

ON THE CIVIL ENFORCEMENT ORGAN IN CHINA**SOBRE EL ÓRGANO DE EJECUCIÓN CIVIL EN CHINA**Cao Zhixun¹

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Abstract: To overcome the difficulty in enforcement and establish the effective enforcement, the position of the enforcement organ should be taken seriously both in Chinese and comparative context. The People's court is the merely competent enforcement organ under Chinese law and there could be various possibilities regarding its internal organization. Although a more privatized enforcement mechanism is not planned in China, partially due to the endeavor to keep on providing better public services instead, practicing lawyers and other persons could still contribute to the solution of difficulty in enforcement. The relationship between different functions of adjudication and enforcement within the same court relates to a crucial issue in theory and in practice which allows further exploration in a variety of aspects. There could be conflicting interests of both sides of the parties and even among a group of enforcement creditors. As a result, the enforcement organ has to strike a balance among various enforcement interests respectively. The creditors, especially the diligent one, should be primarily protected, whereas the necessary interests of debtors deserve to be preserved as well.

Keywords: Enforcement Proceedings; Difficulty in Enforcement; Centralized Enforcement System; Relationship Between Adjudication and Enforcement; Balance of Enforcement Interests

Resumen: Para superar la dificultad en la aplicación y establecer una aplicación efectiva, la posición del órgano de aplicación debe tomarse en serio tanto en el contexto chino como en el comparativo. El tribunal popular es el órgano de ejecución meramente competente en virtud de la legislación china y podría haber varias posibilidades en cuanto a su organización interna. Aunque en China no está previsto un mecanismo de ejecución más privatizado, en parte debido al esfuerzo por seguir proporcionando mejores servicios públicos, los abogados en ejercicio y otras personas aún podrían contribuir a la solución de las dificultades de ejecución. La relación entre las diferentes

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funciones de adjudicación y ejecución dentro de un mismo tribunal se relaciona con un tema crucial en la teoría y en la práctica que permite una mayor exploración en una variedad de aspectos. Podría haber intereses en conflicto de ambas partes de las partes e incluso entre un grupo de acreedores de ejecución. Como resultado, el órgano de ejecución tiene que encontrar un equilibrio entre los distintos intereses de ejecución, respectivamente. Los acreedores, especialmente el diligente, deben ser protegidos principalmente, mientras que los intereses necesarios de los deudores merecen ser preservados también.

Palabras claves: Procedimientos de ejecución; Dificultad en la ejecución; Sistema de ejecución centralizado; Relación entre adjudicación y ejecución; Equilibrio de intereses de ejecución

I. Introduction

In recent years, the difficulty in enforcement and its solution attract greater and greater attention. Based on the *Decision of the Central Committee of the Communist Party of China (CCCPC) on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law of 2014* (hereinafter referred to as the CCCPC Rule of Law 2014) and the subsequent reforms comprehensively launched by the Supreme People's Court (SPC) until 2019, some preliminary solutions were successfully accomplished. Then, 'an effective long-term system that solves the difficult problems of enforcement' (SPC, 2019, p. 35) is planned to be established and a separate statute of civil enforcement law is supposed to be promulgated in one or two years. Indeed, the enforcement mechanism in China has achieved a lot. In 2019 and 2020, for instance, there are more than 10,000,000 enforcement cases each year, while the number of concluded cases approximates the same number (Zhou, 2019, 2020).

Behind the practical difficulty together with the achievement in the area of enforcement law, it first comes to the enforcement organ which is in charge of everything in enforcement proceedings. In the context of Chinese law, this entity has to decide whether to register an enforcement application, how to promote enforcement proceedings and when to terminate the case. Since in China the enforcement organ is equivalent to the People's court, we may wonder whether there are some alternative entities which may be able to substitute or at least assist the work of the competent court. And if the exclusive authority of People's court both in areas of adjudication and enforcement should still continue, we may need to figure out the connection and difference between these two functions of the judiciary. Moreover, during the operation of enforcement proceedings, the competent enforcement court has to try its best to protect the interests of both parties. It is of necessity to strike a balance between conflicting interests of both sides of the parties and even among a group of enforcement creditors to the same enforcement debtor.

The understanding of the enforcement organ is even more significant while taking the comparative observation into account. Certainly, despite the long-lasting difficulties until now, making our best endeavors to group or categorize existing legal systems globally is still desirable (Husa, 2004; Mattei, 1997). Then, there could be a further choice of developing or discarding on a national basis (Langbein, 1985, p. 823), even if we are not bridging differences between legal systems through more abstraction of the proposed comparative categories (Reitz, 1998, p. 636). Indeed, the enforcement system is significantly affected by historical, political, cultural and even path-dependent considerations. The characteristics of the Chinese enforcement mechanism could yet be respected more seriously if we have already placed it into the general framework of international academic discourse.² In some cases, we may be capable of finding the mutual understanding in spite of the slight divergence in detail. This article hopes to use the enforcement organ as the tool to analyze the Chinese enforcement legal system and as a window to gaze outward, which may make the comparative exploration possible. In the end, we have to endeavor to locate the approach to achieve the effective enforcement³. When the world changes rapidly and international disputes arise, this attitude must be insisted (Woo, 2018).

II. *The enforcement court as the single enforcement organ*

1. Organization of the Enforcement Court

As one of its major characteristics, there is only one organization in China which has functional jurisdiction over the enforcement issues regarding civil and commercial matters. Comparatively, for the execution of criminal fixed-term imprisonment, the judicial administrative authorities at all levels are the responsible organs. The People's Court has only to enforce the operative part of a criminal judgment relating to property. According to article 1 of the *Several Provisions of the SPC on Enforcing the Property Portion of A Criminal Judgment of 2014*,⁴ which regulates this related mechanism in detail, the court has authority to enforce the following matters: (i) fines or confiscation of property; (ii) the order to return the property or compensate the victim for the property; (iii) disposal of illicit money and property transferred along with the case; (iv)

2 The prudent establishment of ALI/UNIDROIT Principles of Transnational Civil Procedure and the ambitious European model rules of civil procedure are among the in-depth endeavor to enable different models of rule of law to converge. See ELI/UNIDROIT, *ELI/UNIDROIT Model European Rules Of Civil Procedure* (OUP, 2021).

3 On the international background and the on-going development, see UNIDROIT (2021, Aug. 22). *Study LXXXVI B: Best Practices for Effective Enforcement*, <https://www.unidroit.org/work-in-progress/effective-enforcement-best-practices>. Additionally, the ongoing project of Compendium of Comparative Civil Justice, which is organized by the Max Planck Institute Luxembourg for Procedural Law and International Association of Procedural Law from 2019 to 2025, also covers enforcement proceedings in its 14th segment.

4 Since judicial interpretations, which are released by the SPC and adopt formal promulgation process, consist of effective rules in practice, this article will not go further to discuss whether they are sources of law in an abstract sense.

confiscation of the defendant's property transferred along with the case which has been used for committing the crime.

Generally speaking, the ordinary court system in China has four different levels: the Local People's Courts, the Intermediate People's Courts, the Higher People's Courts and the Supreme People's Court (Fu & Meng, 2016, pp. 99-100). There is a special enforcement bureau or division which is responsible for the enforcement affairs in each of the courts (Chen, 2021). It is to be observed that courts at different levels have these bureaus with different functions. At the level of local courts or intermediate courts, enforcement bureaus are in charge of the physical enforcement as well as making necessary orders and adjudication⁵ during enforcement. Their tasks consist of some administrative power together with adjudication power (Kerameus, 2014, pp. 10-11, 10-12). For the ones in Higher People's Courts or even the enforcement bureau of the SPC, the competent organ will to a great extent merely take the responsibility of keeping a check on enforcement cases in their jurisdiction. It means that they review and evaluate administrative and judicial activities of their lower courts in the judicial hierarchy. In such case, when some enforcement parties disagree with Local People's Courts or Intermediate People's Courts on some enforcement issues, they can petition the SPC or the related Higher People's Court in each province for enforcement supervision.

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

The model of single competent enforcement organ is suitable to be summarized as a centralized model. Compared to this situation in China, there are models consisting of four (Brox & Walker, 2018, pp. 7-11; Baur, Stürner & Bruns, 2006, pp. 72-73) or two (Nakano & Shimomura, 2016, pp. 40-41) fragmented or diffused enforcement organs. Under the same term of 'bailiffs', three principal types of bailiff could exist for different issues (Kennett, 2003, p. 97). And it is the People's Court which as a whole has to both make a judgment and enforce the judgment. There is also neither internal division either between a senior judicial officer and a judge in Germany inside the enforcement court nor between an enforcement officer, the enforcement court and the court hearing the case.⁶ And other than the German counterpart, different registration

⁵ The relationship between adjudication and enforcement in China, *see infra* section IV.

⁶ The legislative suggestion in favor of the enforcement officer outside the court system for the entire enforcement work in Germany, *see* Stamm, J. (2012). Reformbedarf in der Zwangsvollstreckung? – Die Schaffung eines zentralen Vollstreckungsorgans [Necessity of Reforming Civil Enforcement Law: The Establishment of a Centralized Enforcement Organ]. *JZ (Juristen Zeitung)* 67(2), 67-76.

authorities are not formally admitted as one of the enforcement organs. Yet, there is no doubt that they have to perform their duty to facilitate and cooperate with the enforcement court. It is well accepted that regarding them as enforcement organs would not be ‘of comparative interest’ (Kerameus, 2014, p. 10-10).

The arrangement in China simplifies some of organizational choices of Chinese enforcement law (Kennett, 2018, pp. 301-353; Stürner, 2016). For instance, there is no need to discuss whether a specific type of enforcement titles ought to be taken in charge by one or the other enforcement organ.⁷ The creditors do not have to submit ‘individual applications for specific methods of enforcement’ as some traditional enforcement mechanism did, which demands ‘a reorganisation of court internal administration’(Kennett, 2018, p. 339). Accordingly, the accountability of courts regarding enforcement activities could be established without any further division between some organs of administrative nature and courts (Kerameus, 2014, p. 10-16). There is no genuine need to discuss the supervision of enforcement agents which is otherwise outside the control of the competent court (Kennett, 2018, pp. 104-105). And with this centralized enforcement system, the specialized enforcement officers could be entitled to access the information which may be excluded from routine discovery due to data or privacy protection.⁸ In this context, the enforcement officer would not be challenged simply because of its connection with creditor clients, which would lead to the ignorance of the interests of the debtor or the public interests.

2. Possible Deviation and Innovation

On some occasions, other divisions rather than the ones for civil and commercial matters of the enforcement court could be designated to handle enforcement issues. The arrangement of divisions or groups is concerned with the internal allocation of cases inside the same court. As a result, it is not forbidden that a criminal division of the court is in charge of the review of enforcement order, if the president of this court has explicitly designated the criminal division to do so. The reason for it could normally be lacking personnel in the entire enforcement section and the relatively limited caseload in the criminal division. Moreover, it is nowadays widely acknowledged that the cultivation of professional enforcement personnel is necessary, especially for the adoption of enforcement measures. In the past, it was highly criticized that the enforcement officers were at least legally trained, less honored, reluctant to use coercive measures and could be threatened or even injured by debtors to be enforced, while their

7 The example of the third party debt in Germany, *see* Walker, W. (2019). Zur Übertragbarkeit der Forderungspfändung auf den Gerichtsvollzieher [On the Possibility of Transferring the Assignment of Seizure of Debts to the Enforcement Officer]. *DGVZ (Deutsche Gerichtsvollzieher Zeitung)* 134(5), 89-98.

8 *See* Hess, B. (2010). Different Enforcement Structures. In van Rhee, R. & Uzelac, A. (Eds.), *Enforcement and Enforceability: Tradition and Reform* (pp. 41-61). Intersentia. p. 52. This comparative observation was written by a German professor before the introduction of article 802c and 802l of the *German Code of Civil Procedure* which limited the application of themselves to three types of cases. It could be argued, therefore, that the centralised system like Chinese one may also have the advantage in having much more kinds of information gathered.

work was not intellectually challenging compared to other judges and always obstructed practically and politically (Peerenboom, 2001, pp. 249, 284-287, 294-301; Heye, 2004). However, after twenty years of social and judicial development, this statement is only partially true.

Under the framework of a single enforcement organ, there could still be some room for judicial administrative innovation. Among others, it is of advantages to having a couple of enforcement teams inside one court (Xie & Pi, 2019), which looks like subdivisions and remains relative independence. Enforcement officers could also be assembled following the direction given by a separate but intensive enforcement center (Xiao & Zhuang, 2019). This newly assembled team will be more capable of dealing with difficult cases such as the eviction of debtors from occupation of premises.⁹ The SPC's 15th primary task in the area of enforcement in forthcoming years, stated in the *Opinions of the SPC on Deepening the Enforcement Reform and Improving the Long-term Mechanism for Solving Enforcement Difficulties: The Outline of People's Courts' Enforcement Work (2019-2023)* (hereinafter referred to as the Outline of People's Courts' Enforcement Work (2019-2023)),¹⁰ regulates this issue as well. According to it, the enforcement team consisting of 'judge, assistant to the judge (enforcement officer), judicial police and clerk' shall be implemented. The inter-team and intra-team divisions of tasks and division of power shall be optimized. The key points of this model of teamwork could be featured as 'classifying personnel, gathering matters up, clarifying powers and responsibilities, and streamlining the cooperation'. To some extent, the enforcement organ is understood as an individual unit in the sense of judicial administration. To fulfill the enforcement work more flexibly, there is no major barrier which may hold back any prospective reform.

III. Privatization of the enforcement organ as a supplement

1. Private Efforts Available in Practice

A centralized model of enforcement mechanism does not necessarily mean the exclusive authority of the judicial branch in resolving enforcement affairs. Theoretically speaking, private sectors could supplement or even share some enforcement tasks (Baur, Stürner & Bruns, p. 31). However, the Chinese enforcement court is deemed to take the final responsibility for the discovery of enforceable property. Due to the lack of practical needs and opportunities to compete with each other, this kind of active and all-inclusive enforcement court leads to a less-developed market force. To be compared with abundant measures which are accessible to the public,

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

10 Document No. 16 [2019] of the SPC.

center enforcement system is the limited competence of any private entity to dig out the missing assets of the debtor. There are somewhat American-style ‘private firms offering post-judgment collection services’ (Pajic, 2010, p. 245) in reality, whereas not all of them could do their jobs in a legal manner. Since these activities of debt collection could give rise to social disorder, these firms are under serious surveillance and go ordinarily underground. Moreover, not to mention the ordinary creditor or normal practicing lawyers, it was said that even those persons having sources and connections with the government branches might ‘run into dead-ends’ (Peerenboom, 2001, p. 292). Today, this description is still to a great extent credible.

Still, practicing lawyers could in this disadvantageous environment make use of their practical know-how and surge forward to stand for their clients and then earn money by hard working. It is not uncommon that attorneys will search for stocks held by the debtor which will be disclosed in the data platforms of relevant public authorities. The major example is the National Enterprise Credit Information Publicity System (<http://www.gsxt.gov.cn/index.html>), which is operated by the State Administration for Market Regulation directly. Companies in the private sector, such as Qichach (<https://www.qcc.com>) and Tianyancha (<https://www.tianyancha.com>), could also provide some more user-centric and specialized commercial services. These practicing lawyers or private companies will definitely keep track of the related bank accounts or the private ALIPAY/WeChat accounts which have been used in previous transactions which the debtor took part in. They will be after the property information in platforms like Shenzhen United Property and Share Rights Exchange (<http://www.eoechina.com.cn/cn2019/index.html>). Also, the final judgments in the website of China Judgments Online (<https://wenshu.court.gov.cn>) may be of great use, when these judgments reveal the possible further debtors to the concerned enforcement debtor or its possible belongings. Attorneys will have to work as a sort of private detectives. It could imply that the enforcement institution needs to have more support from the lawyers and in some sense, from a more privatized enforcement mechanism. But unlike the reform happened in Croatia, which tried to introduce public notaries and even private bailiffs as a new legal profession (Uzelac, 2010, pp. 88-93), the Chinese law and the related academic discussion have not gone too far.

2. Better Public Enforcement Organ

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

sentence of section one of article 242 of the Civil Procedure Law¹¹, article 485 of the *Interpretation of the SPC on the Application of the Civil Procedure Law of the PRC* of 2015¹² and article 12 of the *Provisions of the SPC on Issues concerning Property Investigation during Enforcement in Civil Procedures* (hereinafter referred to as the *Provisions Investigation 2017*)¹³. This public online system could be regarded as a suitable substitution for the current efforts of private lawyers. If it could fulfill its proposed functions of inquiring and then seizing, this public service would even be a more advanced tool than any private alternatives. Then, most of the currently dispersed property information would all be accessible to the competent enforcement court in each case. Because it is a public authority involved, the delivery of sensitive information is more reliable for other governmental branches providing the information. The creditor could save more money since it may be universal that the court fee is ordinarily lower than the attorney fee. If we take the practice of contingent fee agreement into account, the difference could be even more obvious. Meanwhile, for those lawyers who could make use of their sources inside public authorities, there is a considerable gray zone in the law and they may get caught crossing the line. If instead, the investigation is fulfilled by the court in a totally legal manner, these well-connected lawyers and their friends would go less frequently near the margin of law. It is good for all of them personally and most crucially, for the preservation of rule of law in practice.

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

11 There are five versions of the *Civil Procedure Law* statute which are released subsequently in 1982, 1991, 2007, 2012 and 2017. Without further specification, the *Civil Procedure Law* is cited in its current version of 2017.

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

13 Judicial Interpretation No. 8 [2017] of the SPC.

3. Private Assistance Is Still Needed

Before this comprehensive online enforcement inquiry and control system is accomplished, practicing lawyers would certainly not lose their job. Insisting on the public nature of the enforcement organ does not come into conflict with the possibility of designating private sectors to bear a hand. Practicing lawyers may be empowered to collect the necessary property information after their application for an investigation order has been approved by the responsible court. For instance, in order to spare the time of enforcement officers, they could send the creditor's attorney to a remote bank branch or a business workplace of the debtor to acquire the crucial information. Just as the Dutch *huissier de justice* could engage in extrajudicial debt collection activities, provide legal advice for clients as well as fulfill the official enforcement duties (van Rhee, 2010, p. 173), it is not hard to imagine that the Chinese lawyers could accomplish multiple kinds of activities.

The primary task 38 of the Outline of People's Courts' Enforcement Work (2019-2023) recognizes the need to try out the investigation by some practicing lawyers. Task 43 states that the proportion of lawyers participating in enforcement proceedings should be improved, while the information platforms facilitating lawyers' participation shall also be established to maximize the role of lawyers. Here, the lawyers are helping the court reduce its caseload. And to some extent, the Chinese court is good at finding helpers. The most significant example is shown in the area of disposing debtor's assets. In the past, the court relied on private auction firms to sell the seized items. Then, The SPC released the *Provisions of the SPC on Several Issues concerning Online Judicial Sale by People's Courts*¹⁴ in March 2017 and adopted an online auction system nationwide. This judicial interpretation stated that it was the enforcement court that was in charge of the sale process, literally named as judicial sale. According to other rules of this judicial interpretation and the respective policy clarification, the auction firms are now merely assisting the court with their professional specialty.

Even if the public inquiry and control system is well established, the supplementary role of practicing lawyers should not be understated. Not to mention their prospective contribution concerning the usage of interim measures during and before the commencement of civil proceedings, there would always be some assets of the debtor which are not listed in any public or private data platform.¹⁵ Falsely registered properties exist inevitably and concealed legal relationships beneath the public record are unable to be eliminated. Some public authorities may be reluctant to provide all the required information. Some enforcement officers forget or intentionally fail to do as requested by laws. On all these occasions, the practicing lawyers with their experience and knowledge should be the most appropriate wingmen for their clients.

14 Judicial Interpretation No. 18 [2016] of the SPC.

15 As a result, the access to non-public files is highly cherished by modern enforcement laws. See Hess, B. (2010). Different Enforcement Structures. In van Rhee, R. & Uzelac, A. (Eds.), *Enforcement and Enforceability: Tradition and Reform* (pp. 41-61). Intersentia. p. 51.

Only the ordinary mechanical tasks should be left to the enforcement court. Taking it more broadly, attorneys and the court are capable of cooperating and collaborating with each other among the same legal community.

Lastly, this trend is also admitted by the newest Outline of People's Courts' Enforcement Work (2019-2023) of the SPC. The SPC's 17th primary task plans to actively introduce specialists to participate in enforcement. Here, institutions and personnel from arbitration, notary, practicing lawyer, accountant, audit and other professionals are taken into account. There should be distinct approaches to the essential matters under the power of enforcement and their supporting matters with some administrative nature. As a result, some appropriate outsourcing of property search and control, support for online auction, payment of case-related money, service of documents, and other supporting matters in enforcement proceedings to specialists outside the judiciary shall be experimented. During the purchase of social services, procedural justice should be guaranteed. It means that the potential contribution of practicing lawyers, in spite of minor importance, is always acknowledged by the current reform plan.

IV. The relationship between adjudication and enforcement

1. Development toward Separation of Both Institutions

Furthermore, besides the discussed privatization of enforcement organ, there is still some other possible choice when it comes to how to partly change the dominating role of the court in enforcement proceedings. Rather than the court, an independent administrative organ is also capable of being a centralized enforcement organ as the example in Sweden has shown (Kennett, 2018, pp. 303-308; Kennett, 2003, pp. 96-97). As a result, the issue of separating the enforcement work from Chinese courts could be subject to some further reform. Indeed, the People's Court is requested and empowered to accomplish a variety of tasks. Besides the function of settling disputes in the form of litigation or mediation, the same court has to fulfill the function of enforcement at the same time. Nevertheless, both functions differ from each other by nature. Without outsourcing of enforcement tasks to any organ other than the court, it is not hard to agree that 'a court-based system tends to emulate the way the core business of the courts (litigation) is being executed (Uzelac, 2010, p. 96). Therefore, we need to discover how to understand the relationship between adjudication and enforcement within individual courts and the judiciary as a whole. Especially, some understanding of this relationship may lead to more substantial consideration of the dispute in the enforcement case during enforcement proceedings and then distinguish it from the counterparts in other jurisdictions.¹⁶

As one of the long-lasting aims of Chinese civil justice reform, the separation of

16 The understanding of the principle of formality in Germany, *see* Baur, F., Stürner, R. & Bruns, A. (2006). *Zwangsvollstreckungsrecht* [Civil Enforcement Law]. C.F. Müller. pp. 3-4.

adjudication and enforcement is proposed and promoted in the area of enforcement law.¹⁷ Although the first version of the *Organic Law of the People's Courts of China of 1954* stated that there were separate enforcement officers in courts and the second version of it in 1979 confirmed again, this legal rule was not taken in practice seriously. It was the adjudication judge who was responsible for the execution of the final judgment which it had made seconds ago. The judge had to think about the possibility of successful enforcement even while trying the case. This all-in-one model could jeopardize the impartiality of the trial judge and make it a directly interested person in the ongoing civil process.

In the 1990s, the Chinese court began to establish a separate section of enforcement within each of the courts. Section 3 of article 209 of the *Civil Procedure Law of 1991* shows that the local court and the intermediate court have the power to set up an enforcement organization, whose responsibility is to be regulated by the SPC directly. Gradually, apart from the enforcement of interim measures stipulated in article 3 of the *Provisions of the SPC on Several Issues concerning the Enforcement of People's Courts (for Trial Implementation)* of 1998 (hereinafter referred to as the Enforcement Provisions 1998)¹⁸, the judge making a judgment will not consider any enforcement affair anymore. The power of creating an enforcement organization is extended to courts at all levels due to the amendment of the *Civil Procedure Law* statute. In the *Civil Procedure Law of 2007*, section 3 of article 205 restates this rule, while now the position of it is section 3 of article 228 of the *Civil Procedure Law of 2007*. Moreover, the enforcement of interim measures on most occasions is distributed to the enforcement organ as well since 2016. Yet, article 2 of the then effective judicial interpretation, namely the *Provisions of the SPC on Several Issues concerning the Handling of Property Preservation Cases by the People's Courts* of 2016, reserves the possibility of adjudicative judges in exceptional cases to enforce the interim measures issued by themselves. At the end of 2020, along with other judicial interpretation in the area of enforcement, this new rule finds its position in the revised version of article 3 of the Enforcement Provisions 1998.

Recently, the proposed separation encounters ongoing reform and creative social experiments. According to the foundational CCCPC Rule of Law 2014, optimizing the allocation of judicial authorities in a broader sense was supposed to be emphasized. Therefore, public security authority, procuratorial organs, courts and judicial administrative organs had to perform their own function, whereas the criminal investigative power, prosecutorial power, adjudicative power and enforcement power had to coordinate and be mutually restricting with each other. Since the above-mentioned organizations and powers could correspond with each other, it was argued that courts had the adjudicative power and judicial administrative organs had the

17 Similar comparative remarks, see Hess, B. (2010). Different Enforcement Structures. In van Rhee, R. & Uzelac, A. (Eds.), *Enforcement and Enforceability: Tradition and Reform* (pp. 41-61). Intersentia. p. 46.

18 Judicial Interpretation No. 15 [1998] of the SPC.

enforcement power. However, the judicial branch and a majority of commentators disagreed with this approach of interpretation. Instead, CCCPC was only pursuing a general goal of separating adjudication and enforcement rather than any concrete plan for the separation. In other words, an independent administrative agency that is competent for the civil enforcement is not an option.

2. Further Aspects to Understand This Relationship

The specific approaches to the separation of adjudication and enforcement should be subject to the further development from different perspectives. For instance, it is to be discussed whether the proposed *Civil Enforcement Law* statute and the *Civil Procedure Law* statute themselves could be decisive in this respect. The grouping of judges between adjudication judges and enforcement judges or enforcement judges who are specifically for property investigation and the ones supervising their colleagues could also be an effective test for the separation. Considering that proceedings have their roots in their organization, the individual court could be tried to be restructured with the establishment of the enforcement bureau, othe internal division of the same court and even an enforcement organ outside the court (Xiao & Huang, 2014).¹⁹ Alternatively, according to the primary task 13 of the Outline of People's Courts' Enforcement Work (2019-2023), the choice between special teams of judges and separate divisions could depend on the real situation in each court. Besides, after the CCCPC decision in 2014, some pilot system reform of separation of judicial power and enforcement power was planned and executed. The result of this pilot plan has not been made public. From the perspective of an outsider, it could be speculated that the result of this reform could not be very positive or of great significance. In such cases, the final results of the movement towards separation of adjudication and enforcement are still to be expected.

Moreover, the relationship between adjudication and enforcement could be of broader meaning. On one hand, it may refer to the cooperation and collaboration inside the court system. There is already a judicial document named *Opinions of the SPC on the Coordinated Operation of Case Docketing, Trial, and Enforcement by People's Courts* (hereinafter referred to as the *Opinions Coordinated Operation 2018*)²⁰, which intends to promote the smooth connection and the efficient operation of different stages of a civil process and to safeguard the efficient realization of the parties' rights. For instance, article 463 of the Interpretation of the Civil Procedure Law and number 3 of section 1 of article 16 of Enforcement Provisions 2020 (updated Enforcement Provisions 1998 in 2020)²¹ stress that the content of enforcement titles shall be definite

¹⁹ Leading opinion which is open for the shift of enforcement function to some institutions outside the court system, see Zhang, Z. (2008). Zhi xing ti zhi gai ge de xiang xiang kong jian [Imaginary Space of the Reform for Execution System], *People's Judicature: Application*, 2008(21), p. 50. DOI:10.19684/j.cnki.1002-4603.2008.21.015.

²⁰ Document No. 9 [2018] of the SPC.

²¹ The *Decision of the SPC to Amend Eighteen Judicial Interpretations in Area of Enforcement Including the Provisions of the SPC on Several Issues Concerning People's Courts' Impoundment of*

and specific. Section 1 of article 11 of the Opinions Coordinated Operation 2018 lists nine types of cases in which the particularity of the rights to be enforced could be of no question. This judicial document also regulates default rules in case that the specific item to be enforced has been damaged or lost and no compensation could be agreed between parties. At the same time, article 15 of Opinions Coordinated Operation 2018 provides solutions when the enforcement court finds that the content of enforcement titles is not clear enough. The need to have these rules is shown by the frequent discussion on them in practice. Especially when Chinese courts are still working hard to improve the quality of the judgment they made, this aspect of the relationship between adjudication and enforcement should be taken seriously. Respectively, the primary task 19 of the Outline of People's Courts' Enforcement Work (2019-2023) supplies its suggestion as well.

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

Explicit illustrations could be found in case of adding enforcement debtor during enforcement proceedings. In accordance with the applicable *Provisions of the SPC on Several Issues Concerning the Modification and Addition of Parties in Civil Enforcement* of 2016 (hereinafter referred to as the Provisions Addition of Parties 2016)²², some third parties such as the shareholder of a one-man company could be added as the debtor in the enforcement case originally only against the company. Ordinarily, in order to enable a direct enforcement against the shareholder, the shareholder should have been claimed in the previous litigation at the first place. Instead, section 1 of article 32 of Provisions Addition of Parties 2016 requests the third party, which has been added as an enforcement debtor and refuses to be added, to file a third-party claim to prevent the execution of a judgment within 15 days from the date when a written ruling on adding the enforcement debtor is served. With the creation of this special institution, which in spite of the same name differs from article 771 of *German Code of Civil Procedure*, enforcement proceedings are admitted to have authority to

Goods Transported by Railway, Judicial Interpretation No. 21 [2020] of the SPC.

²² Judicial Interpretation No. 21 [2016] of the SPC. In the scope of this contribution, the related articles of this judicial interpretation were not modified by the new Judicial Interpretation No. 21 [2020] of the SPC.

violate the principle of formality. Accordingly, the enforcement court could in fact expand, rather than just be subject to, the confirmed scope of liability in final judgments (Xiao, 2021, pp. 15-20).

3. Impact of Enforcement Conspiracy Damaging Outsiders

Generally speaking, the aforementioned concentration of enforcement authority in one and the same court does not necessarily mean that the separation of distinct powers could not be achieved. The key issue should be with which mechanism we could make it come true. This kind of questioning is recently intensified by the numerous occurrence of conspiracy in Chinese civil cases. It puts the position of enforcement proceedings in a more delicate situation and invites more substantial involvement from the side of the judiciary in the future.²³ The existence of conspiracy indicates the malevolent agreement between the judgment debtor and a bad-faith third party against the judgment creditor. It is a serious legal problem which could be attributed to a variety of social, economic and legal factors. The criminal prosecution of the false litigation is currently among the most crucial issues in practice.²⁴ For instance, both the debtor and the third party may agree on the existence of contractual rights or even some real rights (*jus in re*) of the third party. Or they may settle their false case with confirmation that the third party has right on the assets which actually belong to the debtor.

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

23 The area of arbitration law encounters some similar problems in China. Although it is commonly agreed that in some optimal situation, the commercial arbitration practice in China should follow the direction of international standards. This tendency is supposed to exist not only in international or foreign-related cases, but also in the purely domestic cases. However, because there is obviously the same conspiracy issue, during the newest modification process of the *Arbitration Law* since 2020, which originally took effect in 1995, the voices to add some substantial intervention even after the final arbitral award is given are sound and clear.

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

V. Protection of parties during enforcement

1. Primary Protection of the Enforcement Creditor

Then when it comes to the major players in enforcement proceedings, the relationship between the enforcement court and each of the parties is to be observed. Since the enforcement title by its nature acknowledges the existence of some substantive rights of the enforcement creditor, efforts in executing a final judgment aim undoubtedly at the protection of the enforcement creditor. When it comes to the effectiveness of enforcement proceedings, effectiveness means the effective legal protection which conforms to the *Constitution* and is also in favor of the creditor (Baur, Stürner & Bruns, 2006, pp. 81-82).

In this sense, the enforcement organ, which may even be requested to be neutral by laws, could still to a great extent share mutual interests with the creditor in enforcement proceedings. Both the creditor and the enforcement organ are facing the difficulty in enforcement (Zhao, 2010, pp. 577-578). It is well known that following the CCCPC Rule of Law 2014, the SPC began its campaign for the resolution of difficulty in enforcement. We may wonder who is accountable for this difficulty. Although other entities such as local governmental agencies, private companies with the duty to assist the enforcement officer, some influential third parties and so forth may contribute to the hardship in enforcement proceedings, the debtor who fails to perform the debt in the first place is to be held liable. It does not depend on whether the debtor is insolvent or rather has sufficient property while refusing to pay. Regarding positions of the creditor and debtor against the court, if the court intends to blame the debtor, it could be presumed that the creditor will be in contrast favored. And even if the enforcement court's responsibility should be mitigated and the creditor has now to take some business or day-to-day risk, this advantageous position of the creditor will not be changed fundamentally.

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

2. Necessary Protection of the Enforcement Debtor

On the other hand, although the function of enforcement proceedings concentrates on effectively protecting the creditor, there should be legal limitations on this process of execution on account of the protection of the to-be-enforced debtor. While granting the enforcement organ general permission to affect debtor's property rights, freedom and so forth, the *Constitution* should also mark the boundary between legal and non-legal activities (Baur, Stürner & Bruns, 2006, pp. 82-93). Since China has not made use of any privatized enforcement agent which has to act for its creditor clients by its nature, respecting the rights of debtors should not encounter some inherent difficulty (Kennett, 2003, pp. 100, 104).

First of all, the interests of the debtor are protected by procedural rules directly. For instance, when the debtor conceals its property and tries to frustrate enforcement proceedings, article 248 of the *Civil Procedure Law* empowers the enforcement court to issue a search order which is signed by the president of the court. The necessity of having a special order for initiating the search measure is of significant nature. The Chinese rule differs from the German counterpart stated in article 758a of the *German Code of Civil Procedure*, which also requests a search order normally and takes the consent of debtor, the possibility of jeopardizing the success of the search and so forth as available exceptions (Brox & Walker, 2018, pp. 188-194). In such cases, in order to protect the constitutional right of the enforcement debtor based on section 2 of article 13 of the *German Basic Law*, it is in Germany accepted that the court has to play a role in giving the search order. The court has to supervise the operation of the search. Other than the German enforcement officer appointed by but parallel to the German court, the enforcement officer in China directly belongs to the personnel of the court. Regarding the relationship between the enforcement officer and the court in China, the court is rather supervising itself when it determines whether to make a search order. Theoretically speaking, similar to the Japanese understanding following section 2 of article 123 of *Japanese Civil Enforcement Law*, it could be alternatively argued that an additional search order is unnecessary because it could be presumed that the power to search is an inherent one of the enforcement officer. Nevertheless, Chinese law tries to safeguard procedural justice in a more prudent manner. Besides the applied procedure regulated in article 498-500 of Interpretation of Civil Procedure Law, the president of the court has to approve the plan of search at the first place. The procedural arrangement could not prevent the misuse of enforcement power entirely, whereas at least the procedure itself counts. Taking the not unusually abused discretionary rights of the public authority in China into account, procedural steps aiming at controlling it are without dispute wanted.

Moreover, in considering whether and how to employ enforcement measures, the principle of proportionality plays a crucial role (Kerameus, 2014, p. 10-19). Accordingly, the enforcement court has to provide adequate protection to the debtor's family in the form of exemptions (Chase et al. 2017, p. 619). For instance, both the

second sentence of section 1 of article 243 and the same sentence of article 244 of the Civil Procedure Law emphasize that the enforcement court shall ensure that necessary living expenses for the debtor and his/her dependent family members are exempted from being executed, when the court withholds a portion of the debtor's income, seizes the debtor's assets and then sells them off. And in accordance with sections 1 and 2 of article 5 of the *Provisions of the SPC for the People's Courts to Seal up, Distrain and Freeze Properties in Civil Enforcement* (hereinafter referred to as the Provisions Seizure 2004)²⁵, clothes, furniture, kitchenware, tableware and other necessities for family life, together with the living expenses necessary for the debtor and his/her dependent family members, are excluded from the enforceable assets of the debtor as well. Moreover, the same legal norm lists some special property of the debtor which may relate to the necessary protection of his/her interests as well as the interests of his/her family. Articles necessary for compulsory education, unpublicized inventions or unpublished works, auxiliary devices and medical articles necessary for the physical disability and articles of honor and commendation, are understood as unenforceable items. Although not formally enumerated, the religious items enjoy this kind of enforcement exemption too.

Respectively, the SPC announced the *Opinions on Further Intensifying the Ideal of Enforcement with Goodwill and Politeness in the Enforcement Work* (hereinafter referred to as the Opinions Enforcement Goodwill 2019)²⁶ at the end of 2019. With this document, the judiciary in China intends to concretely facilitate a more strict, standardized, impartial, and polite enforcement system and promote the sustainable, sound, and high-level operation of the enforcement work. Using the academic terminology, to be applied is the principle of proportionality,²⁷ which leads to the protection of the debtor to the maximum extent and the avoidance of excessive enforcement, while the prevailing party still should have its rights realized as determined. Although there is no explicit prohibition of the *contra bonos mores* hardship following the example of article 765a of the *German Code of Civil Procedure*, the spirit of this German rule is shown in this Chinese judicial policy.

This policy represents the fundamental requirement of sentence 3 of section 1 of article 242 of the *Civil Procedure Law* which limits the enforcement to the enforcement title. Firstly, excessive or inconsiderate seizure ought to be strictly prohibited. For instance, in case of a number of properties to be enforced, the enforcement court shall select the property which has less impact on the work and living of the debtor and is

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

26 Document No. 35 [2019] of the SPC.

27 It is also argued that when it comes to the underlying political purposes as well as features of the Chinese enforcement mechanism, this new judicial policy differs from the principle of proportionality. See Chen H. (2021). Shan yi zhi xing bian [On the principle of civil enforcement in good faith], *ECUPL Journal*, 2021(2), pp. 30-40. DOI: CNKI: SUN: HDZX.0.2021-02-003.

easier to be enforced.²⁸ If appropriate, the debtor could suggest the order of enforcement among different properties, while without justifiable reason, the court shall accept the suggestion. And when the bank savings are to be frozen, the frozen amount shall be specified and the transfer and use of the savings beyond the amount shall not be affected. Where the overall value of an apartment to be seized obviously exceeds the amount of creditor's rights, seizure measures shall be limited only to the corresponding value portion. It means that the scope of the seizure taken by courts may be narrower than the range of the requested duty to report property in accordance with article 241 of the *Civil Procedure Law* and its similar counterparts Part 71 of the *Civil Procedure Rules of UK* or article 802a of the *German Code of Civil Procedure*. If the workshops, machinery equipment, and other production materials of an enterprise are seized and the continuous use of them has no significant impacts on the value of the property, the enforcement court shall approve such kind of use.

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

The most vigorous tool in the hand of an enforcement officer is the power to carry out some credit punishment via indirect enforcement measures. The credit of a natural person or legal person has great importance in modern society and a lower social reputation could affect the lives of most persons dramatically. Just because of the comprehensive nature and the severe consequences it may give rise to, the credit network and its major application, lists of dishonest enforcement debtors, could be misused. These lists are similar to the long-lasting tradition of having a public list of debtors in Germany. A related judicial interpretation, which was named as *Several Provisions of the SPC on Issuing the Information on the List of Dishonest Judgment Debtors*²⁹ and was released originally in 2013 and then amended in 2017, could not exhaust all possible applications of these lists. Is it of constitutionality to circulate the listed debtor's status of being dishonest to its relatives, neighbors or even the person who makes a phone call to the debtor? Should the court and the local bureau of education be allowed to prevent the children of the debtor from going to a private or even public school? If the close relative of the debtor is struggling with some severe illness, is it suitable to list the debtor nevertheless and forbid it to travel even for a visit to hospitals in other provinces? For the purpose of insisting on the principle of

28 Similar arrangement in comparative law, see Kennett, W. (2018). Different National Enforcement Structures And Their Consequences For Cross-Border Enforcement, In Rijavec, V., Kennett, W., Keresteš, T., & Ivanc, T. (Eds.), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast*. Wolters Kluwer. p. 339.

29 Judicial Interpretation No. 7 [2017] of the SPC.

proportionality, some public law scholars have paid close attention to the operation of this network and intended to draw the line for the practitioners including enforcement officers (Wang & Huang, 2021; Shen, 2019).

3. Exceptional Encouragement for Diligent Creditors

Some special consideration should be given to the situation of multiple creditors during enforcement. In such occasions, not just interests of one creditor and one debtor are to be balanced, but the distribution among different creditors should also be well arranged (Kennett, 2000, p. 93). Like the counterparts in continental legal systems, the Chinese enforcement law does in general adopt the principle of individual enforcement (Baur, Stürner & Bruns, 2006, p. 4). Therefore, the implementation of any enforcement measures is for the benefit of the specific creditor who has initiated enforcement proceedings. Here is the priority principle to be applied. Section 1 of article 88 of the Enforcement Provisions 1998 rules that when a couple of creditors apply for enforcing the assets of the same debtor and any right of them does not enjoy some substantive priority of repayment such as mortgage, pledge or lien, the order of paying off is determined by the sequence of taking enforcement measures. Nevertheless, an exception is acknowledged, when the debtor is an insolvent natural person who is generally until now impossible to be bankrupted under Chinese law.³⁰ Instead, its creditors have the opportunity to apply for a ‘fair distribution in judgment execution’³¹, where the principle of equality applies generally. In this sense, article 510 of the Interpretation of the Civil Procedure Law states that, after the liquidation of enforcement expenses and rights enjoying substantive priority of repayment, ordinary creditors will in principle be repaid in accordance with the proportion in the total debts which have been claimed in the fair distribution process. This rule is not something totally new, but originally appeared in article 94 of the Enforcement Provisions 1998.

To the contrary, the *Enterprise Bankruptcy Law* follows the principle of collective enforcement in section 2 of article 113. After settling the rules for the sequence of liquidation among different types of claims, it is said that the insolvent assets shall be distributed according to the proportion, when they fail to satisfy the requirements for liquidation in a same sequence. Respectively, a legal-person debtor is no longer suitable for the fair distribution process since 2015, when the Interpretation of the Civil Procedure Law explicitly directs them to turn outward to the bankruptcy proceedings

30 However, it is noted that some local legislation in China may walk ahead compared to the national statute. For instance, Shenzhen Special Economic Zone in Guangdong Province has promulgated in August 2020 its own version of personal bankruptcy regulation. This law, which takes effect in March 2021, confirms among others the possibility of fresh start for any ordinary citizen. The local authority establishes a new bureau for the administration of bankruptcy affairs at the same time. If we take the *U.S. Consumer Bankruptcy Reform Act of 2020* into consideration, which was introduced to amend *U.S. Bankruptcy Code* at the end of 2020, it is not hard to discover that the progress in both countries aims at the modernization of personal bankruptcy.

31 On the introduction to this fair distribution mechanism and reflective comments on impact of it to the practice in China before/after the judicial interpretation of 2015, see Zhang, Z. (2019). The Corporate Bankruptcy Substitute in China. *Colum. J. Asian L.*, 33, 172-218. DOI: 10.7916/cjal.v33i1.5455

from the enforcement procedure. Failure in initiating the bankruptcy proceedings implies that the principle of priority still applies, as enforcement proceedings continue. Hence, article 96 of the Enforcement Provisions 1998 is abolished, which refers to the application of fair distribution mechanism in case of an enterprise. As a result, the date of implementing enforcement measures, for instance taking impoundment, matters in each enforcement case. Article 516 of Interpretation of the Civil Procedure Law demands that the sequence of payment in this case should be as follows: enforcement expenses, rights enjoying substantive priority of repayment, the ordinary creditor's right which was taken control of by the enforcement court at first and the other common creditor's rights which come later.

Yet, the problem left is, despite the application of individual enforcement in case with some debtor of insolvent natural person, whether encouragement should be given to the creditor taking active steps to discover the assets to be enforced. The answer under Chinese law is a 'yes and no' or in German, 'jein'. In case of multiple competing creditors against one and the same debtor, the current law tends to enable one of creditors to obtain bonus during enforcement if it has substantially facilitated the discovery of debtor's assets. Article 510 of the Interpretation of the Civil Procedure Law chooses the principle of equality while literally using the term of 'in principle' in this norm. It is attributed to the respective severe dispute in practice on the question of whether the creditor seizing the debtor's assets at first ought to be encouraged and rewarded in this 'fair' distribution. If not, there could be less incentive for any creditor to actively take part in the process of searching for property. Rather, it is reasonable for them to stay at home and to be a free rider who takes the advantages of other creditors and in most cases, the advantages of the enforcement court. The reason would be very simple: it is not 'fair' for any diligent creditor (Chase et al. 2017, pp. 618-619). Conversely, this argument may not always be reasonable, since the Chinese approach differs from many jurisdictions regarding the responsibility of property discovery. If the court inquires the assets of the debtor and levies them *sua sponte*, it is hard to declare that the enforcement creditor, who has started enforcement proceedings in the first place, deserves to obtain a preferential position during the distribution stage of the whole proceedings (Kerameus, 2014, pp. 10-127, 10-138). The contribution to the successful discovery of assets refers merely to the commencement of enforcement proceedings on its motive. It seems not to be of great significance.

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

VI. Concluding remark

Due to the active role in making the execution of final judgments and other enforcement titles possible, the enforcement organ stays in the center of enforcement proceedings. Especially, Chinese law has taken a special approach from the comparative perspective. The judiciary acts also as the single enforcement organ. Although only the public authority is competent to enforce, there are still private efforts in practice which may continue existing even after a more advanced public enforcement mechanism is finally established. Having functions of adjudication and enforcement at the same time, People's Courts endeavor to promote separation of both functions which enables proceduralists to consider it in different aspects and based on the practical problems in Chinese context. The enforcement organ's job is to protect the conflicting interests of both parties to different extents. When multiple creditors take part in enforcement proceedings and the distribution of enforced assets of the debtor, we have to explore available means to encourage the substantial participation of any ordinary creditor.

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