

## PART XIII

### ENFORCEMENT

#### CHAPTER 2

#### COMPARATIVE LEGAL PERSPECTIVE ON THE EFFECTIVE ENFORCEMENT OF CREDITORS' RIGHTS

*Masahisa Deguchi\**

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## 1 INTRODUCTION – COMPARATIVE PERSPECTIVE ON THE EFFECTIVE ENFORCEMENT OF CREDITORS' RIGHTS

### 1.1 Protection of Creditors' Rights as a Mission of Enforcement Law

- 1 In the world of civil execution, there was a sheer force in the beginning.<sup>1</sup> Force was believed to be justice. However, where there is force, there is not always justice, and justice is not always supported by power. In such a situation, it is necessary to differentiate between the unjustified use of force and the legitimate exercise of rights and to establish procedures for the protection of rights that conform to the principles of the rule of law. In the compilation of codes in modern countries, procedural laws encompassing execution often preceded substantive laws.<sup>2</sup>
- 2 In the modern era, there is total control of execution by the state, apart from exceptional cases where private individuals are allowed to self-remedy and where private individuals have execution co-power.<sup>3</sup> Self-help is prohibited in principle in the modern state characterized by the rule of law. In modern times, the state's execution monopoly is a component part of the state monopoly of general rights protection. Moreover, with respect to execution, the state adheres to its monopoly. Even when civil disputes between parties are settled voluntarily through settlement, mediation, arbitration, etc., the compulsory realization of the rights recognized therein must always be achieved through the exercise of the state's right of compulsory execution. The state is therefore obligated to provide its citizens with effective protection of their rights as guaranteed by the constitution.<sup>4</sup>

### 1.2 Necessity of Obtaining Information on Debtor's Assets

- 3 Enforcement proceedings are more embedded in legal tradition and culture than any other piece of civil procedure. A comparative overview<sup>5</sup> shows radically different approaches, even between countries that are geographically and culturally very close to each other.<sup>6</sup> This might seem odd since the problems are the same all around the world,

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<sup>1</sup>\*Honorary Vice President of International Association of Procedural Law (IAPL), Professor of Law, Faculty of Law, Ritsumeikan University in Kyoto/Japan.

T Nakano and M Shimomura, *Minjishikoho* [Civil Execution Law] (Seirinshoin 2021) 3.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Hiroyuki Matsumoto, *Minjishikohozenho* [Civil Execution Law & Civil Provisional Remedies Law] (Kobundo 2011) 3.

<sup>5</sup> Enforcement law has recently been neglected in comparative law research; see in detail, Y Taniguchi, 'Afterword' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 279. (This book is a collection of reports from the International Colloquium held at the Faculty of Law, Ritsumeikan University, Kyoto, Japan, in November 2019).

<sup>6</sup> F Gascón-Inchausti, 'Towards More Effective Enforcement Proceedings Through More Effective Asset Discovery' in: M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 154; Civil

but the ways to cope with them serve to mirror the way each society tries to find a balance between confronting rights and interests.

- 4 The problem of enforcing a money judgment exists in every legal system, but the methods and direction vary widely. In most countries of the world, these problems are regarded as a matter of civil procedure, and that is just as well because the rest of the civil procedure (which deals with the methods available to parties to obtain favourable judgments) would be of limited use if those judgments could not be enforced.<sup>7</sup>
- 5 Not only in the continental legal system but also in the Anglo-American legal system, all effective enforcement law systems must ensure sufficient transparency of the debtor's financial assets, especially regarding information on the whereabouts of those assets. Fundamentally, enforcement can only be effective if the creditor has sufficient knowledge of the debtor's assets.<sup>8</sup>
- 6 The role that the courts play in the enforcement of money judgments varies in different countries. In the so-called continental legal system, like Germany, Austria, Japan, Korea, and Taiwan, court officials appear to have a major responsibility for identifying and locating assets of a judgment debtor so that the judgment creditor can initiate enforcement against those assets to satisfy the judgment. In the US, those obtaining money judgments receive no such assistance from bailiffs or other court personnel. However, they can use extensive US discovery processes, including third-party discovery, to locate the assets themselves and thus gain direct access to information about the assets and their location.<sup>9</sup>
- 7 In the following, I will first make a comparative study of German and French enforcement laws, which have greatly influenced Japanese enforcement laws, and then provide a comparative legal discussion on the effectiveness of the enforcement of creditors' rights in Taiwan, Korea, China, Austria, Switzerland, the Netherlands, Poland, the UK, Spain, Argentina, the US, Brazil, and Russia.

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enforcement was unable to keep pace with economic change with respect to both sources of income and methods of asset-holdings. Two particular trends have emerged as a result:

1. A more proactive role for enforcement institutions, 2. Greater access to information. These two trends are mutually reinforcing; for details see W Kennet, *Civil Enforcement in a Comparative Perspective* (Intersentia Ltd 2020) 565. (This book is the latest literature on the comparative legal analysis of three categories of enforcement agencies: the administrative model, the judicial officer model, and the court-centered model).

<sup>7</sup> Cf L Cadiet, 'Effective Rights Protection in Civil Enforcement, Some Comments from a French Point of View' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 46.

<sup>8</sup> A Alsfasser, *Sachaufklärung in der Einzelzwangsvollstreckung* (Mohr Siebeck 2018) 2.

<sup>9</sup> R Marcus, 'America's BYO Approach to Enforcing Money Judgments' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 1.

## 2 RECENT DEVELOPMENT OF GERMAN CIVIL ENFORCEMENT LAW AS MODEL FOR JAPAN AND OTHER COUNTRIES

- 8 Japan has a history of inheriting and developing a modern legal system based on German law at the end of the 19th century. Apart from its influence on several European jurisdictions, German law has exerted considerable academic impact also on other Asian countries (Taiwan, Korea, China, Vietnam, Cambodia, etc.) and South American countries (Brazil, Argentina, Chile, etc.).<sup>10</sup> From a comparative legal perspective, I would like to first examine the effectiveness of the protection of creditors' rights in German civil enforcement law as an example of continental law.

### 2.1 From Enforcement of Movable Property to Enforcement of Claims

- 9 In Germany, the creditor traditionally could just file an application with an enforcement officer<sup>11</sup> for attaching movable property without any knowledge about concrete bank accounts or real property. In the 19th century, legislators throughout Europe predominantly assumed that a civil debtor had a well-equipped home with many assets, subject to execution, which would find a buyer in a compulsory auction. But such times have been gone for a long time. The enforcement officer can seize and auction movable property only in rare cases.<sup>12</sup> The importance of attachment of claims in enforcement proceedings is constantly growing. The debtor's immovable assets are usually either

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<sup>10</sup> Cf H Matsumoto, 'The Reception and Transmission of the Law of Civil Procedure in Japan – The Experience in Japan' in M Deguchi and M Storme (ed), *The Reception and Transmission of Civil Procedural Law in the Global Society* (Maklu Publishers 2008) 137, 146; Y Wang, 'The various roots of Civil Litigation in China and the influence of foreign laws in the global era' in M Deguchi and M Storme (ed), *The Reception and Transmission of Civil Procedural Law in the Global Society* (Maklu Publishers 2008) 149; M-H Ho 'The Reception and Transmission of Civil Procedure Law Experience in Korea and Important Points to be Considered' in M Deguchi and M Storme (ed), *The Reception and Transmission of Civil Procedural Law in the Global Society* (Maklu Publishers 2008) 173; A P Grinover and K Watanabe, 'The Reception and Transmission of Civil Procedure Law in the Global Society – Legislative and Legal Assistance to Other Countries in Procedural Law, Brazilian Report' in M Deguchi and M Storme (ed), *The Reception and Transmission of Civil Procedural Law in the Global Society* (Maklu Publishers 2008) 223; L Cadet, 'The International sources of French civil procedure' in M Deguchi and M Storme (ed), *The Reception and Transmission of Civil Procedural Law in the Global Society* (Maklu Publishers 2008) 264, 267; I Varga, 'Foreign Influences on Hungarian Civil Procedural Law' in M Deguchi and M Storme (ed), *The Reception and Transmission of Civil Procedural Law in the Global Society* (Maklu Publishers 2008) 275.

<sup>11</sup> The word 'bailiff' is commonly used in English-speaking countries as enforcement officer, enforcement agent, or judicial officer who is responsible for enforcement. The term enforcement officer is here used with a neutral meaning.

<sup>12</sup> P Gottwald, 'Enforcement Against Movable Property in Germany' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 1; On the other hand, focusing on the fact that the seizure of movable property often has the effect of seizing 'the subjective interest of the obligor who owns the property', the functional revitalization of movable property execution should be pursued by actively promoting discretionary postponement of revaluation or discretionary permission of instalment payment (so-called 'amicable enforcement') based on the practical judgment of the enforcement officer in accordance with the specific circumstances of each case (see Nakano and Shimomura (n 1) 653; The leitmotif of the bailiff's work of today and its practical emphasis also in Germany lies in his endeavour of an amicable termination of the matter (§802b I GCCP).

non-existent or economically worthless.<sup>13</sup> Execution of physical property is usually not as successful because the debtor's property often has only a low auction value or cannot be seized. In such cases, the only option is to seize a claim of the debtor against a third-party debtor.<sup>14</sup> However, the attachment of bank accounts or the garnishment of wages is by far more promising. There is a significant imbalance among the several creditors in terms of the information demanded about the debtor's financial situation.

- 10 In contrast, corporate creditors in some ways are in an advantageous position because they can obtain some information during the course of the business relationship, especially about the debtor's bank account to which they have previously made payments. In addition, enterprises are registered, and creditors can access commercial registers to locate the debtor's business address and obtain some information about bank accounts, etc. The authorities have additional information. Some of them compile whole dossiers on the debtor's financial situation, especially tax administrations and social security authorities regarding the debtor's employer. Finally, the debtor's car may be registered with the motor transport authority.<sup>15</sup> This information can be used to determine the debtor's residence in enforcement proceedings.

## 2.2 Information Imbalances in Enforcement Proceedings

- 11 However, the relevant information is not equally available to all creditors. It may even be the case that some creditors have no information at all about the debtor's financial situation. This is typically the case with maintenance claims where debtors often try to conceal their financial situation.<sup>16</sup> Similar situations arise in disputes between the owner of a property and former tenants after the termination of the tenancy when the former tenant does not inform the owner of his/her new address, or in disputes over unpaid invoices for the supply of goods or services. In these circumstances, debtors do not necessarily act in bad faith, although there are debtors who intentionally hide their assets from creditors because they know that enforcement or even bankruptcy is imminent. In these cases, creditors face difficulties in relying on proper and timely payment.<sup>17</sup>

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<sup>13</sup> The real estate is in general heavily mortgaged by the bank and other financial institutions.

<sup>14</sup> The third-party debtor is subject to a prohibition of payment and an obligation to provide information (§829 I, 1. GCCP); Art 481(1) Civil Code in Japan: If a third-party obligor of a claim that has been attached performs the obligation to that third party's own obligee, the attaching obligee is entitled to request the third-party obligor to perform the obligation de novo to the extent of the damage sustained by the attaching obligee.

<sup>15</sup> B Hess, 'The Effective Disclosure of the Debtor's Assets in Enforcement Proceedings' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 28.

<sup>16</sup> Cf B Hess, *Europäisches Zivilprozessrecht* (2nd edn, De Gruyter 2020) 550, 554.

<sup>17</sup> Hess (n 15), 28. Under the Japanese Execution Act, the method of indirect enforcement is allowed for a monetary claim pertaining to a maintenance obligation, etc, even though it is monetary execution, and an obligee may choose to file a petition by selecting the method of general monetary execution or the method of indirect enforcement (Art 167-15(1) of Japanese Civil Execution Act).



### 2.3 1931 Draft for a Code of Civil Procedure in Germany

- 12 Under the 1931 draft Code of Civil Procedure in Germany,<sup>18</sup> responsibility for all enforcement measures was to be concentrated in the enforcement division of the courts.<sup>19</sup> Upon receipt of an application for enforcement, these courts were to examine the debtor's financial circumstances, order the debtor to account for his/her property, and confirm it by declaration on oath in a court hearing.<sup>20</sup> The centralised structure of the enforcement agencies has the following advantages: it enables the integration and coordination of enforcement procedures against different types of enforcement targets; it prevents several types of enforcement procedures for the satisfaction of the same claim from being developed by different enforcement agencies without any mutual relationship; it selects appropriate targets in general and carries out swift and effective enforcement; and it helps to place appropriate limits on the scope of the enforcement and protect the lives and business of debtors.<sup>21</sup> Unfortunately, this draft and the concentration of all types of enforcement at the court did not materialise. However, it remains a subject of study among civil procedure scholars.

### 2.4 Information Deficit and Enforcement Mechanisms

- 13 This unequal situation of creditors is in contradiction to two basic pillars of German enforcement law: the Principle of Priority<sup>22</sup> and the decentralised organisation of the

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<sup>18</sup> The Reich Ministry of Justice's 1931 assessment of the need for a reorientation has endured to this day; Cf O Beck, *Entwurf einer Zivilprozessordnung* (Walter de Gruyter & Co 1931); This 1931 draft has been conscientiously considered as an important research material also in Japanese enforcement law; Okurasho Shuzeikyoku, 1931 Nen Doitsu Minjisoshoho Soan narabini Kaisetsu [Taxation Bureau, Ministry of Finance in Japan, Draft of the New German Civil Procedure Code of 1931 and Commentary] 1957.

<sup>19</sup> The following Swiss law on the centralisation of enforcement agencies is typical: Seizure visit, seizure, as well as enforcement sale are exclusively for the enforcement office to conduct in Switzerland. No court order is necessary to get the proceedings started or to approve the seizure, as is the case in some countries. Moreover, the enforcement office is not only responsible for the seizure itself but also for finding the debtor's assets, which is another unique feature of Swiss law. The creditor does not need to help in that task, though it may be useful, if he/she has any knowledge thereof, for him/her to point out existing assets to the enforcement office (see S P Baumgartner and M Heisch, 'Finding Defendant's Assets in Proceedings to Enforce Money Judgments in Switzerland' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 177.

<sup>20</sup> Gottwald (n 12) 2.; H Namura and S Koyanagi, 'Proposal for a Procedure to Strengthen Creditor's Claims While Protecting Debtor's Quality of Life and Privacy in Japan, Study Group for Improvement of Civil Enforcement Law' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 96. (This article is inspired by the centralization of the Swiss executive body and proposes a new executive officer by attorney at law in Japan.) Opposing this proposal in terms of the exercise of the enforcement officer's public powers, W Lüke, 'Some Comments on the Proposals of the Study Group from a German Perspective' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 114.

<sup>21</sup> Cf Nakano and Shimomura (n 1) 44.

<sup>22</sup> §803 (3) GCCP: The lien established by an earlier attachment shall take precedence over that established by a later attachment (Priority or prevention principle); On the issue of the principle of priority in Korea, see M-H Ho, 'The Problem of the Disclosure of the Debtor's Assets in Enforcement

enforcement bodies.<sup>23</sup> The latter pillar entails that the creditor must access the competent enforcement organ depending on the different assets to be attached. The designation of the competent organ means that the application for enforcement must be filed with the enforcement officer if the creditor wishes to attach moveable property (§753 Code of Civil Procedure Law in Germany (hereinafter GCCP); it goes to the *Rechtspfleger* (judicial officer) if the creditor has bank accounts and intangible assets such as salaries (§828, §857 GCCP). Finally, the creditor must file an application with the land registry if he/she wants to seize immovable assets (§864 GCCP). If the creditor does not know where the debtor's property is located, he/she also would not know where to file the application. The creditor would be wasting time and money if he/she applies to an enforcement body that cannot locate and seize the sought-after assets.<sup>24</sup>

- 14 In 1991, in order to avoid such declarations on oath, the German legislature granted the *Gerichtsvollzieher* (enforcement officer<sup>25</sup>) the power to ask the debtor (or in his/her absence another person of the household) about his/her employer or other claims against third parties, eg, bank accounts (§806a GCCP). Since these persons were not obliged to provide information, it is likely that the enforcement officer did not always make use of this possibility.<sup>26</sup>

## 2.5 Expanding the Area of Activity of Enforcement Officers in Germany

- 15 In 1997 the German legislator gave the *Gerichtsvollzieher* (enforcement officers<sup>27</sup>) the authority to work towards an amicable settlement at any point in the enforcement proceeding.<sup>28</sup> If the enforcement officers could not find any attachable property, but the

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Proceedings, From a Comparative Point of View of Korean Law' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 224; The priority principle determines the priority or inferiority among creditors entitled to distributions based on the time before or after the time of foreclosure or participation in execution, whereas the equality principle gives each creditor entitled to distributions a pro rata distribution according to the amount of his/her claim, regardless of whether it is before or after the time of foreclosure or participation in execution. While the legal systems of various countries show diverse and multifaceted deviations from both pure types, reflecting their respective historical circumstances and differences in legislative policies, including substantive law and bankruptcy law, Japanese enforcement law, influenced by French civil law, is characterized by a strong tendency toward the equality principle (see Nakano and Shimomura (n 1) 37).

<sup>23</sup> Switzerland's enforcement authorities are centrally constituted; see Baumgartner and Heisch (n 19) 177.

<sup>24</sup> Hess (n 15) 28; Recent reforms of the German enforcement law tried to overcome this situation by reinforcing the role of the enforcement officer in the enforcement proceedings, for details, see W-D Walker, 'Effektiver Rechtsschutz in der Zwangsvollstreckung nach deutschem Recht' (2021) 39 *Ritsumeikan Law Review* 69, 75.

<sup>25</sup> For more information on the history of enforcement officers in Germany, see M Görtemaker and K Hübner, *Schwert der Justiz* (BeBRa Wissenschaft Verlag 2019) 11.

<sup>26</sup> Gottwald (n 12) 2.

<sup>27</sup> Cf B Hess, *Die Neuorganisation des Gerichtsvollzieherwesens in Deutschland* (Nomos 2006) 18.

<sup>28</sup> Gottwald (n 12) 2; Kennet (n 6) 54; Focusing on the fact that the seizure of movable property often has the effect of seizing 'the subjective interest of the obligor who owns the property', the functional

debtor plausibly contended that he/she could settle his/her debt within six months, the enforcement officers must stay the enforcement procedure provisionally and collect the instalments, provided that the creditor did not object (§806b GCCP former version). If the enforcement officers could attach movables, they could postpone the compulsory auction, if the debtor were willing to pay the debt within one year. If the creditor objected, the enforcement court could grant the same postponement (§813a, §813b GCCP former version). Already since that time, the predominant portion of all payments recovered by enforcement officers consisted of such instalments by the debtors. Nevertheless, many scholars in Germany insisted on a reform of the law to improve the creditor's ability to gain information about the financial situation of the debtor by requiring debtors to submit an affidavit as to assets at the beginning of enforcement procedures.<sup>29</sup>

- 16 In May 2008, the Bundesrat (the Upper House of the German Parliament), passed a bill for the reform of inquiry into the financial condition of debtors and presented it to the German Bundestag (the Lower House) in July 2008. The law was finally passed in July 2009. To enable enforcement officers and court administration to adapt all technical facilities, the law's effective date was delayed until January 2013.<sup>30</sup>

## 17 Principles of the Reform 2013 in Germany

- 18 The new reform law maintains the rule that the *Gerichtsvollzieher* (enforcement officer) is competent to seize movable property but not monetary claims.<sup>31</sup> There were calls to expand their jurisdiction in favour of more effective enforcement, but the legislature did not take up this idea, especially because the enforcement officers themselves were opposed to more paperwork at the time. Today, they are in favour of comprehensive jurisdiction, provided they receive better professional training.<sup>32</sup>

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revitalization of movable property execution should be pursued by actively promoting discretionary postponement of revaluation or discretionary permission of instalment payment (so-called 'amicable enforcement') based on the practical judgment of the enforcement officer in accordance with the specific circumstances of each case (see Nakano and Shimomura (n 1) 653); In Japan at the joint petition of the parties, the court or an authorized judge or a commissioned judge may set the appropriate terms of settlement for resolving the case (Art 265(1) JCCP [Japanese Code of Civil Procedure]). But the settlement at the time of execution by the enforcement officer could be in the reality more reasonable and effective than the settlement in the judgement proceeding.

<sup>29</sup> Gottwald (n 12) 2.

<sup>30</sup> Ibid.

<sup>31</sup> Walker (n 24) 75 proposes to delegate the enforcement of claims from the *Rechtspfleger* (judicial officer) to the enforcement officer, subject to supplementary legal education; the enforcement agencies by the *Rechtspfleger* (judicial officer) and the enforcement officer should be centralized so that information can be shared and the enforcement officer can take on the responsibility of promptly enforcing claims (see Hess (n 27) 107).

<sup>32</sup> Walker (n 24) 75; Since 1.1.2022, attachment, execution and service orders must be transmitted in Germany as an electronic document via a secure transmission channel if they are submitted by a lawyer, by a public authority or by a legal entity under public law (including associations formed by it to perform its public duties).

## 2.6 Task of Enforcement Officer in Germany

- 19 The *Gerichtsvollzieher* (enforcement officer) has the unchanged task under the new law of collecting monetary claims swiftly, completely, and inexpensively (§802a I GCCP). The most significant new provision is that at the creditor's request, the enforcement officer may request the debtor to provide information on his/her financial circumstances and assets at the beginning of the enforcement proceedings and, if such information is insufficient, may obtain information from third parties on the debtor's financial circumstances and assets owned by the debtor.<sup>33</sup> The creditor can decide whether the enforcement officer initially requests only this information together with a declaration in lieu of an oath, or whether the officer should simultaneously pursue the seizure and realization of physical objects at the same time (§802a II GCCP).
- 20 Today, the leitmotif of the *Gerichtsvollzieher's* activity and its practical focus lies in his/her efforts to bring the matter to an amicable conclusion (§802b I GCCP).<sup>34</sup> The enforcement officer can now set a deadline for payment or grant payment by instalments if the debtor can credibly show that he/she can repay his/her debt within 12 months (§802b II 1, 3 GCCP). The officer prepares a payment plan based on the debtor's income, insurance benefits, or regular allowances from relatives. If this payment plan is set, the enforcement is suspended (§802b II 2 GCCP) unless the creditor objects without delay or the debtor is more than two weeks in arrears with a set payment (§802b III 2, 3 GCCP). As long as the payment plan is valid, the debtor is not obliged to provide information about his/her assets.<sup>35</sup>
- 21 The most important point of the reform is undoubtedly the bringing forward of the debtor's obligation to provide information about his/her assets to the beginning of the enforcement proceedings regardless of an unsuccessful attempt at enforcement (§802a, §802b N 1. II No. 2, §802c GCCP).<sup>36</sup> As before the reform (on application of the creditor), the debtor is supposed to record a statutory declaration in lieu of an oath stating that

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<sup>33</sup> In France, there is no system of disclosure of the debtor's own property because debtors obviously do not disclose their own property in 'good faith'. But third-party property information in France functions exclusively as an effective tool (see K Yamamoto, 'France Ho karamita Kinsenshikko no Jikkoseikakuho' [Ensuring the Effectiveness of Monetary Enforcement from the Perspective of French Law] in K Miki (ed), *Kinsenshikko no Jitsumu to Kadai* [Practice and problems of the monetary enforcement] (Seirinshoin 2013) 126; Japan and South Korea have introduced German property disclosure systems and third-party property inquiries (See Ho (n 22) 224).

<sup>34</sup> The enforcement officer (*Gerichtsvollzieher*) in Germany can make direct contact with debtors, visiting them at home or at work, in order to induce them to make voluntary payments, to agree on payment by instalments. Taking into account the creditor's interests, the *Gerichtsvollzieher's* professional practice focuses on advising and clarifying the debtor's situation (see Hess (n 27) 18).

<sup>35</sup> Gottwald (n 12) 3.

<sup>36</sup> Japan did not revise the previously implemented requirements for property disclosure procedures, such as the requirement of non-successful enforcement. According to the legislators, this is due to the non-performance requirement which is necessary to balance the requirement for the protection of the debtor's privacy and trade secrets (see M Uchino and T Koga and T Matsunami, *O&A Reiwa Gannen Kaisei Minjishikkohosei* [Revised Civil Enforcement Legislation] (Kinyuzaiseijiyokenkyukai 2020) 43).

he/she made correct and full statements (§802e III GCCP). This reform was welcomed enthusiastically as a paradigm shift and a big step forward from the 19th to the 21st century.<sup>37</sup>

## 2.7 Fundamental Right to Judicial Enforcement

- 22 The power of civil enforcement is the legal power to conduct civil enforcement procedures for the realization of claims and security interests under private law by exercising the state's compulsory power. When the requirements for the realization of a claim by civil enforcement are fulfilled, the creditor may petition the state for the commencement of civil enforcement, seeking to invoke its compulsory power. This right of the creditor is called a right of claim for enforcement. This is a public right of a private individual against the state to seek invocation of the state's civil enforcement power, and forms part of the right of a private individual to claim protection of his/her rights against the state.<sup>38</sup> The existence of a compulsory execution system is a touchstone for the effectiveness of rights protection through civil litigation because, without the possibility of compulsory execution of a title of obligation, civil litigation as a rights protection system would be dysfunctional.<sup>39</sup>
- 23 The right to effective enforcement is considered part of the fundamental right to judicial protection in Germany,<sup>40</sup> in the EU,<sup>41</sup> and also in countries influenced by German law.<sup>42</sup> From this fundamental 'human right' the creditor takes the next step by ensuring that the court itself gathers the information about the debtor's assets necessary for the judgment creditor to effectuate the judgment. Much the same orientation is reflected in the judgment enforcement in Austria. Indeed, the enforcement process takes place ex officio without even the need for the judgment creditor to apply for that assistance.<sup>43</sup> Also in Japan, the constitutional guarantee of the procedural protection of creditor's rights is similarly understood to include the realization of rights through civil enforcement.<sup>44</sup>
- 24 Therefore, the state is obliged to ensure the transparency of the debtor's assets within the framework of effective enforcement in favour of the creditor. On the other hand, it is to be noted that in Germany state measures of property disclosure may constitute an invasion of general personal rights—more precisely the right to informational self-determination, derived from Art 2. para. 1, Art 1. para. 1 GG as well as the guarantee to property (Art 14. para.2. sentence.2 GG) and ultimately both personal freedom (Art 2.

<sup>37</sup> Gottwald (n 12) 4.

<sup>38</sup> Matsumoto (n **Fehler! Textmarke nicht definiert.**) 17.

<sup>39</sup> Ibid.

<sup>40</sup> Hess (n 15) 28; With regard to the creditor's claim, BGH speaks of a right to satisfaction, which is protected by Art 14, Paragraph I of the German Basic Law (BGHZ 141, 173, 177; cf Alsasser (n 8) 2.

<sup>41</sup> Alsasser (n 8 2; Cf, file:///C:/Users/mdt00/Downloads/001-58020.pdf.

<sup>42</sup> Gascón-Inchausti (n 6) 154.

<sup>43</sup> W H Rechberger, 'Clarification of Facts in Austrian Enforcement Law' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 20.

<sup>44</sup> Matsumoto (n 4) 17.

para.2 sentence.2 GG) and the Inviolability of the home (Art 13 GG). Thus, in the case of compulsory enforcement and especially in the case of factual clarification, there is a tension—also from a constitutional point of view—between the creditor's right to effective compulsory enforcement and the protection of the debtor's interests.<sup>45</sup>

### 3 DEVELOPMENT OF JAPANESE CIVIL PROCEDURE LAW AS TRANSMISSION OF GERMAN CIVIL PROCEDURE LAW

#### 3.1 Japan's Civil Procedure Law (Civil Enforcement Law) Was Strongly Influenced by the German Civil Procedure Law of 1877<sup>46</sup>

- 25 The former Code of Civil Procedure (CCP) in Japan was enacted in 1890 as the first full-fledged civil procedure law.<sup>47</sup> It was drafted by the German jurist Hermann Techow and was reformed in 1926, influenced by the Austrian Law of Civil Procedure. The 1926 Code of Civil Procedure aimed to reduce delay, smooth proceedings and carry and take in various new ideas. In the process of the reform, the Austrian Code of Civil Procedure was the primary source of reference.<sup>48</sup> After World War II, the occupying US General Headquarters directed a drastic reform of the civil procedure system in connection with Japanese democratization. For almost 70 years thereafter, the revised code continued to be used with occasional amendments. After some preliminary work beginning in the 1950s, the Ministry of Justice at the end of the 1960s, reformed the Code of Execution, which had remained almost unchanged since the 1890s and had become outdated. This reform represented the first step of a longer process, covering the whole field of Civil Procedure Law reform.<sup>49</sup>
- 26 The system of enforcement law, which was implemented by the CCP of 1890, mentioned above, and the Auction Act of 1898, had contained some theoretical discrepancies since its inception. Beyond that, there were also practical difficulties such as procedural delays that could not be overlooked. Against this background, in 1968, the legislature began work on a new Enforcement Law. After two preliminary drafts in 1971 and 1973, the Civil Execution Act (hereafter CEA) was enacted in 1979. This Act entered into force on 1 October 1980.<sup>50</sup>
- 27 As in Germany and other countries, the creditor's burden of finding debtor property has been a serious problem in the civil execution system in Japan. Until the beginning of this century, however, a creditor could not obtain any assistance from the enforcement court

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<sup>45</sup> Alsasser (n 8) 3-4, 16.

<sup>46</sup> For more information on the transmission of the German Code of Civil Procedure of 1877 in Japan, see Matsumoto (n 10) 137.

<sup>47</sup> Cf *ibid* 139.

<sup>48</sup> See *ibid* 140; H Baum and M Bälz (ed), *Handbuch Japanisches Handels- und Wirtschaftsrecht* (Carl Heymanns Verlag 2011) [S Kakiuchi] 1290.

<sup>49</sup> M Deguchi, 'Fact Clarification and Effective Legal Protection in Civil Enforcement Law in Japan' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 71.

<sup>50</sup> Deguchi (n 49) 72.



about it—creditors had to find property to be seized all on their own before filing a compulsory execution for monetary claims. Such a burden can be a big obstacle, especially for a creditor who has little information about the debtor’s property (e.g., maintenance claim creditor, crime victim, etc.). It was in the 2003 reform of the Japanese CEA when the Property Disclosure Procedure (§§196-203 CEA. Hereinafter ‘Property Disclosure’) was introduced as a part of the civil execution system. In Property Disclosure proceedings, upon a petition by a creditor, a court may order a debtor to appear at the court and to make a statement on his/her property. This reform of the CEA was the first important step for the Japanese civil enforcement law system to ease the creditor’s burden to search for debtors’ property. The Property Disclosure was designed with a cautious approach for fear of abuse—for example, creditors with some types of title of obligation (a judgment with a declaration of provisional execution, a notarial deed, etc.) were not allowed to request the disclosure. That impaired the usefulness and effectiveness of the procedure. In particular, weak sanctions (non-penal fine up to JPY 300,000) have led to debtors’ disobedience of the disclosure order.<sup>51</sup>

### 3.2 2019 Reform of the Civil Enforcement Act in Japan

- 28 The enforcement of judgments in Japan is governed by the Japanese Civil Execution Act.<sup>52</sup> I would like to summarize the 2019 amendments to the Civil Enforcement Act in Japan, especially focusing on amendments regarding the expansion of the creditor’s right to obtain information about the debtor.<sup>53</sup> Improving the effectiveness of the debtor property disclosure system was the most important item of this revision. Along with measures to strengthen the existing property disclosure procedures, the revised law establishes new procedures for obtaining information from third parties other than the debtor. Specifically, upon petition by a creditor holding a title of obligation, the court may require the debtor to provide information on (i) real estate, (ii) salary claims, (iii) deposit claims, etc. held by the debtor to third parties that have information on each of these, namely (i) the *Tokisho* [registration office], (ii) municipalities and the Japan Pension Service and other organizations implementing employee pension insurance, and (iii) bank and other financial institutions.<sup>54</sup> Amendment of the ‘Property Disclosure Procedure’: Amendments Related to the Extension of the Creditor’s Right to Obtain Information about the Debtor

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<sup>51</sup> H Tega, ‘Investigation of Debtors’ Property in Japan—To Make Claims Truly Enforceable’ in M Deguchi (ed), *Effective Enforcement of Creditor’s Rights* (Springer 2022) 85.

<sup>52</sup> Civil Execution Act – Japanese Law Translation <https://www.japaneselawtranslation.go.jp/en/laws/view/70/en>

<sup>53</sup> Cf Deguchi (n 49) 71.

<sup>54</sup> The existing system to date has not necessarily served to effectively protect the rights of creditors, although an attorney inquiry under Art 23-2 of the Lawyers Act can be conducted and an order issued to the effect that an exploratory seizure is possible. Based on the Attorneys Act, Art 23-2 (1) (Request for Information), an attorney may request the bar association of which they hold a membership to make inquiries to public offices or public or private organizations so that they may provide information necessary for a case taken by the attorney. The bar association may refuse the request if it finds that

- 29 Japan made a comprehensive amendment to the Civil Enforcement Act in 2003 to allow creditors to obtain information about the debtor's assets through an 'asset disclosure procedure'. In asset disclosure proceedings, the debtor is summoned by the court at the request of the creditor and is required to make an affidavit about his/her assets.<sup>55</sup>
- 30 Under the 2003 amendment, though, the number of requests from creditors for asset disclosure was limited (to about 1,000 cases per year), and the number has decreased in recent years. Moreover, only 30%-40% of creditors who filed a request were able to obtain information about the debtor's assets in the asset disclosure procedure because the debtor either refused to disclose them or for other reasons.<sup>56</sup>
- 31 Whoever falsely makes a declaration in lieu of an oath before an authority that is competent to administer such declarations or falsely testifies whilst referring to such a declaration, incurs a penalty of imprisonment for a term not exceeding three years or a fine (§156 of the Criminal Code) a penalty of imprisonment for a term not exceeding three years or a fine. Furthermore, the court may order the detention of a person who fails to appear on the date for the disclosure of property or refuses to disclose property without cause, upon motion of the creditor, in order to compel disclosure (§802 g of the GCCP). In Japan, when the property disclosure procedure was first introduced in 2003, there were concerns that it might be abused as a means of harsh debt collection by malicious financiers, so criminal penalties were not imposed as a sanction. However, to improve the feasibility of the asset disclosure procedure, the following two amendments were made in the 2019 amendment to the Japanese Civil Enforcement Act [CEA]: Expansion of the group of persons entitled to file an application for the property disclosure procedure (§197 (1) CEA) and non-appearance, refusal to swear under oath, refusal to make a statement, and false statements were made subject to imprisonment for up to six months or a fine of up to ¥500,000 (§213 (1) Nr. 5. and Nr.6. CEA).<sup>57</sup>

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the request is inappropriate. (2) A bar association may, pursuant to the request referred to in the preceding paragraph, request public offices or public or private organizations to provide necessary information. As for the problems with the Request for Information under Art 23-2 of the Lawyers Act in Japan, see, K Yamamoto (ed), *Rontenkaisetsu Reiwa Gannen Kaisei Minjishikkoho*, [Commentary on the Issues: The Revised Civil Execution Law of 2022] (Kinyuzaiseijiyokenkyukai 2020) 38. [S Kakiuchi] points out the following problems: (1) only the bar associations to make inquiries; (2) the broad discretionary authority of the bar associations; (3) the reporting obligation is unclear.

<sup>55</sup> Deguchi (n 49) 74.

<sup>56</sup> Cf *ibid*.

<sup>57</sup> Yamamoto (ed) (n **Fehler! Textmarke nicht definiert.**) 18 [S Koga]; The German Enforcement Law allows for the enforcement custody of debtors for the disclosure of property (§802g GCCP); In addition, South Korea has also introduced also enforcement custody system because of doubts about the effectiveness of sanctions through criminal penalties, and the system has been effective in the operation of property disclosure (see S Koga, 'Kankoku niokeru Kinsensaimumegi no Jikkoseitanpo notameno Seido, Zaisanmeijiseido o Chushintoshite' [The System for Ensuring the Effectiveness of the Title of Monetary Obligations in Korea: Focusing on the System of Disclosure of Property] in: K Miki (ed), *Kinsenshikko no Jitsumu to Kadai* [Practice and Problems of Monetary Execution](Seirinshoin 2013) 256-



### 3.2.1 Expansion of Debtor's Title in Asset Disclosure Proceedings

- 32 Under Japanese law, a debtor who has an 'obligation title' (*Saimumeigi*), such as a final judgment, can pursue enforcement through the court. After the Civil Enforcement Act was amended in 2003, a debtor who had some kind of obligation title, such as 'a judgment with a declaration of provisional enforcement' ordered in the lower court judgment, which could be appealed, or 'a notarial deed executed by a notary' with the debtor's consent to waive enforcement (*Sikkō-Shōsho*),<sup>58</sup> could not apply for property disclosure proceedings.
- 33 This limitation of the eligibility to file an application in the property disclosure procedure has been criticised, however, as a debtor who has any obligation title can pursue enforcement and there are no plausible reasons to exclude such debtors from the property disclosure procedure. In view of this criticism, the amendment to the Civil Enforcement Act 2019 expanded the group of persons entitled to apply for the asset disclosure procedure and made the asset disclosure procedure accessible to a debtor with any obligation title (§197(1) CEA). Tentative court judgments other than final judgments were excluded from property disclosure on the grounds that they would be difficult to restore to their original state.<sup>59</sup> Tightening of Sanctions for Non-Appearance and False Statements
- 34 The asset disclosure process penalizes a debtor who (i) failed to appear at an asset disclosure hearing, (ii) refused to take an oath, (iii) failed to make a statement, or (iv) made a false statement about the status of the debtor's assets. After the 2003 amendment to the Civil Enforcement Law, however, the penalty was only 'a non-punitive (administrative) fine of not more than JPY 300,000'. Some practitioners pointed out that such penalties were not sufficient to deter a debtor from refusing to disclose his/her assets. Considering these inadequacies, the 2019 Amendment increased the penalties for items (i) through (iv) above. The penalty under the 2019 Amendment is imprisonment with labour for not more than six months or a fine of not more than JPY 500,000.<sup>60</sup> The formerly weak sanction has been strengthened.

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259; In contrast, French enforcement law abolished the system of *exécution sur la personne* (or *contrainte par corps*) in 1867. As an alternative to such personal enforcement, '*astreinte*' has been enhanced as a means of indirect enforcement of performance (cf Yamamoto (n 33) 135).

<sup>58</sup> In the preparation of a deed of execution in Japan, the notary's function is limited to notarizing the parties' statements by fixing them in a deed according to a strict formality, and the notary has neither the authority nor the responsibility to examine the substantive legitimacy of the rights pertaining to the statements (the so-called theory of formal examination authority); for details, see Nakano and Shimomura (n 1) 208.

<sup>59</sup> Yamamoto (ed) (n Fehler! Textmarke nicht definiert.53) 18 [S Koga].

<sup>60</sup> Deguchi (n 49) 77.

### 3.3 The New Procedures for Obtaining Information from Third Parties Were Influenced by French Law

35 Japan has adopted the principle of equality of French enforcement law and has been influenced by French law, including the system of indirect enforcement (*astreinte*).<sup>61</sup> The French property disclosure system was introduced in 1991 with the amendment of the Civil Execution Act. This is based on the idea of shifting the emphasis in French enforcement proceedings from enforcement against movable property to enforcement against claims (deposit claims, salary claims, etc.). In other words, while humanization of execution procedures is advocated, execution against monetary claims is less harmful to debtors than execution against movable property, and in order to induce creditors to use execution against monetary claims while maintaining the basic structure that leaves the choice of execution procedure to creditors, it is necessary for creditors to be able to obtain information regarding seized assets. The ability to obtain information on seized assets is a prerequisite for this. Based on such an idea, this procedure of property inquiry was developed as the institutional basis for enabling a wide range of claims enforcement.<sup>62</sup> French law provides for the collection of information by an enforcement officer (*huissier de justice*) as a procedure for obtaining information from third parties (Art L152-1 to L152-2 of the French Civil Execution Code).<sup>63</sup>

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<sup>61</sup> Cf S Ohama, 'Kansetsukyosei no Kadai' [Problems of *astreinte*], p.281. in K Miki (ed), *Kinsenshikko no Jitsumu to Kadai* [Practice and problems of the monetary enforcement]; Yamamoto (n 33) 135; It is interesting to note that *astreinte* is applicable to any obligation and can be used as a method of enforcing the performance of monetary obligations (Art L131-1 *Procédures D'Exécution*); Japanese enforcement law is characterized by a strong inclination toward the principle of equality (cf Nakano and Shimomura (n 1) 38); As a strong exception to the principle of equality in Japanese enforcement law is what we call 'the assignment order' (Art 159 (1) JCEA: An execution court may, upon petition by the obligee affecting a seizure, issue an order to assign the seized monetary claim to the obligee affecting a seizure at the face value in lieu of payment).

<sup>62</sup> Yamamoto (n 33) 127.

<sup>63</sup> Art L152-1: Subject to the provisions of Art 6 of law n° 51-711 of 7 June 1951 on the obligation, coordination and secrecy of statistics, the administrations of the State, the regions, the departments and the communes, the companies conceded or controlled by the State, the regions, the departments and the communes, the public establishments or bodies controlled by the administrative authority must communicate to the bailiff in charge of the execution including a court decision authorizing a seizure of bank accounts, the information they hold that makes it possible to determine the address of the debtor, the identity and address of his employer or any third party debtor or depositary of liquid or payable sums and the composition of his real estate assets, to the exclusion of any other information, without being able to invoke professional secrecy. Art L152-2: Institutions authorized by law to keep deposit accounts must inform the enforcement agent whether one or more accounts, joint accounts or merged accounts are opened in the name of the debtor, as well as the places where the accounts are kept, to the exclusion of any other information, without being able to invoke professional secrecy. Art L152-3: The information obtained may be used only to the extent necessary for the execution of the security or securities for which it was requested. It may not, under any circumstances, be communicated to third parties or be the subject of personal data processing. Any violation of these provisions is punishable by the penalties incurred for the offence provided for in Art 226-21 of the Criminal Code, without prejudice, where appropriate, to disciplinary proceedings and an order for damages.

36 The 2019 amendment to the Japanese Civil Enforcement Act also introduced new procedures called ‘procedures for obtaining information from third parties’. This system of property inquiries to third parties was introduced regarding the 1991 amendment of the French Civil Execution Code. This is based on the idea that in French enforcement procedures, the emphasis is shifting from enforcement of movable property to enforcement of claims (enforcement against deposit claims and salary claims)<sup>64</sup>. However, unlike Germany and South Korea, which have functioning property disclosure systems, France does not have a property disclosure system, which Japan introduced in reference to German law. This is because property disclosure is a system that relies on the good faith of the debtor, and failure to disclose will result in a transfer to court proceedings and the judicialization of the process. On the other hand, the French system is considered superior in that it does not depend on the will of the debtor and enables avoidance of the court. This distrust of voluntary disclosure by the debtor is an example of French pragmatism. In addition, in light of the fact that in Germany and South Korea, which operate property disclosure, it is considered rare to find a case in which the debtor is allowed to enforce the disclosure of useful property information in reality, and a system of property inquiry is now in place, the French system has a certain rationality.<sup>65</sup> Under its procedures, a creditor holding title may obtain the following three types of property information about a debtor from a third party:

- (1) information about the debtor’s real property
- (2) information about the debtor’s salary; and
- (3) information about deposits or savings in the debtor’s bank account.<sup>66</sup>

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<sup>64</sup> Yamamoto (n 33) 126.

<sup>65</sup> Ibid.

According to the EU Green Paper 2008, there are two types of property disclosure and property reference procedures in Europe:

- (1) Countries without either procedure are Italy and Scotland.
- (2) Countries with only property disclosure are Germany (which subsequently introduced property inquiries), the United Kingdom, Ireland, Greece, Denmark, and Finland.
- (3) Countries with only property inquiries are France, the Netherlands, Belgium, Luxembourg.
- (4) Countries with both property disclosure and property inquiry are Austria, Spain, Portugal, Sweden, Slovenia, Estonia, etc

Countries that do not have any procedures, such as (1), are almost disappearing, while (3) is France and the three Benelux countries. However, many Latin countries have procedures for property disclosure, and countries with both systems, such as (4), are becoming the majority (cf [https://www.europarl.europa.eu/registre/docs\\_autres\\_institutions/commission\\_europeenne/com/2008/0128/COM\\_COM\(2008\)0128\\_EN.pdf](https://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2008/0128/COM_COM(2008)0128_EN.pdf)).

<sup>66</sup> Cf Art L152-1, Art L152-2, Art L152-3, *Code des procédures civiles d’exécution*.

### 3.4 Obtaining Information on Debtor's Real Property

37 There is a real estate registration system in Japan called 'Tōki'<sup>67</sup>, and information about real estate (e.g., the owner of a property) is registered in the Tōki. Every person, including the debtor, can view the Tōki without permission. However, the Tōki can only be searched by the location (street address) of the property and not by the name of the owner of the property. Hence, a debtor cannot search for a debtor's property by the debtor's name.<sup>68</sup> The 2019 amendment to the Civil Enforcement Act enables a debtor holding an obligation title to obtain information about the debtor's real property by a court order. Specifically, at the debtor's request, the court may order the land registry to provide information on whether there is a property of which the debtor is the registered owner, and if there is such a property, further information on that property.<sup>69</sup>

### 3.5 Obtaining Information on the Debtor's Salary in Japan

38 In order to enforce a salary claim of the creditor, the creditor must identify a third-party debtor in Japan, such as the debtor's employer. However, identifying the debtor's employer is sometimes a difficult task for a creditor. For this reason, the 2019 Amendment allows a creditor who has an obligation title to obtain information about a debtor's salary entitlement.<sup>70</sup> More specifically, at the request of the creditor, a court may order municipalities or associations involved in employee retirement benefits to disclose whether there is a person or entity that pays a salary to the creditor, and if there is such a person or entity, further information about that person or entity. In Japan, a municipality receives information about the employment of a resident of the municipality from the resident's employer, and the above associations keep information about the employment of participants in their pension schemes. However, it should be noted that only a creditor who has one of the following claims can apply for the above arrangement: a claim for

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<sup>67</sup> The validity of the contents of a description in a real estate register is called public trust. In Japan's registration system, the contents of the description are generally correct, but if the true relationship of rights differs from the description in the registration, even if the description is trusted, it cannot be protected in principle. In other words, the true relationship of rights takes precedence over the description in the register; Real Property Registration Act, Art 1: The purpose of this Act is to preserve the rights of the people by providing for a system of registration for the indication of real estate and for public notice of rights concerning real estate, and thereby to contribute to the safety and smoothness of transactions. French law (opposition requirements principle) is a legislative example that registration, a means of public notice, has no direct relationship with changes in property rights between the parties concerned, but is simply a requirement for opposing changes in property rights in relation to third parties. The Japanese Civil Code also adopts the opposition requirements principle, which states that, in principle, registration under the Real Property Registration Act is necessary to set up against a third party a variation of real property rights in relation to real property (Art 177 of the Civil Code).

<sup>68</sup> Yamamoto (ed) (n **Fehler! Textmarke nicht definiert.**) 60 [N Takatori].

<sup>69</sup> Ibid.

<sup>70</sup> This is information on the obligor's deposit or savings claim as prescribed in Art 466-5(1) Japanese Civil Code, which is necessary for filing a petition for compulsory execution or exercise of a security interest; Cf Yamamoto (ed) (n **Fehler! Textmarke nicht definiert.**) 84 [T Nakahara].

maintenance arising out of the relationship between spouse, parents, and child(ren), or other family relationship; or a right to compensation for injury to human life or body.<sup>71</sup>

### 3.6 Obtaining Information on Deposits or Savings in the Debtor's Bank Account in Japan

- 39 In Japan, the creditor must provide not only the name of the bank but also the name of the branch to enforce the attachment of deposits or savings in the debtor's bank account. However, in practice, it is usually difficult to determine the name of the branch holding the debtor's bank account, as all major banks have numerous branches. The 2019 amendment to the Civil Enforcement Act enables the creditor holding an obligation title to obtain information on the deposits or savings in the bank account of the debtor. Specifically, at the request of the creditor, the court may order a bank to provide information on whether the debtor maintains a bank account and, if such an account exists, other information about it, including the branch that maintains the account.<sup>72</sup>

### 3.7 Right to Information Self-Determination and the Principle of Proportionality in Germany and Japan

- 40 The question of whether civil enforcement proceedings should be linked to asset disclosure proceedings is a discussion about the procedural safeguards for debtors when conducting proceedings to obtain information from third parties.<sup>73</sup> The requirement of precedence of property disclosure procedures in German law is based on the consideration of the proportionality principle, on the grounds that the acquisition of information by a bailiff from a third party is an intervention in the debtor's right to information self-determination.<sup>74</sup> The acquisition of information by an enforcement officer from a third party is an intervention in the debtor's right to information self-determination.<sup>75</sup> Proportionality considerations apply because (i) having the debtor disclose the information himself/herself is less restrictive on the right to self-

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<sup>71</sup> Cf Uchino and Koga and Matsunami (n 36) 85.

<sup>72</sup> Cf *ibid* 117.

<sup>73</sup> Procedures for obtaining information from third parties should be limited to cases where it is necessary to implement the procedures since the creditor obtains information that belongs to the privacy of the debtor and imposes on the third party the administrative burden of retrieving and providing the information (see Yamamoto (ed) (n **Fehler! Textmarke nicht definiert.**) 105 [S Aoki]).

<sup>74</sup> In German public law, the principle of proportionality (*Verhältnismäßigkeit*) is designed to measure the legitimacy of all the state organs. The principle of proportionality is already laid down in Art 5(4) of the Treaty on European Union. It seeks to set actions taken by European Union (EU) institutions within specified bounds. Under this principle, EU measures: must be suitable to achieve the desired end; must be necessary to achieve the desired end; and must not impose a burden on the individual that is excessive in relation to the objective sought to be achieved (proportionality in the narrow sense). On proportionality in a narrow sense, Alsfasser (n 88) 20.

<sup>75</sup> This terminology 'informational self-determination' (*informationelle Selbstbestimmung*) was first used in the context of a German constitutional ruling relating to personal information collected during the 1983 census (see BverfGE 65, 1); on the general right to privacy in the form of the right to informational self-determination, Alsfasser (n 8) 16.

determination of information than having the information transmitted from a third party<sup>76</sup>, and (ii) the debtor may repay the debt or reach an agreement with the creditor on repayment of the debt as a result of the property disclosure procedure.<sup>77</sup>

- 41 In contrast, with regard to point (i), Japanese law requires that the property disclosure procedure precede the procedure for obtaining information from a public institution. However, in the procedure for obtaining information from financial institutions (banks, etc.), there is no requirement that the property disclosure procedure needs to come before. The reason for this is that there is a risk that the debtor may dispose of savings bonds, book-entry transfer bonds, etc., by going through the property disclosure procedures.<sup>78</sup> When considered in comparison with the German principle of proportionality, it appears that under Japanese law, property disclosure procedures, which in principle require disclosure of all debtor assets, are not considered to be less disadvantageous to debtors than procedures for obtaining information from third parties that target individual assets. With regard to point (ii), property disclosure procedures under Japanese civil enforcement law are not considered to be a system that encourages the debtor to make repayment or reach an enforcement settlement regarding repayment.<sup>79</sup> The view that it is unnecessary to require property disclosure prior to the petition is that the confidentiality of the procedure should be such that information can be obtained without prior notice or opportunity to file an appeal of execution. An appeal against execution is also permitted only to seek dismissal of the petition.<sup>80</sup>

#### 4 CHARACTERISTICS OF THE NEW ENFORCEMENT LAW SYSTEM IN GERMANY, JAPAN, FRANCE

- 42 In general, in Germany, Japan, and France, the creditor can just demand a self-discovery by the creditor, although the creditor may also instruct the enforcement officer to obtain additional information from a third party.<sup>81</sup> In Germany, §802 I GCCP recognizes the right of the enforcement officer to obtain information from a third party.<sup>82</sup> In other words, while there are some overlaps with Japanese law with regard to subject information such as information on automobiles held by the debtor (§802(1), Nr.1-Nr.3 GCCP), the main

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<sup>76</sup> As for the significance of preceding the property disclosure procedure, from the viewpoint of self-determination regarding information, it is requested to first have the debtors themselves disclose information about their property. However, there is an opinion that the burden and disadvantage of the debtor is smaller if the creditor obtains information regarding individual property from a third party than if the debtor has to make the disclosure (see Kazuhiko Yamamoto Editor, above n.54, p. 108 [Satoshi Aoki]).

<sup>77</sup> Yamamoto (n Fehler! Textmarke nicht definiert.) 115 [S Aoki].

<sup>78</sup> Ibid.

<sup>79</sup> Ibid 116.

<sup>80</sup> Ibid 48.

<sup>81</sup> Gottwald (n 12) 9.

<sup>82</sup> Since the enforcement officer are connected to the electronic facilities of the courts electronic queries are easily possible and obtaining information from third parties is quickly available (see Gottwald (n 12) 11.



characteristic is that the enforcement officer in Germany is the person in charge of collecting, supervising, and communicating the information. According to §802I GCCP, a prerequisite is that the debtor has failed to fulfil its obligation to disclose property or that the property disclosed by the debtor was found to be insufficient to the full satisfaction of the creditor. On the other hand, the acquisition of information by a German court execution officer itself differs from Japanese law in that the debtor is not allowed to appeal in advance, and the obligee should notify the debtor of the results of the acquisition of information within four weeks after the acquisition without delay (§802I (3) GCCP). However, there are considerable differences between German and Japanese enforcement officers in terms of their training.<sup>83</sup>

#### 4.1 Legal Training of Enforcement Officers in Germany, Japan, and France

- 43 German enforcement officers are at the lowest level of state civil servants, while the majority of Japanese enforcement officers come from court clerk backgrounds.<sup>84</sup> Eligible candidates include those from court clerk backgrounds, as well as certain administrative officials, attorneys at law, patent attorneys, judicial scriveners, or real estate appraisers. In order to recruit other enforcement officers from various fields, they must have at least ten years of work experience in banks, long-term credit banks, labour banks, and credit unions. Many of Japan's enforcement officers come from court clerk backgrounds.
- 44 After four years of legal education at a university level, most of the appointed court clerks in Japan receive two more years of additional training at the Training and Research Institute for Court Officials<sup>85</sup> before being assigned to a court, where they are basically responsible for all preparatory work in judgment proceedings, enforcement proceedings, and insolvency proceedings. Court clerks (*Saibansho Shokikan*) in Japan, who are therefore judicial experts with highly sophisticated legal education, are responsible for being present at court proceedings and keeping detailed judicial records (authentication of court proceedings) in order to ensure due process of law. Additionally, they assist the judges in the research of laws, orders, and judicial precedents and perform other duties stipulated

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<sup>83</sup> For more information on the training of enforcement officers around the world, see <https://www.uihj.com/about-us-2/members-of-the-uihj/>.

<sup>84</sup> The enforcement officer in Germany is a civil servant in the sense of state law and liability law as well as an official in the sense of criminal law (see Brox and Walker, *Zwangsvollstreckungsrecht* (11th edn, Vahlen 2021) 8); Kennet (n 6) 525; 'The Judicial Officer in the World – Germany' <https://www.uihj.com/wp-content/uploads/2020/05/Germany-15-April-2020-EN.pdf>. To become a *Gerichtsvollzieherin* Germany as well as in Austria, a simple school-leaving certificate is sufficient (see Kennet (n 6) 503, 550).

<sup>85</sup> The Training and Research Institute for Court Officials is a training institute established in affiliation with the Supreme Court in Japan. With the aim of bringing about proper and prompt justice and making court proceedings easy for the public to access and understand, the Institute provides court officials other than judges with various training programs that enable them to acquire knowledge, skills and techniques that they need in performing their duties, and also to help them develop character and insight. It also conducts research on court procedures, thereby facilitating improvements in the performance of official duties in the courts (see [https://www.courts.go.jp/english/institute\\_02/institute/index.html#Introduction](https://www.courts.go.jp/english/institute_02/institute/index.html#Introduction)).

by relevant laws. Moreover, Japanese court clerks make the preparatory arrangements between the dates of the court proceedings, which places them in a position of significant responsibility, and they also take an active role in administering litigation in cooperation with judges to realize prompt and proper justice.<sup>86</sup> In particular, Japanese court clerks are well versed in enforcement practice because they have received legal education plus professional practice education similar to the training of *huissiers de justice* in France,<sup>87</sup> and as court clerks, they have been delegated the authority for enforcement duties by the judges in Japan. Therefore, it is considered to be equivalent to the '*Rechtspfleger*'<sup>88</sup> or even higher officials in Germany. Thus, most Japanese enforcement officers should be capable of handling the enforcement of claims as long as they are willing to do so.

## 4.2 Discussion on Privatization of the *Gerichtsvollzieher* System in Germany

- 45 The legal status of the *Gerichtsvollzieher* is the subject of frequent political debate in Germany. On June 20, 2007, the Bundesrat (upper house of the German parliament) passed a bill to reform the enforcement officer system. The bill provided for the privatization of the *Gerichtsvollzieher* system as in France to increase the efficiency of enforcement and save costs.<sup>89</sup> The task of the *Gerichtsvollzieher* would no longer be carried out by judicial officials, but by persons in private practice, who would work on their own account, but under the supervision of the state. Opponents argued that the enforcement of judicial decisions is a sovereign task that should not be privatized.<sup>90</sup> In addition, they argued that this could create a significant increase in enforcement costs, which could discourage some creditors, especially those with small claims, from initiating

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<sup>86</sup> As a rule, enforcement proceedings in the enforcement court are presided over by a judge and assisted by a court clerk, but the Civil Execution Act and the Civil Execution Rules provide for the inherent authority of the court clerk in several enforcement matters in Japan. During the period when the modern civil court system was established, cases were typically handled according to the strictly procedural method of handling cases, but eventually, the phenomenon of non-contentious cases, in which cases are handled in a light and flexible non-contentious manner, began to appear. In terms of personnel structure. In such cases, authority has been transferred to court clerks to reduce the burden on judges, who are subject to strict qualification requirements and personal status guarantees (see Nakano and Shimomura (n 1) 59).

<sup>87</sup> See K Yamamoto, 'Shikkokan Seido no Hikakuteki Kento' [Comparative Legal Review of the Enforcement Officer System] (2013) 11 Shin Minshishikko Jitsumu, 118-120.

<sup>88</sup> The *Rechtspfleger* in Germany is also an official of the higher service (§2 RPfLG) which is a senior position, equivalent to a court clerk in Japan. In his/her decisions he/she is independent and subject only to the law (§9 RPfLG). He/she is mainly responsible for compulsory enforcement of monetary claims against receivables and other property rights as well as immovable property (§828ff. GCCP; §1ff ZVG). Only one German *Hochschule* (*Schwetzingen*) has been offering a three-year bachelor's degree program for bailiffs. It has been offered since 2017; see Walker (n 24) 76; Also in Austria the applicant of *Rechtspfleger* must have passed the *Matura* or the *Beamtenaufstiegsprüfung* and needs a three-year training period (see M Andenas and B Hess and P Oberhammer, *Enforcement Agency Practice in Europe* (British Institute of International and Comparative Law 2005) 119).

<sup>89</sup> The working group on the reorganization of the *Gerichtsvollzieher* in Germany advocated privatization in the form of lending with limited competition of bailiffs within their district (for details, see Hess (n 27) 13).

<sup>90</sup> Brox and Walker (n 84) 10.



enforcement proceedings, which in turn could have a negative impact on payment incentives.<sup>91</sup>

### 4.3 Data Analysis of the Enforcement Officer System

46 The Japanese enforcement officer system is a successor to the German *Gerichtsvollzieher* system, but the German system at that time was strongly influenced by the French system, so the Japanese system was also indirectly influenced by the French system. The characteristics of the enforcement officer legal system can be therefore broadly classified into the French model of the free office of the enforcement officer and the German model of the enforcement officer.<sup>92</sup> In Japan, the characteristics of the enforcement officer system prior to the enactment of the enforcement officer law include the office system, the free-choice system, and the commission system.<sup>93</sup> This system of enforcement officers was intended to avoid bureaucratic complications, to link the enforcement officers directly with the creditors, and to have them carry out their activities as promptly and actively as the law permitted, based on their own responsibility and calculation, and through free competition among the enforcement officers. On the other hand, it was accompanied by adverse effects such as the tendency to create personal relationships between enforcement officers and the parties concerned. Furthermore, the requirements for the execution of their duties often were criticized as unclear and leading to unfairness, so reforms were strongly demanded.

47 Therefore, in 1966, the Law on Enforcement Officers was revised, and efforts were made to adopt the German-style civil service system by eliminating the personal managerial coloration attached to the conventional enforcement officer system.<sup>94</sup>

48 The following subsections compare the French and German types of enforcement officers.

### 4.4 Reform Tendency to Improve the Efficiency of Enforcement in the EU

49 In recent years, many European countries have initiated far-reaching reforms to improve the efficiency of enforcement<sup>95</sup>. In France, the enforcement of monetary claims was

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<sup>91</sup> Ibid.

<sup>92</sup> Yamamoto (n 87) 116.

<sup>93</sup> (1) Each enforcement officer established an office separate from the court to which he/she belonged, on his own responsibility and account, and made it the basis for his enforcement service; (2) In principle, each creditor may arbitrarily select one of several enforcement officers belonging to the same court and delegate execution; (3) The enforcement officer does not receive a salary from the state, but takes as his income the fees he/she receives from creditors, and only when the fees do not reach a certain amount, the deficiency amount is paid from the state treasury (see Yamamoto (n 87) 115).

<sup>94</sup> T Nakano/M Shimomura, above n.1, 51-52.

<sup>95</sup> The Heidelberg project, directed by Prof. Burkhard Hess in 2002 investigated how the transparency of a debtor's assets, the attachment of bank accounts, and provisional enforcement and protective measures contributed to the efficiency of enforcement of judicial decisions within the European Union (cf Andenas and Hess and Oberhammer (n 88) 18, 195); Cf Alsasser (n 8) 210-211.

reorganized in the early 1990s and the legal status of the enforcement officer (*huissiers de justice*) was upgraded, while other reforms have strengthened the enforcement officer's ability to obtain information<sup>96</sup>. The Netherlands has also implemented sustainable reforms. There, enforcement officers were given the status of a free profession and were allowed to compete with each other in debt collection. Similar reforms are planned in England. Austria has also reformed its enforcement system in recent years. The execution courts with joint jurisdiction have been retained, but at the same time, computerized enforcement has been introduced and the remuneration of enforcement officers has been increased with cost incentives to boost motivation<sup>97</sup>. In general, there is a growing trend toward the creation of uniform enforcement systems. The German 'decentralized' system, with its multitude of different enforcement bodies, seems singular in comparison. In addition, there is a clear tendency toward privatized enforcement officers, who carry out enforcement as contracted or regulated freelancers under the supervision of the enforcement court.<sup>98</sup>

#### 4.5 The French Enforcement Officers (*Huissiers De Justice*) as an Independent Agency

50 The French enforcement officers (*huissiers de justice*)<sup>99</sup> differ considerably from German and Japanese enforcement officers in terms of legal education, legal status, and area of activity. The *huissiers de justice* are characterised by their legal status as an independent agency and are recognised by the Minister of Justice. They are subject to land jurisdiction, but creditors are otherwise free to choose among them. Qualifications<sup>100</sup> include a minimum of a master's degree in law, passing a professional examination based on two years of practical training—and the acquisition of shares in an office is a prerequisite for

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<sup>96</sup> The French property disclosure system was introduced by the 1991 amendment to the Civil Execution Law. The main feature of the 2010 amendment to the Civil Execution Law was the transfer of the subject of access from the prosecutor to *huissiers de justice* (see Yamamoto (n 33) 128).

<sup>97</sup> Hess (n 27) 27, 28.

<sup>98</sup> Ibid.

<sup>99</sup> *Huissiers de justice* in France should also serve as formal witnesses to events (*constat d'huissier*) in the manner of a notary public. As a member of the legal profession, he/she acts in the service of process, responsible for delivering such documents and authenticating parties to whom they are delivered; proceeds in the enforcement and recovery of any court and legal claims, including bankruptcy, property claims, seizures, and evictions; issues court summonses (assignments and quotations); and performs other actions. He/she may also exercise authorizations of a Court of Appeals, and act in insurance and property actions. He/she has the monopoly right to call police hearings to guarantee the execution of court orders and to conduct non-monopoly activities such as amicable settlements, draft findings of private deeds, and provision of limited legal advice. He/she also can authenticate character findings which may serve as evidence during litigation. Some elements of his statements cannot be challenged except by way of an improbation action; on acquisition of a share in an *Huissiers de justice's* office in France like the Latin notary system, see Kennett (n 6) 255.

<sup>100</sup> Cf Kennett (n 6) 253; Major European countries that make advanced legal education at the level of a Master of Laws equivalent to that of a judicial officer in France a qualification requirement include Luxembourg, Denmark, Finland, Switzerland, Poland, and Sweden, while countries that make university legal education a qualification requirement include Spain, England and Wales, Italy, Portugal, and the Netherlands (see <https://www.uhj.com/about-us-2/members-of-the-uhj/#>).

the job.<sup>101</sup> The scope of work includes execution of movable property and claims, with a monopoly on service of process, confirmation, and representation.<sup>102</sup>

- 51 *Huissiers de justice* in France who are highly educated in the legal profession, are completely different from German<sup>103</sup> and Japanese enforcement officers in terms of legal education, legal status, and their area of practice.<sup>104</sup> A *huissier de justice* is an officer of the court in France. He/she is appointed by the Minister of Justice and holds a monopoly on the service and execution of court decisions and enforceable instruments. *Huissiers de justice* are authorized to (i) obtain information from administrative agencies and other public institutions regarding the debtor's employers, third-party debtors, beneficiaries, and real estate, and (ii) obtain information regarding the debtor's account from financial institutions that accept deposits.<sup>105</sup>

#### 4.6 Huissier De Justice in France

- 52 This part examines the details of the privatized French system of *huissier de justice* as an independent liberal profession who, like notaries,<sup>106</sup> own their office in the enforcement system. The website of the *Union Internationale des Huissiers de Justice* (UIHJ) is useful for this purpose and is relied upon in this chapter.<sup>107</sup>
- 53 Approximately 3,200 judicial officers (*huissiers de justice*) in France<sup>108</sup> are appointed within approximately 1,860 offices. They work together with approximately 700 trainees

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<sup>101</sup> The enforcement officer in Sweden (*Kronofogde*) is also appointed by the enforcement authority on the basis of a master's degree or higher in law, at least two years' experience as an assistant judge, and one year of practical training in the enforcement officer's office. Approximately 196 judicial officers are appointed within approximately five offices. They work together with approximately 13 trainees or assistants and approximately 30 staff members. All are civil servants (State-employed). For more information on Swedish enforcement officers, see Wendy Kennett, above n.6, p.125.

<sup>102</sup> Cf Kennett (n 6) 259.

<sup>103</sup> Cf 'The Judicial Officer in the World – Germany' <https://www.uhj.com/wp-content/uploads/2023/05/GERMANY-MAY-2023-EN.pdf>

<sup>104</sup> The French *Huissiers des justice* (enforcement officer) must pass a professional examination based on a master's degree in law or higher, plus two years of practical training, and the acquisition of a share (Charge) is a prerequisite for a professional (see Yamamoto (n 87) 117; Kennett (n 6) 253; cf 'The Judicial Officer in the World – France' <https://www.uhj.com/wp-content/uploads/2020/05/France-April-2020-EN.pdf>.

<sup>105</sup> Yamamoto (n 33) 128.

<sup>106</sup> *Huissier de justice* in France is a public officer, appointed by the Minister of Justice, entrusted by the State with a mission of public service. To carry out its mission, the State delegates part of the public authority to the latter: it ensures authenticity. This means that it has several elements of governmental authority, which it receives from the State (<https://www.notaires.fr/en/notaire/role-notaire-and-his-principal-activities/role-notaire#toc-anchor-2>).

<sup>107</sup> 'The Judicial Officer in the World – France' <https://www.uhj.com/wp-content/uploads/2020/05/France-April-2020-EN.pdf>

<sup>108</sup> In Japan, there were 258 bailiffs (as of April 1, 2022), all of whom were male. This has been ascribed to the risks involved in enforcing the release of movable property and surrender. In France, about 20%

or assistants and approximately 12,000 staff members. They exercise their missions as liberal professionals—as partners of offices—or as salaried judicial officers. The ‘growth and activity’ law of 6 August 2015, known as the ‘Macron law’, changed the profession of the judicial officer. In order to simplify and improve the public service of justice, the judicial officer became a ‘Commissioner of Justice’ in 2022. This new profession is the result of the blend between judicial officers and auctioneers which was officially launched in January 2019. The new Chamber of Commissioners of Justice is made up of two sections (a section of judicial officers and a section of auctioneers). After 1 July 2022, judicial officers and auctioneers no longer constitute two separate professions and have been merged to become commissioners of justice. They are thus designated under the exclusive name of the Commissioner of Justice.

- 54 In the past, to become a judicial officer, the level required according to the provisions of decree n° 75-770 of 14 August 1975 relating to the conditions of access to that profession was four years of legal studies or equivalent (Master 1 or equivalent). On the other hand, with regard to the new profession of Commissioner of Justice, the decree of 15 November 2019 and the decree of 13 December 2019 provide details concerning the titles or diplomas and require a level of education corresponding to at least five years of study after the baccalaureate (Master 2 or equivalent). The National Training Institute of Judicial Officers (INHJ), created in 2018, is in charge of the two years of training that all candidates for the professional examination must have, in addition to their internship. The initial training of judicial officers is provided according to a blended learning method.
- 55 A professional exam is necessary to become a Commissioner of Justice. Commissioners are appointed by the Ministry of Justice. There is no limit to the number of Commissioners. Their geographic jurisdiction, since the ‘Macron’ law, corresponds to that of the Court of Appeal, which allows an optimal territorial network while maintaining access to local professionals. A Commissioner may exercise his/her activity within a structure comprising one or more other Commissioners. Between 30 and 40% of the Commissioners act individually, the others work in a non-individual form. The profession is represented before public authorities at the national level by the National Chamber of Commissioners of Justice (judicial officers’ section). They can join two different participating representative trade unions in the negotiation of the collective agreement: either the National Chamber or the trade union representations of their employees.
- 56 The Commissioner of Justice is in charge of enforcing court decisions, including enforcement measures. Commissioners can (i) serve judicial and/or extrajudicial documents in civil, commercial and/or criminal matters; (ii) carry out forced or voluntary public auction sales of goods; and (iii) undertake other activities such as debt collection, statements of facts, sequestration of goods, legal advice, bankruptcy proceedings (in some cases), missions entrusted by a judge, mediation, representation of parties in the court (in

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are women, as are about 25% in Germany, more than 60% in Spain, and about 50% in Sweden (see Yamamoto (n 87) 117).

some cases), drawing up of private deeds and documents, court service and real estate management.

#### 4.7 *Gerichtsvollzieher* in Germany

- 57 The German enforcement officer (*Gerichtsvollzieher*) system, which served as a model for the Japanese enforcement officer (*Shikkokan*) system, was also strongly influenced by the French enforcement officer (*huissier de justice*) system.<sup>109</sup> As of 12/2018, the German enforcement officer system encompassed approx. 4,270 *Gerichtsvollzieher* (2,425 males, 1,845 females) working in their own offices with their own staff. All are civil servants (State-employed in a Federal German State). Each *Gerichtsvollzieher* serves in an administrative district in a local court district. To become a judicial officer, no legal studies level is required in 15 of the 16 German States. Only in Baden-Württemberg the judicial officers must have an education in a special college for judicature (36 months).<sup>110</sup> In the other States there is an initial training for the future *Gerichtsvollzieher*. This training is normally compulsory and lasts for 20 months. As of 12/2018, 419 candidates were enrolled.
- 58 A professional exam is necessary to become a *Gerichtsvollzieher*. They are appointed by the Ministry of Justice of the State. There is a limited number of *Gerichtsvollzieher* in relation to the number of administrative districts. Each *Gerichtsvollzieher* is responsible individually for his/her work and cannot exert their activities jointly or within a structure including other *Gerichtsvollzieher*. There are no rules relating to ethics and/or deontology or disciplinary rules applicable to the profession of *Gerichtsvollzieher*. Instead *Gerichtsvollzieher* submit to control of their activities by a special court for enforcement. *Gerichtsvollzieher* are in charge of enforcing court decisions.<sup>111</sup>

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<sup>109</sup> Cf Görtemaker and Hübeber (n 25) 13.

<sup>110</sup> Only one German university (*Hochschule für Rechtspflege Schwetzingen*) has been offering a 3-year bachelor's degree program for *Gerichtsvollzieher* (enforcement officer) (since 2017). There, the training of *Gerichtsvollzieher* in the area of seizure of receivables is more intensive. However, this course of study also focuses on the attachment of physical property. Training as a judicial officer (*Rechtspfleger*), which under current law is required when the enforcement court carries out the garnishment of claims, has long been carried out as part of a course of study at special judicial administration colleges and lasts (like the Bachelor's degree program of judicial officers) three years. In this study program, the training has a much larger scope than in the training of *Gerichtsvollzieher* and incidentally than in law studies at university). This intensity is related to the current legal competence of the judicial officers for the seizure of receivables; for details, see 'Gerichtsvollzieher/in (LL.B.) – Mit Recht in die Zukunft' <https://www.mit-recht-in-die-zukunft.de/gerichtsvollzieher/>

<sup>111</sup> 'The Judicial Officer in the World – Germany' <https://www.uhj.com/wp-content/uploads/2023/05/GERMANY-MAY-2023-EN.pdf>

## 4.8 High Court Enforcement Officers in England and Wales

59 Here, the system of enforcement officers in England and Wales will be briefly mentioned. Approx. 63 judicial officers are appointed within the same number of offices.<sup>112</sup> They work together with about 12 trainees or assistants and a few thousand staff. All are self-employed professionals. Every judicial officer or office of a judicial officer is competent to serve the entire national territory. Three years of law studies or the equivalent is required to become a judicial officer. There is an initial training for the future judicial officers. This training is normally compulsory and lasts up to three years. Continuing on-the-job training is also required for the judicial officers. and for their staff.

60 With some exceptions, a professional exam is necessary to act in the profession of a judicial officer. Judicial officers are appointed by the Ministry of Justice, but their number is not limited. A judicial officer can exert his/her activities individually or within a structure including other judicial officers. Between 10 and 20% of judicial officers act individually. The High Court Enforcement Officers' Association represents the profession at the national level.<sup>113</sup>

## 5 COMPOSITION OF THE ENFORCEMENT BODIES

### 5.1 Enforcement Bodies

61 The power of compulsory enforcement and other powers to carry out civil enforcement are the exclusive authority of the state.<sup>114</sup> In other words, the government agency or public official in charge of state action that is part of the enforcement procedure is called the enforcement agency.<sup>115</sup> In Japan, the enforcement body under the Civil Enforcement Law consists of an enforcement court (*Shikko Saibansho*) and an enforcement officer (*Shikokan*).<sup>116</sup> In Germany, the enforcement body consists of the procedure court, the

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<sup>112</sup> In the United Kingdom, there are two types of officers: high court enforcement officers, who are free professionals, and enforcement officers, and county bailiffs, who are court employees (seen Yamamoto (n 87) 117).

<sup>113</sup> 'The Judicial Officer in the World – England and Wales' <https://www.uhj.com/wp-content/uploads/2023/05/ENGLAND-AND-WALES-MAY-2023-EN.pdf>

<sup>114</sup> W Lüke, *Zivilprozessrecht II* (11 edn, C.H. Beck 2021) para 4.

<sup>115</sup> In China, the courts and their enforcement officers monopolize the power of enforcement and therefore are accountable for any enforcement activities. This centralized model of competent enforcement organ is contrary to the model with different organs, such as Japan with two enforcement organs and Germany with four organs. The Chinese court is the sole enforcement organ, which means that public authority is the only possible entity responsible for civil execution; for details, see Z Cao, 'Discovery of Debtor's Assets in the Enforcement of Monetary Judgments in China' (2020) 40 *Ritsumeikan Law Review*, 73. See also Nakano and Shimomura (n 1) 43.

<sup>116</sup> Japan initially followed German law in adopting a tripartite structure with the enforcement agency consisting of an enforcement officer, an enforcement court, and a trial court (cf Nakano and Shimomura (n 1) 44).



enforcement court, the judicial officer (*Rechtspfleger*<sup>117</sup>), the enforcement officer (*Gerichtsvollzieher*), and the land registry (*Grundbuchamt*).<sup>118</sup>

## 5.2 Centralized Enforcement Body System

- 62 There are two types of enforcement bodies: a centralized system in which enforcement authority is concentrated in a single body, and a multidimensional system in which enforcement authority is shared among different bodies that stand side by side.<sup>119</sup> As mentioned already the centralised structure of the enforcement agencies has the following advantages: it enables the integration and coordination of enforcement procedures against different types of enforcement targets; it prevents overlapping types of enforcement procedures for the satisfaction of the same claim from being developed by different enforcement agencies without any mutual relationship; it selects appropriate targets in general and carries out swift and effective enforcement; and it limits the scope to the necessary limits and protects the lives and business of the debtor.<sup>120</sup>

## 5.3 Pluralistic Structure of Enforcement Body

- 63 Moreover, in a pluralistic structure, the responsibility for carrying out enforcement actions is shared among different types of enforcement agencies that are responsive to the differences in the types of enforcement objects and the content of enforcement methods, thereby ensuring speedy and effective enforcement.<sup>121</sup>
- 64 In short, enforcement that mainly involves practical enforcement dispositions (movable property enforcement, delivery of property enforcement, etc.), in which the enforcement agency must be present at every turn and carry out factual acts with actual force, is considered to be the responsibility of the enforcement officer. In contrast, enforcement that mainly involves conceptual enforcement dispositions (real estate enforcement, claims enforcement, etc.), which often require a high degree of legal judgment regarding complex rights relations, is considered to be the responsibility of the enforcement court. In Japan, a court clerk is in charge of dispositions in small claims enforcement, which was

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<sup>117</sup> The *Rechtspfleger* in Germany is mainly responsible for compulsory enforcement of pecuniary claims in respect of federations and other property rights as well as immovable property (see Walker (n 24) 10). The *Rechtspfleger* are civil servants in the higher civil service in Germany and Austria who, under the respective legal systems, perform a wide range of duties in the courts and, in Germany, also in the public prosecutor's offices. In both countries, their responsibilities are mainly regulated by way of delegation of decisions and other duties originally vested in the judge. In Germany, these regulations are laid down in the 'Rechtspfleger Act'. Decisions of the *Rechtspfleger* are usually made in the form of orders. The duties, legal status, and training of *Rechtspfleger* differ considerably in the two countries. *Rechtspfleger* also exist in the Liechtenstein court organization.

<sup>118</sup> Cf Lüke (n 114) 10 - 16.

<sup>119</sup> Nakano and Shimomura (n 1) 43.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

established by the continuous Improvement Act of 1994 in Japan (see, §167-2 CEA and following).<sup>122</sup>

#### 5.4 Transfer of Authority from the Enforcement Court to the Court Clerk

65 In Japan, judges retain the authority to make dispositions to initiate or terminate enforcement proceedings and to make judicial decisions on dispositions that cause a change in the substantive relationship or state of affairs (orders of permission of sale and orders of delivery), while court clerks are granted of several powers to manage the progress of enforcement proceedings and incidental or preparatory matters, etc.<sup>123</sup>

#### 5.5 Diversity among the Legal Systems in the World

66 Diversity among the legal systems arises from different kinds of points such as periods for voluntary compliance, statutes of limitations for initiating enforcement proceedings, and remedies that are available to the debtor just to name a few. In practice, the most 'visible' difference and the one with the greatest impact on this issue concerns the Authority responsible for enforcement. A look at the situation within the most integrated region in the legal field, i.e., the European Union, reveals very relevant differences.<sup>124</sup> Whereas in some Member States enforcement will be granted and directed by a court (Austria,<sup>125</sup> Ireland, Italy, Malta, Slovenia,<sup>126</sup> Spain<sup>127</sup>), in others the enforcement officers are the competent authorities (Cyprus, Estonia,<sup>128</sup> Finland, Greece, Romania,<sup>129</sup> Slovakia). In addition, the notion of a 'bailiff' or 'enforcement agent' is not univocal.<sup>130</sup>

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<sup>122</sup> Art 167-2(1) JCEA: Compulsory execution against a monetary claim based on the title of obligation pertaining to an action on small claim set forth in any of the following items shall be carried out by a court pursuant to the provisions of the preceding Division and, notwithstanding the provisions of Art 2, be carried out by a court clerk pursuant to the provisions of this Division, upon petition; see Nakano and Shimomura (1) 44.

<sup>123</sup> Judges in Japan significantly overloaded due to the increase in the number of litigation cases, restrictions on increasing the number of judges who are constitutionally guaranteed independence, and the difficulty of training judges. This leads to a tendency for judges to assign to court clerks those affairs that do not require complex or sophisticated legal judgment and can generally be handled on a routine basis. Notably, despite a total Japanese population of 123,223,561, the number of judges in Japan in 2022 is astonishingly low—only 3,782 ([https://www.courts.go.jp/vc-files/courts/2022/databook2022/db2022\\_22-24.pdf](https://www.courts.go.jp/vc-files/courts/2022/databook2022/db2022_22-24.pdf)); see, Teichiro Nakano/Masaaki Shimomura, above n.1, p. 45; also in Austria the majority of court responsibilities in enforcement proceedings are performed by a *Rechtspfleger* (see Andenas and Hess and Oberhammer (n 88) 118).

<sup>124</sup> Gascón-Inchausti (n 6) 156; Kennett (n 6) 9. analyses three models: the administrative model as civil servants (Sweden, Finland), the judicial officer model as regulated legal professionals (France, Benelux, Eastern Europe, Spain, Portugal), and the court-centred model as the traditional European model (Germany, Austria, Slovenia).

<sup>125</sup> Cf Kennett (n 6) 489; Andenas and Hess and Oberhammer (n 88) 116.

<sup>126</sup> Cf Kennett (n 6) 510

<sup>127</sup> Cf Kennett (n 6) 441; Andenas and Hess and Oberhammer (n 88) 216.

<sup>128</sup> Cf Kennett, above n.6, p.419.

<sup>129</sup> Cf, Wendy Kennett (n 6) 418.

<sup>130</sup> On the word Bailiff, see Kennett (n 6) 12.



Bailiffs may be court-appointed officers (Belgium,<sup>131</sup> Denmark, Germany, Latvia, Lithuania, The Netherlands,<sup>132</sup> Sweden,<sup>133</sup> UK<sup>134</sup>), but they can also act as private practitioners (Luxembourg, France<sup>135</sup>), or both (Bulgaria). In some Scandinavian systems, enforcement is entrusted to public bodies (i.e., administrative, non-judicial ones). Notaries are sometimes entrusted with enforcement-related tasks (e.g., enforcing extrajudicial titles in Croatia, Hungary,<sup>136</sup> and under certain conditions, Spain, and conducting auctions in Greece and Italy). Moreover, in some Member States, the authority in charge of enforcement varies depending on the enforcement measure, on the type of asset subject to enforcement, or even on the choice of the applicant. Examples are France<sup>137</sup> (the usual enforcement authority is the bailiff, but some enforcement measures will require a judicial decision and fall under the competence of the enforcement judge or another first instance judge), Luxembourg (where the enforcement authority is essentially the *huissier de justice*, but enforcement over immovable property also heavily involves courts), Germany<sup>138</sup> (local courts are responsible for execution proceedings concerning enforcement against claims and other property rights and enforcement against real estate), or the Czech Republic<sup>139</sup> (where a creditor can choose whether to obtain satisfaction of his/her claim by means of judicial enforcement of a decision, i.e., by a judicial enforcement agent, or by means of execution by a judicial executor). This issue is very relevant when it comes to the problem of discovering the debtor's assets; it is an activity that sometimes requires public authority—imperium in a classical sense—and bailiffs do not always have it.<sup>140</sup>

## 6 SEARCHING ASSETS FOR EFFECTIVE ENFORCEMENT IN BRAZIL

### 6.1 Debtor's Procedural Legal Obligations to Disclose the Assets

- 67 In Brazilian civil procedure law, the search for the debtor's assets is considered to be primarily the creditor's task.<sup>141</sup> But if the creditor has exhausted the means to search for assets and the law provides for subsidiary state action, the judge or other court

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<sup>131</sup> Cf Kennett (n 6) 47, 215

<sup>132</sup> Ibid; Andenas and Hess and Oberhammer (n 88) 195.

<sup>133</sup> Cf Kennett (n 6) 125; Andenas and Hess and Oberhammer (n 88) 229.

<sup>134</sup> Cf Andenas and Hess and Oberhammer (n 88) 131.

<sup>135</sup> The diversity and expansion of the scope of work can be pointed out as a characteristic of the work of the enforcement officer as a free profession in France. They have developed as a specialized profession in debt collection. The performance of their duties is carried out in an office system, such as the Latin American notary system, after a master's degree and practical training. For details, see Kennett(n 6) 243; cf Kennett (n 6) 44.

<sup>136</sup> Cf Kennett (n 6) 417.

<sup>137</sup> Cf ibid 243.

<sup>138</sup> Cf ibid 521; Andenas and Hess and Oberhammer (n 88) 169.

<sup>139</sup> Cf Kennett (n 6) 414.

<sup>140</sup> Gascón-Inchausti (n 6) 156-157.

<sup>141</sup> A Cabral, 'Searching Assets and Pressuring the Debtor for an Effective Enforcement: An Overview of the Brazilian Execution Proceedings' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 187; Cf Marcus (n 9) 57.

personnel can help to provide effective assistance in enforcement proceedings. On the other hand, the new Code of Civil Procedure in Brazil, which came into force in 2015, has strengthened the debtor's procedural legal obligations to disclose the existence and the location of assets and introduced general coercive clauses that allow the judge to coerce and pressurise the debtor, and employ many other methods which can contribute to more efficient enforcement proceedings, such as notarial certificates of uncollectibility, the registration of money judgments in debtors' lists and credit watch services, agreements on assets in litigation, sales by private initiative, etc. From a comparative perspective, the new Brazilian legal system appears to be a middle way between many other legal systems and has so far proven to be more effective than the format that existed before the reforms.<sup>142</sup>

## 6.2 Who Should Be in Charge of Searching for Debtor's Assets?

- 68 Some jurisdictions, like the United States, view the task of finding debtor's assets as an exclusively private initiative.<sup>143</sup> Some other countries tend to a more state-centred approach. In Poland, for instance, it is reported that this activity is primarily public, and judges take on a major role in finding debtor's assets.<sup>144</sup> In another group of jurisdictions, the search for debtor's assets is a task that is mainly considered a private matter but with the subsidiary activity of the judge or enforcement officer to help the creditor whenever he/she cannot succeed in finding the debtor's assets. This is the case in the legal systems of Germany,<sup>145</sup> Japan,<sup>146</sup> Austria,<sup>147</sup> and Brazil<sup>148</sup>. The differences among these legal systems depend on what triggers the state force (a simple unsuccessful attempt of the creditor, if proven by documents; the prior use of other—private—means of execution; etc.).<sup>149</sup>

## 7 CREDITOR'S PROPERTY RIGHTS AND DEBTOR'S DUTY TO REPORT ASSETS IN TAIWAN

### 7.1 Reform Enforcement Law to Protect the Fundamental Rights of Individuals

- 69 Taiwan's Enforcement Law was enacted in 1940 and was amended once extensively in 1975, followed by a complete revision in 1996. In 2000, the new Enforcement Law was amended again to improve the efficiency of enforcement. In addition, some provisions were declared unconstitutional by the Taiwan Judicial Yuan because they did not meet the constitutional requirements for enforcement; in 2010, the Law to Implement the

<sup>142</sup> Cabral (n 141) 187.

<sup>143</sup> Cf Marcus (n 9) 57.

<sup>144</sup> Cf P Rylski and K Weitz, 'Polish Enforcement Law in Civil Cases General Characteristics and Directions of Development' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 199.

<sup>145</sup> Cf Gottwald (n 12) 2.

<sup>146</sup> Cf Deguchi (n 49) 75.

<sup>147</sup> Cf Rechberger (n 43) 17.

<sup>148</sup> Cabral (n 142) 187.

<sup>149</sup> Ibid 190.

International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic, Social, and Cultural Rights came into force in Taiwan. To protect the fundamental rights of individuals, the current Enforcement Law was newly enacted in 2011, taking into consideration Art 11 of the ICCPR. In order to properly protect the interests of creditors in the exercise of private rights, Art 19 of Taiwan's Compulsory Enforcement Act was amended as follows:

- 70 'If the execution court finds it necessary to conduct an investigation in an execution case, it may order the creditor to investigate and report or conduct an investigation ex officio' (paragraph 1).

The execution court may conduct an investigation against the relevant tax authorities, other authorities, entities, or other persons with knowledge of the debtor's property or financial situation. The person to be investigated may not be refused unless it is an individual with a valid reason (paragraph 2).<sup>150</sup>

- 71 In addition, the debtor is obligated to provide information on how its financial situation has changed within a certain period of time prior to the commencement of enforcement.<sup>151</sup>

## 7.2 Debtor's Obligation to Report Property

- 72 If the assets of the debtor that have been determined are not sufficient to repay the claim for the requested execution or if the debtor's assets to be surrendered cannot be located, the execution court may, at the creditor's request or ex officio, set a time limit and order the debtor to accurately report his/her assets subject to execution within one year before the expiry of the set time limit (Art 20 paragraph 1 of Taiwan's Enforcement Act). If the debtor violates the duty of notification and does not make a notification or makes a falsified notification, the enforcement court may, at the request of the creditor or ex officio, order the debtor to provide security or fulfil the enforcement obligations within a time limit. If the debtor fails to provide sufficient security within the time limit or fails to fulfil his/her obligations, the enforcement court may, at the creditor's request or ex officio, take the debtor into custody after hearing him/her and ascertaining that the debtor is able to report his/her financial circumstances.<sup>152</sup>

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<sup>150</sup> K-L Shen, 'Effective Enforcement of Creditor's Rights in Civil Execution Through Effective Discovery of Debtor's Assets in Taiwan' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 218.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

### 7.3 Debtor's Property Report after Commencement of the Compulsory Enforcement

- 73 The features of Taiwan's enforcement law are summarised as follows. The debtor's property report in Taiwan can only be presented after the commencement of the compulsory enforcement proceedings. This is in contrast to Germany where the debtor is now obliged to provide full details of his/her financial situation and assets at the start of compulsory enforcement proceedings.<sup>153</sup> Thus, in Taiwan, it cannot be concluded from this that the debtor is insolvent and not creditworthy. The enforcement court may, upon the creditor's petition or on its own authority, order the debtor to report his/her property situation.
- 74 The elements of Property Discovery: (1) the presence of an enforcement title, (2) the enforcement proceedings have commenced, and (3) the property of the debtor is insufficient to repay the claim for the petitioned compulsory enforcement. However, for the third element, the provisions do not expressly stipulate that the debtor shall be accorded an opportunity to be heard, so there are doubts about the lack of procedural protections. How should the debtor undertake the property discovery? There is no explicit provision in Taiwan law to determine the period of discovery. In practice, the judge can decide whether to designate a court session or not for the debtor to report the inventory of properties.<sup>154</sup>
- 75 if the debtor refuses to report his/her inventory of properties and does not furnish adequate security or fulfil his/her obligations, the court may place the debtor into custody.<sup>155</sup> The Act stipulates that the enforcement court may issue an arrest warrant to take the debtor into custody under specific circumstances. However, the restriction to living quarters ('house arrest') may restrain the debtor's freedom less heavily than a normal arrest warrant and can still incentivise the debtor to fulfil the obligation. Therefore, provisions to restrict the debtor to living quarters were added to facilitate the compulsory enforcement (Arts 22 & 25 Compulsory Enforcement Act in Taiwan).<sup>156</sup> The measure of taking into custody shall be used as a last resort. Taiwan's compulsory execution law is stricter than Japanese law to bind the debtor to make repayment (§802g (1) GCCP), as well as German law (§802g (1) GCCP).

## 8 DISCOVERY OF THE DEFENDANT'S PROPERTY IN SWITZERLAND

### 8.1 Competent Authorities

- 76 If a debtor does not pay, knowing about his/her assets is crucial to enforcing the claim. However, locating these assets can be challenging. Swiss law offers some peculiarities with

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<sup>153</sup> Gottwald (n 12) 11.

<sup>154</sup> Shen (n 150) 218.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid 220.

regard to the identification of debtor's assets and the enforcement of judgments and debts in general. The result is a procedure that is quite efficient and effective in the enforcement of debts while protecting the interests of the debtor.<sup>157</sup>

- 77 Attachment visits, attachments as well as forced sales are exclusively a matter for the enforcement office. Unlike certain other countries, no court order is required to initiate the procedure or to authorise the attachment. Moreover, the enforcement office is not only responsible for the attachment itself, but also for locating the debtor's assets—another special feature of Swiss law. The creditor does not have to assist in this task, although it can be useful if he/she points out existing assets to the enforcement office, provided he/she is aware of them.<sup>158</sup>

## 8.2 Debtor's Obligations

- 78 According to Art 91 para. 1 SchKG, the debtor must be present in person at the attachment hearing or ensure that a representative is present. At the attachment visit the debtor must disclose all his/her assets, including those of other persons, as well as rights against third parties, to the extent necessary to cover the creditor's claim plus interest and costs (Art 91(1) SchKG). This disclosure obligation is quite comprehensive and encompasses assets located abroad and assets formerly owned by the debtor.<sup>159</sup>

## 8.3 Third-Party Obligations

- 79 Art 91 para. 4 SchKG states that third parties who dispose of assets belonging to the debtor or who owe the debtor money have the same duty to provide information as the debtor himself. This means that, among others, banks, trustees, lawyers, and employers must disclose, under threat of criminal sanctions, all assets of the debtor that they hold at the request of an enforcement officer. The enforcement office expressly informs the persons involved of their obligations and the criminal sanctions in case of non-cooperation (Art 91 para. 6 SchKG). Banking secrecy does not apply because the debtor would have to disclose the relevant information to the authorities himself/herself. The same applies to privileges and data protection provisions. Fishing expeditions, however, are not allowed. The enforcement office must have to assume that the third person has assets of the debtor. Such a reason may exist, for example, if the enforcement office is aware that the debtor used to have business relations with the third party, e.g., because he/she was a customer of a certain bank for a long time. As a general rule, enforcement measures taken by the office—including disclosure requests against third parties—must be proportionate and take into account all competing interests.<sup>160</sup>

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<sup>157</sup> Baumgartner and Heisch (n 19) 171.

<sup>158</sup> *Ibid* 177; In Switzerland, the enforcement offices are centralized and function as the enforcement body.

<sup>159</sup> *Ibid* 178.

<sup>160</sup> Baumgartner and Heisch (n 19) 179.

## 8.4 Duties of the Authorities

- 80 The authorities are also obliged to provide information to the same extent as the debtor (Art 91 para. 5 SchKG). This applies to all authorities, whether federal, provincial, or municipal. The tax authorities are probably the main target of enforcement officers. However, social security offices, motor vehicle offices, or residents' registration offices may also come into consideration. Here, too, the data protection laws and privileges do not apply, since the authorities' duty to provide information does not go beyond that of the debtor. The Swiss Enforcement Act provides for effective protection of creditors' rights due to the centralisation of enforcement agencies.<sup>161</sup>

## 9 CLARIFICATION OF FACTS IN AUSTRIAN ENFORCEMENT LAW

### 9.1 Conditions for Unsuccessful Execution

- 81 In Austria, most of the enforcement proceedings [*Exekutionsordnung*-EO] are monetary enforcement proceedings.<sup>162</sup> A list of assets according to Sec. 47 EO can only be demanded from the obligor within the framework of the execution in order to obtain a pecuniary claim if the levy of execution or the salary execution according to Sec. 294a EO has been unsuccessful.<sup>163</sup>

### 9.2 List of Debtor's Assets Ex Officio

- 82 Since the amendment of the enforcement law in 1991, the initiation of the procedure for the submission of a list of assets is no longer dependent on an application by the enforcing creditor but takes place ex officio. The official inclusion of the list of assets shall only be waived if the enforcing creditor has waived its collection (Sec. 47 Para. 1 No. 1 EO), or if no more than one year has elapsed since the last list of assets was submitted or the detention pending trial was carried out (Sec. 49 Para. 1 last sentence EO). Except for the imposition of coercive detention, the inclusion of the list of assets does fall within the functional competence of the judicial officer (Sec. 17 Para. 2 Subpara. 3 of the Judicial Officers Act [*Rechtspflegergesetz*]). However, the request to the obligor to state his/her assets must be made by the bailiff at the place of execution when the execution of the levy of execution has been (unsuccessfully) carried out, provided that the obligor is present. If the obligor was not present at the execution and the bailiff is unable to find the obligor despite several attempts, he/she shall be summoned by the court to draw up the list of assets there. If the obligor does not comply with this summons, the submission of the list of assets will be enforced, i.e., the obligor will be compulsorily summoned to appear and, in the event of refusal to submit the list of assets, coercive detention will be imposed on him/her. To protect the fundamental right to personal freedom (Art 5 Para.

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<sup>161</sup> Ibid; cf Hess (n 27) 107.

<sup>162</sup> Rechberger (n 43) 17.

<sup>163</sup> Ibid 19.

4 European Convention on Human Rights—ECHR), the court of execution must clarify the existence of the relevant preconditions in oral evidence proceedings prior to the imposition of imprisonment.<sup>164</sup>

- 83 The electronic compilation of the list of assets and its central availability via a database is today—as in Germany—state of the art in Austria.<sup>165</sup> The judicial officer or bailiff fills in the list of assets according to the information provided by the obligor directly on the screen. The list can then be accessed by the courts throughout Austria by court automation support. This makes it easier for the courts, especially in later insolvency proceedings, to check whether cost-covering assets are available. Within a vesting period of one year, the debtor is obligated to submit a new list of assets if it is shown credibly that he/she later acquired assets (Sec. 49 Para. 1 EO).<sup>166</sup>
- 84 Ultimately, it must be pointed out that there are significant differences between the Austrian regulation of fact-finding in enforcement proceedings and the German legal situation: Even after the mentioned reform in Germany, the priority collection of the debtor's information on his/her financial status is dependent on the creditor not only applying for it but also expressly excluding an amicable settlement in the enforcement order. In addition, the use of the most effective coercive measure, namely coercive detention, also depends on a petition to that effect. In the Austrian EO, all these measures are subject to official procedures; a petition by the enforcing creditor is not required. In Austria's view, this does better justice to the interests in the context of money execution because enforcing creditors primarily wish to have their claims satisfied promptly; the question of the concrete (possible) procedural steps tends to play a subordinate role for them.<sup>167</sup>

## 10 BALANCING CREDITORS' RIGHTS TO EFFICIENT ENFORCEMENT AND DEBTORS' RIGHTS IN ARGENTINA

- 85 On the question of who can and should provide factual and evidentiary material on the debtor's assets for the purpose of enforcement by the enforcement bodies, the different systems give different answers. Complete and comprehensive knowledge of the debtor's assets facilitates the choice of the most efficient and at the same time appropriate and suitable enforcement measure, and it enables coordination of several parallel measures. Every legal system must strike a balance between the right of creditors to efficient enforcement and the right of debtors to adequate protection. However, full disclosure constitutes a serious interference with the debtor's private or business sphere. Full knowledge of the debtor's assets facilitates the choice of the most efficient and at the

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<sup>164</sup> Ibid 20.

<sup>165</sup> Cf Á Pérez Ragone, 'Comments on Information Concerning the Debtor's Assets for the Enforcement Proceeding' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 51.

<sup>166</sup> Rechberger (n 43) 21.

<sup>167</sup> Ibid.



same time proportionate and appropriate enforcement measure, and it permits a coordination of several parallel measures. Each legal system has to balance the creditors' right to efficient enforcement with the debtors' right to adequate data protection.<sup>168</sup>

### 10.1 The Role of IT: Register and Database

- 86 The computerised systems available to a creditor pursuing a debtor's assets abroad vary from system to system. In states with more modern legislation, the judicial or administrative authority takes the initiative in forcing the debtor to make a statement of assets, and may also conduct searches on public, or even sometimes private, registers. This section considers the current operation of these devices in the various systems. It also addresses the optimum configuration for their use, given that the information should be protected to prevent its misuse during enforcement and especially to protect the personal data of the debtor.
- 87 Access to registers and other databases with a public character may be sought either by the creditor, especially if the debt is significant, or by the enforcement organ, either because the system in question does not require the debtor to make a statement, or because relevant sources of information are not open to the public, such as databases managed by the tax authorities, or those that have significant safeguards and regulations in place due to the cooperation of financial institutions. There are additional complications that arise in relation to accessing foreign records. The complex and utopian scenario in which this is always possible remains far from reality. Not only are some opposed to the concept, but there are also difficult technical barriers. The contribution of new technology in increasing the efficiency of enforcement and searching for debtor's assets is remarkable. According to the principle of non-discrimination on grounds of nationality, access to records should not be problematic either for national or international creditors. This goal could be achieved simply by ensuring electronic access to records. However, electronic access to records without any control over the enquirer (such as an electronic signature or conditions imposed by the enforcement organism), would make it impossible to verify the legitimate interests of the person making the enquiry. A judicial order should be required, where appropriate, compelling the enquirer only to use the information obtained for the purposes of formal proceedings.<sup>169</sup>

## 11 ASSETS DISCLOSURE PROCESS AND ASSETS CHECK PROCESS IN KOREA

- 88 There is a saying that debtors are struggling enough to hang themselves in the judgment proceedings, and creditors in the execution proceedings. It is highly likely that the debtor will obstruct execution by hiding the assets subject to execution, or falsely transferring them to another person. Even if the debtor does not do this, it is very important for the

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<sup>168</sup> Pérez Ragone (n 165) 49.

<sup>169</sup> Ibid 51.



creditor to identify the debtor's assets accurately. Thus, an institutional mechanism is needed to make it easier for creditors to identify the debtor's assets, prevent the debtor's obstruction of execution in advance, or impose sanctions on such obstruction to enhance the effectiveness of the execution. In Korea, there is an 'assets disclosure process' and an 'assets check process' as systems to identify the assets of an unfaithful debtor. The assets check process is used when the result of the assets disclosure process is insufficient. And 'the list of defaulters' was set up as a sanction against insincere debtors.<sup>170</sup>

### 11.1 Assets Disclosure Process in Korea

- 89 The assets disclosure process refers to a procedure for the disclosure of assets that requires the debtor at the court's order (i) to submit a list of assets subject to execution and disposition within a certain period of time at the request of the creditor (if the debtor fails to fulfil the obligation under the executory title for the purpose of paying money), and (ii) to take an oath of its authenticity.<sup>171</sup> The creditor may apply to the court for an order to disclose if the debtor fails to implement the executory title, and the court may issue the order accordingly (section 62 (1) Korean Civil Execution Act ('KCEA')). The requirements for an application for a disclosure order are as follows: (i) The debtor bears the monetary debt under the executory title, (ii) the debtor has not performed the obligation, (iii) the creditor meets the requirements for the commencement of execution, especially that the creditor has been granted the executory title, and (iv) the debtor's assets cannot be easily found (section 62 (2) KCEA).<sup>172</sup>
- 90 This is the same as the new procedure in Germany that specifies that the process of assets disclosure can be taken at the beginning of the execution process. Unlike Germany however, in Korea this procedure is not the responsibility of the bailiff but of the enforcement court. Germany provides access to the centralized register of disclosed assets through a central Internet portal, which Korea does not have. However, in Germany, the number of accesses to the information is limited to once in a two-year period according to the constitutional principle of proportionality.<sup>173</sup>
- 91 Items to be disclosed include (i) assets subject to execution, (ii) assets sold by the debtor within one year prior to the service of the disclosure order, (iii) assets sold by the debtor to third parties other than relatives within a certain range within the one year prior to

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<sup>170</sup> Ho (n 22) 221.

<sup>171</sup> Ibid.

<sup>172</sup> Ibid.

<sup>173</sup> Ho (n 22) 222; In Korea, since the establishment of the Constitutional Court of Korea in 1988, based on the model of the German Federal Constitutional Court, German constitutional principles have also been taken into consideration in the Civil Procedural Law; On the background and role of the introduction of the constitutional court system, see K Hwang-sik, 'Gendai Kankokushakai niokeru Minjisoshoho no Yakuwari' [The Role of Civil Procedure Law in Contemporary Korean Society] (2016) 1 Ritsumeikan Hogaku, 363.

the service of the disclosure order, and (iv) free disposal of the debtor's assets within two years before the service of the disclosure order (section 64 (2) KCEA). The purpose of not limiting the disclosure to the debtor's current assets is to make wrongly transferred assets subject to execution by having them returned to the debtor.<sup>174</sup>

- 92 The debtor may object to the disclosure order. If the debtor does not file an objection or the objection is rejected as being unfounded, the court designates a date for the disclosure of the assets, requires the debtor to attend, and notifies the creditor of the date (section 64 (1) KCEA). On the date for the disclosure of assets, the debtor must be present to submit a list of assets (section 64 KCEA) and must swear an oath (section 65 KCEA). Violators of disclosure obligations are subject to detention, imprisonment, or fines (section 68 KCEA).<sup>175</sup>
- 93 There is also a difference between Germany and Korea in terms of sanctions against violators of the stated obligations. In Germany, detention is provided, and in Korea, punishment such as imprisonment and fines can be imposed as well. But the punishment in Korea has been criticized as excessive and beyond the scope of the norm's purpose.<sup>176</sup>

## 12 NEW REFORM AND DEVELOPMENT IN THE EU

### 12.1 A Constitutionalisation of the Enforcement Proceedings<sup>177</sup>

- 94 In some countries the purpose of the civil procedure system has been explained by dispute resolution theory or rights protection theory,<sup>178</sup> but the law prohibits citizens from self-help and instead guarantees them the right to a trial in the Constitution.<sup>179</sup> Therefore, it can be interpreted that the purpose of civil procedure is to protect the rights of private citizens. As a nation governed by the rule of law, the constitutional

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<sup>174</sup> Ho (n 22) 222.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid 221.

<sup>177</sup> See for more details, see G Kodek and Á Pérez-Ragone, *Constitutional Rights in Enforcement Proceedings*, 1 (not published).

<sup>178</sup> In Japan, the theory of dispute resolution advocated by Professor Hajime Kaneko has become the traditional theory: see, H Kaneko, *Shinshu Minjisoshoho Taikei* [*Shinshu Civil Procedure Law System*] (Sakaishoten 1965) 26; In recent years, however, the theory of protection of rights has become a strong argument from the viewpoint of substantially guaranteeing the constitutional right of citizens to a trial; see, T Kigawa, 'Soshoseido no Mokuteki to Kino' [Purpose and Function of the Procedure System] (Year) 1 Koza Minjisoshoho 29; Hideo Nakamura, *Minjisoshoho Seido no Mokuteki nitsuite* [Purpose of the Civil Procedure Law System], FS fuer Toichiro Kigawa (Minjisaiban no Jyujitsu to Sokushin [Improving and promoting civil justice] (Jo), (Hanrei Times Sha 1994).1; Morio Takeshita, *Minjisoshoho no Mokuteki to Shiho no Yakuwari* [Purpose of Civil Procedure Law and Role of Private Law], *Minjisoshohozashhi*, No.40, (Horitsubunkasha 1994) 1.

<sup>179</sup> The right of citizens to seek enforcement against the state is called a civil enforcement right, which is a right under public law against the state and, like the right of action in judgment proceedings, is an expression of the constitutionally guaranteed right to claim judicial action; Cf Nakano and Shimomura (n 1) 22.

guarantee of the protection of rights encompasses not only the right to a trial but also the realization of rights through civil enforcement.

- 95 Closely related to the above, a second common point is the constitutionalisation of enforcement proceedings in the EU. From the European constitutional perspective on enforcement law, the ECHR relates enforcement to the procedural human right to effective and timely legal protection (Art 6 ECHR). The jurisprudence of the ECHR has emphasized above all the perspective of realisation of the creditor's right.<sup>180</sup>
- 96 On the one hand, the creditor's right to enforcement proceedings should be considered as part of the fundamental right of access to justice, which would be delusory if litigants only had the right to obtain a judgment on the merits.<sup>181</sup> This view is prevalent in any progressive legal system and has been repeatedly confirmed by the European Court of Human Rights as part of Art 6 para. 1 of the ECHR.<sup>182</sup> This means in turn that the creditor has a right to an efficient enforcement procedure and to have the enforceable title enforced within a reasonable time. On the other hand, the debtor involved in the enforcement has the right to a fair trial, also in the sense of ECHR Art 6 para. 1 and national constitutions. He/she must be able to seek appropriate legal remedies to challenge enforcement proceedings and/or enforcement measures. Of course, other fundamental rights of the debtor do not simply disappear or fade away when enforcement begins. Freedom of movement, privacy, and data protection, for example, may present hurdles to the effectiveness of enforcement proceedings. This confrontation between the conflicting interests of creditors and debtors must be resolved in light of the principle of proportionality,<sup>183</sup> which is also the basis of any reasonable regulation of enforcement proceedings.

## 12.2 Need to Ensure Sufficient Transparency in Enforcement Proceedings in order to Guarantee the Creditor's Right to Effective Judicial Protection

- 97 The latest reforms<sup>184</sup> at the national level largely corresponded to parallel developments in European procedural law. Here, the EU legislature has emphasized the need to ensure

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<sup>180</sup> Hess (n 27) 28-29.

<sup>181</sup> Gascón-Inchausti (n 6) 154.

<sup>182</sup> Cf H-J Blanke, S Mangiameli, *The Treaty on European Union (TEU) - A Commentary* (Springer 2013) 287.

<sup>183</sup> The principle of proportionality says that public authority's infringement of constitutionally protected rights of the individual must not be so strong that the means used are more than justified by the purpose of the exercise of the power, and the infringement must not extend beyond what is justified by the purpose; see Matsumoto (n 4) 19; A Baur and R Stürner and A Bruns, *Zwangsvollstreckungsrecht* (14th edn, C.F. Müller 2022) para 7.2; However, the principle of proportionality must be applied with great caution, since there is a risk that the already often unpromising enforcement will become even more ineffective and the enforcement title will be devalued (Cf Lüke (n 114) para 9.)

<sup>184</sup> Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations OJL 7, 10.1.2009.

sufficient transparency in enforcement proceedings in order to guarantee the creditor's right to effective judicial protection (Art 47 CFR and Art 6 ECHR). The inadequate situation at the national level is much more problematic in cross-border cases. There, creditors are confronted with the fundamental situation that enforcement procedures are strictly regulated by national law and creditors must therefore resort to national procedures to obtain basic information about the debtor's financial situation. Thus, the creditor faces a double hurdle: first, they have to access the different national systems to obtain information on the debtor's financial situation, and second, they must initiate enforcement proceedings under foreign national law based on the information obtained.<sup>185</sup>

- 98 The Maintenance Regulation is the first EU instrument to overcome these practical obstacles. This is not surprising. There is a strong interest on the part of the Member States in creating an effective mechanism for the enforcement of maintenance claims given the strong involvement of public authorities in this area of law. Normally, public institutions pay maintenance when the debtor does not pay: child support recipients (especially single mothers) have no means of obtaining support from other persons. Therefore, social assistance steps in and pays for maintenance. In return, the maintenance claim is assigned to the authority in order to collect it from the debtor. This is the reason why the cross-border recovery of alimony maintenance claims has become a priority for the Hague Conference on Private International Law and for the EU legislature.<sup>186</sup>
- 99 The 2009 EU Maintenance Regulation provides for a two-track system to facilitate the cross-border recovery of maintenance claims. On the one hand, it empowers the individual maintenance creditor to assert and enforce maintenance claims within the European Judicial Area. On the other hand, Art 49 et seq. provide for a system of cooperation between the central authorities of the EU Member States in the recovery of maintenance claims in cross-border cases. In this regard, Art 51 (2) of Regulation 4/2009 states that the Central Authorities have this specific task.<sup>187</sup>
- 100 The cooperating Central Authority requested shall provide this information only to the requesting Central Authority (not to the individual claimant). The information will be used exclusively for the recovery/enforcement of the maintenance claim in question. In principle, the information is obtained according to the national information systems of the EU Member States. However, some Member States have extended the tasks of the Central Authorities under national law to create an efficient system of information collection. For example, the German legislature has authorized the Federal Office of Justice to request relevant information directly from federal authorities such as the Federal Tax Office and the Federal Motor Transport Authority. As a result, German law now provides a special

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<sup>185</sup> Hess (n 15) 35.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

mechanism of public enforcement of maintenance claims available to foreign maintenance creditors not only from other EU Member States but also from third countries.<sup>188</sup>

### 12.3 The European Account Preservation Order<sup>189</sup>

- 101 The European Court of Justice ruled in May 1980 that judicial decisions granting provisional or protective measures without the party against whom they are directed having been summoned without prior service are not covered by the European Communities' recognition and enforcement regime.<sup>190</sup> Twenty-six years later, in October 2006, the European Commission published a Green Paper launching a consultation on the need for and possible features of a uniform European procedure for the preservation of bank accounts.<sup>191</sup> On July 25, 2011, the Commission presented a proposal for a regulation establishing a 'European Account Preservation Order' to facilitate the recovery of claims in civil and commercial matters. On July 17, 2014, Regulation No. 655/2014 (hereinafter, the 'EAPO Regulation') establishing a European Account Preservation Order entered into force.<sup>192</sup> This procedure allows a creditor of a Member State to protect the future enforcement of its claim by preventing its debtor from withdrawing funds from bank accounts and/or from withdrawing and/or transferring funds to bank accounts in another Member State.<sup>193</sup>

### 12.4 The Regulatory Approach

- 102 Art 14 of the EAPO-Regulation provides for a similar mechanism. This instrument permits the cross-border attachment of bank accounts located in the European Judicial Area.<sup>194</sup> As a matter of principle, a creditor who seeks to attach an account in another EU Member State must specify the account by its IBAN in the application for attachment (Art 8 No 1 EAPO-Regulation). However, if the creditor does not know the details of the bank account, he/she can apply for a request to investigate the bank account under Art 14 of the Regulation.<sup>195</sup>
- 103 The Regulation does not prescribe a specific language for the application. However, the Implementing Regulation has already integrated a formalised application under Art 14 into the form of the request for a Preservation Order (Art 8). In the application, the

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<sup>188</sup> Ibid 36.

<sup>189</sup> European Account Preservation Order Regulation, 655/2014 of 15 May 2014 (EU).

<sup>190</sup> Bernard Denilauler v SNC Couchet Frères, Case 125/79 (CJEU), Judgment of the Court of 21 May 1980 [ECLI:EU:C:1980:130]

<sup>191</sup> Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts [SEC (2006) 1341].

<sup>192</sup> B Krans and P Ribbers, 'The European Account Preservation Order in Dutch Practice' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 121.

<sup>193</sup> Krans and Ribbers (n 192) 121.

<sup>194</sup> Cf, Hess, above n.16, 763.

<sup>195</sup> Hess (n 15) 37.

creditor must assert that the specific prerequisites of Art 14 of the EAPO-Regulation are met.<sup>196</sup> If he/she disposes of an enforceable title; or the title is non-enforceable, the creditor must specify that there is a risk that enforcement is likely to be jeopardized); and the reasons to believe that there is a bank account of the debtor in the Member State where information is sought. The Regulation does not prescribe the use of any specific language. In practice, many Member States accept requests in English (and in French). The integration of the application for information into the general application form facilitates the usage of Art 14 considerably. The request is filed with the court competent for the issuing of the attachment order. The court assesses the admissibility of the request.<sup>197</sup>

## 12.5 Huge Step to Protect the Creditor's Rights

- 104 The EAPO Regulation introduced a uniform procedure for the attachment of bank accounts. Previously, the European order for payment and the small claims procedure established uniform procedures for payment orders and small claims, respectively. However, the scope of the EAPO Regulation is limited in several respects. First, the Regulation is a European Union instrument that applies only to the Member States. Moreover, the Regulation applies only to monetary claims in civil and commercial matters in cross-border cases. The limitation to civil and commercial matters excludes, among others, administrative and social security matters, insolvency, and arbitration. A case may be classified as 'cross-border' if, among other things, the bank account, or accounts, to be protected by the attachment order are held in a Member State other than the court of the Member State in which the creditor is domiciled. For example, a German court may issue such an order for a bank account in Belgium or the Netherlands. The aim of the Regulation is thus to ensure that in cross-border cases, funds in bank accounts are secured efficiently and expeditiously. By applying this regulation, creditors can protect future cross-border enforcement of their claim(s) by freezing funds in bank accounts. To freeze the funds in the bank account, an attachment order must be obtained. The application for such an order may be made using a special form. In the procedure for obtaining an attachment order, legal representation by a lawyer or other legal counsel is not mandatory. A court in a Member State may issue an ex officio order freezing a bank account held in another Member State.<sup>198</sup>

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<sup>196</sup> Art 14 EAPO-Regulation: Request for the obtaining of account information (2): The creditor shall make the request referred to in paragraph 1 in the application for the Preservation Order. The creditor shall substantiate why he/she believes that the debtor holds one or more accounts with a bank in the specific Member State and shall provide all relevant information available to him/her about the debtor and the account or accounts to be preserved. If the court with which the application for a Preservation Order is lodged considers that the creditor's request is not sufficiently substantiated, it shall reject it.

<sup>197</sup> Hess (n 15) 37.

<sup>198</sup> Krans and Ribbers (n 192) 123.

### 13 CHARACTERISTICS OF POLISH ENFORCEMENT LAW

105 The model of the Polish enforcement law, similar to its civil proceedings, was developed based on German and Austrian solutions.<sup>199</sup> The motion for initiating enforcement allows for conducting enforcement with any acceptable methods. Special rules apply only in cases of enforcement against immovable property. In the motion for initiating enforcement, the creditor may, but is not required to, indicate the enforcement method or methods; the enforcement authority should, however, use an enforcement method that is the least burdensome for the debtor (Art 799 of the CPC in Poland).<sup>200</sup>

#### 13.1 Recent Changes to the Polish Enforcement Law

106 To improve the effectiveness of enforcement proceedings in civil cases, comprehensive reforms were implemented in 2004. In particular, the disclosure of the debtor's assets and the acquisition of information on such assets by the enforcement officer were introduced. The issue of computerisation and the use of new techniques of communication and of recording enforcement activities proved to be a major challenge in the development of the regulations concerning enforcement proceedings, as was the case with the civil procedure in general. The process of computerisation of enforcement proceedings was initiated in 2009; more reforms were implemented as a result of its continuation, particularly in 2015. Most recently, the legislator focused on the issues of debtor's protection and on obtaining information on the debtor's assets.<sup>201</sup>

107 To illustrate the current trends in the development of Polish enforcement law, the first issue to be tackled is the transformation of the systemic position of a judicial enforcement officer as an enforcement authority.<sup>202</sup> The second issue concerns the solutions in Polish law that apply to obtaining information (in a broad sense of the term) in enforcement proceedings, in particular information on the debtor's property.<sup>203</sup> The third topic to be discussed is the extent and the form in which enforcement proceedings in Poland are computerised.<sup>204</sup> The fourth topic is the newest set of regulations on debtor protection in the enforcement proceedings.<sup>205</sup> The fifth is a new method of enforcing non-monetary obligations, which was implemented fairly recently; as part of

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<sup>199</sup> Rylski and Weitz (n 144) 199.

<sup>200</sup> Ibid 199-200.

<sup>201</sup> Ibid 203.

<sup>202</sup> Rylski and Weitz (n 144) 145, 204; Pursuant to the Act in 1997, Judicial officers became independent public officers running their own businesses. Since 1997 creditors have been given the possibility to select a judicial enforcement officer (Art 759 of the CPC).

<sup>203</sup> See 13.2 below.

<sup>204</sup> Rylski and Weitz (n 144) 209; The motion for initiating enforcement in case of an 'electronic' enforceable title is also filed with the judicial enforcement officer via the ICT system (Art 797, Section 2 of the CPC).

<sup>205</sup> Rylski and Weitz (n 144) 210; Judicial enforcement officers have the right to refuse to initiate enforcement if the creditor's motion was only filed to harass the debtor (Art 801, Section 3 of the CPC).



that method, the debtor is required to pay the creditor an adequate sum (the mandatory sum), as inspired by solutions applied in Romanic countries.<sup>206</sup>

### 13.2 Obtaining Information in Enforcement Proceedings

- 108 It needs to be emphasised that, in the motion for the initiation of enforcement, the creditor may, but is not required to, indicate the debtor's assets from which his/her claim may be satisfied. If the creditor fails to do it, the burden of the activity rests with the judicial enforcement officer<sup>207</sup> to a large extent (Art 801, Section 1 of the CPC). In such a situation, the judicial enforcement officer shall ex officio first (i) determine the debtor's assets within the scope known to him/her based on other proceedings conducted, or based on publicly accessible sources of information or records to which he/she has electronic access, or (ii) call on the debtor to submit a list of assets. As far as the first task is concerned, the enforcement authority, including the judicial enforcement officer, has a very important right to demand explanations from the participants of the enforcement proceedings, which includes primarily the parties to the proceedings, namely the creditor and the debtor (Art 761, Section 1 of the CPC). Furthermore, the enforcement authority may demand information on the debtor's material status or information that allows for the identification of the individual assets and addresses details as necessary to ensure proper conduct of the proceedings from various institutions, including public administration bodies, tax authorities, disability pension authorities, banks, and other private entities upon the pain of a fine (Art 761, Section 11 and Art 762 of the CPC).<sup>208</sup>
- 109 The creditor's ordering the judicial enforcement officer to look for the debtor's assets is the third method of obtaining information on those assets. The creditor has such a possibility unless the judicial enforcement officer already determined the debtor's assets based on other proceedings conducted or based on publicly accessible sources of information or records to which s/he has electronic access (Art 8012 of the CPC).<sup>209</sup>

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<sup>206</sup> Ryłski and Weitz (n 144) 212; This mandatory penalty was introduced in 2012 to enforce debtors, modelled on the French and Belgian *astreintes* (Art 1050-1051 CPC).

<sup>207</sup> On Judicial Enforcement Officer in Poland, Cf, Ryłski and Weitz (n 144) 204; Approximately 1.203 judicial officers (*Komornik sądowy* in Poland) are appointed within approximately 1.203 offices. They work together with approximately 1.708 trainees or assistants and approximately 12.000 staff. All are liberal or self-employed professionals. To become a judicial officer, the following level is required: five years of law studies or equivalent (Master 2 or equivalent) like in France (Cf 'The Judicial Officer in the World - Poland' [https://uehj.eu/wp-content/uploads/2020/01/poland\\_-\\_en-1.pdf](https://uehj.eu/wp-content/uploads/2020/01/poland_-_en-1.pdf)).

<sup>208</sup> Ryłski and Weitz (n 144) 206-207.

<sup>209</sup> Ibid 208.

## 14 DISCOVERY OF DEBTOR'S ASSETS IN ENFORCING MONETARY JUDGMENTS IN CHINA

### 14.1 Difficulty of Enforcement and the Key Role of the Court

110 For a long time it has been argued that the enforcement of a final judgment in China was of great difficulty.<sup>210</sup> The decisive factor for the success of a civil case is the actual enforcement of a final judgment. Compared to other jurisdictions, the Chinese enforcement mechanism is special, and the courts play a key role in asset identification.<sup>211</sup>

### 14.2 Possible Enforcement Measures

111 To facilitate the discovery of assets, there are many possible enforcement measures, which can be divided into three groups: direct measures, indirect measures with active pressure on the debtor, and indirect measures aimed at passive deterrence of the debtor. According to the philosophy of enforcement law in China, the enforcement court should play a comprehensive role in determining the debtor's property.<sup>212</sup>

### 14.3 Monopoly of Power of Enforcement in China

112 The court and its enforcement officers in China monopolize the power of enforcement and then are accountable for any enforcement activities. Therefore, this centralized model of competent enforcement organs is contrary to the model with different organs. For instance, there are two enforcement organs (Enforcement Court and Enforcement Officer) in Japan and even three organs (Enforcement Court, *Rechtspfleger*, Enforcement Officer) in Germany. The Chinese court acting as the enforcement organ means that public authority is the only possible entity responsible for civil execution.<sup>213</sup>

### 14.4 Direct Measures to Locate the Assets of the Debtor

113 To promote the effectiveness of the execution of any civil judgment, the most direct solution points to the physical discovery of assets. In 2017, the Supreme People's Court ('SPC') made a judicial interpretation specifically on this issue, namely the Provisions of

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<sup>210</sup> Cf, Z Cao, 'Civil Enforcement Rules and Mechanism in China: The Past, Present and Future, (2021) 9(1) Peking Univ. L.J. 23, 27–30.

<sup>211</sup> Cao (n 115) 69.

<sup>212</sup> Ibid; It means that, as one of the characteristics of the Chinese enforcement law system, the enforcement organ and judges must actively ascertain what belongs to the debtors.

<sup>213</sup> Cao (n 115) 73; In Austria, the enforcement of monetary claims is centralized in the enforcement courts, and in Switzerland and the Scandinavian countries, in the enforcement authorities (see, Hess (n 27) 107); The centralisation of enforcement agencies has been adopted in relatively small and federalized countries such as Switzerland, whereas in socialist countries such as China, the courts have strong powers. Moreover, like the counterparts in the continental legal system, the Chinese enforcement law does in general adopt the principle of individual enforcement (*Einzelvollstreckung*).

the Supreme People's Court on Issues concerning Property Investigation during Enforcement in Civil Procedures (hereinafter Provisions Investigation 2017). It incorporates some institutions and procedures which have been proven efficient in practice. Section 249 I 1 of the Civil Procedure Law (hereinafter CPL) states explicitly that the enforcement court shall have the right to ask relevant entities about the deposits, bonds, stocks, fund shares, and other property of the debtor.<sup>214</sup>

#### **14.5 Indirect Measures to Force the Debtor to Submit Assets (Active Measures)**

- 114 To push any discredited debtor subject to enforcement of a civil judgment, 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.
- 115 First is the duty to report the assets. Section 248 of the CPL requests debtors to report their current property as well as their property for one year before receiving the enforcement notice. According to §247 of the CPL and §482 of the ICPL, this notice of enforcement, which urges the debtors to obey the enforcement title and reminds them of 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.<sup>215</sup>

#### **14.6 Indirect Measures to Deter the Debtor from Hiding (Passive Measures)**

- 116 Aside from active measures at obtaining a debtor's assets, there are some indirect enforcement measures which passively put the debtor under pressure. One prominent illustration refers to the establishment of an all-inclusive credit management network involving eg, public authorities in different branches, banks, leading private companies, and so forth. Its legal basis is §262 of the CPL (originally §231 of the CPL 2007 and then §255 of the CPL 2012), 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.<sup>216</sup>

#### **14.7 Primary Role of the Court during Enforcement**

- 117 Generally speaking, the philosophy of enforcement law in China differs from that of many other jurisdictions. While having nothing to do with the creditor's dispositional rights regarding the initiation and termination of enforcement proceedings, the Chinese enforcement court is deemed to take the final responsibility for the discovery of

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<sup>214</sup> Cao (n 115) 73

<sup>215</sup> Ibid 76.

<sup>216</sup> Ibid 78.

enforceable property. In other words, the court in China plays an all-inclusive role in finding out the debtor's property assets. Since the court is the only enforcement organ in China and has a duty to promote enforcement proceedings, there is 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 with regard to civil judgment.<sup>217</sup>

## 15 PROJECT OF A NEW PERUVIAN CIVIL PROCEDURE CODE AND THE DEBTOR'S DUTY TO INDICATE ASSETS

118 A draft reform of the CPC was published in 2017, after a year of work by a Reform Commission convened by the Peruvian Ministry of Justice and Human Rights. This project continued to be worked on and has now ultimately produced a proposal for the new 'Civil Process Code' (PNCP), that was recently published by the Peruvian Government. Both projects favoured a completely new and different civil enforcement chapter, at least compared to the CPC in force, and the main inspiration was undoubtedly the Brazilian Civil Procedure Code of 2015.<sup>218</sup> Among some major changes, there is a big change in the structure of the civil enforcement process because, from the first enforcement decision, the judge is expected to carry out the affection of the assets of the debtor. Besides, the phase in which the debtor can defend himself/herself is now an incidental action brought before the same judge, but as an autonomous process, separated from the enforcement procedure itself (Art 721 PNCP). The types of defences available to debtors are no longer restricted nor specified in typical situations (as mentioned above); rather, a broad defence is always available since it can be based on procedural and/or substantive defences and, therefore, it is possible to obtain a judgment with *res judicata* without the need for any subsequent process (Art 719, 723 PNCP). This does not limit the possibility that the debtor, in the same enforcement procedure, may object to the reasonability or proportionality of the enforced measures issued against him/her (Art 639 PNCP). As can be seen, this new procedure is completely different from the current structure of the civil and commercial enforcement procedure of the Peruvian CPC of 1993.<sup>219</sup>

119 In addition, several enforcement measures have also been explicitly regulated and in great detail. For instance, the judicial seizure (*embargo*) has been brought back again, which in pecuniary claims is the main way to allow a creditor's satisfaction from the beginning of the enforcement (Art 668 ss). As mentioned above, this institution was unfortunately removed from the current CPC. Also, one of the most significant changes has been to incorporate an unusual clause of *dos and don'ts* for enforcement measures, covering such matters as coercive measures and civil prison (Art 633, 635), to make

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<sup>217</sup> Ibid 80-81.

<sup>218</sup> See Cabral (n 141) 188.

<sup>219</sup> R Cavani and S Espejo, 'Civil Enforcement in Peru: a General Overview' (updated December 2022: not published) Latin-American National Reports 119.

provisional enforcement the general rule, with several rules for reversal or suspension of the enforcement (Art 645ff). The 2020 Peruvian Civil Procedure Code Amendment Project does not suggest a total reorganization of the organic part of the enforcement process, in the sense that it would exclude the judge entirely from participation in the enforcement proceedings. It does, however, propose a partial exclusion: when the debt is not paid and there are debtor's assets that were seized, the creditor can choose to keep the property of the asset, transferring to the debtor the excess instead of having a time-consuming and expensive public auction, and, if it is a financial company (like a bank), it is possible to choose a private sale. In this case, the judge only has to approve the contract. Finally, it is important to address the new explicit duties debtors are not allowed to obstruct the creditors' satisfaction and to affirmatively facilitate the enforcement itself. The most important of all these duties is the one that prohibits hiding any asset that can be useful to satisfy the creditor (Art 629). This is actually the other side of the coin of the principle of patrimonial liability, which imposes on the debtor a duty to satisfy the creditor with all of his/her assets (Art 627). There is not, however, any specific duty on the available assets so that they may be seized. The debtor can fulfil his/her duty to not obstruct the enforcement by simply assuming passive behaviour. Also, the proposed new Code contains a summary of a procedure in case that the debtor sells any asset or right after the judgment or enforcement mandate. This is called 'enforcement fraud', which is a type of 'obstruction to the enforcement'. This procedure allows that, within a few days, the judge can issue an order that the asset be made part of the enforcement, despite possibly having a new owner (Art 628).<sup>220</sup>

## 16 CHARACTERISTICS OF THE RECOURSE TO DEBTORS' FINANCES AND OTHER ASSETS IN RUSSIA

### 16.1 Enforcement Agencies in Russia

- 120 Since 1997, the enforcement of jurisdictional acts in Russia is done by public officials, namely by bailiffs, working for the Federal Bailiffs Service. Legitimate orders of bailiffs must be strictly fulfilled within all the territories of the Russian Federation.<sup>221</sup>

### 16.2 Locating Debtors' Finances and their Other Assets

- 121 When it is unknown if the debtor has enough money and other assets, the bailiff makes a request to the tax authorities, property rights registration authorities, banks, and other credit institutions. The amount of the debt is always taken into consideration. The claimant creditor also can apply to a tax authority, asking for the necessary information. The information that might be requested is as follows:

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<sup>220</sup> Cavani and Espejo (n 219) 120-121.

<sup>221</sup> A Chekmareva, 'Some Characteristics of the Recourse to Debtors' Finances and Their Other Assets in Russia' in M Deguchi (ed), *Effective Enforcement of Creditor's Rights* (Springer 2022) 228.

1. The names and locations of the banks and other credit institutions where the debtor has accounts.
2. The account numbers, the amount of money, and monetary movements (rubles and foreign currencies).
3. Other objects of value, belonging to the debtor kept in banks and other credit institutions.

122 All the mentioned organizations must provide the information within seven days after receiving a request. The Russian Federation's Code of Administrative Offences provides for liability for infringement of laws on enforcement proceedings, and not only for debtors. These are the cases when the legitimate requirements of a bailiff have not been fulfilled or the information about a debtor's property status has proved to be false. Those who are liable are punished with a monetary penalty. The fine is 2000–2500 rubles for ordinary citizens, 15,000–20,000 rubles for officials, and 50,000–100,000 rubles for legal persons.<sup>222</sup>

### 16.3 Skip Tracing in Russia

- 123 One of the major problems, arising while jurisdictional acts are being enforced, is the desire of the debtors to dodge the enforcement agencies and conceal information about their finances and property. The main part of the execution of the judicial decision is finding and tracking down persons of interest, known as 'skip tracing'. That is what Russian enforcement agencies mostly do both in foreign countries and in the Russian Federation. Since 2012, the Federal Bailiffs Service (FBS) has been exclusively in charge of skip tracing; it has a special skip tracing department. The process starts only in cases where the bailiffs' actions have not led to locating the debtor or his/her property. In 2018, skip tracing measures taken by the FBS made it possible to find thousands of debtors, including 52.9 thousand alimony debtors. Russian bailiffs also located 7.9 thousand vehicles that belonged to debtors (405 vehicles belonged to alimony debtors). It is allowed to look only for property that belongs to the debtor. An official order is needed to start skip tracing in Russia and foreign countries, according to the international agreements that cover these issues. At the international level, the steps of civil skip tracing in foreign countries are determined by the international agreements on mutual legal aid, to which Russia is a party. The process requires a complex and time-consuming exchange of documents.
- 124 There are still many countries that do not have legal aid agreements with Russia, and many of the existing ones were signed before the modern information technologies era. In 2009, the FBS joined the International Union of Judicial Officers (IUJO). Russia still needs to create a centralized database, containing information about large debtors and

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<sup>222</sup> Ibid 229.

their property. Such a database could be built by accumulating the data from the member states of the IUJO. By the general rule, fixed in the enforcement document, a Russian bailiff should get a judgment enforced within two months. In case of skip tracing, the deadline can be extended.

125 A bailiff must initiate a skip tracing process in certain types of cases, which are fixed by law. Skip tracing starts when it is necessary to:

1. Protect the interests of the Russian Federation and the interests of its constituents if the debtor owes more than 10,000 rubles (about 130 euros).
2. Recover alimony.
3. Pay damages for injuries or compensate the death of the breadwinner.
4. Compensate harm caused by a crime.
5. Make a convicted person perform the community service.
6. Recover penalties for crimes.

126 When there are property claims of private creditors, skip tracing aimed at locating the debtor or his/her property can be initiated only if the debt is more than 10,000 rubles.<sup>223</sup>

127 Locating a debtor or his/her property is done in the following way:

128 The operational information is requested from banks. Personal identity and other official personal documents are checked if there is a ground to believe that a person and/or his/her property is being looked for. The officials question individuals who might have some relevant information. The supposed debtor is also questioned. It is necessary to note that by law these individuals and the supposed debtor are in no way responsible for refusing to answer the questions or for lying.

129 Overall, the process includes lots of inquiries, document examinations, and inspection of the property in question. It is about rooms, buildings, structures, and plots of land, which may be occupied by or belong to the person sought. Vehicles are also on the list. The public bailiffs who are involved in a skip tracing process can use the information received from a private detective if the creditor has employed the services of a private detective agency. Very often the bailiffs cooperate with various public sector bodies. For example, there are cooperative activities with the General Administration for Traffic Safety. Policemen and bailiffs can stop an offender's car and check information systems to find out if the traffic offender is a debtor. Bailiffs can also obtain information about a debtor's

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<sup>223</sup> Ibid 230-231.



Internet service agreements as well as his/her cell phone numbers, and the sums paid for the services. After submitting a request to the Internet service providers, a bailiff can find out where the debtor's computer is located. This information is used to inform the debtor about the execution proceedings against him/her and about the necessity to pay the debt. One more innovative way to collect information about a debtor and his/her property status is the use of open-access information on social media. Analysis of the debtors' profiles contributes to discovering both people and property.<sup>224</sup>

#### **16.4 Other Measures that Motivate Debtors to Fulfil the Requirements Specified in the Enforcement Document**

- 130 There are other measures, which do not rely on recourse to the debtor's assets but are nevertheless aimed at urging him/her to fulfil enforcement requirements. One such measure is a ban on travelling abroad until the debt is cancelled. Due to such debts, more than seven million Russians could not leave the country in 2018. That year, the measure helped to recover about 72.1 billion rubles. Along with the travel ban, driving license revocation is also widely used. The debtor cannot get his/her driving license back until the debt is totally or partially cancelled. This measure is applicable in cases of alimony debts, damages for injuries, and compensations for the death of the breadwinner. On top of that, driving license revocation applies to property damage and emotional distress caused by a crime as well as to various non-property-related childcare issues and fines for violation of traffic rules.<sup>225</sup>

### **17 AMERICA'S 'BYO APPROACH' TO ENFORCING MONEY JUDGMENTS**

- 131 The role undertaken by the court in enforcing money judgments varies in different countries. It appears that in Germany and Austria, court officials shoulder considerable responsibility in identifying and locating assets of a judgment debtor so that the judgment creditor can initiate execution against those assets to satisfy the judgment. In the US, those who obtain money judgments do not receive such help from bailiffs or other court personnel. However, they can use broad American discovery rights, including discovery from third parties, to locate the assets for themselves, gaining direct access to the information about assets and location. American judgment creditors must take the initiative to locate assets subject to execution like the 'bring your own' (BYO) culture of American university students' parties! To do that, they not only can use official discovery but also various self-help measures. Ultimately, however, US procedure does not regard the enforcement of a money judgment (as opposed to an injunction) as the court's responsibility.<sup>226</sup>

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<sup>224</sup> Ibid 231.

<sup>225</sup> Ibid 232.

<sup>226</sup> Marcus (n 9) 57.

### 17.1 Broad American Discovery

- 132 US courts are usually fairly indifferent to whether money judgments are enforced; that is a problem for the judgment creditor to solve. But American courts also provide the judgment creditor with very effective tools to solve that problem—broad American discovery to locate assets and then, once the assets have been located, legal authority to seize and ‘monetize’ those assets (usually by conducting an auction often known as a ‘sheriff’s sale’).<sup>227</sup>

### 17.2 Broad Judicial Access to Information About Debtor’s Assets

- 133 From an American perspective the range of information sources available to the self-starter German (The Debtor’s Declaration and Information from Third Party<sup>228</sup>) or Austrian court<sup>229</sup> that seeks to enforce a judgment is striking. This effort can inquire into many records of assets held by the debtor, including real property, motor vehicles, and the like. But it can go beyond that. One focus is often the tax return information of the debtor. Another is social security accounts held by the debtor. Sometimes, it seems, that access can be obtained throughout the entire EU by the court official gathering this information. This access to governmental records of the debtor’s assets stands in remarkable contrast to the American approach. Tax records are not ordinarily available to governmental officials outside the taxing authority, the Internal Revenue Service (IRS). Even the Federal Bureau of Investigation (FBI) cannot obtain access to IRS records in ordinary circumstances. The notion that the court would gather such information on its own motion to assist a private judgment creditor in executing a money judgment is thus particularly striking to American observers. As we shall see below, however, the US approach is also different in that it empowers private actors to seek out the information that governmental actors obtain in Germany and Austria. Unlike the systems in those countries—which deny the creditor access to the governmental information itself—in the US, the discovery method empowers the creditor to obtain the information that can be obtained directly. Moreover, self-help outside the governmental sphere also plays a major role in debt collection in the US.<sup>230</sup>

### 17.3 American Discovery Rules to the Judgment Creditor’s Rescue

- 134 In both Germany and Austria, the focus is on the bailiff’s responsibility to enforce the money judgment and obtain information about the debtor’s assets. However, the judgment creditor does not obtain direct access to the information gathered by the bailiff.<sup>231</sup> Consistent with the BYO tradition, the American approach is to empower the judgment creditor rather than place a duty on the court. Rule 69(a)(2) of the Federal

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<sup>227</sup> Ibid 58.

<sup>228</sup> Hess (n 15) 33; The Reform of GCCP in detail, cf Gottwald (n 12) 4.

<sup>229</sup> Rechberger (n 43) 20.

<sup>230</sup> Marcus (n 9) 59.

<sup>231</sup> Gottwald (n 12) 3.

Rules of Civil Procedure provides the full panoply of discovery tools ordinarily available to an American litigant for discovery 'in aid of execution'. This includes discovery from third parties. Thus, the American BYO approach provides judgment creditors with valuable tools to locate assets subject to execution.

- 135 As the U.S. Supreme Court noted in a 2014 case dealing with enforcement of Rule 69 discovery to enforce a money judgment against the Republic of Argentina: 'The rules governing discovery in postjudgment execution proceedings are quite permissive.'<sup>232</sup> In that case, the Court declined to find that there was a 'sovereign immunity' exception to Rule 69. As a result, the Court rejected Argentina's argument that the discovery could be had only regarding assets in the US, and not those outside the country. It did, however, require that the judgment creditor provide prima facie evidence of potential execution before discovery could occur.<sup>233</sup>

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<sup>232</sup> *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2254 (2014).

<sup>233</sup> Marcus (n 9) 64-65.

## ABBREVIATIONS AND ACRONYMS

ACCP	Code of Civil Procedure (Argentina)
ACHPR	African Court on Human and Peoples' Rights
ADR	Alternative Dispute Resolution
ALI	American Law Institute
ANCCPC	Argentine National Civil and Commercial Procedural Code (Argentina)
Art	Article/Articles
BGH	<i>Bundesgerichtshof</i> (Federal Court of Justice) [Germany]
BID	<i>Banco Interamericano de Desarrollo</i> (Inter-American Development Bank)
CEPEJ	<i>Conseil de l'Europe Commission européenne pour l'efficacité de la justice</i> (Council of Europe European Commission for the efficiency of justice)
cf	<i>confer</i> (compare)
ch	chapter
CIDH	<i>Corte Interamericana de Derechos Humanos</i> (Interamerican Court of Human Rights)
CJEU	Court of Justice of the European Union
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	<i>exempli gratia</i> (for example)
ELI	European Law Institute
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	<i>ibidem</i> (in the same place)
ICPR	Civil Procedure Regulations (Israel)
ICT	Information and Communication Technologies
ie	<i>id est</i> (that is)

IIDP	<i>Instituto Iberoamericano de Derecho Procesal</i> (Iberoamerican Institute of Procedural Law)
JCCP	Code of Civil Procedure (Japan)
JPY	Japanese Yen
n	footnote (internal, ie, within the same chapter)
no	number/numbers
para	paragraph/paragraphs
PD	Practice Direction
PDPACP	Pre-Action Conduct and Protocols
pt	part
RSC Order	Rules of the Supreme Court (UK)
SCC	Supreme Court Canada
Sec	Section/Sections
supp	supplement/supplements
TCCP	Code of Civil Procedure (Turkey)
trans/tr	translated, translation/translator
UK	United Kingdom
UKCPR	Civil Procedure Rules (UK)
UNIDROIT	<i>Institut international pour l'unification du droit privé</i> (International Institute for the Unification of Private Law)
UP	University Press
US / USA	United States of America
USD	United States Dollar
USFRCP	Federal Rules of Civil Procedure (US)
v	versus
vol	volume/volumes
WB	World Bank
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## LEGISLATION

### International/Supranational

EU Green Paper 2008

The International Covenant on Civil and Political Rights ('ICCPR')

The International Covenant on Economic, Social, and Cultural Rights

European Convention on Human Rights—ECHR

Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations OJL 7, 10.1.2009.

The Charter of Fundamental Rights of the European Union (CFR)

Regulation (EU) No 655/2014 of the European Parliament and of the Council [The European Account Preservation Order]

Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts [SEC (2006) 1341].

### National

Civil Procedure Law (Germany)

Civil Law (Japan)

1931 draft for a code of civil procedure in Germany

Civil Execution Act (Japan)

Basic Law [Grundgesetz] (Germany)

Code of Execution (Japan)

Lawyers Act (Japan)

Civil Enforcement Act in 2003 (Japan)

Criminal Code (Japan)

Civil Execution Code (France)

Real Property Registration Act (Japan)

2019 amendment to the Civil Enforcement Act (Japan)

Rechtspfleger Act (Germany)

Compulsory Enforcement Act (Taiwan)

Schuldbetreibung und Konkurs (Switzerland)

Exekutions-ordnung-EO (Austria)

Judicial Officers Act (Austria)

Civil Execution Act (Korea)

Civi Procedure Code (Poland)

Civil Procedure Law (China)

Interpretation of the Supreme People’s Court on the Application of the CPL 2015 [ICPL]  
(China)

Civil Procedure Code of 2015 (Brasil)

Civil Procedure Code PNCP (Peru) 2017

Civil Procedure Code PNCP (Peru) 1993

The enforcement of jurisdictional acts 1997 (Russia)

The Federal Rules of Civil Procedure (USA)



## **CASES**

### **International/Supranational**

Judgment of the Court of 21 May 1980 (Bernard Denilauler v SNC Couchet Frères)

Case 125/79, European Court Reports 1980 -01553, (ECLI identifier: ECLI:EU:C:1980:130).

### **National**

BGHZ 141, 173, 177

BverfGE 65, 1

Republic of Argentina v. NML Capital, Ltd., 573 U.S. 134, 138 (2014)

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