6] are obvious, and the plaintiff in whose favour the judgment is given obtains merely a declaratory announcement of its civil right or interests. Some illusion like this is not enough at all.

3 In pursuit of the triumph in enforcement proceedings, with which acting party lies the responsibility for initiating and promoting enforcement proceedings, who shall be accountable for the discovery of the assets of the debtor, which measures the competent enforcement organ could take, which legal relief the party nursing grievance has, and even whether civil enforcement proceedings ought to be revisited from a public management perspective,[7] all deserve an in-depth analysis.

4 Although the enforcement law is of great importance, compared to the other related areas, it is frequently less stressed. Not just in China, internationally it could be deemed as 'a relatively neglected subject' both in legal research and the legal harmonization.[8] Also in the United Kingdom, the enforcement proceedings are supposed to be taken more seriously than before.[9] Even the giant project harmonizing the international procedure law, ALI/UNIDROIT Principles of Transnational Civil Procedure, also leaves the enforcement law untouched.[10] In such a case, there is indeed a need to initiate a new collaborated project enhancing the position of enforcement proceedings. It comes to the 'Best Practices for Effective Enforcement'[11] project, formally referred to as 'Principles of Effective Enforcement' project[12], which is at present promoted by the

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[6] The adjudication function of the justice system itself could also be convicted as 'inherently unsuited' regarding some critical issues in human society. L L Fuller, 'The Forms and Limits of Adjudication' (1978) 92 Harvard Law Review 353.

[7] W Kennett, *Civil Enforcement in a Comparative Perspective. A Public Management Challenge* (Intersentia 2021).

[8] C H van Rhee and A Uzelac, 'Enforcement and Enforceability – An Introduction' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) xxi. As 'Achilles' heel' of European civil judicial area, A Uzelac, 'Privatization of Enforcement Services – A Step Forward for Countries in Transition?' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 83, 99; W Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in V Rijavec and others (ed), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 301, 353–354.

[9] I Levy, 'Taking Enforcement Seriously' (2017) 36 Civil Justice Quarterly 127.

[10] American Law Institute, *Principles of Transnational Civil Procedure* (Cambridge UP 2006) P29-A.

[11] On its background and the on-going development, UNIDROIT, 'Enforcement: Best Practices', https://www.unidroit.org/work-in-progress/enforcement-best-practices accessed 7 January 2024.

[12] R Stürner, 'Preliminary feasibility study on possible additional work on the development of Principles of Transnational Civil Procedure relating to effective enforcement' (Governing Council 95th Session,

International Institute for the Unification of Private Laws (UNIDROIT) steadily. This contribution, as a part of the separate Part 14 on enforcement law, is devoted to the proposed multi-volume *Compendium of Comparative Civil Justice*, which will be the final contribution of a project organized by the Max Planck Institute Luxembourg for Procedural Law and International Association of Procedural Law. Hence, although not coordinating with each other, the Chinese campaign against difficulty in enforcement is accompanied by the newest international development.

5 To what extent we could learn from the related comparative study, and most crucially, to what extent we could participate in the ongoing process of research on enforcement proceedings and what we could temporarily or finally contribute back to the rest of the whole world, is still waiting for our answer. Since the divergence between the Chinese system and Western counterparts is of great scale, an anatomy of Chinese exceptionalism [13] needs to be done according to the comparative experience. [14] Moreover, due to the practical emphasis in China, this article focuses primarily on the enforcement of monetary judgment. It is yet to be admitted that the non-monetary judgments, where various enforcement titles compel the debtor to comply with themselves, could also be of more difficulty.[15] Methodologically, following the widely accepted tradition in comparative civil procedure law, this article is more rules-oriented.[16] Yet, whether there could be some legal or non-legal institutions facilitating the voluntary fulfilment from debtors, which may negate the need for enforcing a judgment at all, could be a separate issue to be developed.

Rome, 18–20 May 2016), UNIDROIT 2016 C.D. (95) 13 Add 2, 7–8 https://www.unidroit.org/english/governments/councildocuments/2016session/cd-95-13add-02-e.pdf accessed 7 January 2024.

[13] This specialty in Chinese context reminds us, the proceduralists, perhaps most instantly of the notorious 'American exceptionalism', where the US civil procedure law does reflect an undeniable self-sufficient set of procedural characteristics. O Chase, *Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context* (New York UP 2005) 47–71; R L Marcus, 'Putting American Procedural Exceptionalism into a Globalized Context' (2005) 53 American Journal of Comparative Law 709. More generally, R A Kagan, *Adversarial Legalism: The American Way of Law* (2nd edn, Harvard UP 2019).

[14] Upholding a rather more international and therefore thoroughly comparative perspective particularly in the age of inward turning both in the US and in China, M Woo, 'Comparative Law in a Time of Nativism' (2018) 41 Hastings International and Comparative Law Review 1.

[15] K D Kerameus, 'Enforcement Proceedings' in M Cappelletti (ed), *International Encyclopedia of Comparative Law. Vol XVI. Civil Procedure* (Mohr Siebeck 2014) para 10 – 139–145.

[16] M Bogdan, 'On the Value and Method of Rule-Comparison in Comparative Law' in H P Mansel and T Pfeiffer (ed), *Festschrift für Erik Jayme* (Sellier 2004) 1233, 1233–1242.

2 FRAMEWORK OF THE ENFORCEMENT MECHANISM IN CHINA

2.1 Civil Procedure Law Statute

6 Shortage of institutional supply is easy to be detected in the Chinese enforcement legal system. In general, there are seven versions of the Civil Procedure Law (hereinafter CPL) statute which are released subsequently in 1982, 1991, 2007, 2012, 2017, 2021 and 2023.[17] Within the current one, there is a separate part named 'enforcement proceedings' consisting of 35 Articles (Article 235–269). The major issues addressed refer to the possible institutions during enforcement such as security for enforcement, designation of enforcement to other courts and enforcement settlement, the way to commence or terminate the enforcement procedure, the applicable enforcement measures in terms of different objects to be enforced, and accessible remedies. Yet, in most of the cases, there is just one legal provision on each issue. As a result, only an outline of enforcement proceedings could be drawn in the statute itself.

7 Although the statute was modified several times recently, enforcement proceedings do unfortunately not attract much attention of national legislators. Part of the reason lies in the fact that a separate Civil Enforcement Law statute is drafted by the Supreme People's Court (SPC). Until January 2024, the new statute draft does not enter any substantial legislative process. While the separate statute for enforcement proceedings is pending for several years, it is not hard to understand why within these amendments of the CPL statute, the enforcement rules could not find much room.

8 And this is not a new phenomenon but could be traced to the tradition under Chinese law. In previous versions of this statute, a comparably small group of legal rules, for instance, Article 207–236 in the version of 1991 and Article 161–184 in the CPL 1982, is in each text to be found. It is rather obvious that feasible weapons with the statute in the hands of enforcement judges/officers is not enough. Moreover, the legislative branch in China is really reluctant to revise the statute on a large scale.[18] In their words, they are very serious and prudent when it comes to any modification of statutes. This attitude could be proved considering that after such many years, the scale of the enforcement rules in the CPL statute has not changed a lot.

9 On such occasions, an outsider would easily wonder whether the civil justice system as a whole could secure uniformity in laws during the application of law. Where there are

[17] Without further specification, the CPL is cited in its current version of 2023.

[18] On the history of amending the CPL statute, Y Fu and X Meng, 'Civil Justice in China' (2016) 3 BRICS Law Journal 94, 95–99.

no sufficient legal rules, there would be various local rules to fill in the gap. To improve the quality of legal service and most crucially, to gain trust with people, it is regarded that no other choice is left for the SPC apart from promulgating judicial interpretations and other judicial instruments. The applicable rules which are highly missing in the CPL statute should be supplemented as soon as possible.

2.2 Related Judicial Interpretations

10 In reality, the SPC also makes good use of its power to announce judicial interpretations in almost every area of law. It is a long-lasting tradition in China that the SPC releases at least one judicial interpretation for each of the crucial statutes. For instance, there is in the area of civil procedure one entire Interpretation of the SPC on the Application of the Civil Procedure Law of the PRC of 2015 (hereinafter ICPL 2015).[19] And there could be several interpretations, rather than an all-inclusive one, in one specific legal area as well. In this sense, to be counted in the area of civil law are Interpretation of the SPC of the Application of the Relevant Guarantee System of the Civil Code of the PRC,[20] Interpretation (I) of the SPC on the Application of the Book Real Right of the Civil Code of the PRC,[21] Interpretation (I) of the SPC on the Application of Book Six Succession of the Civil Code of the PRC,[22] Interpretation (I) of the SPC on the Application of the 'Marriage and Family' Book of the Civil Code of the PRC,[23] and Several Provisions of the SPC on the Retroactivity in the Application of the Civil Code of the PRC.[24] Even in the case of civil procedure law, some judicial interpretations could be made to supplement or even alter the basic ICPL 2015. Then, there are Interpretation of the SPC on Several Issues concerning the Application of Enforcement Procedures of the Civil Procedure Law of the PRC of 2008 (hereinafter Enforcement Interpretation 2008)[25] and Several Provisions of the SPC on the Application of Simplified Proceedings in the Trial of Civil Cases[26] which limit respectively their scope of application to a certain topic or specific proceedings.

11 Also, it is understandable that, to make the operation of enforcement proceedings more coherent, for instance, the SPC released for each of the security to be provided, the

[19] Judicial Interpretation No 5 [2015] of the SPC (China).

[20] Judicial Interpretation No 28 [2020] of the SPC (China).

[21] Judicial Interpretation No 24 [2020] of the SPC (China).

[22] Judicial Interpretation No 23 [2020] of the SPC (China).

[23] Judicial Interpretation No 22 [2020] of the SPC (China).

[24] Judicial Interpretation No 15 [2020] of the SPC (China).

[25] Judicial Interpretation No 13 [2008] of the SPC (China).

[26] Judicial Interpretation No 15 [2003] of the SPC (China).

designation of responsible courts and enforcement settlement an independent judicial interpretation, after it had tried to solve practical problems with several compiled judicial interpretations (ie, one interpretative document for different areas in enforcement proceedings). All these three judicial interpretations consist of more than ten articles and have already experienced modification in these years. Nevertheless, it could be rightfully argued that the current enforcement law enables the court to enjoy more discretionary power while the enforcement procedure is less structured.[27]

12 For the purpose of this contribution, it could be left aside whether out of its power of interpreting the statutes, the judicial branch in China does have the authority to make some of the rules which go beyond the original scope of legal rules or could not be linked to any existing specific legal rule. Whether in this way some judge-made laws are incorporated into the formal sources of law, do deserve some abstract jurisprudential discussion.[28] However, since this article intends to explore more concretely the practice of enforcement proceedings, the author would like to assume that judicial interpretations as such have some institutional effects and shall be obeyed in practice. No practicing lawyer would totally ignore the existence of the mentioned judicial interpretation and use the Civil Code itself as the sole source of any legal argument. Due to the same reason, the possible internal division of judicial interpretations, which could by their nature have different institutional effects, is not to be explained either. Besides, there could be a variety of documents released by distinct public authorities. They could make a difference in practice as well and therefore the related ones will be introduced respectively. However, although some so-called Guiding Cases,[29] similar to precedents in Western jurisdictions, have been published since 2011 and should have some sort of binding effects in practice, they do not relate to the topic of this contribution and therefore will not be taken into consideration.

13 It is noted that both judicial interpretations in the area of enforcement law[30] and the ICPL 2015 which is on the entire civil procedure law (including enforcement

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[27] J Li, 'The Power Logic of Justice in China' (2017) 65 American Journal of Comparative Law 95, 117.

[28] C Wang, 'Law-Making Functions of the Chinese Courts: Judicial Activism in a Country of Rapid Social Changes' (2006) 1 Frontiers of Law in China 524.

[29] The introduction to and translation of these guiding cases, Stanford University, 'Stanford Law School China Guiding Cases Project' https://cgc.law.stanford.edu accessed 7 January 2024. Now the project is already terminated.

[30] Decision of the SPC to Amend Eighteen Judicial Interpretations in Area of Enforcement Including the Provisions of the SPC on Several Issues Concerning People's Courts' Impoundment of Goods Transported by Railway, Judicial Interpretation No 21 [2020] of the SPC (China).

proceedings)[31] have been collectively updated in accordance with the Civil Code of the PRC at the end of 2020. Then, all of them are taken into effect on 1 January 2021. Yet, the overwhelming majority of the original rules remained unchanged after this revision. Although this enthusiasm for changing the living laws gives rise to the hardness of predicting the effective legal rules, even for a licensed Chinese practitioner, it still means a rapid development and departure from the less-developed regime of legal rules toward a better rule of law.

2.3 Brief History of the Enforcement Mechanism

2.3.1 Starting Point of the Civil Enforcement

14 To begin with, the history of enforcement is to be introduced briefly. After the establishment of the new People's Republic of China, the formal legal institutions played a minor role in the dispute resolution, in the form of 'controversy among the citizens',[32] and civil law was underestimated. Only the mediation, both inherited from the ancient Chinese tradition and implemented with Communist working methods, predominated in most cases.[33] Under these circumstances, the formal enforcement proceedings had naturally less place to develop. Earliest in the post-reform era since 1979, along with the rapid economic growth and long-lasting campaign against poverty,[34] there are ongoing dramatic changes in various areas of law. The enforcement mechanism is without a doubt among the most affected areas.

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[31] Decision of the SPC to Amend Nineteen Judicial Interpretations in Area of Civil Procedure Including the Provisions of the SPC about Several Issues Concerning the Civil Mediation Work of the People's Court, Judicial Interpretation No 20 [2020] of the SPC (China).

[32] J A Cohen, 'Chinese Mediation on the Eve of Modernization' (1966) 54 California Law Review 1201, 1201–1202.

[33] S B Lubman, 'Dispute Resolution in China after Deng Xiaoping: Mao and Mediation Revisited' (1997) 11 Columbia Journal of Asian Law 229, 232–235.

[34] On the relationship between law and economic development in contemporary China, F K Upham, 'From Demsetz to Deng: Speculations on the Implications of Chinese Growth for Law and Development Theory' (2009) 41 New York University Journal of International Law and Politics 551; D C Clarke, 'Economic Development and the Rights Hypothesis: The China Problem' (2003) 51 American Journal of Comparative Law 89. On the relationship between the foreign-related enforcement mechanism and economic development, R Peerenboom, 'Seek Truth from Facts: An Empirical Study of Enforcement of Arbitral Awards in the PRC' (2001) 49 American Journal of Comparative Law 249, 309–318.

15 It is not beneath the radar until recently that the enforcement of a final judgment in China was of great difficulty.[35] Compared to the enforcement of a foreign judgment in China,[36] for instance, made by a US court, which may face up to this challenge as well,[37] the problem of enforcement at national level is deeply embedded in the current civil justice system in China. It was strongly claimed that local protectionism may lead to the efforts of local governments to help companies even hide or transfer assets.[38] Many debtors tended to evade payment, and they were really good at making their valuable property disappear if they were informed about the prospective enforcement proceedings.[39]

16 Although the problems in the area of enforcement are still to be solved, which is also the main purpose of any continuing reform, it has already been argued for 10 years that especially in urban areas,[40] the enforcement mechanism in China has been improved

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[35] D C Clarke, 'Power and Politics in the Chinese Court System: The Enforcement of Civil Judgments' (1996) 10 Columbia Journal of Asian Law 1. However, because this fundamental contribution specifically pointing at enforcement proceedings in China was drafted more than 25 years ago, the time, applicable rules and the operation in practice have been changed in a dramatic way.

[36] A different problem relates to the recognition and enforcement of a foreign arbitral award in China. Thanks to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, primarily the partially unified international standard and practice apply in China. Generally discussion, M Zhang, 'Enforceability: Foreign Arbitral Awards in Chinese Courts' (2018) 20 San Diego International Law Journal 1; R P Alford, J G Ku and B Xiao, 'Perceptions and Reality: The Enforcement of Foreign Arbitral Awards in China' (2016) 33 Pacific Basin Law Journal 1; F D'Souza, 'The Recognition and Enforcement of Commercial Arbitral Awards in the People's Republic of China' (2007) 30 Fordham International Law Journal 1318. One excellent example on the Chinese specialty under the international principles and practice, H Chen, *Predictability of 'Public Policy' in Article V of the New York Convention under Mainland China's Judicial Practice* (Kluwer 2017). F Yang, *Foreign-Related Arbitration in China: Commentary and Cases* (Cambridge UP 2016); W Sun, *Arbitration in China* (Kluwer 2015).

[37] The solution for it has to rely more on analysis from the perspective of international law. J Hsu, 'Judgment Unenforceability in China' (2013) 19 Fordham Journal of Corporate and Financial Law 201.

[38] D T Wang, 'Judicial Reform in China: Improving Arbitration Award Enforcement by Establishing a Federal Court System' (2008) 48 Santa Clara Law Review 649, 657–659; R Peerenboom, 'Seek Truth from Facts: An Empirical Study of Enforcement of Arbitral Awards in the PRC' (2001) 49 American Journal of Comparative Law 249, 276–279.

[39] Just like the situation in England, W Kennett, 'Enforcement: General Report' in M Storme (ed), *Procedural Laws in Europe: Towards Harmonisation* (Maklu 2003) 81, 106.

[40] Discovering the discrepancy between courts in the more developed and less developed areas of China, X He, 'A Tale of Two Chinese Courts: Economic Development and Contract Enforcement' (2012) 39 Journal of Law and Society 384.

dramatically.[41] Recent research claims that the Chinese enforcement court, especially the local courts, is still under great pressure from external ecology in the sense of environment and surroundings. Discussed are the governance pressure from the perspective of political ecology, the relief pressure from the perspective of economic ecology, and the interaction pressure of social ecology.[42]

2.3.2 Efforts Against Difficulty in Enforcement

17 Under the general framework of running judicial reforms[43] and most crucially according to the political agenda, the movement towards improved enforcement mechanisms is triggered. Since the Communist Party of China (CPC) assumes a paternalistic role for the Chinese court system while preserving the supreme authority over it,[44] the political design of the Party is certainly of great significance in the enforcement area. In October 2014, the Decision of the Central Committee of the Communist Party of China (CCCPC) on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law (hereinafter CCCPC Rule of Law 2014) was adopted in the fourth plenary session of the 18th CCCPC, where along with other objectives in enhancing the law-based governance of China (依法治国), the resolution of difficulty in enforcement was targeted directly.

18 Responding to this high-level demand seriously, the President of SPC, Chief Justice Qiang Zhou, promised in the fourth session of the 12th National People's Congress in March 2016 that the difficulty in enforcement was scheduled to be solved basically in two or three years. Accordingly, the improvement of the enforcement system is regarded as one of the most crucial issues, including the promotion of judicial transparency[45] and

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41 R Peerenboom and X He, 'Dispute Resolution in China: Patterns, Causes and Prognosis' (2009) 4 East Asia Law Review 1, 14–15; X He, 'Enforcing Commercial Judgments in the Pearl River Delta of China' (2009) 57 American Journal of Comparative Law 419. Another major related publication in the same year, Y Tang, *Why Enforcement Is So Difficult: Government, Market and Court in a Transitional State* (Peking UP 2009).

42 L Yu, 'Enforcement Ecology and Uneven Enforcement in Grassroots Courts' (2020) 3 Chinese Journal of Law 102.

43 Y Fu and Z Cao, 'The Position of Judges in Civil Litigation in Transitional China: Judicial Mediation and Case Management' in L Chen and C H van Rhee (ed), *Towards a Chinese Civil Code: Comparative and Historical Perspectives* (Martinus Nijhoff 2012) 495, 495–519; CF Minzner, 'China's Turn against Law' (2011) 59 American Journal of Comparative Law 935.

44 L Li, 'The Chinese Communist Party and People's Courts: Judicial Dependence in China' (2016) 64 American Journal of Comparative Law 37.

45 S Finder, 'China's Translucent Judicial Transparency' (2019) 14 Journal of Comparative Law 222; B Ahl and D Sprick, 'Towards Judicial Transparency in China: The New Public Access Database for Court

implementation of the judicial accountability system, and should be taken seriously. After a series of intense campaigns in the enforcement area, the final victory was cheerfully declared by the SPC in March 2019. It was also announced that the quality of this work had been proved by a third-party evaluation whose jury consisted of a group of experts, professors, and practicing lawyers.

19 While enforcement proceedings play a more and more crucial role in the entire dispute resolution mechanism in China, it is statistically proven that the performance of the Chinese enforcement system is better off than in the past. In 2019 and 2020, there are more than 10,000,000 enforcement cases. Among all initiated cases, 9,547,000 cases in 2019 and 9,958,000 cases in 2020, have been closed in the same year. The amount of satisfied enforcement debt is CNY 1,700,000,000,000 (equivalent USD 261,000,000,000) in 2019 and CNY 1,900,000,000,000 (equivalent USD 291,000,000,000) in 2020. And during 2017-2019, 96.5% of all enforcement proceedings are terminated each year,[46] while this rate during 2016–2018 is 82.9%.[47] It is also reported that during the five years between 2018-2023, Chinese courts at all levels took 457,730,000 cases while concluding 451,210,000 cases during the same period of time. The amount of satisfied enforcement debt in total is CNY 9,400,000,000,000 (equivalent USD 1,446,000,000,000), while this amount in 2022 is over CNY 2,000,000,000,000 (equivalent USD 308,000,000,000) which breaks the historical record.[48]

20 Considering the scale of the matter under discussion and the relatively rapid change, the enforcement problem is really of great significance in China. Even according to the latest World Bank's Doing Business report, the performance of China ranks among the Top 5 in the area of enforcing contracts. It comes to the efficiency of resolving a commercial dispute, which is calculated by the average total duration of filing and service, trial and

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Decisions' (2018) 32 China Information 3. More concentrating on the perspective of judicial organization and administration, M Versteeg 'Making Chinese Court Filings Public? Some Not-So-Foreign American Insights' (2020) 133 Harvard Law Review 1728.

[46] This rate is grossly calculated by comparing the number of all initiated enforcement cases and the number of terminated ones, which does not mean the same case will be initiated and terminated in the same year.

[47] Q Zhou, 'Annual Working Report of the SPC' (www.court.gov.cn, 1 June 2020) https://www.court.gov.cn/zixun/xiangqing/232991.html accessed 20 November 2024; Q Zhou, 'Annual Working Report of the SPC' https://www.court.gov.cn/zixun/xiangqing/290831.html accessed 20 November 2024.

[48] Q Zhou, 'Annual Working Report of the SPC' https://www.court.gov.cn/zixun/xiangqing/393751.html accessed 20 November 2024.

judgment and enforcement.[49] Later, the judiciary is supposed to continue constructing 'a long-term effective system that solves the difficult problems of enforcement'.[50] The purpose of this new system is to fill in the gap between the 'practical solution', which was announced by the CCCPC in 2014, and the 'basic solution' declared by the SPC in 2019.

3 ENFORCEMENT COURT AS THE SINGLE ENFORCEMENT ORGAN

21 Behind the practical difficulty together with the achievement in the area of enforcement law, it first comes to the enforcement organ which is in charge of everything in enforcement proceedings. In the Chinese context, this entity has to decide whether to register an enforcement application, how to promote enforcement proceedings and when to terminate the case. Since in China, the enforcement organ is equivalent to the people's court, we may wonder whether there are some alternative entities which may be able to substitute or at least assist the work of the competent court. And if the monopoly of people's court both in areas of adjudication and enforcement should still continue, we may need to figure out the connection and difference between these two functions of the judiciary.

3.1 Organization of the Enforcement Court

3.1.1 General Observation

22 The understanding of the enforcement organ is even more significant while taking the comparative observation into account. And certainly, despite the long-lasting difficulties until now, making our best endeavours to group or categorize existing legal systems globally is still desirable.[51] Then, there could be a further choice of developing or discarding on a national basis,[52] even if we are not bridging differences between legal

[49] Doing Business, 'Enforcing-Contracts: What-Measured' (2020) www.doingbusiness.org/en/data/exploretopics/enforcing-contracts/what-measured accessed 7 January 2024.

[50] Supreme People's Court of PRC (ed), *Guidelines of the Supreme People's Court on Deepen the Judicial System Reform with Comprehensive Integrated Reforms of People's Courts – Framework of the Fifth Five-Year Judicial Reform for People's Courts (2019–2023)* (People's Court Press 2019) 35.

[51] An elegant methodological remark, see J Husa, 'Classification of Legal Families Today. Is It Time for a Memorial Hymn?' (2004) 56(1) Revue internationale de droit comparé 11. More generally and fundamentally, see U Mattei, 'Three Patterns of Law: Taxonomy and Change in the World's Legal Systems' (1997) 45(1) American Journal of Comparative Law 5.

[52] See J H Langbein, 'The German Advantage in Civil Procedure' (1985) 52 University of Chicago Law Review 823.

systems through more abstraction of the proposed comparative categories.[53] Indeed, the enforcement system is significantly affected by historical, political, cultural and even path-dependent considerations. The characteristics of the Chinese enforcement mechanism could yet be respected more seriously if we have already put it into the general framework of international academic discourse.[54] In some cases, we may be capable of finding a mutual understanding in spite of the slight divergence in detail. This Chapter hopes to use the enforcement organ as the tool to analyse the Chinese enforcement legal system and as a window to gaze outward which may make the comparative exploration possible. In the end, we have to endeavour to locate the approach to achieve effective enforcement. When the world changes rapidly and international disputes arise, this attitude must be insisted on.[55]

23 As one of its major characteristics, there is only one organization in China which has the functional jurisdiction over the enforcement issues regarding civil and commercial matters. Comparatively, for the execution of criminal fixed-term imprisonment, the judicial administrative authorities (司法行政部门) at all levels are the responsible organs. The people's court only has to enforce the operative part of a criminal judgment relating to property. According to Article 1 of the Several Provisions of the SPC on Enforcing the Property Portion of A Criminal Judgment[56] of 2014, which regulates this related mechanism in detail, the court has authority to enforce the following matters: (1) fines or confiscation of property; (2) the order to return the property or compensate the victim for the property; (3) disposal of illicit money and property transferred along with the case; (4) confiscation of the defendant's property transferred along with the case which has been used for committing the crime.

24 Generally speaking, the ordinary court system in China has four different levels: the local people's courts, the intermediate people's courts, the higher people's courts and the Supreme People's Court.[57] There is a special enforcement bureau or division which is

[53] See J C Reitz, 'How to Do Comparative Law' (1998) 46 American Journal of Comparative Law 617, 636.

[54] The prudent establishment of ALI/UNIDROIT Principles of Transnational Civil Procedure and the ambitious European model rules of civil procedure are among the in-depth endeavour to enable different models of rule of law to converge. See Model European Rules of Civil Procedure (ELI/UNIDROIT).

[55] See M Woo, 'Comparative Law in a Time of Nativism' (2018) 41 Hastings International and Comparative Law Review 1.

[56] Judicial Interpretation No 13 [2014] of the SPC (China).

[57] On the overview of the structure of Chinese courts, see Y Fu and X Meng, 'Civil Justice in China' (2016) 3 BRICS Law Journal 94, 99–100.

responsible for the enforcement affairs in each of the courts.[58] It is to be observed that courts at different levels have these bureaus with different functions. At the level of local courts or intermediate courts, enforcement bureaus are in charge of the physical enforcement as well as making necessary orders and adjudication during enforcement. Their tasks consist of some administrative power together with adjudication power.[59] For the ones in higher people's courts or even the enforcement bureau of the SPC, the competent organ will to a great extent merely take the responsibility of keeping a check on enforcement cases in their jurisdiction. It means that they review and evaluate administrative and judicial activities of their lower courts in the judicial hierarchy. In a case where some enforcement parties disagree with local courts or intermediate courts on some enforcement issues, they can petition the SPC or the related higher people's court in each province for enforcement supervision (执行监督).

25 If some courts choose to split their whole caseload into parts due to the functions to be fulfilled, several divisions or groups of enforcement could be constituted accordingly. For instance, it is possible that the first division or group for the taking of enforcement measures physically, the second one for the decisions and orders made during enforcement, and the third one for the review of these orders while the party to enforcement proceedings intends to challenge them. Some divisions could also only cover specific categories of enforcement cases such as the ones based on an authentic instrument, an arbitral award or interim measures.

26 The model of a single competent enforcement organ is suitable to be summarized as a centralized model. Compared to this situation in China, there are models consisting of four (Germany)[60] or two (Japan)[61] fragmented or diffused enforcement organs. Under the same term of 'bailiffs', three principal types of bailiffs could exist for different issues.[62] And it is the people's court which as a whole has to both make a judgment and enforce the judgment. There is also no internal division either between eg, *Rechtspfleger* (judicial officer) and judge in Germany inside the enforcement court or between

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[58] Generally, on the organizational structure of Chinese courts, see H Chen, 'The Unified System of Adjudication and Administration of Chinese Courts' in P Chan and C H van Rhee (ed), *Civil Case Management in the Twenty-First Century: Court Structures Still Matter* (Springer 2021) 53, 53–65.

[59] Generally, see K D Kerameus, 'Enforcement Proceedings' in M Cappelletti (ed), *International Encyclopedia of Comparative Law, Vol XVI. Civil Procedure* (Mohr Siebeck 2014) para 10 – 11–12.

[60] See H Brox and W D Walker, *Zwangsvollstreckungsrecht* (C.H. Beck 2018) para 11–16; F Baur, R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (C.F. Müller 2006) para 6.47–6.52.

[61] T Nakano and M Shimomura, *Civil Enforcement Law* (Seirin Shoin 2016) 40–41.

[62] See W Kennett, 'Enforcement: General Report' in M Storme (ed), *Procedural Laws in Europe: Towards Harmonisation* (Maklu 2003) 81, 97.

Gerichtsvollzieher (the enforcement officer), the enforcement court and the court hearing the case.[63] And other than the German counterpart, different registration authorities are not formally admitted as one of the enforcement organs. Yet, there is no doubt that they have to perform their duty to facilitate and cooperate with the enforcement court. It is well accepted that regarding them as enforcement organs would not be 'of comparative interest'.[64]

27 The arrangement in China simplifies some of organizational choices of Chinese enforcement law.[65] For instance, there is no need to discuss whether a specific type of enforcement titles ought to be taken in charge by one or the other enforcement organ.[66] The creditors do not have to submit 'individual applications for specific methods of enforcement' as some traditional enforcement mechanisms did, which demands 'a reorganization of court internal administration'.[67] Accordingly, the accountability of courts regarding enforcement activities could be established without any further division between some organs of administrative nature and courts.[68] There is no genuine need to discuss the supervision of enforcement agents which is otherwise outside the control of the competent court.[69] And with this centralized enforcement system, the

[63] The legislative suggestion in favour of the enforcement officer outside the court system for the entire enforcement work in Germany, see J Stamm, 'Reformbedarf in der Zwangsvollstreckung? – Die Schaffung eines zentralen Vollstreckungsorgans' (2012) 2 JuristenZeitung 67.

[64] See K D Kerameus, 'Enforcement Proceedings' in M Cappelletti (ed), *International Encyclopedia of Comparative Law. Vol XVI. Civil Procedure* (Mohr Siebeck 2014) para 10.

[65] See R Stürner, 'Preliminary feasibility study on possible additional work on the development of Principles of Transnational Civil Procedure relating to effective enforcement' (Governing Council 95th Session, Rome, 18–20 May 2016), UNIDROIT 2016 CD (95) 13 Add 2, 7–8 https://www.unidroit.org/english/governments/councildocuments/2016session/cd-95-13add-02-e.pdf accessed 7 January 2024. See also W Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in V Rijavec, W Kennett, T Kerestes and T Ivanc (ed), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 301, 301–353; B Hess, 'Different Enforcement Structures' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 41, 44–48.

[66] The example of third party debt in Germany, see W D Walker, 'Zur Übertragbarkeit der Forderungspfändung auf den Gerichtsvollzieher' (2019) 5 Deutsche Gerichtsvollzieher Zeitung 89.

[67] W Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in V Rijavec, W Kennett, T Kerestes and T Ivanc (ed), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 301, 339.

[68] Comparatively see K D Kerameus, 'Enforcement Proceedings' in M Cappelletti (ed), *International Encyclopedia of Comparative Law. Vol XVI. Civil Procedure* (Mohr Siebeck 2014) para 10–16.

[69] Respectively see W Kennett, 'Enforcement: General Report', in M Storme (ed), *Procedural Laws in Europe: Towards Harmonisation* (Maklu 2003) 81, 104–105.

specialized enforcement officers could be entitled to access the information which may be excluded from routine discovery due to data or privacy protection.[70] In this context, the enforcement officer would not be challenged simply because its connection with its creditor clients which would lead to its ignorance of the interests of the debtor or the public interests.

3.1.2 Possible Deviation and Innovation

28 On some occasions, other divisions rather than the ones for civil and commercial matters of the enforcement court could be designated to handle with enforcement issues. The arrangement of divisions or groups is concerned with the internal allocation of cases inside the same court. As a result, it is not forbidden that a criminal division of the court is in charge of the review (*Erinnerung*) of enforcement order, if the president of this court has explicitly designated the criminal division to do so. The reason for it could normally be lacking personnel in the entire enforcement section and the relatively limited caseload in the criminal division. Moreover, it is nowadays widely acknowledged that the cultivation of professional enforcement personnel is necessary, especially for the adoption of enforcement measures. In the past, it was highly criticized that the enforcement officers were at least legally trained, less honoured, reluctant to use coercive measures and could be threatened of even injured by debtors to be enforced, while their work was not intellectually challenging compared to other judges and always obstructed practically and politically.[71] However, after twenty years of social and judicial development, this statement is only partially true.

29 Under the framework of a single enforcement organ, there could still be some room for judicial administrative innovation. Among others, it is advantageous to have a couple of

[70] See B Hess, 'Different Enforcement Structures' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 41, 52. This comparative observation was written by a German professor before the introduction of Article 802c and Article 802l of the German Code of Civil Procedure (GCCP) which limited the application of themselves to three types of cases. It could be argued, therefore, that the centralized system like Chinese one may also have the advantage in having much more kinds of information gathered.

[71] See R Peerenboom, 'Seek Truth from Facts: An Empirical Study of Enforcement of Arbitral Awards in the PRC' (2001) 49 American Journal of Comparative Law 249, 284–287, 294–301. See also W Heye, 'Forum Selection for International Dispute Resolution in China – Chinese Courts vs. CIETAC' (2004) 27 Hastings International and Comparative Law Review 535.

enforcement teams inside one court,[72] which look like sub-divisions and remain relatively independent. Enforcement officers could also be assembled following the direction given by a separate but intensive enforcement centre.[73] This newly assembled team will be more capable of dealing with difficult cases such as the eviction of debtors from occupation of premises.[74] The SPC's fifteenth primary task in the area of enforcement in forthcoming years, stated in its Opinions of the SPC on Deepening the Enforcement Reform and Improving the Long-term Mechanism for Solving Enforcement Difficulties—the Outline of People's Courts' Enforcement Work (2019-2023)(hereinafter Outline of People's Courts' Enforcement Work (2019-2023)),[75] regulates this issue as well. According to it, the enforcement team consisting of 'judge, assistant to the judge (enforcement officer), judicial police and clerk' shall be implemented. The inter-team and intra-team division of tasks and division of power shall be optimized. The key points of this model of teamwork could be featured as 'classifying personnel, gathering matters up, clarifying powers and responsibilities, and streamlining the cooperation' (人员分类、事务集约、权责清晰、配合顺畅). To some extent, the enforcement organ is understood as an individual unit in the sense of judicial administration. To fulfil the enforcement work more flexibly, there is no major barrier which may hold back any prospective reform.

3.2 Privatization of Enforcement Organ as a Supplement?

3.2.1 Private Efforts Available in Practice

30 A centralized model of enforcement mechanism does not necessarily mean the monopoly of the judicial branch in resolving enforcement affairs. Theoretically speaking, private sectors could supplement or even share some enforcement tasks.[76] However,

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[72] See Y Xie and D Pi, 'Establishment of the Long-effect Mechanism of Enforcement Performance Evaluation of Local Courts: Based on Examples from Court of District M' (2019) 11 Journal of Law Application 50.

[73] See J Xiao and S Zhuang, 'On the Optimal Configuration of the Power to Enforce Civil Executions: Centered on the Intensive Reform of Enforcement in Our Country' (2019) 11 Journal of Law Application 3.

[74] Unlike the somewhat cold-blooded eviction enforcement proceedings in US, which has been delicately descripted by Matthew Desmond (See M Desmond, *Evicted: Poverty and Profit in the American City* (Crown Publishers 2016)), the constitutional human rights of the vulnerable groups is emphasized and their interests is relatively more cherished in China. To some extent, it is necessary for keeping the social stability and therefore well accepted in China.

[75] Document (法发) No 16 [2019] of the SPC (China).

[76] On the historical development, see F Baur, R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (C.F. Müller 2006) para 3.28.

the Chinese enforcement court is deemed to take the final responsibility for the discovery of enforceable property. Due to the lack of practical needs and opportunities to compete with each other, this kind of active and all-inclusive enforcement court leads to a less-developed market force. To be compared with abundant measures which are accessible to the public-centre enforcement system is the limited competence of any private entity to dig out the missing assets of the debtor. There are somewhat American-style 'private firms offering post-judgment collection services'[77] in reality, whereas not all of them could do their jobs in a legal manner. Since these activities of debt collection could give rise to social disorder, these firms are under serious surveillance and they go ordinarily underground. For instance, it is practically challenging to oversee the traveling track of the targeted person without violating the relevant rights of personality which could be charged by the prosecutors as criminal offenses. Moreover, not to mention the ordinary creditor or normal practicing lawyers, it was said that even those persons having sources and connections with the government branches may 'run into dead-ends'.[78] Today, this description is still to a great extent credible.

31 Still, practicing lawyers could in this disadvantageous environment make use of their practical know-how and surge forward to stand for their clients and then earn money by hard work. It is not uncommon that attorneys will search for stocks held by the debtor which will be disclosed in the data platforms of relevant public authorities. The major example is the National Enterprise Credit Information Publicity System (国家企业信用信息公示系统)[79], which is operated by the State Administration for Market Regulation directly. Companies in the private sector, such as Qichacha (企查查)[80] and Tianyancha (天眼查)[81], could also provide some more user-centric and specialized commercial services. These practicing lawyers or private companies will definitely keep track of the related bank accounts or the private ALIPAY/WeChat accounts which have been used in previous transactions in which the debtor took part. They will be after the property information in platforms like Shenzhen United Property and Share Rights Exchange (深圳联合产权交易所)[82]. Also, the final judgments on the website of China Judgments

[77] N Pajic, 'Avenues for Enforcement and Execution of Judgments in the United States' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 237, 245.

[78] R Peerenboom, 'Seek Truth from Facts: An Empirical Study of Enforcement of Arbitral Awards in the PRC' (2001) 49 American Journal of Comparative Law 249, 292.

[79] Chinese National Enterprise Credit Information Publicity System http://www.gsxt.gov.cn/index.-html accessed 7 January 2024.

[80] Qichacha Search Engine https://www.qcc.com accessed 7 January 2024.

[81] Tianyancha Search Engine https://www.tianyancha.com accessed 7 January 2024.

[82] Shenzhen United Property and Share Rights Exchange https://www.sotcbb.com accessed 7 January 2024.

Online (中国裁判文书网)[83] may be of great use, when these judgments reveal the possible further debtors to the concerned enforcement debtor or its possible belongings.[84]

32 In other words, attorneys will have to work as a sort of private detectives. It could imply that the enforcement institution needs to have more support from the lawyers and in some sense, from a more privatized enforcement mechanism. But unlike the reform happened in Croatia, which tried to introduce public notaries and even private bailiffs as a new legal profession,[85] the Chinese law and the related academic discussion have not gone too far.

3.2.2 Better Public Enforcement Organ?

33 Yet, the present situation that practicing lawyers have to work hard and progressively does not mean it is necessary in the long run. Under the current plan held by the authority, the reform of enforcement proceedings will highly possibly run in the opposite direction and further intensify public enforcement measures. Accordingly, there is an online enforcement inquiry and control system (网络查控系统), which is led by the judiciary and enables the court to discover the personal identity and property of the judgment debtor directly. The legal ground of this system locates in Article 253 Section

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[83] China Judgments Online https://wenshu.court.gov.cn accessed 7 January 2024.

[84] Regarding the ongoing story, it is noted that the judiciary is now reluctant to publish real judgments online and such issue attracted much attention in China's society at the end of 2023. Significantly less judgments are released in the China Judgments Online, while the SPC insisted that 'China's determination and efforts to promote judicial openness will not be weakened, and its approach to ensuring transparency will become more diverse' and 'the website, established in 2013 in an attempt to improve judicial transparency, will continue to be used, but its operation will be optimized. At the same time, it revealed that two other online platforms for court rulings are being set up, in part to offer more channels for the public to see verdicts and learn about the law. It said the first new archive will mainly be used for analyzing judicial data through rulings, and so access will be restricted to court staff members. But the second will be a library of all cases with reference value, no matter whether the material is provided by a court, a lawyer or a resident, and it will be accessible to everyone for research and learning about the law'. See Y Cao, 'Top court reaffirms dedication to improving judicial transparency' *China Daily* (Beijing, 27 December 2023) https://www.chinadaily.com.cn/a/202312/27/WS658b7ee1a31040ac301a9b9e.html accessed 20 October 2024.

[85] See A Uzelac, 'Privatization of Enforcement Services – A Step Forward for Countries in Transition?' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 83, 88–93.

1 sentence 1 of the CPL, Article 485 of the ICPL 2015[86] and Article 12 of the Provisions of the SPC on Issues concerning Property Investigation during Enforcement in Civil Procedures (hereinafter Provisions Investigation 2017)[87]. This public online system could be regarded as a suitable substitution for the current efforts of private lawyers. If it could fulfil its proposed functions of inquiring and then seizing, this public service would even be a more advanced tool than any private alternative. Then, most of the currently dispersed property information would all be accessible to the competent enforcement court in each case. Because it is a public authority involved, the delivery of sensitive information is more reliable for other governmental branches providing the information. The creditor could save more money since it may be universal that the court fee is ordinarily lower than the attorney fee. If we take the practice of contingent fee agreements into account, the difference could be even more obvious. Meanwhile, for those lawyers who could make use of their sources inside public authorities, there is a considerable grey zone in the law and they may get caught crossing the line. If instead, the investigation is fulfilled by the court in a totally legal manner, these well-connected lawyers and their friends would go less frequently near the margin of law. It is good for all of them personally and most crucially, for the preservation of the rule of law in practice.

34 With the assistance of information technology and developed computer programs, the execution work will be simplified and formalized dramatically. While having standardized guidance for promoting enforcement proceedings, enforcement officers would be requested to follow these procedural steps strictly. It is also proposed by the Outline of People's Courts' Enforcement Work (2019-2023) in its primary task 27. Among others, more user-friendly functions such as batch selection, batch freezing and automatic search of objects, as well as artificial intelligence, shall be accordingly developed. The computer system should be easy to use and facilitate enforcement officers determining the direction and measures for search and control of the property. In such an optimal case, there would be no need for practicing lawyers to repeat investigational measures which have already been taken by some enforcement officer. In other words, if China continues its current public approach to finding out the enforceable assets *sua sponte* and this path dependence gives rise to no severe practical

[86] Judicial Interpretation No 5 [2015] of the SPC (China). Although the judicial interpretation has been revised the end of 2020, due to the promulgation of the Civil Code, there is no substantial change made for the topic of this article.

[87] Judicial Interpretation No 8 [2017] of the SPC (China). Although the judicial interpretation has been revised the end of 2020, there is no substantial change made for the topic of this article.

problem, the privatization of enforcement the organ in the sense of officially diverting some enforcement functions to private sectors is hardly an open question.

3.2.3 Private Assistance Still Needed

35 Before this comprehensive online enforcement inquiry and control system is accomplished, the practicing lawyers would certainly not lose their jobs. Insisting on the public nature of the enforcement organ does not come into conflict with the possibility of designating private sectors to bear a hand. Practicing lawyers may be empowered to collect the necessary property information after their application for an investigation order has been approved by the responsible court. For instance, in order to spare the time of enforcement officers, they could send the creditor's attorney to a remote bank branch or a business workplace of the debtor to acquire crucial information. Just as the Dutch *Huissier de Justice* could engage in extrajudicial debt collection activities, provide legal advice for clients as well as fulfil its official enforcement duties,[88] it is not hard to imagine that the Chinese lawyers could accomplish multiple kinds of activities.

36 The primary task 38 of the Outline of People's Courts' Enforcement Work (2019-2023) recognizes the need to try out the investigation by some practicing lawyers. Task 43 states that the proportion of lawyers participating in enforcement proceedings should be improved, while the information platforms facilitating lawyers' participation shall also be established to maximize the role of lawyers. Here, the lawyers are helping the court reduce its caseload. And to some extent, the Chinese court is good at finding helpers. The most significant example is shown in the area of disposing debtor's assets. In the past, the court relied on private auction firms to sell the seized items. Then, the SPC released the Provisions of the SPC on Several Issues concerning Online Judicial Sale by People's Courts[89] in August 2016 and adopted an online auction system nationwide. This judicial interpretation stated that it was the enforcement court that was in charge of the sale process, literally named as judicial sale (司法拍卖). According to other rules of this judicial interpretation and the respective policy clarification, the auction firms are now merely assisting the court with their professional specialty.

37 Even if the public inquiry and control system is well established, the supplementary role of practicing lawyers should not be understated. Not to mention their prospective contribution concerning the usage of interim measures during and before the commencement of civil proceedings, there would always be some assets of the debtor

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[88] See C H van Rhee, 'The History of the "Huissier de Justice" in the Low Countries' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 161, 173.

[89] Judicial Interpretation No 18 [2016] of the SPC (China).

which are not listed in any public or private data platform.[90] Falsely registered properties exist inevitably and concealed legal relationships beneath the public record are unable to be eliminated. Some public authorities may be reluctant to provide all the required information. Some enforcement officers can forget or intentionally fail to do as requested by laws. On all these occasions, practicing lawyers with their experience and knowledge should be the most appropriate wingmen for their clients. Only ordinary mechanical tasks should be left to the enforcement court. Taking it more broadly, attorneys and the court are capable of cooperating and collaborating with each other among the same legal community.

38 Lastly, this trend is also admitted by the newest Outline of People's Courts' Enforcement Work (2019-2023) of the SPC. The SPC's seventeenth primary task plans to actively introduce specialists to participate in enforcement. Here, institutions and personnel from arbitration, notaries, practicing lawyers, accountants, audit and other professionals are taken into account. There should be distinct approaches to the essential matters under the power of enforcement and their supporting matters with some administrative nature. As a result, some appropriate outsourcing of property search and control, support for online auction, payment of case-related money, service of documents, and other supporting matters in enforcement proceedings to specialists outside the judiciary shall be experimented. During the purchase of social services, the procedural justice should be guaranteed. It means that the potential contribution of practicing lawyers, although of minor importance, is always acknowledged by the current reform plan.

3.3 Relationship Between Adjudication and Enforcement

3.3.1 Development Toward Separation of Both Institutions

39 Furthermore, besides the discussed privatization of the enforcement organ, there is still some other possible choice when it comes to how to partly change the dominating role of the court in enforcement proceedings. Rather than the court, an independent administrative organ is also capable of being a centralized enforcement organ as the example in Sweden has shown.[91] As a result, the issue of separating the enforcement

[90] As a result, the access to non-public files is highly cherished by modern enforcement laws. See B Hess, 'Different Enforcement Structures' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 41, 51.

[91] See W Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in V Rijavec, W Kennett, T Kerestes and T Ivanc (ed), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 301, 303–308. Earlier discussion

work from Chinese courts could be subject to some further reform. Indeed, a people's court is requested and empowered to accomplish a variety of tasks. Besides the function of settling disputes in the form of litigation or mediation, the same court has to fulfil the function of enforcement at the same time. Nevertheless, both functions differ from each other by nature. Without outsourcing of enforcement tasks to any organ other than the court, it is not hard to agree that 'a court-based system tends to emulate the way the core business of the courts (litigation) is being executed'.[92] Therefore, we need to discover how to understand the relationship between adjudication and enforcement within individual courts and the judiciary as a whole. Especially, some understanding of this relationship may lead to more substantial consideration of the dispute in the enforcement case during enforcement proceedings and then distinguish it from the counterparts in other jurisdictions.[93]

40 As one of the long-lasting aims of Chinese civil justice reform, the separation of adjudication and enforcement (审执分离) is proposed and promoted in the area of enforcement law.[94] Although the first version of the Organic Law of the People's Courts of PRC of 1954 stated that there were separate enforcement officers (执行员) in courts (Article 38) and the second version of it in 1979 (Article 41 Section 1) confirmed again, this legal rule was not taken in practice seriously. It was the adjudication judge who was responsible for the execution of the final judgment which it had made seconds ago. The judge had to think about the possibility of successful enforcement even while trying the case. This all-in-one model could jeopardize the impartiality of the trial judge and make it a directly interested person in the ongoing civil process.

41 In the 1990s, the Chinese court began to establish a separate section of enforcement within each of the courts. Article 209 Section 3 of the CPL 1991 shows that the local court and the intermediate court have the power to set up an enforcement organization, whose responsibility is to be regulated by the SPC directly. Gradually, apart from the enforcement of interim measures (Article 3, Provisions of the SPC on Several Issues concerning the Enforcement of People's Courts (for Trial Implementation) of 1998

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of this mode with dedicated enforcement specialists, see W Kennett, 'Enforcement: General Report' in M Storme (ed), *Procedural Laws in Europe: Towards Harmonisation* (Maklu 2003) 81, 96–97.

92 A Uzelac, 'Privatization of Enforcement Services – A Step Forward for Countries in Transition?' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 83, 96.

93 See only the understanding of the principle of formality in Germany: F Baur, R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (C.F. Müller 2006) para 1.4–1.8.

94 Similar comparative remarks, see B Hess, 'Different Enforcement Structures' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 41, 46.

(hereinafter Enforcement Provisions 1998)[95]), the judge making a judgment will not consider any enforcement affair anymore. The power of creating an enforcement organization is extended to courts at all levels due to the amendment of the CPL statute. In the 2007 version of the CPL, Article 205 Section 3 restates this rule, while now the position of it is Article 239 Section 3 of the CPL 2023. Moreover, the enforcement of interim measures on most occasions is distributed to the enforcement organ as well since 2016. Yet, Article 2 of the then effective judicial interpretation, namely Provisions of the SPC on Several Issues concerning the Handling of Property Preservation Cases by the People's Courts of 2016[96], reserves the possibility of adjudicative judges in exceptional cases to enforce the interim measures issued by themselves. At the end of 2020, along with other judicial interpretations in the area of enforcement, this new rule finds its position in the revised version of Article 3 of the Enforcement Provisions 1998.

42 Recently, the proposed separation has encountered ongoing reform and creative social experiments. According to the foundational CCCPC Rule of Law 2014, optimizing the allocation of judicial authorities in a broader sense was supposed to be emphasized. Therefore, public security authority, procuratorial organs, courts and judicial administrative organs had to perform their own function, whereas the criminal investigative power, prosecutorial power, adjudicative power and enforcement power had to coordinate and be mutually restricting with each other. Since the here named organizations and powers could correspond with each other, it was argued that courts had the adjudicative power and judicial administrative organs had the enforcement power. However, the judicial branch and a majority of commentators disagreed with this approach of interpretation. Instead, CCCPC was only pursuing a general goal of separating adjudication and enforcement rather than any concrete plan for the separation. In other words, an independent administrative agency which is competent for civil enforcement is not an option.

43 During the drafting of the new Civil Enforcement Law statute in 2023, there was a large debate regarding which public organ is the most suitable one for managing enforcement proceedings. It was heard that the Department of Justice has great interests in taking up the position of the judiciary in enforcement proceedings. The discussion itself and the results are still kept as state secrets. Yet, many experts knew that this was at least one of the key issues, if not the most significant one, which postpones the progress of the prospective Civil Enforcement Law statute.

[95] Judicial Interpretation No 15 [1998] of the SPC (China).

[96] Judicial Interpretation No 22 [2016] of the SPC (China).

3.3.1.1 Further Aspects to Understand This Relationship

44 Whether to realize the separation by the procedural rules to be adopted (eg, proposed Civil Enforcement Law statute v CPL statute), among different groups of judges (eg, adjudication judges v enforcement judges, or enforcement judges who are specifically for property investigation v the ones supervising their colleagues), with restructuring each court (eg, enforcement bureau v other internal divisions of the same court), or whether to establish an enforcement organ outside the court, should be subject to the further development.[97] Alternatively, according to the primary task 13 of the Outline of People's Courts' Enforcement Work (2019-2023), the choice between special teams of judges and separate divisions could depend on the real situation in each court. Besides, after the CCCPC decision in 2014, some pilot system reform of separation of judicial power and enforcement power was planned and executed. The result of this pilot plan has not been made public. From the perspective of an outsider, it could be speculated that the result of this reform could not be very positive or of great significance. In such cases, the final results of the movement towards separation of adjudication and enforcement are still to be expected.

45 Moreover, the relationship between adjudication and enforcement could be of broader meaning. On one hand, it may refer to the cooperation and collaboration inside the court system. There is already a judicial document named Opinions of the SPC on the Coordinated Operation of Case Docketing, Trial, and Enforcement by People's Courts (hereinafter Opinions Coordinated Operation 2018)[98], which intends to promote the smooth connection and the efficient operation of different stages of a civil process and to safeguard the efficient realization of the parties' rights. For instance, Article 463 of the ICPL 2015 and Article 16 Section 1 item 3 of the Enforcement Provisions 2020 (updated Enforcement Provisions 1998 in 2020) [99] stress that the content of enforcement titles shall be definite and specific. Article 11 Section 1 of the Opinions Coordinated Operation 2018 lists nine types of cases in which the particularity of the rights to be enforced could be of no question. This judicial document also regulates

[97] See elaborately J Xiao and Z Huang, 'On the Principle of Separation and Collaboration in Judicial Power Configuration: A Perspective on the Separation of Jurisdiction and Enforcement Power' (2015) 55(6) Jilin University Journal Social Sciences 34. Leading opinion which is open for the shift of enforcement function to some institutions outside the court system, see only Z Zhang, 'Imaginary Space of the Reform for Execution System' (2008) 560 People's Judicature: Application 50.

[98] Document (法发) No 9 [2018] of the SPC (China).

[99] Decision of the SPC to Amend Eighteen Judicial Interpretations in Area of Enforcement Including the Provisions of the SPC on Several Issues Concerning People's Courts' Impoundment of Goods Transported by Railway, Judicial Interpretation No 21 [2020] of the SPC (China).

default rules in case the specific item to be enforced has been damaged or lost and no compensation could be agreed between parties (Article 14 of the Opinions Coordinated Operation 2018). At the same time, Article 15 of the Opinions Coordinated Operation 2018 provides solutions when the enforcement court finds that the content of enforcement titles is not clear enough. The need to have these rules is shown by the frequent discussion on them in practice. Especially when Chinese courts are still working hard to improve the quality of the judgment they made, this aspect of the relationship between adjudication and enforcement should be taken seriously. Respectively, the primary task 19 of the Outline of People's Courts' Enforcement Work (2019-2023) supplies its suggestion as well.

46 On the other hand, when it comes to different functions of adjudication and enforcement, there could be more disputes. From the perspective of comparative law, it is repeatedly emphasized enforcement proceedings should follow the principle of formality. It is true if there is a separate enforcement officer which sits outside the adjudicating court, because the respective enforcement officer, rather than a court, is not empowered to make any substantive decision. Yet, could we acknowledge some exceptions if the court itself is responsible for enforcing its judgment? And then, may an enforcement officer go beyond the formal standards, when it has sufficient grounds to believe that it has successfully detected the true nature of the case? Especially, a qualified judge could also act as an enforcement officer in China. It is well accepted that the enforcement division of the competent court has both functions of adjudication and enforcement.

47 Explicit illustrations could be found in case of adding enforcement debtor during enforcement proceedings. In accordance with the applicable Provisions of the SPC on Several Issues Concerning the Modification and Addition of Parties in Civil Enforcement of 2016 (hereinafter Provisions Addition of Parties 2016)[100], some third parties such as the shareholder of a one-man company could be added as the debtor in the enforcement case originally only against the company (Article 20 Provisions Addition of Parties 2016). Ordinarily, in order to enable a direct enforcement against the shareholder, the shareholder should have been claimed in the previous litigation at the first place. Instead, Article 32 Section 1 of the Provisions Addition of Parties 2016 requests the third party, which has been added as an enforcement debtor and refuses to be added, to file a third-party claim to prevent the execution of a judgment within 15 days from the date

[100] Judicial Interpretation No 21 [2016] of the SPC (China). In the scope of this contribution, the related articles of this judicial interpretation were not modified by the new Judicial Interpretation No 21 [2020] of the SPC (China).

when a written ruling on adding the enforcement debtor is served. With the creation of this special institution, which in spite of the same name differs from Article 771 German Code of Civil Procedure (GCCP), enforcement proceedings are admitted to have the authority to violate the principle of formality. Accordingly, the enforcement court could in fact expand, rather than just be subject to, the confirmed scope of liability in final judgments.[101]

3.3.2 Impact of Enforcement Conspiracy Damaging Outsiders

48 Generally speaking, the aforementioned concentration of enforcement authority in one and the same court does not necessarily mean that the separation of distinct powers could not be achieved. The key issue should be with which mechanism we could make it come true. This kind of questioning has recently intensified by the not rarely happened conspiracy in Chinese civil cases. It puts the position of enforcement proceedings in a more delicate situation and invites more substantial involvement from the side of the judiciary in the future.[102] The existence of conspiracy indicates the malevolent agreement between the judgment debtor and a bad-faith third party against the judgment creditor. It is a serious legal problem which could be attributed to a variety of social, economic and legal factors. The criminal prosecution of false litigation is currently among the most crucial issues in practice.[103] For instance, both the debtor and the third party may agree on the existence of contractual rights or even some real rights (*ius in re*)

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[101] See J Xiao, 'The Institutional Impact of Establishing the Principle of Formalization in Civil Enforcement' (2021) 24 Journal of The East China University of Politics Science and Law 6, 15–20.

[102] The area of arbitration law encounters some similar problems in China. Although it is commonly agreed that in some optimal situations, the commercial arbitration practice in China should follow the direction of international standards. This tendency is supposed to exist not only in international or foreign-related cases but also in purely domestic cases. However, because there is obviously the same conspiracy issue, during the newest modification process of Arbitration Law since 2020 (until January 2024 still ongoing), which originally took effect in 1995, the voices to add some substantial intervention even after the final arbitral award is given are sound and clear. At the end of 2023, a set of accountability rules are proposed and severely discussed in the academic circle and among practitioners.

[103] See only *Interpretation of the SPC and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in the Handling of Criminal Cases regarding False Litigation*, Judicial Interpretation No 17 [2018] of the SPC (China). There is also an additional judicial instrument on the criminal punishment of false litigation, which is mutually signed by the SPC, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on March 2021. Document (法发) No 10 [2021] of the SPC (China).

of the third party. Or they may settle their false case with confirmation that the third party has a right on the assets which actually belong to the debtor.

49 As a result, the enforcement officer could not find any valuable item on the premises of the debtor or under its name anymore. Alternatively, the third party will raise objections in enforcement proceedings commenced by the judgment creditor and claim falsely for its ownership or other property rights to prevent the enforcement of a specific item of the debtor (Article 238 CPL and similar to Article 771 GCCP). In order to protect the creditor from the damage of this kind of deceit, some enforcement officers in practice believe that the court should dig into the ownership of the disputed assets and identify the real scope of the debtor's belongings. In other words, the enforcement officer may not obey the principle of formality during its executional practice. It may try to go into the substance of the case and exercise some adjudicative power, if any, outside any ongoing adjudicative process.

3.4 Protection of Parties During Enforcement

3.4.1 Primary Protection of the Enforcement Creditor

50 Then, when it comes to the major players in enforcement proceedings, the relationship between the enforcement court and each of the parties is also relevant. Since the enforcement title by its nature acknowledges the existence of some substantive rights of the enforcement creditor, efforts in executing eg, a final judgment aim undoubtedly at the protection of the enforcement creditor. When it comes to the effectiveness of enforcement proceedings, effectiveness means effective legal protection which conforms to the Constitution Law (*verfassungsrechtliche Rechtsschutzgewährleistung*) and is also in favour of the creditor.[104]

51 In this sense, the enforcement organ, which may even be requested to be neutral by laws, could still to a great extent share mutual interests with the creditor in enforcement proceedings. Both the creditor and the enforcement organ are facing the difficulty in enforcement.[105] As introduced, the SPC began its campaign for the resolution of difficulty in enforcement following the CCCPC Rule of Law 2014. We may wonder who is accountable for this difficulty. Although other entities such as local governmental agencies, private companies with the duty to assist the enforcement officer, some influential third parties and so forth may contribute to the hardship in enforcement

[104] See F Baur, R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (C.F. Müller 2006) para 7.1.

[105] See X Zhao, 'The Crisis in Enforcement of Civil Judgments in Modern Society' (2010) 22 Peking University Law Journal 576, 577–578.

proceedings, the debtor who fails to perform the debt in the first place is to be held liable. It does not depend on whether the debtor is insolvent or rather has sufficient property while refusing to pay. Regarding the positions of the creditor and debtor against the court, if the court intends to blame the debtor, it could be presumed that the creditor will be in contrast favoured. And even if the enforcement court's responsibility should be mitigated and the creditor has now to take some business or day-to-day risk, this advantageous position of the creditor will not be changed fundamentally.

52 Moreover, the enforcement organ in China, even in this case the court as a public organ, has to prove its own value in realizing the substantive rights determined in the enforcement title. If legal enforcement proceedings are in most cases unsuccessful, the creditor may have to consider the possibility of employing illegal methods to collect its debt. Then the underworld, if any, would activate the law of the jungle. This could further jeopardize the authority of the judiciary and make the enforcement work even harder. Especially, as to be introduced later, the Chinese enforcement court is deemed to play an all-inclusive role to facilitate the creditor. As Article 1 and Article 2 of the Provisions Investigation 2017[106] have clarified, the enforcement court takes the final responsibility for the discovery of enforceable property, while the creditor merely has the burden to provide clues. Even the court system itself would also like to take the rate of satisfaction in enforcement (执行到位率) very seriously, which literally means the percentage of fulfilled debt in the entire to-be-enforced amount of debt. The pursuit of a higher rate of this kind is always one key element in evaluating the success of an enforcement court.

3.4.2 Necessary Protection of the Enforcement Debtor

53 On the other hand, although the function of enforcement proceedings concentrates on effectively protecting the creditor, there should be legal limitations on this process of execution on account of the protection of the to-be-enforced debtor. While granting the enforcement organ a general permission to affect debtor's property rights, freedom and so forth, the national Constitution Law should also mark the boundary between legal and non-legal activities.[107] Since China has not made use of any privatized enforcement agent which has to act for its creditor clients by its nature, respecting the rights of debtors should not encounter some inherent difficulty.[108]

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[106] Judicial Interpretation No 8 [2017] of the SPC (China).

[107] See generally F Baur, R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (C.F. Müller 2006) para 7.2–7.37.

[108] See W Kennett, 'Enforcement: General Report' in M Storme (ed), *Procedural Laws in Europe: Towards Harmonisation* (Maklu 2003) 81, 100, 104.

54 First of all, the interests of the debtor are protected by procedural rules directly. For instance, when the debtor conceals its property and tries to frustrate enforcement proceedings, Article 259 CPL empowers the enforcement court to issue a search order which is signed by the president of this court. The necessity of having a special order for initiating the search measure is of significant nature. The Chinese rule differs from the German counterpart stated in Article 758a GCCP, which also requests a search order normally and takes the consent of debtor, the possibility of jeopardizing the success of the search and so forth as available exceptions.[109] In such cases, in order to protect the constitutional right of the enforcement debtor based on Article 13 II of the German *Grundgesetz* (Federal Constitution), it is in Germany accepted that the court has to play a role in giving the search order. The court has to supervise the operation of search. Other than a *Gerichtsvollzieher* (enforcement officer) appointed by but parallel to the German court, the enforcement officer in China directly belongs to the personnel of the court. Regarding the relationship between the enforcement officer and the court in China, the court is rather supervising itself when it determines whether to make a search order. Theoretically speaking and similar to the Japanese understanding following Article 123 Section 2 of the Japanese Civil Enforcement Law, it could be alternatively argued that an additional search order is unnecessary because it could be presumed that the power to search is an inherent one of the enforcement officer. Nevertheless, the Chinese law tries to safeguard its procedural justice in a more prudent manner. Besides the applied procedure regulated in Article 497–500 of the ICPL 2015, the president of the court has to approve the plan of search at the first place. This procedural arrangement could not prevent the misuse of enforcement power entirely, whereas at least the procedure itself counts. Taking the not unusually abused discretionary rights of the public authority in China into account, procedural steps aiming at controlling it are without dispute wanted.

55 Moreover, in considering whether and how to employ enforcement measures, the principle of proportionality plays a crucial role.[110] Accordingly, the enforcement court has to provide adequate protection to the debtor's family in the form of exemptions.[111] For instance, Article 254 Section 1 sentence 2 and Article 255 Section 1 sentence 2 of the CPL emphasize that the enforcement court shall ensure that necessary living expenses for the debtor and its dependent family members are exempted from being executed,

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[109] See H Brox and W D Walker, *Zwangsvollstreckungsrecht* (C.H. Beck 2018) para 322–330.

[110] Comparative remarks already, see K D Kerameus, 'Enforcement Proceedings', in M Cappelletti (ed), *International Encyclopedia of Comparative Law, Vol XVI. Civil Procedure* (Mohr Siebeck 2014) para 10–19.

[111] See O Chase, H Hershkoff, L Silberman, J Sorabji, R Stürner, Y Taniguchi and V Varano, *Civil Litigation in Comparative Context* (West Academic Publishing 2017) 619.

when the court withholds a portion of the debtor's income, seizes the debtor's assets and then sells them off. And in accordance with Article 5 item 1 and 2 of the Provisions of the SPC on the Seizure, Impoundment and Freezing of Properties in Civil Enforcement by People's Courts of 2004 (hereinafter Provisions Seizure 2004)[112], clothes, furniture, kitchenware, tableware and other necessities for family life, together with the living expenses necessary for the debtor and its dependent family members, are excluded from the enforceable assets of the debtor as well. Moreover, the same legal norm lists some special property of the debtor which may relate to the necessary protection of its interests as well as the interests of its family. Articles necessary for compulsory education, unpublicized inventions or unpublished works, auxiliary devices and medical articles necessary for the physical disability and articles of honour and commendation, are understood as unenforceable items (Article 5 item 3–6 Provisions Seizure 2004). Although not formally enumerated, the religious items enjoy this kind of enforcement exemption too.

56 Respectively, the SPC announced its Opinions on Further Intensifying the Ideal of Enforcement with Goodwill and Politeness in the Enforcement Work (hereinafter Opinions Enforcement Goodwill 2019)[113] at the end of 2019. With this document, the judiciary in China intends to concretely facilitate a stricter and more standardized, impartial, polite enforcement system and promote the sustainable, sound, and high-level operation of the enforcement work. Using the academic terminology, to be applied is *Verhältnismäßigkeitsprinzip* (the principle of proportionality),[114] which leads to the protection of the debtor to the maximum extent and the avoidance of excessive enforcement, while the prevailing party still should have its rights realized as determined. Although there is no explicit prohibition of the *contra bonos mores* hardship following the example of Article 765a GCCP, the spirit of this German rule is shown in this Chinese judicial policy.

57 This policy represents the fundamental requirement of Article 253 Section 1 sentence 3 of the CPL which limits the enforcement to the enforcement title. Firstly, excessive or inconsiderate seizure ought to be strictly prohibited. For instance, in case of a number

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[112] Judicial Interpretation No 15 [2004] of the SPC (China). In the scope of this contribution, the related articles of this judicial interpretation were not modified by the new Judicial Interpretation No 21 [2020] of the SPC (China).

[113] Document (法发) No 35 [2019] of the SPC (China).

[114] It is also argued that when it comes to the underlying political purposes as well as features of the Chinese enforcement mechanism, this new judicial policy differs from the principle of proportionality. See H Chen, 'On the Principle of Civil Enforcement in Good Faith' (2021) 24 Journal of The East China University of Politics Science and Law 30, 34–37.

of properties to be enforced, the enforcement court shall select the property which has less impact on the work and living of the debtor and is easier to be enforced.[115] If appropriate, the debtor could suggest the order of enforcement among different properties, while without justifiable reason, the court shall accept the suggestion (Article 3 Opinions Enforcement Goodwill 2019). And when the bank savings are to be frozen, the frozen amount shall be specified and the transfer and use of the savings beyond this amount shall not be affected. Where the overall value of an apartment to be seized obviously exceeds the amount of creditor's rights, seizure measures shall be limited only to the corresponding value portion (Article 4 Opinions Enforcement Goodwill 2019). It means that the scope of the seizure taken by courts may be narrower than the range of the requested duty to report property in accordance with Article 252 of the CPL and its similar counterparts Part 71 of the UK Civil Procedure Rules (UKCPR) or Article 802a ff GCCP. If the workshops, machinery equipment, and other production materials of an enterprise are seized and the continuous use of them has no significant impact on the value of the property, the enforcement court shall approve such kind of use (Article 5 Opinions Enforcement Goodwill 2019).

58 Looking at the big picture, Opinions Enforcement Goodwill 2019 shows some preferred working methods in practice and looks like a statement of enforcement policy rather than legal norms. However, taking a more pragmatic perspective, the content of this document represents a group of right answers which are endorsed by enforcement officers and will make a difference in the real world. Moreover, it may also contribute to reconsidering the role of the court in enforcement proceedings, since this document implies a restrictive tendency of using discretional judicial power.

59 The most vigorous tool in the hands of an enforcement officer is the power to carry out some credit punishment via indirect enforcement measures. The credit of a natural person or legal person has great importance in modern society and a lower social reputation could affect the lives of most persons dramatically. Just because of its comprehensive nature and the severe consequences it may give rise to, the credit network and its major application, lists of dishonest enforcement debtors, could be misused. These lists are similar to the long-lasting tradition of having a public list of debtors in Germany (Article 802f III 2, Article 882b ff GCCP). A related judicial interpretation, which was named as Several Provisions of the SPC on Issuing the Information on the List of Dishonest Judgment Debtors (hereinafter Provisions Dishonest

[115] Similar arrangement in comparative law, see W Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in V Rijavec, W Kennett, T Kerestes and T Ivanc (ed), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 301, 339.

Debtors 2017)[116] and was released originally in 2013 and then amended in 2017, could not exhaust all possible applications of these lists. Is it of constitutionality to circulate the listed debtor's status of being dishonest to its relatives, neighbours or even the person who makes a phone call to the debtor? Should the court and the local bureau of education be allowed to prevent the children of the debtor from going to a private or even public school? If the close relative of the debtor is struggling with some severe illness, is it suitable to list the debtor nevertheless and forbid it to travel even for a visit to hospitals in other provinces? For the purpose of insisting on the principle of proportionality, some public law scholars have paid close attention to the operation of this network and intended to draw the line for the practitioners including enforcement officers.[117]

3.4.3 Exceptional Encouragement for Diligent Creditors

60 Some special consideration should be given to the situation of multiple creditors during enforcement. In such occasions, not just the interests of one creditor and one debtor are to be balanced, but the distribution among different creditors should also be well arranged. [118] Like the counterparts in continental legal systems, the Chinese enforcement law does in general adopt the principle of *Einzelvollstreckung* (individual enforcement).[119] Therefore, the implementation of any enforcement measures is for the benefit of the specific creditor who has initiated enforcement proceedings. Here is the priority principle to be applied. Article 88 Section 1 of the Enforcement Provisions 1998 rules that when a couple of creditors apply for enforcing the assets of the same debtor and any right of them does not enjoy some *Verteilungsvorrecht* (substantive priority of repayment) such as *Sicherungsrechte* (mortgage, pledge or lien), the order of paying off is determined by the sequence of taking enforcement measures. Nevertheless, an exception is acknowledged, when the debtor is an insolvent natural person who is generally until now impossible to be bankrupted under Chinese law.[120]

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[116] Judicial Interpretation No 7 [2017] of the SPC (China).

[117] See X Wang and Z Huang, 'On the Legal Restriction on the Dishonesty Restriction System' (2021) 37 China Law Review 96; K Shen, 'The Rule of Law Approach to the Construction of Social Credit System' (2019) 211 China Legal Science 25. See also X Dai, 'Enforcing Law and Norms for Good Citizens: One View of China's Social Credit System Project' (2020) 63 Development 38.

[118] See already W A Kennett, *Enforcement of Judgments in Europe* (Oxford UP 2000) 93.

[119] See F Baur, R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (C.F. Müller 2006) para 1.9–1.10.

[120] However, it is noted that some local legislation in China may walk ahead compared to the national statute. For instance, Shenzhen Special Economic Zone in Guangdong Province has promulgated in August 2020 its own version of personal bankruptcy regulation. This law, which takes effect in March

Instead, its creditors have the opportunity to apply for a 'fair distribution in judgment execution' (参与分配)[121], where the principle of equality applies generally. In this sense, Article 510 of the ICPL 2015 states that, after the liquidation of enforcement expenses and rights enjoying substantive priority of repayment, ordinary creditors will in principle be repaid in accordance with its proportion in the total debts which have been claimed in the fair distribution process. This rule is not something totally new, but originally appeared in the Article 94 of the Enforcement Provisions 1998.

61 To the contrary, the Enterprise Bankruptcy Law follows the principle of *Gesamtvollstreckung* (collective enforcement) in its Article 113 Section 2. After settling the rules for the sequence of liquidation among different types of claims (Article 113 Section 1), it is said that the insolvent assets shall be distributed according to the proportion when they fail to satisfy the requirements for liquidation in a same sequence. Respectively, a legal-person debtor is no longer suitable for the fair distribution process since 2015, when the ICPL 2015 explicitly directs them to turn outward to the bankruptcy proceedings from enforcement proceedings. Failure in initiating the bankruptcy proceedings implies that the principle of priority still applies, as enforcement proceedings continue. Hereinafter is the former Article 96 of the Enforcement Provisions 1998 abolished, which refers to the application of fair distribution mechanism in case of an enterprise. As a result, the date of implementing enforcement measures, for instance taking impoundment, matters in each enforcement case. Article 516 of the ICPL 2015 demands that the sequence of payment in this case should be as follows: enforcement expenses, rights enjoying substantive priority of repayment, the ordinary creditor's right which was taken control of by the enforcement court at first and the other common creditor's rights which come later.

62 Yet, the problem left is, despite the application of individual enforcement in case of some debtor of an insolvent natural person, whether encouragement should be given to the creditor taking active steps to discover the assets to be enforced. The answer under Chinese law is a *yes and no* or in German, *jein*. In case of multiple competing creditors against one and the same debtor, the current law tends to enable one of creditors to

2021, confirms among others the possibility of a fresh start for any ordinary citizen. The local authority establishes a new bureau for the administration of bankruptcy affairs (深圳市破产事务管理署) at the same time. If we take the US Consumer Bankruptcy Reform Act of 2020 into consideration, which was introduced to amend US Bankruptcy Code at the end of 2020, it is not hard to discover that the progress in both countries aims at the modernization of personal bankruptcy.

[121] On the introduction to this fair distribution mechanism and reflective comments on impact of it to the practice in China before/after the judicial interpretation of 2015, see Z Zhang, 'The Corporate Bankruptcy Substitute in China' (2019) 33 Columbia Journal of Asian Law 172.

obtain bonus during enforcement if it has substantially facilitated the discovery of debtor's assets. Article 510 of the ICPL 2015 chooses the principle of equality while literally using the term of 'in principle' in this norm. It is attributed to the respective severe dispute in practice on the question of whether the creditor seizing the debtor's assets at first ought to be encouraged and rewarded in this 'fair' distribution. If not, there could be less incentive for any creditor to actively take part in the process of searching for property. Rather, it is reasonable for them to stay at home and to be a free rider who takes the advantages of other creditors and in most cases, the advantages of the enforcement court. The reason would be very simple: it is not 'fair' for any diligent creditor.[122] Conversely, this argument may not always be reasonable, since the Chinese approach differs from many jurisdictions regarding the responsibility of property discovery. If the court inquires the assets of the debtor and levies them *sua sponte*, it is hard to declare that the enforcement creditor, who has started enforcement proceedings at the first place, deserves to obtain a preferential position during the distribution stage of the whole proceedings.[123] Its contribution to the successful discovery of assets refers merely to the commencement of enforcement proceedings on its motive. It seems not to be of great significance.

63 As a result, different pilot programs have been implemented in various places in recent years. Finally, while drawing up the ICPL, the SPC decided that it should leave some space for further endeavours which may appropriately reward the hardworking creditor. It is overwhelmingly accepted in practice that up to 20% of the total value of the debtor's seized item, which remains after the payment of enforcement expenses and rights enjoying substantive priority of repayment, should go to the pocket of the creditor who has contributed to the possession of this debtor's item at the first place.

4 MAJOR PROCEDURAL ISSUES DURING ENFORCEMENT

4.1 Commencement of Enforcement Proceedings

4.1.1 Necessity and Types of Enforcement Titles

64 To initiate enforcement proceedings, the enforcement applicant shall possess a valid basis for enforcement (*titres exécutoires*).[124] The most significant basis in practice is

[122] Similar understanding, see O Chase, H Hershkoff, L Silberman, J Sorabji, R Stürner, Y Taniguchi and V Varano, *Civil Litigation in Comparative Context* (West AP 2017) 618–619.

[123] Comparatively, see K D Kerameus, 'Enforcement Proceedings', in M Cappelletti (ed), *International Encyclopedia of Comparative Law, Vol XVI. Civil Procedure* (Mohr Siebeck 2014) para 10– 127–138.

[124] Fundamental comparative discussion, W A Kennett, *Enforcement of Judgments in Europe* (Oxford UP 2000) 63–75.

definitely the civil final judgment, in Chinese term the legally effective judgment.[125] The implementation of it is even treated as a continuous status of the development of substantive rights.[126] There could be additional *Vollstreckungstitel* (enforcement titles) qualified to be a valid basis. To be named is, for instance, other judicial decisions, a consent judgment in the form of mediation agreement, a civil fine decision against the parties in contempt of court, a special non-contentious *Mahnbescheid* (order for payment), a commercial or labour arbitral award or the related interim measures, an authentic instrument confirming the existence of debt with enforcement force, the property part of an effective criminal judgment or ruling and even an administrative judgment. Moreover, in the area of foreign-related proceedings, foreign judgments or rulings recognized by Chinese courts, judgments made in Hong Kong, Macao and Taiwan region of China, and arbitral awards by some foreign arbitration institutions are entitled to commence enforcement proceedings.

65 These legal instruments are substantially listed in the Article 2 of the Enforcement Provisions 1998. The enforcement title plays a central role in enforcement proceedings, since the aim of the proceedings is determined by the content of the title. Accordingly, Article 253 Section 1 sentence 3 of the CPL requires that the property inquiry and seizure, freezing, transfer and sale by the enforcement court shall not exceed the extent of obligations that the debtor shall perform. And if a substantive settlement is reached during enforcement proceedings, then there is no need to continue the proceedings anymore, because the settlement could replace the private relationship between the creditor and debtor previously confirmed in the enforcement title.

4.1.2 Other Requirements Before Commencement

66 Normally, a creditor holding a valid enforcement title needs to petition a competent court for enforcement of this title. Only on rare occasions, which have to be stated previously in statutes or at least judicial interpretations, the court will start the enforcement of specific judgments or decisions on its own initiative. It means that the enforcement case will be transferred from the adjudication division of the trial court to the enforcement organ of the same court. In this sense, indeed, the Article 247 Section 1 sentence 2 of the CPL states that the relationship between initiation on the own

[125] Whether a civil judgment is final or not, is highly disputed especially in the past, partially because of the existence of trial supervision procedure in Chinese CPL statute (Article 209 ff). J Huang, 'Conflicts Between Civil Law and Common Law in Judgment Recognition and Enforcement: When is the Finality Dispute Final' (2011) 29 Wisconsin International Law Journal 70.

[126] W Jiang and J Xiao, 'The Fundamental Structure of Enforcement Law in China' (2001) 4 Jurist 83, 86.

motion of the court and on the application of a party is in the form of 'either/or'. Nevertheless, no doubt exists in practice that the application of an enforcement creditor is of priority and is to be found in the overwhelming majority of all initiated cases.

67 Another crucial element of the enforcement mechanism is the enforcement jurisdiction. According to Article 235 Section 1 of the current CPL, the jurisdiction in enforcement proceedings belongs to the first instance[127] court and the court at the same level where the property to be enforced locates. Before the amendment of CPL statute in 2007, only first instance court is competent for the operation of enforcement proceedings (Article 207 Section 1 of the CPL 1991). This change almost 15 years ago makes a great difference in Chinese context. The supplemented connection point of some enforceable property provides the creditor with further options. For instance, if it worries about the possible local protectionism in some remote county, it could turn to a metropolis and rely on the judges far away from the influence of local government to promote the enforcement. Additionally, Article 1 of the Enforcement Interpretation 2008 requires that the property to be enforced shall be proven by evidential materials concerning the existence of enforceable assets in the jurisdiction of the proposed court. When it comes to other legal instruments to be enforced, such as any arbitral award or authentic instrument, the court at the place of domicile of the debtor or where the enforceable property locates should obtain the jurisdiction (Article 235 Section 2 of the CPL).

68 Similar to some foreign counterparts,[128] the enforcement creditor has to file the application for enforcement most possibly to a local people's court and less possibly to an Intermediate people's court. Then, the responsible court will begin to review and determine whether this application formally meets the requirements to start

[127] If the case applying some special procedure could only be tried once, there would be no 'first' instance, but only one instance at all. On such occasions, the ICPL 2015 adds its Article 462 to close the loophole in the law, which states that rather than the first instance court, the local court which has made the decision shall have the enforcement jurisdiction. In this way, the jurisdiction is determined by the jurisdictional rules in the individual special proceedings.

[128] For instance, the procedure for granting the enforcement in Austria (Bewilligungsverfahren), which differs from the actual enforcement (Vollzugsverfahren), is prepared for special requirements apart from the general procedural requirements. WH Rechberger, *Civil Procedure in Austria* (2nd edn, Kluwer 2006) 92. Comparative research, K D Kerameus, 'Enforcement Proceedings' in M Cappelletti (ed), *International Encyclopedia of Comparative Law. Vol XVI. Civil Procedure* (Mohr Siebeck 2014) para 10 – 22–43.

enforcement proceedings. Article 18 Section 2 of the Enforcement Provisions 1998[129] states that while meeting the listed preconditions, the application for enforcement will be docketed within seven days after application by the court. Otherwise, the court shall render a ruling not to accept the case within seven days. According to the Article 18 Section 1 of the Enforcement Provisions 1998, the legal instrument to be enforced (enforcement title) should have taken effect at first. The enforcement applicant ought to be the right holder, the successor or the person succeeding to the rights determined by the enforcement title, while the debtor fails to perform its obligation within the term determined by the enforcement title. The enforcement case should be under the jurisdiction of the court reviewing the application. Moreover, Article 463 of the ICPL 2015 states that in the enforcement title, the subjects of rights and obligations are supposed to be definite and the content involving the payment should be specific. The same requirement applies when the enforcement title refers to the specific performance of a contract.

4.1.3 Changing Feature of the Enforcement Notice

69 Along with the review of the enforcement application, even simultaneously, the enforcement officer shall issue a notice of enforcement to the enforcement debtor following Article 251 of the CPL. Then in accordance with the Article 482 of the ICPL 2015, the enforcement court shall issue the notice within ten days as of receipt of a written application for enforcement or a letter of transfer for enforcement. In this notice, there should be an order to the debtor urging him to perform the obligations and a reminder which informs the debtor that it has to pay the interest or surcharge in case of any delayed performance. This interest or surcharge, which appears in Article 264 of the CPL,[130] is similar to the *astreinte* under French law or its counterpart in Italy[131] or even

[129] After the revision in 2020, this article is now Article 16 of the new released judicial interpretation with the same name. The substantial difference between these two versions refers to the deletion of the former Article 18 Section 1 item 3 which requires that the enforcement application ought to be submitted within the time limitation of enforcement. Due to the Article 483 Section 1 of ICPL 2015, even if the creditor applies for enforcement after the time limitation has expired, the court shall register the enforcement case at first and wait for the debtor to submit an objection respectively. If the debtor fails to do so, the enforcement proceedings shall be ordinarily promoted.

[130] A comprehensive study on the indirect enforcement measures including this special payment and the fine due to the frustration to enforcement, Z Cao, 'On the Permanent Injunction and Its Enforcement: Focusing on the Regulation of Repeating Infringements' (2018) 4 Peking University Law Journal 1070, 1091–1099.

[131] E Jeuland and S Lalani (ed), *Lexicographical Research in Civil Procedure* [*Recherche Lexicographique en Procédure Civile*] (IRJS Éditions 2017) 63–64 (by Elisabetta Silvestri).

the sort of penalty for the contempt of court in order to compensate the right owner.[132] Then, the enforcement officer may immediately take enforcement measures to take control of the debtor's assets, even if the notice has not been given (Article 251 CPL).

70 This rule is especially remarkable because there are several changes between the 1991 version and the 2012 version of the *CPL* statute. According to Article 220 of the CPL 1991, enforcement measures could only be employed when the deadline for the voluntary fulfilment determined by the enforcement notice has expired. A man may wonder why this enforcement notice and the new deadline determined by it is for taking any enforcement measures of necessity. Since the enforcement title has already confirmed the obligations to be enforced and the deadline for the debtor to perform its duty, it is confusing whether the date of performance decided in the final judgment could be extended to the new deadline in the enforcement notice and whether this extension is of any substantive legal effects.

71 Gradually, the enforcement difficulty in practice pushed the court to reconsider this rule. In order to prevent the debtor from prospectively hiding or transferring its assets to frustrate the enforcement, the freshly added section 2 of Article 216 of the CPL 2007 began to empower the enforcement officer in case of hiding or transferring assets to seize the assets instantly while giving the enforcement notice. In the next year, Article 30 of the Enforcement Interpretation 2008 clarified that, where an enforcement officer immediately took any enforcement measure, it could send an enforcement notice at the same time or within three days from the day when the enforcement measure was taken.

72 The contribution of the CPL 2012 is that the limited application of this rule in a situation of hiding or transferring assets is abolished. This amendment is justified and widely accepted, since the old rule may impose too much burden on the enforcement officer in proving the existence of such a case. With the new Article 240 of the CPL 2012 (Article 251 of the current CPL), the enforcement officer presently has more discretion to decide when to take enforcement measures, which may be beneficial to the effectiveness of enforcement.

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[132] S Subrin and MYK Woo, *Litigating in America: Civil Procedure in Context* (Aspen Publishers 2006) 284–285.

4.2 Enforcement Objects and Their Handling

4.2.1 Scope of Objects to be Enforced

73 There could be different objects to be controlled by the enforcement judge. For instance, deposits in the bank account, bonds, stocks, fund shares (Article 253 Section 1 sentence 1 CPL), potential income (Article 254 CPL), other financial products, negotiable securities, the real and movable property and certainly cash of the debtor. These are also covered in the assets which should be reported to the court at the beginning of enforcement proceedings. Respectively, the enforcement court could try to transfer real estate certificates, land certificates, forest right certificates, patent certificates, trademark certificates, vehicle and vessel licenses and other property right certificates during enforcement (Article 502 ICPL 2015). In such case, Article 262 of the CPL suggests that the enforcement court may issue a notice of enforcement assistance to the relevant entities which must assist the court.

74 Different items may have various durations of seizure. According to Article 487 of the ICPL 2015, the enforcement court shall not freeze the bank deposits for longer than one year, shall not seize the movable assets for longer than two years, and shall not seize the real assets or freeze other property rights for longer than three years. This limitation is also subject to the renewal by the enforcement court *sua sponte* or the extension applied by the creditor and then approved by the enforcement court. The extension shall not exceed the relevant period prescribed. Compared to the old-time rule in Article 29 of the Provisions Seizure 2004, which has been deleted in its 2020 version, these periods of ICPL 2015 have been prolonged substantially.

75 In some occasions, the debtor may provide the enforcement security which may enlarge the scope of enforceable assets. In accordance with Article 242 of the CPL, where, during enforcement proceedings, the enforcement debtor provides security to the people's court, the people's court may, with the consent of the applicant for enforcement, decide to suspend enforcement and the period of temporary prescription. If the enforcement respondent fails to perform its obligations within the prescribed period, the people's court shall have the power to enforce the property provided as security or the property of the guarantor. Here, the applicant for enforcement says 'yes' explicitly, while the enforcement debtor would never say 'no' since he has already provided security for the temporary prescription.

4.2.2 Control of the Discovered Assets

76 In order to realize the specific performance demanded in final judgments or other enforcement titles, the debtor's assets found ought to be controlled by the enforcement court. Article 253 Section 1 sentence 2 of the CPL authorizes the enforcement court to seize, freeze, transfer or sell the property of the debtor according to different circumstances. There is a special judicial interpretation regulating this area, ie, Provisions Seizure 2004. In general, according to Article 1 of Provisions Seizure 2004, the enforcement court shall make an order to seize the movable properties, real properties or other property rights of the debtor and then serve this order to enforcement parties. If some assistance of a third party is needed, the court could make a notice for assistance in enforcement and serve it along with a copy of the ruling to this third party. Moreover, the debtor, who could be named as the primary debtor, could have debtors of its own. The money claims of a primary debtor against its debtors fall into the scope of its assets and therefore, these claims are suitable to be enforced in favour of the creditor of the primary debtor.[133] The enforcement court is also empowered to withhold or withdraw a portion of the party's income corresponding to the party's obligations to be performed (Article 254 Section 1 sentence 1 CPL). Some more generalized garnishment/subrogation proceedings against a primary debtor's receivables (代位执行) were allowed since the judicial interpretation of 1998[134] and then were renewed in the ICPL 2015. Eventually, these proceedings survived in the amendment of ICPL 2020. The order to be made here is similar to the third party debt order in England (Part 72 UKCPR), which requires a third party to pay to the judgment creditor the amount of money which the third party owes to the judgment debtor.[135]

77 The purposes of any forms of levy aim at the preservation in order to prevent from further disposing of levied property, and at the civil execution in order to satisfy the claims.[136] In order to make the seizure of assets possible, there is with no doubt a strong need to have a comprehensive mechanism to locate the assets of the debtor. Besides the traditional on-site investigation, the online enforcement inquiry and control system

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[133] K D Kerameus, 'Enforcement Proceedings' in M Cappelletti (ed), *International Encyclopedia of Comparative Law. Vol XVI. Civil Procedure* (Mohr Siebeck 2014) para 10–104.

[134] J Glusman, 'Garnishment of Receivables in Chinese Law' (2004) 3 Washing University Global Study Law Review 455. Certainly, this measure of enforcement differs from the substantive right of subrogation (代位权), which demands an individual claim for relief and is now regulated in Article 535 of *Civil Code*.

[135] N Andrews, *Andrews on Civil Processes: Arbitration & Mediation* (Intersentia 2019) 500–503.

[136] K D Kerameus, 'Enforcement Proceedings' in M Cappelletti (ed), *International Encyclopedia of Comparative Law. Vol XVI. Civil Procedure* (Mohr Siebeck 2014) para 10–94.

is the keynote words in recent years. It shows an illustration of the Chinese rapid development in the area of enforcement, while as discussed later, could lead to a more efficient enforcement system in the future. Broad inquiring rights of the enforcement court are given by Article 253 Section 1 sentence 1 of the CPL as well as Article 485 of the ICPL 2015 which enables a full-scale inquiry into the debtor's property. Article 252 of the CPL establishes a property report system for the debtor regarding its current property and its property for one year before receiving the enforcement notice. Moreover, in accordance with Article 259 of the CPL and Article 497–500 of the ICPL 2015, the enforcement court is authorized to issue a search order and could search the body of the debtor, its residence or a place where property may locate. Following Article 484 of the ICPL 2015 and the former Article 97–99 of the Enforcement Provisions 1998, it is also possible for the enforcement court to summon the debtor or its related persons and if necessary, to physically force them to appear (拘传).

78 Later, the Provisions Investigation 2017 supplements several possible institutions which are able to facilitate the property investigation. Among others, search order against concealment to account books and other materials (Article 14 Provisions Investigation 2017), entrustment of an audit (Article 17–20 Provisions Investigation 2017) and advertisement of the creditor's offer of reward (悬赏广告) for locating any enforceable property (Article 21–24 Provisions Investigation 2017) should be taken into consideration. In addition, it has to be noted that the property report system is also strengthened by Article 3–11 of the Provisions Investigation 2017. This system is comparable with the order to obtain information from judgment debtors in other jurisdictions, such as Part 71 of the UKCPR[137] or Article 802c GCCP in order to clarify the matters (*Sachaufklärung*).[138] However, unlike the German court which needs to wait for the submission of the debtor or the forthcoming limited investigation against a third party fulfilled by the *Gerichtsvollzieher* (enforcement officer),[139] the Chinese enforcement court is free to inquire into the related information of any category and ask for assistance from almost any third parties. Some of these measures are to be discussed in detail later in this contribution.

[137] N Andrews, *Andrews on Civil Processes: Arbitration & Mediation* (Intersentia 2019) 489–499.

[138] C Seiler, '§802c' in H Thomas and H Putzo (ed), *Zivilprozessordnung*: *ZPO* (40th edn, C.H. Beck 2019) para 1 ff. See also A Alsfasser, *Sachaufklärung in der Einzelzwangsvollstreckung* (Mohr Siebeck 2018).

[139] According to Article 802l GCCP, only statutory pension insurance funds, Federal Central Tax Office and Federal Motor Transport Authority are the competent third parties to be requested to provide information. The practical situation in Germany, P Gottwald, 'Die Mobiliarzwangsvollstreckung in Deutschland' (2019) 37 Ritsumeikan Law Review 69, 79–80.

4.2.3 Sale of the Already Seized Items

79 The ordinary items seized will then be prepared for a public auction normally on the Internet. There is online electronic bidding among different buyers through one of the Internet auction platforms listed and supervised by the SPC. This online auction system is nationally accessible since 1 March 2017. The SPC released a special judicial interpretation, named Provisions of the SPC on Several Issues concerning Online Judicial Sale by People's Courts, which consists of 38 articles in order to regulate this online judicial sale. Until 6 June 2021, there are already 841,518 cases via this system and the total value of these cases is CNY 1,590,661,000,000 (equivalent USD 248,779,000,000).[140] This amount in total is over CNY 2,000,000,000,000 (equivalent USD 308,000,000,000) as of March 2023.[141] The system is so well-known that not just the professionals make use of it, but also many ordinary citizens would like to go window-shopping. For lots of them, it makes fun, whereas for example an unlucky man may purchase a second-hand mobile phone for a price of some RMB 270,000 (equivalent USD 41,800) in 2017 due to his own mistake of bidding because he saw the pending bidding price erroneously. Since there are numerous online auctions every day, this kind of story happens all the time.

80 Only in exceptional situations, the debtor's assets will be sold off using a method rather than an online auction. The major concerned judicial interpretation is the Provisions of the SPC on the Auction and Sale of Properties in Civil Enforcement by People's Courts of 2004 and its 2020 version. To be selected are the traditional auction on site (for ordinary items) or sale among several chosen prospective buyers (for special items) or sale to the government (for restrained items). Respectively, Article 258 of the CPL provides a general rule. After any property is seized, the enforcement officer shall order the debtor to perform its obligations during a specified period which is determined after the seizure. If the debtor fails to do so, the enforcement court shall auction the seized property. The court may authorize a relevant entity to sell or may directly sell the property as well if auction is not appropriate or both parties decline to auction. For the property prohibited by the state from being sold freely, some relevant entities have to purchase it at a price prescribed by the state.

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[140] SPC, 'Information Platform of Chinese Courts on Practical Solution of Enforcement Difficulties' http://jszx.court.gov.cn accessed 7 January 2024 (This data is updated on a daily basis and its publication has normally a delay of several days).

[141] Q Zhou, 'Annual Working Report of the SPC' https://www.court.gov.cn/zixun/xiangqing/393751.html accessed 20 November 2024.

4.3 Termination of Enforcement Proceedings

4.3.1 Ordinary Termination as a Possible Procedural Step

81 The aim of the current Chinese enforcement reform is very simple and that is to conclude the enforcement cases before individual enforcement courts. The debtor would have no more option but to perform the judgmental duty entirely or at least enforce the settlement made during enforcement proceedings. The full liquidation of the debtor to be enforced should be the ordinary destiny of an enforcement case. It is not to be tolerated that the debtor having any asset that can be used for debt collection does not pay off the obligation it owed. Considering the possibility that the debtor may frustrate enforcement proceedings, the current law enables enforcement judges to seek, as mentioned, plenty of active and passive measures. If the debt confirmed by the enforcement title is finally satisfied, the enforcement proceedings will be concluded naturally.

82 However, the success of enforcement is not solely determined by the determination of enforcement judges and even the effort of the whole court system. There could always be some debtors who unfortunately have no sufficient assets to pay off. At that time, it is also possible for the debtor to apply for bankruptcy if its situation satisfies the requirement of the Enterprise Bankruptcy Law.[142] Moreover, there could be some special situations where the proceedings also need to be terminated (终结执行). Respectively, Article 268 of the CPL illustrates some of these extraordinary circumstances non-exclusively, under which a ruling of the enforcement court is of necessity: (1) the creditor withdraws the application for enforcement; (2) the legal instrument on which enforcement is based has been revoked; (3) the enforcement debtor dies, who has no enforceable heritage and no one succeeds to the debt to be enforced; (4) the enforcement creditor dies, who is entitled to claim for maintenance; (5) the enforcement debtor is unable to return the loan due to living in hardship, who has no source of income and has lost the ability to work. Then, it is also feasible for the creditor to apply for enforcement once again when the creditor has withdrawn the enforcement proceedings (Article 520 ICPL 2015).[143] For other occasions, although the current law does not explicitly say so, the same principle is supposed to be applied. For instance, when a debtor, regarded as deceased previously, reappears out of nowhere or

[142] Compared to it, a natural person is incompetent for going into bankruptcy.

[143] The reason why the creditor decides to withdraw its application for enforcement is of complexity. It is not rare that this withdrawal is not initiated by the creditor, but rather by the enforcement officer. It could be understood as a way to handle with the pressure of caseload or to get rid of the strict restrictions in case of the termination of the 'current' enforcement procedure.

the poor debtor inherits a large fortune from relatives at any time, there is no reason to deny the possibility of analogizing Article 520 of the ICPL 2015 in such a case. In other words, the ruling on procedural termination is without prejudice for any further enforcement proceedings.

83 The enforcement result may be subject to further relief after the conclusion of enforcement proceedings if the now satisfied payment in an enforcement procedure is in fact without ground. Article 244 of the CPL regulates that the enforcement court shall issue a ruling upon the enforced property demanding the party which has acquired the property to return the property (执行回转), if the enforcement title is revoked by a court for any errors. If the party refuses to return the relevant property, the enforcement court shall take enforcement measures once again, and this time the proceedings are against the creditor in previous enforcement proceedings. One may wonder about the further steps when the acquired property does not exist. Since the physical return is not possible, it seems logical to analogously apply the Article 494 of the ICPL 2015 which states that in such case, compensation may be made by converting the original object into money in accordance with the parties' agreement. Otherwise, it is necessary for the previous debtor suffering losses to bring a new lawsuit against the former creditor.

4.3.2 Special Termination Admitting Failure in Enforcement

84 Moreover, as another special system of the Chinese enforcement mechanism, the debtor and respectively the enforcement court are able to bring enforcement proceedings into a special phase. The court is authorized to declare literally a failure in enforcement (执行不能), a special status of the enforcement case. In fact, this declaration is of interim feature, whereas it could already to a great extent conclude the enforcement case of the responsible court.

85 According to Article 519 Section 1 of the ICPL 2015, the people's court may render a ruling to terminate the 'current' enforcement procedure (终结本次执行程序), if it finds no property for enforcement upon property investigation. The precondition for this special termination is either that the creditor signs for confirmation of no property or that a collegial bench of the enforcement court has examined and verified this situation and then the president of the court has approved accordingly. The usage of 'current' here implies that this special termination differs from other approaches to terminate enforcement proceedings as mentioned. The following Section 2 of Article 519 of the ICPL 2015 restates the right of creditor to apply for enforcement once again, when the creditor discovers that the debtor has any enforceable property after the ruling for special termination has been made.

86 How to interpret the conditions and effects of this special ruling was highly disputed in practice and was challenged by practicing lawyers and law scholars. It could definitely ease the caseload and the hard work of all enforcement courts, whereas conversely the interests of creditors in most individual cases and the realization of the disputed enforcement mechanism could be damaged. In such circumstances, in the winter of 2016, the SPC published the Provisions on Strictly Regulating the Termination of the Enforcement Procedure (for Trial Implementation) (Provisions Termination 2016). Among others, it is clarified that before holding the non-existence of any enforceable assets of the debtor, the enforcement court has to try its best to take any possible enforcement measures and exhaust itself in the attempt.

5 DISCOVERY OF DEBTOR'S ASSETS

5.1 Available Measures Facilitating the Property Discovery

87 For the purpose of realizing affirmed substantive rights of the creditor, it is especially worthy to ask who is to discover assets in civil enforcement proceedings. The approaches to digging out enforceable assets differ among various legal jurisdictions.[144] In the time of intangible economy,[145] the difficulty in discovering the debtor's assets is easily found all over the world.[146] Yet, sufficient transparency of the financial situation of the debtor ought to be accomplished.[147] Under the former UNIDROIT 'Best Practices for Effective Enforcement' project,[148] the disclosure of the debtor's assets is among the key issues to be studied comparatively.[149] China takes a somewhat unique attitude on the

[144] The German reform P Gottwald, 'Enforcement Against Movable Property in Germany' in M Deguchi (ed), *Effective Enforcement of Creditors' Rights* (Springer 2022) 1, 1–16; The Japanese reform M Deguchi, 'Fact Clarification and Effective Legal Protection in Civil Enforcement Law in Japan' in M Deguchi (ed), *Effective Enforcement of Creditors' Rights* (Springer 2022) 71, 73–78.

[145] J Haskel and S Westlake, *Capitalism Without Capital: The Rise of Intangible Economy* (Princeton UP 2018).

[146] X Zhao, 'The Crisis in Enforcement of Civil Judgments in Modern Society' (2010) 22 Peking University Law Journal 576, 580.

[147] B Hess, 'The Effective Disclosure of the Debtor's Assets in Enforcement Proceedings' in M Deguchi (ed), *Effective Enforcement of Creditors' Rights* (Springer 2022) 27, 28–29.

[148] R Stürner, Preliminary feasibility study on possible additional work on the development of Principles of Transnational Civil Procedure relating to effective enforcement (Governing Council 95th Session, Rome, 18–20 May 2016), UNIDROIT 2016 CD (95) 13 Add 2, 7–8 https://www.unidroit.org/english/governments/councildocuments/2016session/cd-95-13add-02-e.pdf accessed 7 January 2024.

[149] This new project should supplement the model principles for transnational litigation, which left out the part of enforcement proceedings. American Law Institute, *Principles of Transnational Civil*

distribution of roles between the court and the parties.[150] The related executive responsibilities are so allocated that they place great emphasis on the investigation and inspection of courts *sua sponte*. It means that, as one of the characteristics of Chinese enforcement law system, the enforcement organ and judges have to actively ascertain what belongs to the debtors.

5.1.1 Direct Measures to Locate the Assets of the Debtor

88 To promote the effectiveness of the execution of any civil judgment, the most direct solution points at the physical discovery of assets. In 2017, the SPC released the Provisions Investigation 2017 specifically on this issue. It incorporates some institutions and procedures which have been proven efficient in practice.

89 Article 253 Section 1 sentence 1 of the CPL states explicitly that the enforcement court shall have the right to inquire the relevant entities about the deposits, bonds, stocks, fund shares and other property of the debtor. Following this rule and Article 485 of the ICPL 2015, as introduced, Provisions Investigation 2017 enables the court to discover the personal identity and property of the judgment debtor through the online enforcement inquiry and control system[151] and by means such as on-site investigation. Both the debtor and the relevant entities and individuals could be subject to this inquiry if the debtor fails to perform its obligations before the deadline determined by the enforcement notice (Article 12 Section 1 of the Provisions Investigation 2017). The court may copy, print, transcribe, photograph, or extract or preserve by other means the materials required for the prospective investigation (Article 12 Section 2 of the Provisions Investigation 2017). Even the creditor is able to file a request for inquiring

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Procedure (Cambridge UP 2006). Following this template, the European further establishment of model rules of civil procedure concentrates also mainly on the adjudicative proceedings. European Law Institute and UNIDROIT, *ELI/UNIDROIT Model European Rules of Civil Procedure* (Oxford UP 2021). However, the temporary failure to lay out the rules on enforcement does not imply that these rules have been deemphasized.

[150] This is also one major issue for the adjudicative proceedings. R Stürner, 'The Principles of Transnational Civil Procedure: An Introduction to Their Basic Conceptions' (2005) 69 Rabels Zeitschrift 201, 226–232; R Stürner and C Kern, 'Comparative Civil Procedure: Fundamentals and Recent Trends' in OB Gürzumar et al. (ed), *Gedächtnisschrift für Halûk Konuralp, Vol I* (Yetkin Yayınları 2009) 997, 1012 ff.

[151] Online operation of civil proceedings is one of the hottest topics in China. Other perspectives regarding e-justice, Z Cao, 'Evolution of Online Courts in China: Situation and Challenges' (2021) 11(2) International Journal of Procedural Law 300; Z Cao, 'Online Dispute Resolution Mechanism in China: Principle of Proceedings and Impact of Technologies' (2022) 8(1) China and WTO Review 29.

about the property information investigated by the court. If while using its discretional power, the court decides to approve the creditor of doing so, the creditor and the representative thereof shall secure the confidentiality of the information obtained (Article 12 Section 3 of the Provisions Investigation 2017). Compared to the German counterpart, the investigational power of the court is comprehensive. It is neither limited to the case where the debtor fails to report its property nor restricted in some categories of information (Article 802l I GCCP).[152] The Chinese law looks like rather the Japanese approach in accordance with Article 18 of the Japanese Civil Execution Law which refers to a more generalized power of investigation.

90 The online enforcement inquiry and control system is accentuated in recent years. The background for this system is that, although there are already lots of platforms which could provide property information of the debtor, the judiciary does not have free access to these platforms. Most of them belong to some government departments, for instance, the ministries of civil affairs, of public securities, of human resources and social security, of natural resources, of housing and urban-rural development, of transport, of agriculture and rural affairs, of market or financial regulation and their local branches. In addition, financial institutions and private internet-based enterprises gain possession of such information as well. Thanks to the rapidly evolving information technology, the on-going efforts have been intensifying connections between those government agencies as well as enterprises and courts at all levels. Since the end of 2014, the SPC has endeavoured to establish mutual systems between itself and some of these entities at national level. Then, the SPC authorized its lower courts to make use of these systems. Nevertheless, it is not rare that within such a comprehensive system, the investigation process in the individual case is still delayed or even impossible. To facilitate their own work, courts at different levels also organized their own connection network separately. Their partners were the regional or local entities taking control of the useful information.

91 Until recently, those different platforms and systems were not yet unified or streamlined.[153] It would be more convenient and efficient to establish direct connections between any court and any local branches of these information-holding entities. As an illustration, a local court in province A could then instantly begin its work in coordination with the local bureau of housing administration in province B to locate the debtor's apartment in province B. More desirable is that the enforcement officer

[152] C Seiler, '§802l' in H Thomas and H Putzo (ed), *Zivilprozessordnung: ZPO* (40th edn, C.H. Beck 2019) para 1 ff, 6 ff.

[153] Introduction to achievements both at national and regional levels, X Wang, 'Efficiency, Problems and Prospect: in the Background of Basically Solving the Problems of Difficulty in Enforcement of People's Courts' (2018) 1 China Review of Administration of Justice 8, 10–14.

could seize the apartment without flying to its location physically and visiting the local bureau of housing administration personally. It would save time and money during enforcement. Even, this new online system would let the debtor give up its unrealistic daydream that the court in province A would be reluctant to come to province B and to take actions seriously. There are already some pioneer examples in relation to the online seizure of real estate. For instance, the implementation systems have already been accomplished within some provincial unity such as Shanghai[154] and Chongqing[155], or in Chaoyang district of Beijing[156] or other counties[157]. And after the bidding process of the online judicial sale of seized objects, it is recently reported that some local court has even in two hours successfully online transferred the ownership of an auctioned apartment to the buyer of the sale with the cooperation of other public authorities.[158] It means that using new ICT, the whole process of discovery, control and sale of enforceable assets could be accomplished online successively. The enforcement officers are looking forward to a national-wide online system which could be used to search property information and even take enforcement measures directly.

92 Furthermore, Article 259 of the CPL adds that the court could issue a search order signed by the president of the court, when the enforcement debtor conceals its property. Under this order, the court could search the body of the debtor, its residence or a place where property may locate. Since some search measure may affect the constitutional rights of the debtors, the SPC takes its procedure very seriously. The necessity of issuing a search order shows already the different approaches in Article 758a GCCP and Article 123 II of the Japanese Civil Enforcement Law, as introduced, which may at least reveal the emphasis of Chinese law on procedural justice for the debtor. Following Article 497–500 of the ICPL 2015, the search personnel shall further wear uniforms as required and show a search warrant and their professional certificates. No irrelevant person may enter the search site. In case of a natural person to be inspected, the debtor or its adult family

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154 J Yan, 'Comprehensively Achieving the Entire Procedure of Inquiring and Control of Real Property Online' *People's Court Daily* (Beijing, 10 September 2019) 1.

155 Y Liu, 'Real Property Inquiry and Control Online System in Chongqing Courts' *People's Court Daily* (Beijing, 19 February 2021) 1.

156 J Zhao, 'For the First Time Only 8 Minutes during Real Property Online Seizure in Chaoyang District' *Beijing Youth Daily* (Beijing, 30 August 2019) A7.

157 China National Radio (CNR), 'First Real Property Inquiry and Control Online System in Jiangxi Province and New "Magic Tool" to Seize and Unseal Apartments' (CNR, 13 May 2020) http://jx.cnr.cn/2011jxfw/zfzx/20200513/t20200513_525088634.shtml accessed 7 January 2024.

158 Wenzhou Intermediate People's Court, 'In Wenzhou, Zhejiang Province: The Real Property Bought with Judicial Sale Could Be Registered' https://www.chinacourt.org/article/detail/2021/03/id/5826490.shtml accessed 20 November 2024.

members as well as the person assigned by a local public organization shall be present. A woman shall be searched by female enforcement officers. If a legal person or any other organization is to be enforced, its legal representative or principal person in charge shall be notified to show up. That the aforementioned persons do not appear on site, has nothing to do with the effect of the search. The assets of the debtor which are discovered during the search shall be seized instantly and then sold. Procedurally, transcripts of search shall be made, to which the signatures, fingerprints or seals of the search personnel, the person being searched and other persons on the scene shall be affixed. If any of these persons refuses to do so, it shall be indicated in the transcripts of search. It is to be remember that Article 14 of the Provisions Investigation 2017 extends the scope of targeted concealment to account books and other materials. If the debtor declines to unlock a place, chest, cabinet and so forth during the search, in which any property or material may be concealed, the court is authorized to use mandatory measures to unlock it.

5.1.2 Indirect Measures to Force the Debtor to Submit Assets (Active Measures)

93 In order to push any discredited debtor to subject to enforcement of a civil judgment, the Chinese law has ascribed even more importance to indirect measures. When the enforcement debtor fails to fulfil its duty as required by a notice of enforcement, different indirect measures could be employed.

94 First of all, it comes to the duty to report the assets. As discussed, Article 252 of the CPL requests the debtor to report its current property status as well as its property status for one year before receiving the enforcement notice. According to Article 251 of the CPL and Article 482 of the ICPL 2015, this notice of enforcement, which urges the debtor to obey the enforcement title and reminds it the additional payment in case of delayed fulfilment of the enforcement obligations, shows the next step of the enforcement court after the registration of the enforcement case. Article 3 of the Provisions Investigation 2017 regulates that the enforcement court ordering this report, on the motion of the creditor or *sua sponte*, shall issue an order of property reporting to the judgment debtor. During the enforcement of monetary obligations, this order shall be issued together with the enforcement notice.

95 Concretely speaking, in accordance with Article 4 of the Provisions Investigation 2017, an order of property reporting shall at least contain the deadline for submitting, the property reporting scope and period, the conditions and period for any supplemental reporting of property, and the legal liability for breaching this property reporting obligation. Not only the assets which the debtor has at presence, but also the ones which it owned from one year before the date of receipt of the notice of enforcement to the

day when the written property report is submitted, shall be incorporated in the property report (Article 5–6 of the Provisions Investigation 2017). The same applies to the changes of assets even after the submission of this report, provided that these changes could affect the fulfilment of obligations of the debtor (Article 7 of the Provisions Investigation 2017). Unlike in Germany, where there should be a central enforcement court in each federal state responsible for the administration of the debtor's disclosure (Article 802k GCCP), the enforcement court in China will demand and administrate the property report on the basis of each individual case. Although only courts are responsible for civil execution, there is no public platform or working intranet inside the entire court system to exchange the disclosed property information. In this sense, each court has to fight its own battle. Only the nationwide online enforcement inquiry and control system, which concentrates on the enforceable assets, is accessible for all courts. The unified Website of Enforcement Information Publication (中国执行信息公开网),[159] which is online disclosing all related enforcement information in China and publicly accessible, does not incorporate this function either. More unfortunately, some empirical research suggests that, even along with the pressure and possible sanctions under the direct and indirect measures, only 5% of all enforcement debtors followed the requirement of the order of property reporting sincerely.[160]

96 Besides waiting for the property report, the enforcement court may employ other measures more actively. In accordance with Article 15 of the Provisions Investigation 2017, for the purpose of ascertaining the debtor's property and capability of performing obligations, the enforcement court may summon the debtor or its legal representative, person in charge, actual controller, or directly liable persons of the debtor, to appear before the court and answer questions. When the persons mentioned before fail to do so without any good reason, the court may summon them by force (拘传) to the court. If the whereabouts of them is unknown, the enforcement court may notify the relevant entities for assistance in locating the person. This summons by force looks like detention by the police or judicial detention decided by the president of the enforcement court, whereas the purpose of doing so is limited to questioning the persons and inquiring the assets. Subject to Article 484 Section 2 of the ICPL 2015, the time reserved for the summon by force should be less than eight hours and in case of summon with detention, no more than 24 hours. To be compared is the judicial detention, according to Article 118 Section 2–3 of the CPL, whose period shall not be longer than 15 days and which is to be enforced by a public security authority for custody. If the detainee admits and

[159] Available at http://zxgk.court.gov.cn/ accessed 7 January 2024.

[160] R Lu and C Li, 'The Operational Problems of Property Reporting System and the Approaches to Handle with Them' *People's Court Daily* (Beijing, 3 February 2021) 7.

corrects its wrongdoing during the period of detention, the enforcement court may decide to discharge the detainee early.

97 In addition, partially in order to verify the property report, the enforcement officer is entitled to entrust an audit to assist it. Generally speaking, the necessity of taking such a measure lies in preventing abuse of process and gross violations of the general principle of effectiveness in court proceedings.[161] In this sense, Article 17 of the Provisions Investigation 2017 states that the creditor may file a written application for entrusting an audit institution to audit the judgment debtor. According to Article 18–19 of the Provisions Investigation 2017, a randomly selected audit institution will begin to examine the necessary materials, which are either submitted by the debtor voluntarily or collected by the court mandatorily. Nevertheless, this possibility of auditing is without prejudice to any other sanctions or procedural measures available to the court, including measures according to the to-be-introduced passive indirect measures.

5.1.3 Indirect Measures to Deter the Debtor from Hiding (Passive Measures)

98 Aside from active measures at obtaining a debtor's assets, there are some indirect enforcement measures which passively put the debtor under the pressure of being enforced. One prominent illustration refers to the establishment of an all-inclusive credit management network involving eg, public authority in different branches, banks, leading private companies and so forth. Its legal basis is Article 266 of the CPL, which provides that the enforcement court may take or notify a relevant entity to assist in taking measures to restrict the debtor from going abroad, to record the debtor's failure in the credit system, to publish information on the failure on media and other measures prescribed by law. Subject to the original rule in the CPL statute, Article 39 of the Enforcement Interpretation 2008 enables the enforcement court, on its own motion or on the motion of the creditor, to publicize the information on the debtor's failure to perform the obligation determined in the enforcement title. The publication could be accomplished through newspapers, radio, television, the Internet, or other media. And the expenses incurred from media release shall be borne by the debtor. The applicant creditor shall pay the relevant expenses in advance. The 2020 revision of this judicial interpretation made here no substantial amendment and only changed it as the new Article 26.

99 And after the amendment in 2015, a legal institution restricting the expense of the debtors is developed. The then-applicable Several Provisions of the SPC on Restricting High Consumption and Relevant Consumption of Persons Subject to Enforcement

[161] N Andrews, *Andrews on Civil Processes: Arbitration & Mediation* (Intersentia 2019) 460–461.

(hereinafter Provision Consumption 2015)[162] authorizes that the enforcement court may take measures to restrict the high consumption by the debtor itself and the relevant consumption not necessary for living or business operation (Article 1 Section 1 of the Provision Consumption 2015). To be forbidden is, for instance, taking any flight or high-speed train, entertaining in night clubs or golf courses, purchasing or renting real estate, travelling or taking a vacation, purchasing insurance and financial products by paying high premium and so forth (Article 3 Section 1 of the Provision Consumption 2015). Those restrictions refer not just to a natural person, but also to a legal representative, principal, persons directly responsible for debt performance or actual controller of the legal entity debtor (Article 3 Section 2 of the Provision Consumption 2015). While determining to take measures, the court has to take many factors into consideration, such as whether the debtor has ever passively resisted the performance of the obligation, actively evaded the performance or refused to perform the obligation, and the capability of the debtor to perform the obligation (Article 2 of the Provision Consumption 2015). Then, the court should serve an order on restriction of consumption on the debtor. This order shall be signed and issued by the president of the enforcement court and shall specify the period, items, legal consequences, and other matters concerning the restriction of consumption (Article 5 of the Provision Consumption 2015). Only if the debtor has applied to the court for permission which is then granted, the debtor is able to conduct the consumption activities prohibited accordingly as they are necessary for life or business operation (Article 8 of the Provision Consumption 2015).

100 The strongest weapon of the court is its potential influence on the credit of the debtor. The failure to fulfil the obligations will be made public on some online platform, while as introduced, the principle of proportionality ought to be considered when the enforcement court makes use of this tool. According to the specialized judicial interpretation on the whole process of making this special list, ie, Provisions Dishonest Debtors 2017, Article 8 of the Provisions Dishonest Debtors 2017, the court system shall circulate a notice of the information on lists of dishonest enforcement debtors to relevant government departments, financial regulatory authorities, financial institutions, public institutions and industry associations undertaking administrative functions, among others. These relevant entities shall impose credit-related punishment on these dishonest persons in terms of government procurement, tendering and bidding, administrative examination and approval, government support, financing credit, market access, qualification accreditation and so forth. Also, the court system shall notify credit investigation institutions, which shall record the information in their credit investigation systems as well. There are special provisions and sanctions for public

[162] Judicial Interpretation No 17 [2015] of the SPC (China).

servants as well as for state organs or state-owned enterprises.[163] As an exceptional rule, Article 4 of the Provisions Dishonest Debtors 2017 requires that the court shall not register a judgment debtor in the list of dishonest judgment debtors, when the debtor is in fact a minor. It is reported that until March 2023, 9,180,000 debtors has fulfilled their obligations due to the pressure of the credit punishment system.[164]

5.2 All-inclusive Role of Court in Discovering Debtor's Assets

5.2.1 Primary Role of the Court During Enforcement

101 After considering the concretely introduced enforcement law regime and its general framework, the next step goes to the discovery of the underlying principle under current Chinese law. In leading developed countries, there could be advanced institutional tools for the enforcement personnel, and even the enforcement creditor, to request the debtor to submit property information (eg, property report, answer to specific property inquiry) and third parties to share information (eg, bank accounts, real estate).[165] Nevertheless, even if similar institutions and mechanisms are employed in China and other jurisdictions, the performance of Chinese courts could be different since it is the underlying principle that would make a difference.

102 Generally speaking, the philosophy of enforcement in China distinguishes from the one of many other jurisdictions. While having nothing to do with the creditor's dispositional rights regarding the initiation and termination of enforcement proceedings,[166] the Chinese enforcement court is deemed to take the final responsibility for the discovery of enforceable property. In other words, the court in China should play an all-inclusive role in finding out the property of the debtor's assets. Since the court is the only

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[163] Those severe and full-scale effects could be traced to the Decision of the CCCPC in the fourth plenary session of the eighteenth CCCPC together with the following *Opinions of the General Office of the CCCPC and the General Office of the State Council on Accelerating the Advancement of the Development of a Credit Supervision, Warning and Punishment System of Dishonest Persons Subject to Enforcement*, issued in September 2016. Reflective remarks, X Dai, 'Enforcing Law and Norms for Good Citizens: One View of China's Social Credit System Project' (2020) 63 Development 38.

[164] Q Zhou, 'Annual Working Report of the SPC' https://www.court.gov.cn/zixun/xiangqing/393751.html accessed 20 November 2024.

[165] O Chase and others, *Civil Litigation in Comparative Context* (West 2017) 616–618; W A Kennett, *Enforcement of Judgments in Europe* (Oxford UP 2000) 99–127.

[166] Generally, on the principles of enforcement proceedings and their exceptions, F Baur, R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (13th edn, C.F. Müller 2006) para 6; W Kennett, 'Enforcement: General Report' in Marcel Storme (ed), *Procedural Laws in Europe: Towards Harmonisation* (Maklu 2003) 81, 104–105.

enforcement organ in China and has a duty to promote enforcement proceedings, it is with no doubt that the court dominates the operation of enforcement procedure (the principle of court operation; *Amtsbetrieb*), just like the situation in an ordinary civil procedure toward civil judgment.[167] Then, both in enforcement proceedings and during the ordinary civil procedure, seeking truth is acknowledged as another ruling principle. There could be the *Verhandlungsgrundsatz* (principle of party presentation) or *Untersuchungsgrundsatz* or *Amtsermittlungsgrundsatz* (investigation on the court's own motion).[168] If we are allowed to contrast this fact-finding doctrine for the truth of a disputed case with the information-obtaining matters for the location of enforceable assets, there should be a comparable principle of court investigation in Chinese enforcement proceedings. Furthermore, not only the procedural promotion and information gathering, but the Chinese courts have also to find out the assets eventually.[169]

103 In other words, the Chinese enforcement court is deemed to play an all-inclusive role and then take the final responsibility for the discovery of enforceable property. The logic behind this arrangement may be very simple in Chinese context. As people's courts are regarded as warriors guarding the effectiveness of a final judgment and guaranteeing the success of its enforcement, there is strong path-dependence in Chinese society and especially among judgment creditors. Enforcement courts have to do their job and that is successful property discovery and the corresponding fulfilment of the rights which have to be confirmed by the trial court with a final judgment. When it comes to other enforcement titles other than civil judgments, the same reliance on enforcement courts applies as well.

104 As an illustration, Provisions Investigation 2017 clarifies the allocation of investigative responsibility among the creditor, the debtor and the enforcement court. Article 1 of the Provisions Investigation 2017 confirms explicitly that the creditor shall provide clues to the property of the judgment debtor; the judgment debtor shall truthfully report its property; and the enforcement court shall investigate through the online enforcement inquiry and control system and adopt other investigative methods if necessary. Then the same judicial interpretation illustrates the duty of the creditor. Article 2 of the Provisions Investigation 2017 makes it clear that while providing clues for the debtor's assets, the

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[167] X Zhao, 'The Crisis in Enforcement of Civil Judgments in Modern Society' (2010) 4 Peking University Law Journal 576, 583–584.

[168] L Rosenberg, K H Schwab and P Gottwald, *Zivilprozessrecht* (18th edn, C.H. Beck 2018) Art 77, para 1 ff.

[169] X Zhao, 'The Crisis in Enforcement of Civil Judgments in Modern Society' (2010) 4 Peking University Law Journal 576, 583.

creditor shall fill out a normalized Property Investigation Form. Where the clues are clear and specific, the enforcement court shall, in the first place, investigate and verify the clues within seven days or in case of emergency, within three days. Where a clue is substantiated, the court shall then take the corresponding enforcement measures in a timely manner. A further judicial interpretation named Opinions of the SPC on Further Improving the Mechanisms for Restricting Enforcement Powers to Enhance Supervision over Enforcement[170] published in December 2021 enhances the requirement to the enforcement court in the third sentence of its Article 13 by stating that in case of emergency, the deadline for investigating and verifying the clues should be within 24 hours rather than three days. However, under the circumstance that the creditor could not find the debtor's assets due to objective reasons, it may apply for an investigation operated by the enforcement court directly.

105 In such a case, it is expected that the final result of an enforcement case is the successful discovery of enforceable assets. Since there is one and the same enforcement organ, the people's court, no efforts need to be made toward the division of competence in enforcement.[171] The enforcement court and its officers have been equipped with plenty of measures to find out the property of the debtor directly or push it to submit its assets which the court has not yet found out.[172] Nevertheless, if an enforcement officer fails to locate sufficient assets to fulfil the obligation determined in the enforcement title, there could be serious doubt on its willingness and capability to accomplish the enforcement. After all, it is generally accepted that the court has to realize the judgment it made. Not to be forgotten is that the creditor normally does not have to pay the enforcement costs in advance. Only on some specifically regulated occasions, such as the aforementioned auditing during enforcement, the applying creditor should bear the costs of auditing in advance. This special arrangement could be understood as the logical result of the court's duty to realize its final judgment, while some may argue that it is the taxpayer as a whole that is paying the costs. It may have its roots in 'judicial emphasis

170 Administrative Document (法) No 322 [2021] of the SPC (China).

171 The enforcement assignment eg, taken by the *Gerichtsvollzieher* in Germany, see P Gottwald, 'Die Mobiliarzwangsvollstreckung in Deutschland' (2019) 37 Ritsumeikan Law Review 69.

172 It is even argued that compared to the counterparts in Germany and Japan, the property investigation is regarded as the one in the central area of the judicial system in China which is given priority during the allocation of judicial resources. M Shi, 'Model Selection for Property Investigation in Civil Enforcement' (2021) 2 East China University of Political Science and Law Journal 57, 65–66.

on facts over the rigidity of law' and 'historical preference for informality and the continuing belief in preserving harmony'[173] in China.

5.2.2 Limited Participation of the Enforcement Creditor

106 As already mentioned, the creditor could and will provide available clues to the enforcement court. 'Despite the availability of such seemingly strong weapons, most courts expect the applicant to take the lead and provide the necessary details about the respondent's assets'.[174] Pragmatically, the creditor tends to be active and it is highly possible that they will not be just waiting for some good news coming from the enforcement officer. Fortunately, compared to the situation twenty years ago and substantially affected by the political campaign against difficulty in enforcement, the ability and willingness of Chinese courts have been improved remarkably.

107 Indeed, when it comes to practicing lawyers active in enforcement area, their know-how is certainly their most valuable as well as invisible assets. In the case of cash or movable items of the debtor, those party-provided clues must still represent the primary source for the court to locate the enforceable assets. As an illustration, data platforms of relevant public authorities or private companies may be a good starting point. As mentioned, the publicly accessible National Enterprise Credit Information Publicity System, some private owned investigative companies or the disclosed facts of the judgments recorded on the website of China Judgments Online are useful sources in search for enforceable assets.

108 Considering the position and ability of the creditor and the professionals which it has entrusted, a special institution deserves more attention. To begin with, according to the existing principle of *Einzelvollstreckung* (individual enforcement) as in other jurisdictions, the enforcement applicant moving fast could obtain an advantageous position during its enforcement proceedings. Moreover, even if other competing creditors have joined the process of distribution, the active efforts of this applicant should be rewarded further. It is pragmatically accepted in China that the creditor having contributed to the discovery of debtor's assets ought to obtain bonus respectively. As a result, Article 510 of the ICPL 2015 states that, after the liquidation of enforcement expenses and rights enjoying substantive priority of repayment, ordinary creditors will 'in principle' be repaid in accordance with its proportion in the total debts which has

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[173] M Y K Woo, 'Law and Discretion in the Contemporary Chinese courts' (1999) 8 Pacific Rim Law & Policy Journal 581, 588.

[174] R Peerenboom, 'Seek Truth from Facts: An Empirical Study of Enforcement of Arbitral Awards in the PRC' (2001) 49 The American Journal of Comparative Law 249.

been claimed in the fair distribution process. Accordingly, 'as an exception' in practice, if there is still some money left after the fulfilment of the priority rights, up to 20% of the total remaining value should be distributed to the creditor who has inquired about the debtor's property previously.

109 Besides, in the period of time between the date of taking effect of a final judgment and the commencement of enforcement proceedings, it is up to the creditor to decide whether to take action at an early stage.[175] Article 163 of the ICPL 2015, instead of the now deleted Article 3 of the Provisions Seizure 2004[176], enables the creditor to apply for preservation measures before the prospective enforcement court. The application should be based on emergency circumstances such as the debtor's transfer of property which, without preservation measures, would lead to the failure of enforcement or difficulty in enforcement. Then, the court shall discharge these preservation measures, if the creditor fails to apply for enforcement within five days after the deadline of performance specified in the enforcement title. Otherwise, the preservation measures shall be automatically transferred into the seizure measure as the ones taken in enforcement proceedings. The period of such measures shall be calculated continuously, and there is no need to render a new written ruling (analogous Article 17 of the Provisions of the SPC on Several Issues concerning the Handling of Property Preservation Cases by the People's Courts,[177] both its 2016 and 2020 version).

110 In a broader sense, the creditor could also apply for addition of some enforcement debtor during enforcement proceedings. Besides other applicable rules, the SPC releases in this area a judicial interpretation named Provisions of the SPC on Several Issues Concerning the Modification and Addition of Parties in Civil Enforcement[178] in 2016. As an illustration stated in its Article 20, where a one-person limited liability company as the enforcement debtor is unable to perform its obligations with its own property, the creditor could move to add the shareholder of this company as an additional

[175] There is no need to mention that the interim measures taken during or even before the civil process could contribute to the effectiveness of enforcement proceedings dramatically. And the protective measures in case of provisional enforceability of a not yet final judgment, see W Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in V Rijavec and others (ed), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 301, 345–346.

[176] Judicial Interpretation No 15 [2004] of the SPC (China).

[177] Judicial Interpretation No 22 [2016] of the SPC (China).

[178] Judicial Interpretation No 21 [2016] of the SPC (China). In the scope of this contribution, the related articles of this judicial interpretation were not modified by the new Judicial Interpretation No 21 [2020] of the SPC (China).

enforcement debtor, provided that this single shareholder fails to prove that its personal property separates from the property of the company. After a successful addition, the shareholder shall assume joint and several liability for the debts of the company. Although in such case the assets of the debtor are not directly detected, since the definition and scope of debtor(s) have been altered, more assets are in fact added to the pool of enforceable property of the current enforcement case.

5.2.3 Comparative Position of Chinese Property Reporting System

111 Besides observation in Chinese context, there could be other tests from a more comparative perspective. Generally speaking, a sort of property reporting system is the most crucial tool for the discovery of debtor's assets, if we follow the well-accepted outline addressed by Professor Rolf Stürner in 2016.[179] Under the elements of this outline, the debtor's declaration of property in China should belong to one of the severest models. The duty to declare is required at the very commencement of enforcement proceedings and covers both the current assets and the assets which the debtor once had up to one year ago. Without any limitation on the scope of the property to be enforced, demanded is the overall identification of debtor's assets. This disclosure refers to a continuous duty of the debtor during the whole enforcement proceedings. It applies even after the court has declared a failure of enforcement and gave a ruling to terminate the *current* enforcement procedure as discussed previously. Still, the duty to submit supplementary property report is nevertheless required (Article 11 Section 2 of the Provisions Investigation 2017).

112 Regarding the procedure of declaration, as mentioned, the court's order of property reporting should normally attach a Property Investigation Form, which the debtor must fill out item by item as required (Article 4 Section 2 of the Provisions Investigation 2017). Although an affidavit is not formally requested, the requirement is substantially the same. It is said explicitly that the court may, according to the seriousness of the circumstances, fine or detain the debtor or even initiate criminal procedure under the applicable law when without any good reason, the debtor refuses to report or falsely reports or fails to report its property within a prescribed time limit (Article 252 of the CPL, Article 9 Section 1 of the Provisions Investigation 2017). Simultaneously, the court shall investigate and verify the property reported by the debtor in due time, and if

[179] R Stürner, Preliminary feasibility study on possible additional work on the development of Principles of Transnational Civil Procedure relating to effective enforcement (Governing Council 95th Session, Rome, 18–20 May 2016), UNIDROIT 2016 CD (95) 13 Add 2, 7–8 https://www.unidroit.org/english/governments/councildocuments/2016session/cd-95-13add-02-e.pdf accessed 7 January 2024.

necessary, the enforcement officer may organize a hearing for the parties (Article 8 Section 1 of the Provisions Investigation 2017).

113 In case of refusal to declare, the debtor will be registered in a public list of dishonest enforcement debtors. The aforementioned consequences similar to the affidavit could be regarded as the sanction of last resort. Although not specifically for the declaration report, Article 15 of the Provisions Investigation 2017 empowers the court to force the debtor to appear before court for the search of assets.

114 Moreover, the court is authorized to ask for assistance from public authorities or private agencies. It could use its online enforcement inquiry and control system or visit the related institutions on-site to obtain information. As mentioned, the forthcoming reform targets at just strengthening the online system which may make even more steps to be taken in the most efficient way. For example, the located assets of the debtor could be seized, or the bank savings could be transferred via online operation which means several keyboard commands and clicks of the mouse. In the long-range design, field work in this aspect will not exist anymore.

5.2.4 Mitigation of the Court's Duty in Enforcement Proceedings

115 Recently, the public authority in China is reconsidering the current active role of the enforcement court. One of the major aims of the current judicial reform in the enforcement area targets at the enhancement of the trust of people. Then the ordinary citizen may be persuaded that there are many debts which are not able to be fully compensated from the very beginning of the civil procedure. The creditor may have chosen a wrong partner in a contract case, or the victim who suffered in a traffic accident has to face up to a negligent wrongdoer who is in poverty. We are living in *Risikogesellschaft* (a society full of risks).[180] The court, assisting the creditor to realize its rights as much as possible, is not always the right one to be blamed for the failure of enforcement. The enforcement court is not equivalent to the private debt collector or practicing lawyer helping the client to win money back.

116 Mitigating the enforcement court's responsibility does not mean leaving the judgment creditor alone or even *let it go*. Rather, the entire government in China, including courts, should get itself involved. It is supposed to implement the guidance and ideas of the Opinions on Strengthening the Comprehensive Treatment of Solving the Problem of

[180] See U Beck, *Risikogesellschaft - Auf dem Weg in eine andere Moderne* (Suhrkamp 1986).

Enforcement Difficulties from the Source,[181] which was released by the Central Comprehensive Law-based Governance Commission in Summer 2019, a special political organ directly led by the President Xi Jinping of PRC. The logic of this political opinion is sound and clear: for the enforcement titles which cannot be implemented totally, other related institutions should be established or developed in order to solve the difficulty in enforcement indirectly. The concrete institutions refer to the social credit system, market exit mechanism in the form of bankruptcy, judicial aid system for vulnerable groups in need and liability insurance. The related civil, commercial and company law which may be misused should also be updated. For instance, the arbitrary change of legal representatives and other senior managers and the arbitrary evasion of corporate assets should be restricted and stopped, while the management of corporate accounting records and the tracing system of entire transaction process is supposed to be improved. The newest reform plan, as the fifth five-year judicial reform framework (人民法院第五个五年改革纲要), adds that the court should enhance the certainty and enforceability of their decisions and establish a mechanism for dealing with the related uncertainty. The case transfer mechanism from enforcement to bankruptcy and the information exchange and sharing between both of them are supposed to be strengthened, while the natural person bankruptcy system ought to be established comprehensively.[182] A more detailed reform plan is also published in the Outline of People's Courts' Enforcement Work (2019–2023).

6 ENFORCEMENT COSTS

6.1 Rules for Enforcement Costs Taken by State Courts

6.1.1 General Rules for Litigation Costs

117 It is necessary for this contribution to report the fundamental rules on litigation costs. The only nationwide rule in this field is the Measures for the Payment of Litigation Costs[183] (hereinafter Measures Costs), which were adopted by the State Council in

[181] Central Comprehensive Law-based Governance Commission of the CPC Central Committee, 'Opinions on Strengthening Comprehensive Management and Effectively Solving the Problem of Difficult Implementation from the Source' https://www.moj.gov.cn/pub/sfbgw/qmyfzg/201908/t20190822_150361.html accessed 20 November 2024.

[182] Supreme People's Court of PRC (ed), *Guidelines of the Supreme People's Court on Deepen the Judicial System Reform with Comprehensive Integrated Reforms of People's Courts— Framework of the Fifth Five-Year Judicial Reform for People's Courts (2019–2023)* (People's Court Press 2019) 62–63.

[183] Order of the State Council, No 481 (China).

December 2006 and came into force on 1 April 2007.[184] Unfortunately, no new revision of such rules has been proposed, while the practical need for a new instrument is very high. This situation could be attributed to the fact that Measures Costs is the product of the State Council which is supposed to initiate a new round of revision. However, the State Council is supposed to handle with almost everything in an administrative state, it may feel hard to find the time and resources to promote the overhaul of the existing regime of litigation costs. For the operation of a gigantic state like China, it is obvious that there is always something more crucial than the costs of judicial affairs. And the issue of litigation costs is also more urgent for other key players in the field, such as the judiciary and the practicing lawyers, than for the State Council. As a result, the Measures Costs is hoped to be modernized but we just do not know when and how. On such occasions, the current rules ought to be respected in this contribution.

118 When it comes to the role of litigation costs within civil procedure, the payment of litigation costs in advance could be constructed as one of the elements of case-filing examination under both the tradition of German-Japanese civil law system and Chinese law (Article 121 Section 1 of the CPL, Article 20 Section 1 sentence 1 and Article 22 Section 1 of the Measures Costs; corresponding to Article 12 Section 1 and Article 22 Section 1 of the German Court Costs Act[185]). Article 20 Section 1 of the Measures Costs states that the case-filing fee shall be prepaid by the plaintiff, the third party who incorporates an independent claim against both plaintiff and defendant of the current case, or the appellant of the case. Where the defendant files a counterclaim and is required by the *Measures Costs* to pay the case-filing fee, the fee shall be prepaid by the defendant as well. But for the cases claiming labour remuneration, no case-filing fee needs to be prepaid. And Article 22 Section 1 and 2 of the Measures Costs stipulate that the plaintiff and the appellant of the disputed case shall pay the respective fees within 7 days as of the next day following receipt of the people's court's notice on payment of litigation costs or as of the day when the appellant submits its appeal. After all, since the payment of litigation costs is as introduced essential for the commencement of civil litigation in general, its calculation may affect the plaintiff's right of action and access to justice.

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184 In fact, Measures Costs concerns both the civil and commercial cases and the administrative cases. But for the purpose of this contribution, only the rules for civil and commercial cases are to be discussed hereinafter. And previously, there were in this field two judicial interpretations published by the SPC in 1989 and 1999 which are now void.

185 L Rosenberg, K H Schwab and P Gottwald, *Zivilprozessrecht* (18th edn, C.H. Beck 2018), Art 83 para 10, Art 96 para 4, Art 129 para 3.

119 As a general principle, Article 6 of the Measures Costs makes clear that the litigation costs paid by a party concerned to the people's court shall include: (1) case-filing fees; (2) application fees; and (3) the traffic expenses, accommodation expenses, living expenses, and subsidies for missed work, which are incurred by witnesses, expert identifiers, interpreters and adjustment makers for their appearing in the court's hearings as prescribed.[186] Based on comparative observations completed for the eighteenth World Congress of Comparative Law organized by International Academy of Comparative Law in 2010, court fees in China are comparatively quite high.[187]

120 Concretely speaking, according to Article 7 of the Measures Costs, the case-filing fee covers the fees for the plaintiff or appellant of different instances of civil proceedings to initiate those proceedings. And the application fees embrace various situations when there is no judgment to be made. According to Article 10 of the Measures Costs, there are application fees eg, for the commencement of enforcement proceedings with a valid enforcement title, for taking preservation measures such as seizure and injunctions, for bankruptcy cases, and for the acknowledgment and enforcement of any foreign judgments or foreign arbitral awards.

121 Excluded from the litigation fees are the expenses which should be directly paid to the competent persons. Article 12 Section 1 of the Measures Costs regulates explicitly that these expenses are the ones to be lawfully borne by the party during the litigation due to judicial identification, announcement, survey, interpretation, assessment, auction, selling-off, warehousing, custody, transport, ship supervision, etc. Based on the principle that the party who applies for the aforementioned service shall bear the expenses, the court shall allocate the relevant duty of payment. Then the responsible party shall directly pay the expenses to the relevant institution or entity. Accordingly, the court will demand either party to take such costs to when giving the final judgment. As a result, if the applicant of these measures wins the case in the end, the opposing party ought to refund the expenses prepaid.

122 Respectively, these expenses differ from the traffic expenses of the litigation participants for their appearance in the court's hearings as Article 6 item 3 of the Measures Costs regulates in the general principle. Moreover, no fees are allowed when the translation

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[186] Article 11 Section 1 of the Measures Costs says that these expenses shall be charged by the court on behalf of persons who have the aforementioned substantive claims at the statutory rates. Similarly, the party who makes photocopies of the archival materials and legal documents of the case shall pay the actual cost of production to the court (Article 11 Section 2).

[187] M Reimann, 'Cost and fee allocation in civil procedure: a synthesis' in M Reimann (ed) *Cost and Fee Allocation in Civil Procedure: A Comparative Study* (Springer 2012) 3, 24.

or interpretation for the language commonly used by the local ethnicity is provided during the court's hearings. Since according to Article 11 Section 1 of the CPL statute, citizens of all ethnical groups in China shall have the right to use their native spoken and written languages in civil proceedings, this special rule written in Article 12 Section 2 of the Measures Costs is necessary. Only with this procedural safeguard, the access to justice could be secured for anyone all over the country. However, it means that the court should pay for these fees since the translation or interpretation is not a pro bono service at all.

6.1.2 Allocation of Enforcement Costs

123 Partially speaking for a Chinese exceptionalism, the enforcement organ is fundamentally liable for enforcement costs at the very beginning of enforcement proceedings in China. In contrast to the aforementioned case-filing fees which ought to be prepaid by the plaintiff in general, the application fee for enforcement proceedings is stipulated differently. The general rule is provided by Article 20 Section 2 of the Measures Costs, which says that the application fee shall be prepaid by the applicant just like the case-filing fees. And Article 22 Section 3 of the Measures Costs states further that the application fee shall be prepaid by the applicant when the applicant files the application or within the time limit specified by the people's court. However, the specific application fees of enforcement proceedings and bankruptcy cases shall not be prepaid by the applicant. Rather, as exceptional rules, the enforcement application fee shall be paid after the enforcement, and the bankruptcy application fee shall be paid after the liquidation.

124 In other words, there is in the field of enforcement law a *court pays* principle. The ordinary operation of enforcement proceedings, namely the commencement and termination of the proceedings as well as the discovery, taking control and selling off of the enforceable assets, is promoted and financially supported by the courts. The same applies to taking direct measures to locate the assets of the debtor such as using the online enforcement inquiry and control system or issuing search orders, to taking indirect measures to force the debtor to submit assets such as making the debtor to perform its duty to report the assets, summon the debtor or other relevant persons, and for taking indirect measures to deter the debtor from hiding any assets which among others rely on the well-established credit management network or the restriction of the unnecessary expense of the debtors.

125 It may look different for observers from other jurisdictions. This situation could be attributed to the arrangement of the Chinese enforcement organ and the jurisdictional rules. It is noted that in China, only people's courts, which also make the final judgment

in the first place, have the functional jurisdiction over the enforcement issues regarding civil and commercial matters. Considering that there are enforcement models which consist of fragmented or diffused enforcement organs,[188] Chinese legal system has chosen for the model of a single competent enforcement organ. For other cases whose enforcement titles are not final judgments, it is still the relevant court that has jurisdiction. And since the state is the one behind all courts in China, *court pays* principle could also be understood as *state pays* principle. This principle focuses more on the relationship between the state and the ordinary citizen who could participate in individual enforcement cases as enforcement creditors and debtors.

6.1.3 Constitutions of Enforcement Costs

126 Similar to Article 6 of the Measures Costs for case-filling fees, Article 10 of the Measures Costs refers to the payment of application fees. The applicable types of cases are listed as followed: (1) Applying for the enforcement of a legally effective judgment, ruling or a mediation-based consent judgment made by the people's court, an arbitral award or mediation-based consent arbitral award made by the arbitration institution, or an authentic instrument confirming the existence of debt with enforcement force provided by the public notarial institution; (2) Applying for taking preservation measures (in the sense of interim measures) which consist of seizure, impoundment and freezing; (3) Applying for a non-contentious order for payment which is the result of a summary procedure for debt collection and substantially follows the German model of German counterpart of *Mahnbescheid*; (4) Applying for issuing a public summon which aims to publicize a public notice for urging and asserting claims in case that a commercial check was stolen; (5) Applying for revoking an arbitral award or for confirming the effectiveness of an arbitration agreement; (6) Applying for bankruptcy; (7) Applying for maritime injunctions, the general average adjustment, the establishment of a limitation fund for maritime claims, the maritime credit registration, or the summon of priority claims to the ship; and (8) Applying for acknowledging and enforcing the judgment or ruling of a foreign court or the award of a foreign arbitration institution.

127 Coming back to the topic of this contribution, it is noted that enforcement costs are *per se* a part of the application fees under Chinese law. The other types of costs, as the rest of the application fees, could also be classified as litigation costs in a broader sense. These two approaches to interpreting litigation costs, either in a narrower (merely Article 6–9 of the Measures Costs for case-filling fees) or broader sense (Article 6–9 plus Article 10 item 2–8 of the Measures Costs), are more or less a problem of definition

[188] The situation in Germany, H Brox and W Walker, *Zwangsvollstreckungsrecht* (C.H. Beck 2018) para 11–16; F Baur, R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (C.F. Müller 2016) para 6.47–6.52.

which could be left alone. While having the general picture of application fees in mind, this contribution will focus on the enforcement costs themselves and the procedural treatment of them.

128 As the aforementioned litigation expenses which are incurred outside the court and should be directly paid to the relevant persons, such as the fees for judicial identification and assessment, similar costs incurred during enforcement proceedings follow the same rule. It means that the enforcement creditor ought to pay the costs to the relevant entities in advance and then be refunded when enforcement proceedings are partially or entirely of success. The assessment plays an even more crucial role in enforcement proceedings compared to during court hearings, since before the auction of seized assets of the debtor, the value of these assets mostly needs to be evaluated properly. The assessment costs could be classified as the litigation costs in a broader sense and the enforcement court has its duty to facilitate the related activities. For instance, Article 489 of the ICPL 2015 states that where on-site inspection and survey are required for auction assessment, the people's court shall order the enforcement debtor, and the person obliged to assist to cooperate. If these persons refuse to cooperate, the people's court may conduct compulsory enforcement.

129 In 2018, the SPC even released a specialized judicial interpretation called Provisions of the SPC on Several Issues concerning the Determination of the Reference Prices for Disposition of Property by the People's Courts.[189] Its Article 2 states that to determine the reference price for disposition of property, a people's court may adopt methods such as bargaining by parties, targeted inquiry to specific qualified institutions, online inquiry to a group of potentially qualified institutions, and designated assessment, and so forth. As of the designated assessment, its Article 15 Section 1 says that the SPC shall establish a list of judicial assessment institutions according to the professional field of assessment and the practicing scope of the assessment institutions. And Article 16 regulates the relevant procedure of selection. It states that the people's court shall notify the two parties of selecting three assessment institutions and the order of them, which are to be decided either by stipulation between the parties or a random lottery. Lastly, its Article 33 Section 1 repeats the general principle that the online inquiry fees and the entrusted assessment fees shall be prepaid by the enforcement applicant in advance and be assumed by the person subject to enforcement later.[190]

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189 Judicial Interpretation No 15 [2018] of the SPC (China).

190 And Article 33 Section 2 of the same judicial interpretation adds that where an enforcement applicant prepays the online inquiry fees or entrusted assessment fees in advance by signing an

6.1.4 Rates of Enforcement Costs

130 Besides case-filling fees in accordance with the aforementioned Article 13 of the Measures Costs, Chinese law also regulates application fees with Article 14 of the Measures Costs which stipulates rates for various proceedings. As a result, a difference between case-filing fees and application fees has been drawn.

131 It comes to the enforcement costs in Article 14 item 1 (1) (2) of the Measures Costs at first. When lawfully applying to the people's court for the enforcement of enforcement titles such as a final judgment, a final arbitral award or a consent judgment of the court or of an arbitration institution, the party concerned shall pay the fee at the following rates. If there is no enforceable amount, CNY 50 up to CNY 500 shall be paid for each case. If the enforceable amount is not more than CNY 10,000, CNY 50 shall be paid for each case; for the part of more than CNY 10,000 up to CNY 500,000, the fee shall be paid at the rate of 1.5%; for the part of more than CNY 500,000 up to CNY 5 million, the fee shall be paid at the rate of 1%; for the part of more than CNY 5 million up to CNY 10 million, the fee shall be paid at the rate of 0.5%; for the part of more than CNY 10 million, the fee shall be paid at the rate of 0.1%.

6.1.5 Cost-shifting Rules

132 Cost-shifting refers to the internal transfer of the costs from the winner to loser in individual civil proceedings. Although the difference between the so-called American cost-shifting rule and the English one is deemed as one of the remarkable issues in the field of litigation costs, 'such a dichotomy is hopelessly simplistic as well as virtually useless'.[191] It is said that in England, considering the varied practice in different tracks, a victorious party should recover its costs from the opponent in principle, in order to deter spurious claims and defences and to indemnify the winning party in litigation results. A further distinction between standard and indemnity cost could be made regarding the determining the scope of cost-shifting, while such cost-shifting could also be one-way and therefore in favour of the plaintiff in certain types of cases.[192] In

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insurance contract, the insurer shall issue a letter of guarantee to the people's court. The letter of guarantee shall specify that the insurer paid the relevant fees since the enforcement creditor has not prepaid the fees and other information and attach the relevant evidence.

[191] M Reimann, 'Cost and fee allocation in civil procedure: a synthesis' in M Reimann (ed) *Cost and Fee Allocation in Civil Procedure: A Comparative Study* (Springer 2012) 3, 9.

[192] A Zuckerman, *Zuckerman on civil procedure: principles of practice* (Sweet & Maxwell, London 2021) Ch 28; N Andrews, *Andrews on Civil Processes. Court Proceedings, Arbitration & Mediation* (Intersentia 2019) Ch 18.

contrast, the American rule prefers generally to the presumption that each party bears its own attorney's fees whereas the taxable costs other than attorney's fees are recoverable. In this way, American intends not to 'make plaintiffs too timid to attempt to vindicate their rights'.[193]

133 In China, normally it is merely possible to recover the litigation costs incurred in courts from the losing party. The attorney fees are not eligible for shifting according to the final results of the case. We may conclude that the American rule also exists in China. On the other hand, there could be special arrangements for cost-shifting under certain substantive legal rules. For instance, in public interest litigations, the costs of the plaintiff's inspection, appraisal charges, reasonable legal fees and other reasonable expenses should be compensated by the losing defendant.[194] In cases regarding intellectual property rights, the attorney fees are understood as 'reasonable expenses paid by the right-holder for preventing the torts' (eg, Article 54 Section 3 of the Copyright Law) which are therefore a part of the substantive legal compensation.

134 Unlike the situation regarding litigation costs, since the enforcement creditor does not need to prepay the costs of courts, there is no issue of cost-shifting for these costs. When it comes to the attorney fees, in practice, there is rarely a case where the application for cost-shifting will be granted. It means that if the enforcement creditor hires its lawyer or even private detectives to dig out the assets of its debtor, the court will not make use of the enforced assets to compensate the expenses of the enforcement creditor. And whether in the end, the enforcement creditor needs to pay the attorney the contingency fees, if any, depends on the final results of the individual enforcement. In contrast, we may remember that as mentioned, the costs for assessment may be recovered in a successful enforcement case.

6.2 Re-allocation of Enforcement Costs in Recent Years

6.2.1 Relationship Between Costs Allocation and Efforts of Enforcement Courts

135 Since we are mainly discussing the allocation of procedural costs between the state court and private parties, which may be altered due to the changes of other crucial factors, we may turn to a similar situation regarding litigation costs at first. It has been observed that there could be a dramatic change when Chinese civil procedure moved from the supra-inquisitorial model towards the party-dominating model back in 1990s. From then on,

193 R D Freer, *Civil procedure* (Kluwer 2017) 8–11.

194 Y Fu, 'Class actions and public interest litigation in China' in A Uzelac and S Voet (ed) *Class actions in Europe* (Springer 2021) 369, 389–390.

Chinese judges were no more expected to devote themselves to the fact-finding of individual cases via investigating the alleged facts of parties aggressively. Rather, they intended to let the parties to shoulder the risks of losing the case according to rules on burden of proof. In other words, judges were taking a relatively passive role in managing the proceedings before them. Since the efforts of judges could be understood as one of the major reasons for calculating litigation costs from the side of the judiciary,[195] there was a movement from the public costs to the private costs within the total of litigation costs. It will be then the parties who should invest more in their attorneys to win the case finally.[196]

136 A similar observation appears in the field of enforcement law. When it comes to the enforcement of eg, a final judgment, it means that the judgment debtor does not voluntarily perform its duty. Then, on behalf of the judgment creditor, the statutory enforcement organ should instead force the debtor to do so (indirect measures) or even makes the operative part of the final judgment fulfilled via its own efforts (direct measures). These efforts will give rise to additional costs. Respectively, as mentioned previously, the creditor does not have to pay the enforcement costs in advance according to the 'state pays' principle. It could be understood as the logical result of the court's duty to realize its final judgment and then accordingly the confirmed substantive rights of the creditor. In general, as introduced, the Chinese court plays an all-inclusive role in discovering debtor's assets.

6.2.2 Doubt on the 'Court pays' Principle and New Development

137 The current rules also mean that if enforcement proceedings are not successful, the responsible enforcement organ should take the financial loss. In such cases, the enforcement organ, which is in pursuit of the fulfilment of enforcement titles, shares mutual interests with the enforcement creditor who also intends to achieve the results of liquidation. And as mentioned, the enforcement organ in China, which is a public organ, still has to prove its own value in realizing the substantive rights determined in eg, final judgments. As a result, courts are supposed to improve the percentage of fulfilled debt in the entire to-be-enforced amount of debt. Yet, some may argue that it is the taxpayer as a whole who is paying the costs under the current system. Therefore,

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[195] M Reimann, 'Cost and fee allocation in civil procedure: a synthesis' in M Reimann (ed) *Cost and Fee Allocation in Civil Procedure: A Comparative Study* (Springer 2012) 3, 24.

[196] Y Fu, 'The nature of litigation fees and the allocation of litigation costs' (2001) 4(1) Peking University Law Review 264–268.

the current rule ought to be overturned.[197] In other words, enforcement proceedings are in fact for the interests of the enforcement creditor in a specific case rather than the general taxpayers. Accordingly, the individual persons who win their cases in the state civil proceedings are taking advantage of enforcement proceedings.

138 In recent years, the situation has changed partially. The campaign of Chinese authorities against the difficulty during enforcement is still ongoing. However, on many occasions, it is the enforcement creditor who needs now to pay some necessary items during enforcement proceedings in advance. These items are not constructed as some default steps to be taken by the enforcement court *sua sponte*. Rather, the enforcement creditor has its choice while without payment these measures will not be taken. Such possibility of taking these additional measures does not affect the judicial duty to discover the debtor's assets, whereas it does make a difference regarding the practical chance of finding those assets in the end. Since all Chinese courts have limited resources but always an increasing caseload of all kinds, the individual enforcement court could merely be too busy to push some enforcement cases forward. Naturally, the creditor will then consider what it could contribute for the sake of its own interests in enforcing the substantive judgment. We may argue that the enforcement creditor is now not merely an applicant for assistance from the state, but rather a wingman who is to facilitate enforcement proceedings as well. In this respect, some examples of the enforcement service which are to be paid now by the creditor are advantageous for our observations in this contribution.

6.2.3 Public Enforcement Service Paid by the Creditor

139 Besides the assessment during enforcement proceedings which are to be paid by the parties rather than the court, the enforcement creditor ought to pay the fee for entrusting an audit to audit the financial situation of the enforcement debtor in advance and then the enforcement creditor could be refunded later. In this respect, Article 17 of the Provisions Investigation 2017 states that the creditor may file a written application for entrusting an audit institution to audit the judgment debtor. After the receipt of the filing, the court has ten days to make its decision. Then it is up to the enforcement court to determine whether to permit the application under the following preconditions: 1) the judgment debtor should be a legal person or an unincorporated organization[198]; 2)

[197] The critical viewpoint taking this arrangement as 'free lunch', Y Lei, 'Fundamental role of civil enforcement' *People's Court Daily* (Beijing, 7 September 2016) 8.

[198] Only the term of unincorporated organization, instead of 'other organizations' in the original version, is revised by the Judicial Interpretation No 21 [2020] of the SPC (China). In the scope of this contribution, the other related articles of the Provisions Investigation 2017 were not modified.

the debtor fails to fulfil the finally decided obligations; 3) the behaviour of the debtor meets one of the following patterns: either refusing to report or falsely reporting its property, concealing, transferring its property or otherwise evading its debts, or that any of its shareholders or investors have stated false capital contribution to the legal entity or have fraudulently withdrawn the capital contributed from the legal entity.

140 Upon approval of the court, a randomly selected audit institution will begin to examine the necessary materials which shall be submitted by the debtor voluntarily. Otherwise, these materials will be collected by the court during its mandatory search measures (Article 18 of the Provisions Investigation 2017). The applying creditor should bear the costs of auditing in advance, while the final allocation of costs depends on whether the circumstances of refusing to report or falsely reporting and evading the debts have been proved (Article 20 of the Provisions Investigation 2017). In other words, the cost-shift in favour of the enforcement creditor is merely available when the suggested audit is proven reasonable.

141 Meanwhile, the enforcement creditor has the option to apply the court for advertising its offer of a reward for locating any enforceable property. Article 21 of the Provisions Investigation 2017 provides the necessary items of this offer, namely the amount or the calculation basis of the reward, the commitment to willingly paying the reward when the obligations are satisfied wholly or partially because of any unknown property clues, and the methods of advertising offers of reward. Within 10 days of receipt of the application, the court shall make its decision. This offer should be broadcast publicly (Article 22 of the Provisions Investigation 2017). When someone appears with clues, the court shall register the identity of the relevant person and the clues (Article 23 of the Provisions Investigation 2017). After confirming that the clues could contribute to the fulfilment of the enforcement debt, the court shall deliver the reward. The reward shall be deducted from enforcement receivable acquired due to the clues, or alternatively, be paid separately by the creditor (Article 24 of the Provisions Investigation 2017). In practice, some relevant insurance products are provided as well. Normally, it means the enforcement creditor has merely to pay 10% of the prospective reward.

7 FUTURE OF THE ENFORCEMENT MECHANISM

7.1 Further Reforms Scheduled by Public Authorities

142 To begin with, attention ought to be placed on the law-making process in the area of enforcement law. A proposed Civil Enforcement Law statute was partially delayed by the fresh Civil Code which takes effect on 1 January 2021. Nevertheless, it will to a great extent follow the current rules stated in the mentioned CPL and its related judicial

interpretations. Generally speaking, Chinese proceduralists are still looking forward to what we will finally have. The only thing for sure is that there will be a separate statute on the operation of enforcement for civil cases. This statute will incorporate some steady rules stated originally in judicial interpretations and therefore, finally expand the scale of legal rules in a stricter sense. There is also strong support for the introduction of an action raising a debtor's objection to the claim being enforced following the German example of Article 767 GCCP.

143 Among the prospective results of a new campaign for establishing a long-term effective enforcement system, there should primarily be an overall plan of comprehensive governance, namely 'leadership by Party committee, coordination by political and legal committees, supervision by the people's congress, government support, court sponsorship, linkage between different departments and public participation'.[199] Concretely speaking, the judiciary should manage the *de facto* sources (源头治理) of the enforcement difficulty. A mechanism for dealing with any uncertain operative part of a civil judgment ought to be established. The institutional reform concerning the promotion of coordination and collaboration among different divisions of the same court and if any, various divisions in different courts, is also desired. And more developed information technology ought to be adopted eg, online auction, intelligent case management and so forth. Moreover, the current enforcement operation should be intensively regulated and standardized.[200]

144 In other words, in accordance with item 3 of the general requirements of the Outline of People's Courts' Enforcement Work (2019–2023),[201] the enforcement work should be integrated into the overall framework for the modernization of the national governance system and governance capacity, while mature and stable enforcement systems, mechanisms and models with Chinese characteristics are supposed to be gradually developed. And in this aspect, diversion arrangement for complex and simple cases (繁简分流) is to be established. So following the primary task 18 of the Outline of People's Courts' Enforcement Work (2019–2023), routine work in the area of enforcement such as search and control of the debtor's assets, preparation and service of judicial documents, management of cases terminated after the failure in enforcement shall be

[199] Supreme People's Court of PRC (ed), *Guidelines of the Supreme People's Court on Deepen the Judicial System Reform with Comprehensive Integrated Reforms of People's Courts – Framework of the Fifth Five-Year Judicial Reform for People's Courts (2019–2023)* (People's Court Press 2019) 62.

[200] Ibid 62–66.

[201] Document (法发) No 16 [2019] of the SPC (China). Because of its nature as the guidance for further development, this instrument is suitable to serve a useful tool to understand the reform plan of the authority.

assigned to special administrative teams for intensive handling.[202] Within the Outline of People's Courts' Enforcement Work (2019–2023), reforms relating to the normalization of enforcement activities, the use of forced enforcement measures, the transparency of enforcement mechanism, the improvement of the supervisory system and the cultivation of enforcement personnel are also comprehensively as primary tasks mapped out.

145 More technically but not therefore of less significance, the possibility of seizing real estate online is one of the crucial tasks in recent years. It represents an advanced phase of using ICT to facilitate enforcement officers for they could complete the preliminary phase by only searching for property information online. The new seizure system should not only be feasible inside some local areas eg, Chaoyang district of Beijing[203] or some other county.[204] And the one within provincial unities such as Shanghai[205] and Chongqing[206] is also not enough. Instead, there should soon be a nationwide online system which could be used both to search property information and to take enforcement measures directly. To some extent, it could be called online enforcement inquiry and control system (version 2.0). A few clicks in this system would be all we need. In this sense, the primary task 27 of the Outline of People's Courts' Enforcement Work (2019–2023) requests more user-friendly functions of the online system such as batch selection, batch freezing and automatic search of objects as well as artificial intelligence services. The computer system should be easy to use and facilitate enforcement officers in determining the direction and measures for search and control of the property. And besides this task, all of the primary tasks 24–31 of the Outline of People's Courts' Enforcement Work (2019–2023) are under the subtitle of 'Deepening the transformation

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[202] Whether the Chinese reform may learn from the experience in Sweden, where there is an independent administrative agency for enforcement issues named as Swedish Enforcement Authority, should be open question for further research. Recent report and analysis, W Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in V Rijavec and others (ed), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 301, 303–308.

[203] J Zhao, 'For the First Time Only 8 Minutes during Real Property Online Seizure in Chaoyang District' *Beijing Youth Daily* (Beijing, 30 August 2019) A7.

[204] China National Radio (CNR), 'First Real Property Inquiry and Control Online System in Jiangxi Province and New "Magic Tool" to Seize and Unseal Apartments' (CNR, 13 May 2020) http://jx.cnr.cn/2011jxfw/zfzx/20200513/t20200513_525088634.shtml accessed 7 January 2024.

[205] J Yan, 'Comprehensively Achieving the Entire Procedure of Inquiring and Control of Real Property Online' *People's Court Daily* (Beijing, 10 September 2019) 1.

[206] Y Liu, 'Real Property Inquiry and Control Online System in Chongqing Courts' *People's Court Daily* (Beijing, 19 February 2021) 1.

of the enforcement model supported by modern information technology'. The name of this subtitle tells by itself.

146 Apart from these efforts which shall be primarily taken by the public authorities, there are still a number of works which could be assisted by private sectors. In this aspect, the primary task 38 of the Outline of People's Courts' Enforcement Work (2019–2023) recognizes the need to try out the investigation by some attorney. Its subsequent primary task 43 states that the proportion of lawyers participating in enforcement proceedings should be improved, while the information platforms facilitating lawyers' participation shall also be built to maximize the role of lawyers. Although the possibility of privatizing enforcement services is not yet discussed intensively in China, the practicing lawyers could still contribute to the solution of enforcement problems. Moreover, according to the primary task 17 of the Outline of People's Courts' Enforcement Work (2019–2023), other specialists such as institutions and personnel from arbitration, notary, accountant and audit ought to be introduced to take part in enforcement proceedings as well.

7.2 Need to Extend Research on Comparative Experience

147 There are for sure a variety of additional enforcement issues which deserve to be developed in the future, which could not be totally covered by this article. However, in order to more generally identify the optimal approach to resolving most existing problems, the function of comparative experience should be examined as an overarching theme at the end of this contribution.

148 Since the continental legal system could to a great extent provide a source of most of the legal provisions in the law codes, there is nowadays a strong tendency to gaze directly upon the firsthand statutory interpretation and judicial practice such as in Germany, Japan and Taiwan region of China.[207] Indeed, not only the abstract principles of enforcement proceedings are suitable to be the targets of research.[208] Some specific arrangement of the procedure, such as the aforementioned action raising a debtor's objection to the claim being enforced, deserves to be investigated in detail.[209] At the

[207] Another reason for it is that enforcement proceedings have to handle substantive legal issues, where the civil law tradition is still ruling currently. To be harmonious with the theories of substantive law, the proceduralists tend more toward the civil law tradition in the design and understanding of enforcement proceedings.

[208] F Baur, R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (13th edn, C.F. Müller 2006) para 6.

[209] C Seiler, '§767' in H Thomas and H Putzo (ed), *Zivilprozessordnung*: *ZPO* (40th edn, C.H. Beck 2019) para 1 ff.

same time, composing parts of Chinese civil procedure law elsewhere are substantially influenced by the US experience as well.[210] Even under such circumstances, the field of enforcement proceedings takes rather a relatively special position. The growth and development of enforcement proceedings are more grass-rooted in the Chinese context. Some technical terms in this area are indeed borrowed from the foreign experience, but the concrete design of the institutions relies rather on the involvement of judges at all levels. Successful lessons in some places will be summarized and then absorbed into some judicial policies or even judicial interpretations. And especially, how to make use of ICT depends on the wisdom of all judges and there is in fact not so much experience which could be transplanted from foreign jurisdictions. To some extent, Chinese courts are not just keeping with the fashion but trying to lead the trend with their most innovative steps in recent years.

149 Moreover, the Chinese law develops some institutions with which even a German or Japanese lawyer may be not quite familiar. For instance, a so-called enforcement settlement (执行和解) is regulated in Article 241 of the CPL. Its first section states that where, during enforcement proceedings, both enforcement parties reach a settlement and conclude an agreement, the enforcement officer shall record the provisions of the settlement agreement in the enforcement report which shall be signed or sealed by both enforcement parties. Although sugar-coated as a settlement, there is practically always participation from the side of enforcement judges. And according to Article 9 of Provisions of the SPC on Several Issues concerning Enforcement Settlement (hereinafter Provisions Enforcement Settlement)[211], the creditor has at present a right of option to decide how to promote the following proceedings after violation of the enforcement settlement. It is stated that where the debtor fails to perform the settlement agreement/compromise on enforcement, the creditor may apply for resuming enforcement of the original effective legal instrument or file a new action in the enforcement court with respect to the performance of the compromise on enforcement. This settlement process is similar to the Article 802b GCCP, under which an enforcement officer should try to amicably terminate the matter at every phase of the enforcement

[210] The most influential contribution in this sense is a series of lectures delivered by Stephen Subrin and Margaret Woo at the dawn of the Twenty-First Century in Renmin University, Beijing, and their final printed publication back in the US: S Subrin and M Y K Woo, *Litigating in America*: *Civil Procedure in Context* (Aspen Publishers 2006).

[211] Judicial Interpretation No 3 [2018] of the SPC (China). Nevertheless, this judicial interpretation gave rise to various practical issues which still deserve our efforts to resolve. This interpretation experienced revision of the Decision of the SPC to Amend Eighteen Judicial Interpretations in Area of Enforcement Including the Provisions of the SPC on Several Issues Concerning People's Courts' Impoundment of Goods Transported by Railway which did not change the framework of the original interpretation.

proceedings, if the creditor does not eliminate the possibility of making a payment agreement. However, unlike the Chinese enforcement judge, the German enforcement officer is not capable of making any substantive agreement. It may either grant the debtor a period to pay or allow the debt to be redeemed by partial performance, both of which are explicitly stated by the Article 802b GCCP.[212]

150 Turning back to the Article 241 of the CPL in China, the newly concluded substantive agreement with preconditions in relation to enforcement proceedings, could nevertheless be interpreted eg, as a *bedingt abgeschlossenes Rechtsgeschäft* under German civil law. And considering this Chinese legal rule has been changed several times already, the academic understanding is still far away from the formation of a settled opinion. Moreover, man could generally believe that the enforcement is more than debt collection and is suitable to promote mediation or settlement.[213] However, it is also strongly argued that the enforcement settlement shows the long-lasting working method of Chinese courts and has the functions of persuasion and education. Because of its case-by-case nature, according to Professor Yaxin Wang, this practice could distort the enforcement system and reproduce underlying contradictions in China's rule of law. Therefore, the enforcement settlement should be a legal institution which could just be temporarily adopted at the early stage of the developing enforcement law.[214] Following this understanding, it could be confirmed that the enforcement settlement is of Chinese specialty and is not transplanted from the Western legal systems.

151 Even, there could be the right of claim for the parties to procedural contracts just like the party to substantive contracts for sales of goods. Article 241 Section 2 of the CPL regulates on the situation where the enforcement settlement is concluded due to the fraud or coercion of the enforcement debtor. However, the statute itself, whether in its original version in 2012 or after the newest revision, does not clarify how the court may as required resume the enforcement of the original title in such cases. Therefore, we may need to apply a specialized judicial interpretation. Among others, Article 16 of the Provisions Enforcement Settlement provides a clearer rule. Where the parties or interested persons deem that the enforcement settlement is invalid or should be cancelled, they may file an action in the enforcement court. After the enforcement settlement is confirmed invalid or cancelled, the applicant for enforcement may apply for resuming enforcement based thereon. Where the enforcement debtor files an action

212 Forbrige, '§802b' in W Krüger and T Rauscher (ed), *Münchener Kommentar ZPO* (6th edn, C.H. Beck 2020) para 5 f.

213 B Hess, 'Different Enforcement Structures' in C H van Rhee and A Uzelac (ed), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 41, 53.

214 Y Wang, 'Coercive Execution and Persuasion and Education' (2000) 2 Social Sciences in China 110.

on the ground that the enforcement settlement is invalid or should be cancelled, the application for resuming enforcement filed by the applicant for enforcement shall not be affected (because now the enforcement debtor has not yet performed the settlement agreement). In other words, these rules suggest either party or even a third party bring a new lawsuit to secure due remedies regarding the relevant procedural contract.

152 Comparative research in the area of enforcement law is still not too much, but too little. Taking the Chinese characteristics into account, the next step is to detect the approach to achieving effective enforcement. Since China is not living in an isolated world and it is planning to accelerate the establishment of a 'dual circulation' development pattern which consists of both domestic and international economic cycles (双循环),[215] gazing outward is still needed. Besides self-evaluation and even third-party evaluation regarding the solution of difficulty in enforcement, there are something more to be done. Even having a higher ranking in the World Bank's international 'Doing Business' competition does mean definitely something to be celebrated. Yet, this interim achievement is not enough either, if we just highlight the information relating to World Bank's indicators which are to be evaluated by reading of domestic laws, questionnaires and so forth. With no doubt, modifying current rules by adopting 2018[216] and 2019[217] versions of the Provisions of the SPC on Strictly Regulating the Issues on Extending the Time Limit for Trial and Postponing the Hearing for Civil and Commercial Cases is able to improve the score in this well-known evaluation. However, to enable foreign investors to have confidence in the Chinese enforcement system with no reservation and hesitation, the Chinese judiciary has to keep reforming. Eventually, even being proud of its special characteristics, the Chinese legal system has to meet the well-accepted international standard. For the discussed issue of this article, it is the sufficient transparency that is able to 'encourage foreign creditors even to attempt to enforce a judgment'[218] within our enforcement mechanism.

153 On such occasions, as mentioned at the very beginning of this article, the UNIDROIT 'Best Practices for Effective Enforcement' project together with the Compendium of

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[215] Xinhua, 'China Pushes "Dual Circulation" to Power Growth in New Development Stage' *China Daily* (Beijing, 10 March 2021) http://www.news.cn/english/2021-03/10/c_139798059.htm accessed 7 January 2024.

[216] Judicial Interpretation No 9 [2018] of the SPC (China).

[217] Judicial Interpretation No 4 [2019] of the SPC (China). On the same day, the SPC also released the Provisions (III) of the SPC on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the PRC for the same purpose. Judicial Interpretation No 3 [2019] of the SPC (China).

[218] W Kennett, 'Enforcement: General Report' in M Storme (ed), *Procedural Laws in Europe: Towards Harmonisation* (Maklu 2003) 81, 110.

Comparative Civil Justice shall be taken as some crucial reference seriously. This attitude is not determined by the European or global wish to harmonize national enforcement structures or proceedings which are severely affected and even obstructed by national legal cultures.[219] Rather, it could be of great benefit to compare our achievement with the preliminary or final results of these projects, which may at least give us some hints for improvement in the future. These endeavours may give rise to more substantial practical influence. Especially, we have to make use of every opportunity to tell the Chinese stories well. To research during the preparation and even taking part in the process of this kind of project, is a challenge to the entire Chinese legal community. Only in this way, the Chinese outstanding system of academic discourse could be constructed firmly and finally.

8 CONCLUDING REMARK

154 Chinese enforcement law is always in the process of evolving which is determined by the legal structure, civilized culture and rapidly changing economic and social lives in China. The evolutionary trajectory of the enforcement mechanism shows the start point, the still continuing reform and the proposed aims in the near future. The difficulty in enforcement exists over a long period of time and has drawn great attention. Considering the proceedings themselves, we have to provide pragmatic solutions with regard to practical problems. These solutions may represent some deviated enforcement mechanisms from the ones developed in other jurisdictions. Nevertheless, aiming at participating in international social and commercial transactions and communicating with other societies in a civil manner, mutual understanding could only be obtained with an open-minded attitude toward comparative research. It requests Chinese proceduralists to copy and follow the Chinese business strategy of *going global and bringing in*. In other words, we have to input the successful lessons from abroad to boost our civil justice system and output the Chinese experience as a gift for friends all over the world. Within the Community of Shared Future for Mankind, we have a long march to seek feasible gradual adjustment.

155 Comparative civil procedure 'may help not just to improve your own national law but to find solutions for practical legal problems of trans-national relations in our world of globalisation'.[220] On one hand, reconsidering the discovery of debtor's assets during enforcement in a comparative context provides Chinese observers with both an

[219] W Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in V Rijavec and others (ed), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 301, 353.

[220] P Gottwald, 'Comparative Civil Procedure' (2005) 22 Ritsumeikan Law Review 23.

approach to looking at our own legal system more closely and the relative position of our practice in contrast with foreign counterparts worldwide. With its strong-willed emphasis on the primary role of the enforcement organ, namely the people's court, to dig out the enforceable property, China has proven its somewhat exceptionalism.[221] To be illustrated is not just an exception to the general principles of dispute resolution mechanism in China but could be traced to the modern Chinese legal tradition insisting on the substantial resolution of disputes in almost all legal areas. Having the comparative lessons in mind, it is not hard to welcome the newest development in China, which begins to examine the necessity of courts to fill the all-inclusive role in finding out the assets and shift the investigative burden and risks more to the parties.

156 On the other hand, what could be learned, if any, from the experience in China? Since the possibilities of the creditor in finding the debtor's property are planned to be enhanced as an international trend, the Chinese judges show how a hard mode (in the popular sense of a computer game) would look like. A more comprehensive enforcement law statute is still on its road. There is no uniform registration system for immovable property, no mandatory financial requirement for the usage of bank accounts rather than cash in case of a great amount of money. But on many occasions, plenty of debtors and their accessories are endeavouring to hide or transfer the assets in a society with less respect for integrity. In such case, Chinese courts have to make use of all possible means in order to iron out the difficulty in enforcement. Confronting tricky debtors, the enforcement mechanism ought to evolve as promptly as possible. It may explain why Chinese courts have taken so many aforementioned enforcement measures with regard to the discovery of assets. However, whether it goes too far and whether it could render templates for other jurisdictions, is still needed to be answered. Most crucially, how to protect the ordinary citizen, debtors inclusive, from excessive interference of public authorities should be taken into consideration. Also, to be observed is the practical influence of such emphasis on the courts' responsibility in China. The unjustly used discretion of judges and to-be-improved confidence in the judiciary may represent an always repeated story in less-developed countries concerning the rule of law.

157 In large, 'all happy families are alike; each unhappy family is unhappy in its own way' In the time of globalization,[222] there are still local problems encountered in each legal jurisdiction. Comparative proceduralists are expected to let us into the secret of success in enforcing the final judgment and figuring out the access to the good ending.

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221 RL Marcus, 'Putting American Procedural Exceptionalism into a Globalized Context' (2005) 53 The American Journal of Comparative Law 709.

222 XE Kramer and C H van Rhee, *Civil Litigation in a Globalising World* (TMC Asser Press 2012).

ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
ALI	American Law Institute
Art	Article/Articles
BGH	*Bundesgerichtshof* (Federal Court of Justice) [Germany]
CCCPC Rule of Law 2014	Decision of the Central Committee of the Communist Party of China (CCCPC) on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law (China)
CEPEJ	*Conseil de l'Europe Commission européenne pour l'efficacité de la justice* (Council of Europe European Commission for the efficiency of justice)
cf	*confer* (compare)
ch	chapter
CIDH	*Corte Interamericana de Derechos Humanos* (Interamerican Court of Human Rights)
CJEU	Court of Justice of the European Union
CNY	Chinese Yuan
CPL	Civil Procedure Law (China)
EBRD	European Bank for Reconstruction and Development
ECLI	European Case Law Identifier
ECtHR	European Court of Human Rights
ed	editor/editors
edn	edition/editions
eg	*exempli gratia* (for example)
ELI	European Law Institute
Enforcement Interpretation 2008	Application of Enforcement Procedures of the Civil Procedure Law of the PRC of 2008 (China)
Enforcement Provisions 1998	Provisions of the SPC on Several Issues concerning the Enforcement of People's Courts (for Trial Implementation) of 1998 (China)
etc	et cetera
EU	European Union
EUR	Euro
ff	following
fn	footnote (external, ie, in other chapters or in citations)
GCCP	Code of Civil Procedure (Germany)
GDPR	General Data Protection Regulation (EU)
ibid	*ibidem* (in the same place)
ICPL	Civil Procedure Law of the PRC

ICPR	Civil Procedure Regulations (Israel)
ICT	Information and Communication Technologies
ie	*id est* (that is)
JPY	Japanese Yen
Measures Costs	Measures for the Payment of Litigation Costs (China)
n	footnote (internal, ie, within the same chapter)
no	number/numbers
Opinions Coordinated Operation 2018	Opinions of the SPC on the Coordinated Operation of Case Docketing, Trial, and Enforcement by People's Courts (China)
Opinions Enforcement Goodwill 2019	Opinions on Further Intensifying the Ideal of Enforcement with Goodwill and Politeness in the Enforcement Work (China)
para	paragraph/paragraphs
PRC	People's Republic of China
Provision Consumption 2015	Provisions of the SPC on Restricting High Consumption and Relevant Consumption of Persons Subject to Enforcement (China)
Provisions Addition of Parties 2016	Provisions of the SPC on Several Issues Concerning the Modification and Addition of Parties in Civil Enforcement (China)
Provisions Dishonest Debtors 2017	Provisions of the SPC on Issuing the Information on the List of Dishonest Judgment Debtors (China)
Provisions Enforcement Settlement	Provisions of the SPC on Several Issues concerning Enforcement Settlement (China)
Provisions Investigation 2017	Provisions of the SPC on Issues concerning Property Investigation during Enforcement in Civil Procedures (China)
Provisions Seizure 2004	Provisions of the SPC on the Seizure, Impoundment and Freezing of Properties in Civil Enforcement by People's Courts of 2004 (China)
pt	part
Sec	Section/Sections
SPC	Supreme People's Court (China)
supp	supplement/supplements
trans/tr	translated, translation/translator
UK	United Kingdom
UKCPR	Civil Procedure Rules (UK)

UNIDROIT	*Institut international pour l'unification du droit privé* (International Institute for the Unification of Private Law)
UP	University Press
US / USA	United States of America
USD	United States Dollar
v	versus
vol	volume/volumes
WB	World Bank

LEGISLATION

International/Supranational

Principles of Transnational Civil Procedure 2004 (ALI / UNIDROIT).

National

Decision of the SPC to Amend Eighteen Judicial Interpretations in Area of Enforcement Including the Provisions of the SPC on Several Issues Concerning People's Courts' Impoundment of Goods Transported by Railway, Judicial Interpretation No. 21 [2020] of the SPC (China) (最高人民法院关于委托执行若干问题的规定).

Decision of the Supreme People's Court on Amending the Several Provisions of the Supreme People's Court on Restricting High Consumption of the Persons Subject to Enforcement, Judicial Interpretation No. 17 [2015] of the SPC (China) (最高人民法院关于修改《最高人民法院关于限制被执行人高消费的若干规定》的决定).

Decision of the Supreme People's Court on Amending the Several Provisions of the Supreme People's Court on Issuing the Information on the List of Dishonest Judgment Debtors, Judicial Interpretation No. 7 [2017] of the SPC (China) (最高人民法院关于修改《最高人民法院关于公布失信被执行人名单信息的若干规定》的决定).

Decision of the Supreme People's Court to Amend the Provisions of the Supreme People's Court on Strictly Regulating the Issues Concerning Trial Period Extension and Continuances in Civil and Commercial Cases, Judicial Interpretation No. 4 [2019] of the SPC (China) (最高人民法院关于修改《最高人民法院关于严格规范民商事案件延长审限和延期开庭问题的规定》的决定).

Code of Civil Procedure (*Zivilprozessordnung*) (Germany).

Interpretation (I) of the Supreme People's Court on the Application of the 'Marriage and Family" Book of the Civil Code of the People's Republic of China, Judicial Interpretation No. 22 [2020] of the SPC (China) (最高人民法院关于适用《民法典》婚姻家庭编的解释（一）).

Interpretation (I) of the Supreme People's Court on the Application of Book Six Succession of the Civil Code of the People's Republic of China, Judicial Interpretation No. 23 [2020] of the SPC (China) (最高人民法院关于适用《民法典》继承编的解释（一）).

Interpretation (I) of the Supreme People's Court on the Application of the Book Real Right of the Civil Code of the People's Republic of China, Judicial Interpretation No. 24 [2020] of the SPC (China) (最高人民法院关于适用《民法典》物权编的解释（一）).

Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in the Handling of Criminal Cases regarding False Litigation, Judicial Interpretation No. 17 [2018] of the SPC (China) (最高人民法院、最高人民检察院关于办理虚假诉讼刑事案件适用法律若干问题的解释).

Interpretation of the Supreme People's Court of Several Issues concerning the Enforcement Procedures in the Application of the Civil Procedure Law of the People's Republic of China, Judicial Interpretation No. 13 [2008] of the SPC (China) (最高人民法院关于适用《中华人民共和国民事诉讼法》执行程序若干问题的解释).

Interpretation of the Supreme People's Court of the Application of the Relevant Guarantee System of the Civil Code of the People's Republic of China, Judicial Interpretation No. 28 [2020] of the SPC (China) (最高人民法院关于适用《民法典》有关担保制度的解释).

Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, Judicial Interpretation No. 5 [2015] of the SPC (China) (最高人民法院关于适用《中华人民共和国民事诉讼法》的解释).

Opinions of the Supreme People's Court on Further Improving the Mechanisms for Restricting Enforcement Powers to Enhance Supervision over Enforcement, Administrative Document (法) No. 322 [2021] of the SPC (China) (最高人民法院关于进一步完善执行权制约机制加强执行监督的意见).

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Provisions (III) of the Supreme People's Court on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China, Judicial Interpretation No. 3 [2019] of the SPC (China) (最高人民法院关于适用《中华人民共和国企业破产法》若干问题的规定（三）).

Provisions of the Supreme People's Court for the People's Courts to Seal up, Distrain and Freeze Properties in Civil Enforcement, Judicial Interpretation No. 15 [2004] of the SPC (China) (最高人民法院关于人民法院民事执行中查封、扣押、冻结财产的规定).

Provisions of the Supreme People's Court on Several Issues Concerning the Enforcement Work of the People's Courts (for Trial Implementation), Judicial Interpretation No. 15 [1998] of the SPC (China) (最高人民法院关于人民法院执行工作若干问题的规定（试行）).

Provisions of the Supreme People's Court on Several Issues concerning the Determination of the Reference Prices for Disposition of Property by the People's Courts, Judicial Interpretation No. 15 [2018] of the SPC (China) (最高人民法院关于人民法院确定财产处置参考价若干问题的规定).

Provisions of the Supreme People's Court on Several Issues concerning Online Judicial Sale by People's Courts, Judicial Interpretation No. 18 [2016] of the SPC (China) (最高人民法院关于人民法院网络司法拍卖若干问题的规定).

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