

The Protection of The Rights of The Respondent in Civil Compulsory Enforcement.

Erqing Liu *

Law School, Peking University, Beijing China

* Corresponding Author Email: 170001639@pku.edu.cn

Abstract. This article focuses on the important role of safeguarding civil rights during the execution process. Due to the unequal rights and obligations between the parties in the execution process, citizens find it difficult to resist the exercise of public power, resulting in the infringement of their property rights and personal rights during execution. To address the above issues, this article proposes the improvement of the execution system and execution supervision, as well as the enhancement of the protection of the respondent's property and human rights and specific institutional suggestions. This article mainly focuses on the operation of public power in the execution process, which plays an important role in protecting the rights of the respondent. The status of the respondent in the execution process should be elevated, and public power should be restricted and supervised. When necessary, public power should also intervene and assist the respondent.

Keywords: Enforcement; Respondent; Protection of rights; civil.

1. Introduction

The protection of rights is an important cornerstone of the effectiveness of law, in which the enforcement system is an important legal measure. Without this system, the effectiveness of implementation and the strength of legal credibility will be meaningless. Therefore, in order to ensure the effectiveness of the judgment and the rights of both parties, we should pay more attention to the importance and necessity of enforcement policy, and constantly explore and improve this system. In essence, the compulsory execution system is to regulate the disputes between the power parties through public relief, that is, the right of the state to intervene in the private rights, and to protect the rights of both parties. In this process, the respondent needs to transfer certain rights, face the national rights many times stronger than itself, and accept mediation [1]. In such a situation of unequal rights, if the public rights cannot be well restrained, it is very easy to infringe on individual rights. If the problems of "difficult implementation" and "disorderly implementation" are not solved, there will inevitably be the result of infringing on individual rights. As a remedy of the enforcement system, the enforcement system should be fair and protect the rights of citizens. Therefore, the study of enforcement system is very necessary. The rights and obligations of the applicant and the respondent in compulsory execution are determined by the trial procedure. If the respondent fails to actively fulfill the obligations of the legal judgment, the people's court may take measures such as sealing up, distraining, freezing the respondent's property in accordance with the law, and then use methods such as selling or auctioning to realize the enforced property, so that the applicant's creditor's rights can be realized.

The respondent enjoys all the rights that citizens should enjoy in accordance with the Constitution during the execution, including the rights to personal dignity and property that are easily infringed upon. Property rights are originally infringed upon due to the need to transfer a portion of their rights for enforcement, sometimes due to inaccurate valuation, overly strict enforcement, and other reasons; For the right to personal dignity and privacy, due to the fact that the respondent is in a disadvantaged position during enforcement, sometimes the applicant or enforcement personnel may naturally have a sense of superiority derived from the ability to enforce others, as well as social discrimination against the identity of a rogue, ignoring the privacy, portrait, and other rights that the respondent should also enjoy[2].

The background of this study is that respondents in civil enforcement proceedings in China are easily subjected to rights violations during the execution process. Excessive punishment of the respondent can be detrimental to the repayment of debts. Therefore, protecting the respondent's rights is crucial, and comprehensive research is necessary from the perspectives of legislation, law enforcement, and the judiciary. This study mainly focuses on the property rights and personal rights of the respondent. It analyzes how the respondent's property rights are violated during execution, how the evaluation of executed properties does not reflect their true value, how excessive restrictions on high consumption harm the respondent, and how the respondent's personal dignity rights are easily violated and how execution excessively deprives the respondent of their rights. To address these issues, it is necessary to continuously improve the legal system and regulate the legal operation of execution power, improve the protection of the respondent's personal dignity rights, and enhance the protection of the respondent's property.

This paper will use the methods of value analysis and case analysis to analyze why the respondent will be infringed, what kind of infringement it is vulnerable to, how to improve this problem and the possible future development direction.

The first part will describe the enforcement system and the respondent's legal status, rights and current enforcement measures. The second part will explain the problems and reasons that the respondent will encounter, the third part will put forward some solutions, and the fourth part will put forward some possible improvement directions in the future.

2. Cause analysis

Although our country has many policies to protect the rights of both parties involved in legal proceedings, it is still difficult to protect the rights of the respondent in practice. Below, I will briefly explain and analyze the main issues and reasons concerning the protection of the respondent's rights.

2.1 Infringement Of Property Rights Subject To Enforcement

In the process of enforcement, the property rights of the respondent can be infringed due to the negligence or intentional misjudgment of law enforcement officers on the value of the respondent's property. As there are many cases and few staff members in grassroots courts, it is inevitable that some inaccurate valuations and judgments will occur due to time constraints and a large caseload. Therefore, cases should be appropriately distributed, and the number of staff members should be increased [3].

90% of corruption occurs during the enforcement stage, and 90% of the corruption during the enforcement stage occurs during the auction process. Public relief means rights, and in the face of rights, the rights of citizens are easily infringed. Many citizens whose properties have been infringed upon by state power also choose to silently submit. Sometimes, forced settlements and low-priced auctions without valuation can easily cause infringement issues.

Therefore, the valuation stage is prone to corruption problems, causing infringement of the respondent's property rights.

After the judgment, the respondent has to work hard every month to pay off the debt as soon as possible, but he/she does not have enough money to support himself/herself, and even basic living needs cannot be guaranteed. According to the city where the respondent is located and how many dependents the applicant needs to support, it should be determined how much money the respondent needs to maintain the minimum living standard and how much money the respondent and his/her family need to achieve self-realization and growth. Empowering respondents can help them better realize social value, repay their debts as soon as possible, and become people who can create value for society.

The application of compulsory enforcement gives the enforcement authorities a considerable discretion. For example, it is difficult to define the definition of high consumption in restricting high consumption. Luxury goods, high-end hotels, and restaurants should be subject to monitoring

restrictions. However, it is challenging to define how much money is considered high consumption for some daily necessities. For example, household nannies may be considered high consumption, but if a family member does need the care of a nurse due to health conditions, it should not be restricted. The definition of high consumption can only be determined through checking ID cards in relatively large consumption places. If cash is used to purchase goods in places where ID cards are not required, it will not be detected [4].

The limitation of high-speed rail and air travel for the respondent due to the enforcement can only result in higher consumption and waste of time, thus constituting an inverted outcome. Instead, it should restrict the purchase of first-class seats, business class seats, or first-class and business-class cabin tickets.

Finally, this kind of restriction on high consumption cannot effectively punish people with extremely high income.

2.2 The Dignity Rights Of The Respondent Are Easily Infringed

To ensure the survival, dignity, and developmental needs of the respondent and their families should be guaranteed, but the current excessive deprivation of their rights has become a more common problem. Among them, privacy and reputation rights are clearly vulnerable to infringement.

The term "deadbeat" usually refers to those who have the ability to repay their due debt but refuse to repay all or part of it for various reasons. In Chinese culture, there has been significant discrimination against "Lao Lai," with the belief that they have no personal dignity rights. Currently, some "Lao Lai" are being broadly referred to as the executed person, but there are different situations where some have the ability to fulfill the obligations but refuse to do so for various reasons, while others do not have the ability to fulfill them which is different due to their reasons [5]. If they are all referred to as "Lao Lai," it will make listeners feel that all executed persons are morally corrupt and undermine their personal dignity rights. In fact, many respondents do not intentionally fail to perform their obligations, and the majority of the respondents are unable to repay their debts due to circumstances beyond their control.

In research, many scholars believe that there are many unreasonable aspects in the current laws, which impose overly strict limitations on the rights of the respondents. This is mainly reflected in the over-disclosure of the respondents' information, which results in the negative consequences of "losing trust in one place, losing trust everywhere" and the difficulty respondents face in exiting. During execution, execution agencies have disclosed too much private information of the respondents on public platforms, resulting in the respondents being excessively condemned by the public, causing great pressure and adverse effects on their mental and daily lives. After losing trust, many avenues for self-realization are blocked for the respondents, and they are subject to discrimination in their work and daily operations, making it difficult for them to realize their own value. The period of non-compliance for respondents is too long, and even after the respondents fulfill their obligations, their information cannot be cleared in a timely manner, affecting their normal lives.

2.3 Cause Of Formation

There are several factors that lead to the violation of the personal dignity rights of respondents in China's enforcement system. Firstly, the high volume of cases and the complexity of the cases often put significant pressure on court staff. To address this issue, the workload should be distributed more evenly among courts, and more employees should be hired to alleviate the burden. Additionally, there are some aspects of the court system that are difficult to supervise effectively, such as information disclosure. The courts need to be more stringent when handling information related to the respondents.

Moreover, some cases have violated the respondents' property rights as a result of overestimating the respondent's property status during the process of investigating their financial situation. This can lead to an incorrect determination of the amount of property subject to enforcement and the amount of money the respondent needs for their living expenses, which can severely impact the respondent's ability to maintain their livelihood.

Although the enforcement system has improved in recent years, there are still gaps that make it difficult for respondents to seek relief. The reconsideration system is relatively generic and sometimes faced with cases that require reconsideration, respondents have difficulty knowing where to start or whether they are eligible to use the reconsideration system. This makes it challenging for many respondents to raise questions and seek solutions when their situation changes.[6]. Additionally, there is no specific review body during the objection review process, making it difficult for respondents to obtain assistance. Departments often pass the buck and push the problem onto other departments, leaving the respondents in a difficult situation.

Finally, even when there are obvious flaws in the execution, it is challenging to raise objections, which makes it challenging for respondents to protect their interests. Therefore, the court and the entire enforcement system should pay more attention to the personal dignity rights of the respondents and ensure that they are protected.

3. Solution

Due to the current situation in China where the rights of the respondent are difficult to guarantee, we need to continuously improve the legal and law enforcement system and law enforcement supervision in order to address the problem at its root. We should also pay attention to the standardization of grassroots execution and establish channels for the respondent's appeals.

3.1 Improvement Of The Power System

Although a respondent's loss of trust greatly affects the interests of creditors and the order and dignity of the law, it is necessary to give serious punishment. However, we should not generalize all respondents, and we should establish punishment levels based on the reasons for the respondent's loss of credibility. In punishing them, we should also set clear legal limits on restrictions, the purpose of which is to encourage the respondent to fulfill their obligations well, rather than to punish for the sake of punishment, infringing on the respondent's rights. The principle of proportionality should be applied in law enforcement, choosing the way that causes the least harm to citizens and protecting the appropriateness, necessity, and balance in the enforcement process.

In the enforcement process, the first thing to do is to determine the standards for determining the respondent and establish fair regional standards, ensuring the neutrality and equality of the enforcement, protecting the rights of both the applicant and the respondent. Enforcement should satisfy the basic living needs of the respondent and their family situation, enabling them to maintain their livelihoods.

3.2 Regulate The Lawful Operation Of The Execution Power

To improve the rights of the respondents, we should adhere to the principle of balancing rights and measure the appropriateness of punishment measures from the perspective of goals, with the aim of encouraging the respondents to fulfill their obligations, rather than punishing them for the sake of punishment [7].

We should ensure that staff have sufficient time to handle every case and avoid overloading work. When conditions permit, multi-round evaluations should be used to reduce the probability of errors.

The mandatory execution system is a procedural aspect of civil law. There are no detailed provisions on the processes and legal personnel responsible for and involved in each step of execution, which can easily lead to violations. Therefore, inspection measures should be improved, or a separate law on mandatory enforcement should be established.

The separation of trial and enforcement reduces the cost of corruption and bribery, making it easier for legal personnel to commit such acts. When the two types of public power are exercised separately, they can supervise each other by comparing the data in the trial and execution processes.

We should strengthen the supervision and review of enforcement authorities, improve inspection measures, and monitor the accounts and property of court-related personnel, taking note of large sums of money or income of unknown origin [8].

The addition of a callback system to visit the respondents and inquire if they have encountered unfair and unjust treatment ensures procedural justice and standardized enforcement procedures, and guarantees the interests of all parties, including the applicant, respondent, and third parties.

We should regulate the evaluation of the income and property status of the respondents, conduct execution in a more scientific manner, regularly confirm the status of the respondents, such as their income, family, and physical conditions, and adjust the execution amount accordingly if there are significant changes.

Finally, we should safeguard the interests of all rights holders, including the respondents, applicants, and third parties, maintain a fair legal system, and prevent any form of bias or injustice.

3.3 To Improve The Protection Of The Personal Dignity Of The Respondents

Applicants and law enforcement personnel shall not infringe upon the personal rights and personality rights of the applicants, including but not limited to seeking debt repayment through violent means; threatening the applicants and their families; conducting enforcement measures such as sealing during special periods such as nighttime and holidays against the executed party; affecting the daily life of the executed party and disturbing their daily business activities; disclosing unnecessary personal information of the executed party, such as residential address; using derogatory terms such as "defaulters" to refer to the executed party; and harassing the family members of the applicants[9].

In addition to incorporating these rights protection issues into legal provisions, they should also be implemented in practice, and legal assistance should be provided promptly when the applicants are infringed upon.

In addition, the cost of expert appraisal is also borne by the respondent, and only the designated institution recognized by the court can have legal effect. The cost of appraisal should also be strictly regulated to avoid situations where certification agencies can charge arbitrary fees. A complete price list should be established, and charges should be strictly enforced based on the price table. Appraisal personnel shall not use the results of the appraisal to extort money or property from the respondents. Clear valuation standards should be established for the executed finances to reduce the discretion of appraisers, ensuring that the appraisal is standardized.

3.4 Possible Directions For Improvement

When there are no assets available for enforcement, it is necessary to make reasonable use of the assets of the enterprise, revitalize zombie companies, and guarantee the payment of employees' wages.

Revitalizing zombie companies and empowering them to better realize their own value is also an important part. Since the executed property belongs to the applicant, the applicant should be granted certain discretionary rights, provided that the applicant is able to repay the debt. For example, when the total amount of debt owed by the executed party is not significant, priority should be given to the enforcement of small assets of equivalent value, and large assets such as real estate should not be auctioned off. If several executable properties have similar values, the executed party should be given the opportunity to choose which one or ones to enforce [10].

In some cases where enforcement is not possible because the executed party has no assets, and the applicant has family members to support and is disabled, the court provides spontaneous assistance to the applicant.

4. Conclusion

The background of this study is that there are currently some legal loopholes in the protection of the rights of respondents in civil enforcement in China. These loopholes lead to potential harm to the

rights of respondents during the enforcement process. Imposing harsh penalties on respondents can negatively impact their normal lives and hinder debt repayment. Therefore, the issue of protecting the rights of respondents is extremely important and requires in-depth research from various aspects including legislation, law enforcement, and the judiciary.

This paper primarily focuses on the property rights of respondents and their personal rights. It analyzes the infringement of the property rights of respondents during enforcement, undervaluation of executed property, overly broad restrictions on high consumption, as well as the potential violation of the dignity rights of respondents and excessive deprivation of their rights during the enforcement process. It is important to continually improve the legal system, regulate the legitimate operation of enforcement powers, enhance the protection of the dignity rights of respondents, and ensure the protection of their property.

One limitation of this paper is the lack of validation through practical court cases and the absence of statistical data on cases. In the future, efforts will be made to collect and improve data to better validate the conclusions.

Acknowledgements

This paper was supported by my professor Pan Jianfeng, for his invaluable instruction, inspiration. Without his previous advice and guidance, this study could not have been completed. Also, I must express my sincere thanks to all the professors in Peking University Law School, for their enlightening courses and lectures in these four years of study.

Reference

- [1] Yang Lixin. The Participation Allocation System in Civil Enforcement Procedures. *Journal of Legal Science: Journal of Northwest University of Political Science and Law*, 1994(1): 86-89.
- [2] Li Hao. On the Discovery of Debtor's Property in Civil Enforcement. *Law*, 2007(12): 55-65.
- [3] Ma Dengke. Initiation and Perfection: An Interpretation of Civil License Execution Appeals. *Journal of South-Central University for Nationalities: Social Sciences*, 2010(5): 117-122.
- [4] Cao Fengguo. The Dilemma and Way out of the Effectiveness of Civil Execution Conciliation Agreements: Taking Article 230 of the Civil Procedure Law as a Starting Point. *People's Justice*, 2013(15): 105-109.
- [5] Liu Yanfang, Yu Hengqiang. Analysis of the Reasons and Countermeasures for the Difficulty in Enforcing Judgments against Natural Persons in Civil Enforcement. *Journal of Anhui Agricultural University (Social Science Edition)*, 2005, 2.
- [6] Yang Lixin. The Participation Allocation System in Civil Enforcement Procedures. *Legal Science: Journal of Northwest University of Political Science and Law*, 1994(1): 86-89.
- [7] Tan Qiugui. *Research on the Principles of Civil Enforcement*. China Legal System Publishing House, 2001.
- [8] Wang Yaling. A Brief Discussion on the Current Situation and Causes of Civil Enforcement Difficulties in China. *Legal System and Society: Bi-weekly*, 2011(12): 141-142.
- [9] Xiao Anding. The Dilemma and Countermeasures of the Suspension Procedure in Civil Enforcement. *Legal System and Society: Bi-weekly*, 2013(33): 237-238.
- [10] Xiao Anding. The Dilemma and Countermeasures of the Suspension Procedure in Civil Enforcement. *Legal System and Society: Bi-weekly*, 2013(33): 237-238.