

CIVIL EXECUTION IN VIETNAM (2): PROCEDURE FOR COMPULSORY EXECUTION: IS IT ADEQUATE FOR AN EFFECTIVE OPERATION OF CIVIL EXECUTION IN VIETNAM?

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1. Introduction

In a separate article, author has analyzed the most concerned issues of the practical operation of civil execution in Vietnam nowadays: the extremely low rate of successfully enforced judgments.⁽¹⁾ The inefficiency of civil execution, besides other factors, in the view of this paper, is resulted mainly from the shortcomings in the current procedure for compulsory execution. This Chapter first introduces the set of current legal documents on civil execution in Vietnam, and then, in an attempt to prove the relations between the weaknesses of the system with the current undeveloped law, pays a considerable attention for analysis of procedure for civil execution provided for in Ordinance 1993 focusing on the position of main actors of civil execution.

2. Scope of existing legal documents on civil execution in Vietnam

The existing legal documents concerning civil execution in Vietnam are generally underdeveloped. First, it is only a set of scattered

documents, ranging from ordinance and decrees to circulars and guidelines; second, it fails to regulate some important issues for an effective compulsory execution and third, its provisions are not necessarily clear or suitable or strong enough for the executor to enforce the court judgments successfully.

Having the highest legal force is the Ordinance 1993,⁽²⁾ which consists of a very modest number of fifty articles. Articles 1-11 set the general principles, articles 12-17 concern the organizational structure, articles 18-28 regulate formality for execution, articles 29-43 spell out the compulsory execution, articles 44-45 provide for the execution claims and protest, articles 46-47 deal with reward and sanctions and the last article relates to the applicability of the Ordinance. Thus, the number of articles, which actually deal with procedure for civil execution, including both non-monetary and monetary execution, is only fifteen. Nevertheless, the Ordinance is the main legal instrument for executors to apply in their everyday activities. Civil execution in Vietnam must be carried out in pursuant to the procedures provided for in this document and relevant to it other legal documents.

Some provisions of Ordinance 1993 receive further explanation in Decree No 69/CP of the government guide-lining the civil execution procedure.⁽³⁾ Consisting of twenty-five articles, Decree No 69/CP fills in certain gaps that Ordinance 1993 leaves unanswered. Concerning organizational matters, there is Decree No 30/CP of the Government on Organization, Duties and Competence of Civil Execution Management Agency, Civil Execution Agency and Executors.⁽⁴⁾

The other two ordinances should be mentioned here concerning the recognition and enforcement of foreign arbitration awards⁽⁵⁾ and foreign court judgments.⁽⁶⁾ Actually, these two ordinances mainly deal with court procedures for recognition of judgments of foreign court and awards of foreign arbitration to be enforced in Vietnam, while referring to the Ordinance 1993 for the enforcement. Once recognized, foreign judgments and arbitration awards seeking enforcement in Vietnam shall have to follow the procedures in Ordinance 1993 for enforcement. These two ordinances confirm the strong willingness

of the Vietnamese government to expand and develop economic relations with foreign countries, to protect the interests of Vietnamese and foreign organizations as well as of individuals.

There are also some circulars, issued at inter-ministerial or ministerial level concerning the procedure for civil execution. The most noticeable document among them is the Circular No 981-TT/LN issued jointly by the Ministry of Justice, the Supreme Court and the Supreme Procuratorate.⁽⁷⁾ The Circular regulates the implementation of some provisions of Ordinance on Civil Execution, such as the procedure for sending the copy of the judgments from a court to a civil execution agency or the method of supervision over civil execution by procuratorate. The other document is the Circular No 119-TT/LT,⁽⁸⁾ which regulates the seizure of assets of an enterprise-debtor for compulsory execution. These circulars are a type of legal documents issued by the central state agencies for implementation of laws, ordinances and decrees to solve those particular questions that do not have clear answer in current law. Since the process of revising current law often takes time, energy and requires certain procedures,⁽⁹⁾ these circulars also help to cope timely with the gaps between the theory and practice caused by the rapidly changing situation.

3. Is the current procedure for compulsory execution improved compared with that in Ordinance 1989?

Since the reform in 1993 focused on structural issues, there is little difference or improvement between the 1989 and 1993 Ordinances.⁽¹⁰⁾ The first noticeable change is that only some new articles have been introduced into Ordinance 1993. Technically the number of articles in the Ordinance 1993 is seven more than that of Ordinance 1989.⁽¹¹⁾ Article 5 adds the grounds for commencement of compulsory execution. Articles 10, 11 and 17 are totally new, as they regulate the state management over civil execution. Article 23 is a mere separation of the former Article 17. Article 46 concerns rewards and

Article 49 is a simple declaration of application of Ordinance for foreign elements. Thus, among the seven new articles, only Article 5 concerns the procedure of civil execution.

The second new feature in Ordinance 1993 is that, in the remaining articles, where necessary, the word “chief judge” in Ordinance 1989 has been replaced by the word “chief executor”; and the word “court” by the word “civil execution agency”.⁽¹²⁾ This is only due to the changing of authority of carrying out compulsory execution from the court system to civil execution agencies.

The third difference that is a noticeable improvement is Article 20, which narrows the scope of judgments, the compulsory execution of which must be initiated by the civil execution agency without creditor’s motion.⁽¹³⁾ That is to say, from now on, more freedom is given to the parties to decide what to do to better protect their rights.

Except for the little changes listed above, all the provisions regulating the procedure for compulsory execution concerning rights and duties of the executor, the debtor, the creditor and third party remained untouched.⁽¹⁴⁾ Therefore, it can be said the procedure for compulsory execution provided for in Ordinance 1993 has had little, if any, improvement compared with that in Ordinance 1989.

The reason why Ordinance 1993 represents few improvements can be explained in the following way. First, it is because of the necessity at the time in 1993 to urgently reorganize the civil execution due to the unreasonable structure that was considered the primary cause of inefficiency of civil execution.⁽¹⁵⁾ As structural reform was necessary, there was no consideration of the revision of procedure for civil execution. All efforts were paid for the building of a new system. Moreover, there was too much work to do within the structural reform, while the time and human resources were very limited.⁽¹⁶⁾

Without any necessary revision, Ordinance 1993 is extremely outdated. When the Ordinance of 1989 was drafted in the 1980’s, the central planned economy of a traditional socialist system was in control. As state-owned enterprises played the major role in commerce and production through five-year economic plans, they were highly protected. The state also was the main provider of services in the

society. This explains why civil execution was automatically initiated by courts without petition of a creditor until the time of the Ordinance 1989, which introduced the petition requirement, though the scope of judgments the enforcement of which to be commenced by court's initiative remained large. As the state was based on directives, not the law to rule society, the success of civil execution was, without necessary sanctions, relying first on voluntary compliance by the debtor. Where the compliance did not meet, using various means through bureaucratic machinery promised to reach this aim. Differently, the period after 1990's is characterized by the transformation towards a market economy, where the demanded principle is not to govern society by bureaucratic directives but by law.⁽¹⁷⁾ The state guarantees large civil rights for individuals and multi-sector economy participants but fails to timely provide a suitable and strong institution to ensure their implementation. Thus, though the attitude towards the role of law in society has been improving, the law is not yet a strong instrument to rely only on a voluntary compliance of the parties concerned.

Furthermore, newly promulgated legal documents also created a discrepancy between the laws of a market economy and the Ordinance 1993 as the law of centrally planned economy. To keep abreast with the times, a new Constitution and nearly 120 laws and ordinances, as well as thousands of implementing regulations and guidelines were adopted in the period of seven years from 1992 and 1999, more than the number of legal documents promulgated during the preceding forty years. In only four years, from 1997 to 2001, the National Assembly and its Standing Committee alone adopted one code, thirty-one laws, thirty-nine ordinances, and twenty-nine resolutions containing legal norms.⁽¹⁸⁾ The increasing volume of newly enacted laws guarantees more democracy, widens the rights and duties of participants of various areas, gives more chances for individuals to develop self-determination, and insures many new methods to recovery damaged rights, that the Ordinance 1993 does not yet cover. Moreover, newly enacted legal documents also enlarge the competency of civil execution agency in enforcing different new kinds of judgments

rendered by the newly established courts. Therefore, responding to the discrepancy between law and reality; that in the laws themselves in the new situation becomes an urgent matter.

4. Current procedure of civil execution: is it sufficient for the court's judgments to be successfully enforced?

The analysis of the current procedure of civil execution shall focus on Ordinance 1993 since it is the most important legal document regulating procedure for civil execution in Vietnam. As civil execution does involve the executor, debtor, creditor and third party, the analysis shall center on the duties and rights of these main actors.

4.1 Executor and their authority

In Vietnam, civil execution is carried out by the state agencies. According to the Ordinance 1993, the state authority has assigned the executor with the duty of carrying out the enforcement of court judgments.⁽¹⁹⁾ However, current law, though does give competency to the executors, but not strong enough for them to act as a sole representative of the state power in carrying out civil execution firmly and effectively.

4.1.1 Whether an executor has enough independence to carry out their duties?

Existing statutory regulations, this paper argues, do not grant enough independence for an executor to carry out their duties. In other words, the executor has to rely on various individuals or agencies, which in many ways can delay or interfere into the smoothness of civil execution. The provision on the appraisal committee is a typical instance. The committee is set up on case by case basis. The Ordinance requires an appraisal committee to consist of representatives of various agencies.⁽²⁰⁾ There are some weaknesses in this provision can be pointed out. First, it takes time for the executor not only to determine which agency is specialized in management of a particular asset,⁽²¹⁾ but also

to follow the procedure of sending an invitation letter, waiting for the acceptance, issuing a decision for the establishment of a committee. Second, the absence of any member is considered as a violation of the required procedure, therefore, places the executor in the position of depending on the kindness and cooperation of the concerned agencies in sending the representatives.⁽²²⁾ Even worse, no sanction is available for the act of incoordination of these agencies. Third, the group decision is not necessarily correct, since the representatives are often management staff, not experts in the field. Lastly, as it is the decision of a group, it may make individual responsibility of each member unclear.

This procedure, with its unreasonableness as above argued, unfortunately shall be repeated, according to the Ordinance 1993, if the first auction fails.⁽²³⁾

The provision on the duty of a provincial and district governor to instruct relevant agencies in locality to cooperate in compulsory execution is another limitation of independence of the executor.⁽²⁴⁾ Indeed, in the days of the centrally planned economy, when the people's committee influenced all spheres of life by determinant power,⁽²⁵⁾ it helped to have good cooperation. Presently, when there has yet to become available a mechanism for liability for such an act of incoordination, if a local government shows due "consideration",⁽²⁶⁾ or performs the "duty" properly, civil execution can somehow gain benefits. Nevertheless, when this "duty" becomes "right", it causes the enforcement of a court judgment to be stuck.⁽²⁷⁾ Practice shows that instructions, among other things, can sometimes lead to delay in compulsory execution, or backlog of cases, which is considered as a good reason for the executor to be disciplined.⁽²⁸⁾

Besides this, derived from the principle of coordination, when the enforcement of a judgment seems difficult, for one or another reason, the usually applied method is to call on a meeting of the relevant agencies to come to a common decision. Therefore, in civil execution, the work of one gradually becomes the work of everyone. Thus, in this case, though many others are involved in the process, the only person who is finally responsible for the success (or unsuccess) of

civil execution is executor alone.

This, together with the principle that civil execution agency is organizationally attached to local Justice Department, which in turn is an agency of People's Committee⁽²⁹⁾ puts the executor into position to obey all the opinions or instructions of local governments in carrying out their duty.⁽³⁰⁾ In case the People's Committee itself is a debtor, it is needless to say that the executor can find a way to deal with the debtor, who is the executor's manager, in enforcing the judgment.⁽³¹⁾

Contributing to the delay of compulsory execution is the dependence of the executor on ineffective litigation procedures concerning the right of appeal by the parties and the right of protest by the competent authorities.⁽³²⁾ Current procedure provides for a broad range of authorities that have the power to protest for review the legally effective judgments to postpone the compulsory execution.⁽³³⁾ This, together with the view that appeal is a right without any limitation, and the requirement that the appeal fee is extremely low,⁽³⁴⁾ has often been overused by the parties. Besides that, it can lead to the practice that judges, many of them still lack necessary legal knowledge,⁽³⁵⁾ may think if there are any mistakes, they can be fixed by the appeal procedure.⁽³⁶⁾ This system as a whole may cause the parties to waste time, money and energy as well as the trust in justice. It makes judgment unstable, throws away the efforts of the executor, who may feel that compulsory execution could be stopped at any time but litigation might never end.⁽³⁷⁾

4.1.2 Whether an executor has enough power to carry out their duties?

Current procedure, this paper argues, does not give an executor enough power to carry out compulsory execution successfully. The powerless position of the executor appears in various instances. First, the provision of law, that the executor can attach property in case a debtor is intentionally absent at place of execution⁽³⁸⁾ shall appear useless, if the debtor keeps the door closed. It is because the executor lacks the right to open the door to enter the premises. If the executor cannot enter the premises, how might they attach assets, which the

absent debtor keeps inside? The same problem occurs if the debtor keeps valuables on themselves or in a container as the executor lacks the right to make a search. Lacking this power terribly reduces the effectiveness of compulsory execution in Vietnam since cash or foreign currency or gold, not a bank account is a very common way to keep profits. Such a custom and practice was built up through the long history of consecutively hard fought wars and times of stagnant economy.

Second, the executor has no way to search for debtor or to identify their property, due to the lack of a sufficient registration system of assets, a due coordination between the relevant agencies and sanctions for the act of non-compliance. It is even more difficult as the transfer of the ownership in Vietnam is done, to avoid tax, often in the form of simple “hand-writing”.⁽³⁹⁾ To identify who is the real owner of the property, therefore, is extremely difficult.

Third, auction, as the only method of conversion of attached properties⁽⁴⁰⁾ limits the choice of the executor to affect judgments. In cases of no offer to purchase, the property shall left unsold, therefore, though enforceable, the judgment shall be unable to be successfully enforced. Auction alone may also create a sort of intermediary, who can benefit from it and therefore infringe the interests of the creditor or debtor or both. Furthermore, auction alone is not enough or suitable for all kinds of assets, as not all of attached properties can find their ways of conversion through this method, as some are low in value, perishable properties or out of fashion.

Fourth, the Ordinance of 1993 creates no way for an executor to deal with property-related rights. Thus, even though it can be valued in cash and can be transferred in civil transactions, property-related rights, including land use rights still remains untouched for compulsory execution. The enforcement of the land use right is a typical example. According to the Report No 55/1999 BC.THA dated May 10, 1999 of the civil execution agency of Can tho province, there have a total of 400 judgments, which order the farmers to pay the debts to the banks by the land use rights. However, none of them have been enforced, due to the fact that civil execution agency lacks the right

to attach and affect the auction of the land. Therefore, despite the truth that the debtor has assets, an executor cannot convert those assets into money for enforcement of judgment.

Fifth, the Ordinance of 1993 lacks a clear and effective procedure for the executor to carry out the non-monetary judgments. Though non-monetary judgments are just as important compared with monetary judgments, they received far less attention. There are available only three articles to regulate the procedure for non-monetary enforcement, which are mere word-by-word copies of the Ordinance of 1989 without any necessary changes.⁽⁴¹⁾ As these provisions focus on voluntary enforcement based on the humanitarian principle, they fail to contain any provision on measures or sanctions to deal with non-performance to ensure enforcement. Taking the judgments rendered by the labor courts as a typical example: the majority of labor court judgments are in favor of employees, such as orders on payment of salary or on acceptance of the employee back to the place of work. The first question is how shall those judgments be considered successfully enforced? The Ordinance of 1993 has no answer. It has no requirements, for example, that the enforcement of such a judgment shall be deemed fully enforced, if the debtor-agency practically issued a decision on payment of the stated amount, then properly served to the creditor, and the creditor fully received such an amount of money. Similarly, the debtor-agency should be required to issue a decision on acceptance of employee back to work and actually put them to workplace. The second question is how to define or treat the responsibility of the debtor-agency for their non-compliance with what the judgments require? There is no clear answer. Indeed, there has only one sanction (though it is not specified especially for non-monetary execution) in form of fine to apply to a debtor-agency for failing to act in conformity with the executor's order, but a small fine, as a symbol, does not work at all.⁽⁴²⁾ Moreover, it is the fine in the name of the whole debtor-agency, but not the authorized person as an individual, who actually possess the right or duty to act on behalf of the agency. Obviously, the fact that the judgment is not enforced is solely the fault of the authorized person. Therefore, the concept

that the authorized person bears no personal responsibility, as the fine is imposed on the agency as a whole, is unfair.

Hence, for non-monetary enforcement, there should be clearly distinguished those acts that require the debtors to fulfill by themselves and those acts that can be fulfilled by others. For the former, it is beneficial to introduce drastic sanctions, and for the latter there should be provisions for substitution. It is irrelevant to just rely on the debtor's good will to reach the aim of the justice. Reconsidering the conception of non-monetary enforcement shall be of great value, especially in the contemporary society.

Sixth, there is no sanction or relevant way for the executor to deal with third parties. They can be the members of the appraisal committee, policeman in cases of non-assistance, individuals or agencies, who possess relevant information or necessary documents, individuals or agencies who keep assets of debtors and so on if they fail to cooperate with civil execution agency. Banks or credit institutions, for instance, often refuse to provide relevant information on debtor's account, reasoning that they have to protect the customer's personal information.⁽⁴³⁾ Banks, by some ways, even allow debtors to withdraw money regardless of an attachment order.⁽⁴⁴⁾ The employer often fails to obey an order on deduction from debtor's income or fails to report the changes related to a new workplace or new income of the debtor. The implementation of an order by the executor, thus, depends totally on the willingness of the banks and employers.

All of these weaknesses in the law make the efforts of executor meaningless. In such a situation, the organizational reform alone cannot bring about the effectiveness of civil execution. Thus, the reported reason that the number of unenforceable and unsuccessfully enforced judgments remains high due to the fact that the debtor has no assets or their whereabouts are unknown does not necessarily reflect the real situation. In other words, the number of successfully enforced judgments would remarkably be increased if more effective measures were available.

It is necessary to consider the fact that at this stage when the law consciousness of the general populace is still at a low level, the law

cannot rely on inherently stubborn debtors or the uncooperative attitude of those involved in compulsory execution. Rather, the law should back up executors with muscles strong enough to carry out a just and fair execution. In the survey conducted by this author,⁽⁴⁵⁾ 88% of interviewees respond affirmatively to the question of the need to strengthen the power for executors. The same result is concerned the question on the need to introduce severer treatment for debtor's violation (*See Annex II*).

Moreover, current material benefits for executor, due to insufficient budget, are not yet a stimulus. The survey done for this paper shows that only 8% of interviewees think that a salary of an executor is high enough for living, while 41% comment the salary is an average, and 51% say that it is too low and is not sufficient for minimum living standards. (*See Annex I*). The situation that the income is low while the work is hard and risky does not encourage an executor to be devoted to the job. Because of low income, an executor may want to quit the job,⁽⁴⁶⁾ or may easily violate the law such as demand money from a creditor in exchange of a quick enforcement or from a debtor for a delay.⁽⁴⁷⁾ In addition, the facilities for civil execution agencies are still a problem. Even now, ten years after organizational reform, the offices, the equipments, budget and the like for operation of civil execution agency have still not yet been completed due to the lack of finance.⁽⁴⁸⁾ Therefore, a strong stimulus for executor's work is in the same necessity essential to increase the efficiency of civil execution.

4.2 Creditors and the mechanism to protect their rights

4.2.1 A creditor is not well protected by the current procedure for compulsory execution

Generally speaking, the reform in 1993 was eventually aimed to protect the rights of the creditor, but little has improved since. Firstly, as derived from the above-analyzed status of executor, it is very often the executors confront with obstacles while effecting the enforcement of judgments. Therefore, it is hard to say that the Ordinance 1993 properly protects the rights of the creditor for benefits of who the compulsory execution is carried out.

Secondly, according to the Ordinance 1993, the current scope of creditors who can have their rights protected by compulsory execution is limited. As the Ordinance 1993 provides only court judgments subject to compulsory execution, it excludes at least two kinds of creditors: the creditor in mutual agreements, and the creditor in arbitration awards. Though mutual agreement is often used by the parties to reach the common way to solve their problems in pursuant with the law, and then be recognized by the court, it does not include into the scope of judgment to be enforced under Ordinance 1993. In practice, some civil execution agencies accept at their discretion the petition of the creditor, and some do not. This paper advocates the view that mutual agreement between parties should be encouraged by allowing it to be enforced under the civil execution procedure, as it is a good sign of seeking not only a peaceful way to resolve disputes but also economical in term of time and money for both parties as well as the state agency. Notary documents are in the same situation. Arbitration awards, similarly, are excluded from the scope of the Ordinance 1993. An award, rendered by the Vietnam International Arbitration Center, though final, has neither the means to be enforced by civil execution, nor a way to be heard or recognized by the court.⁽⁴⁹⁾ While an award, rendered by a foreign arbitration may be recognized and enforced in Vietnam, an award rendered by its own institution may not. Even an award rendered by a domestic arbitration center is of “trial value” to the parties: when a party does not voluntarily honor the award, the other party has to recourse to the court by initiating a lawsuit.⁽⁵⁰⁾ It is the view in this paper that an arbitration institution should be strengthened as an alternative choice for parties to solve disputes.⁽⁵¹⁾ Therefore, arbitration awards should be enforced by procedure of civil execution.

Thirdly, the Ordinance 1993 appears to be bias against some kinds of creditors. Since the Ordinance creates two mechanisms for a compulsory execution to be commenced, it is assumed that there are two types of creditors. The first type is the creditors, who are individuals. The enforcement of their judgments is not automatic, unless a petition to civil execution agency has been sent.⁽⁵²⁾ Examples

of these are creditors of judgments on compensation for loss of life or health, payment of salary, payment of debts, delivery of immovable or movables and so on. The other type of creditor is the state. Examples of this type are those judgments in favor of the state, such as payment of litigation fees, return of or compensation for damage of socialist properties, fines, confiscated properties and so on.⁽⁵³⁾ In such cases, Ordinance 1993 assigns the civil execution agencies to automatically initiate civil execution by themselves on behalf of the state.

The division by the Ordinance of two classes of creditors is not reasonable. It, on the one hand, appears as discrimination between socialist and private properties, and on the other, between individuals and state agencies. This is a common characteristic for former centrally planned countries, when due to the paramount importance of state-owned property or “socialist property” to the economy; it was “untouchable”⁽⁵⁴⁾ and protected at a higher level or by all means. This term had been changed with the adoption of policy toward a market economy. Its reflection can be found in most important and newly enacted legal documents. The Constitution of 1992 (amended in 2001) and the Civil Code of 1995 already recognize private ownership and instead of the term “socialist property” introduced the term “ownership of the entire people”.⁽⁵⁵⁾ Following in this light, the Criminal Code of 1999 also adopts the policy to treat violations of all types of ownerships equally.⁽⁵⁶⁾ Moreover, the division of creditors into two groups creates confusion for executors themselves and even for creditors- agencies, as to whether the judgment belongs to the group of automatic enforcement or enforcement by a petition. To determine property, which one is socialist and which one is not is not as simple as before when only two types of property were dominant: socialist and cooperative. Presently, with the recognition of a multi-sector economy and foreign direct investment, ownership of property is sometimes mixed, and that makes it hard to define mere “socialist property”. Furthermore, the division of creditors, though aims to protect state property, actually undermines the responsibility of those who are in charge of managing and using it. State property which has been assigned to state-run enterprises, state bodies, units of the people’s

army, socio-political organizations and so on should be not only under the right but also the duty to manage and use carefully, effectively and properly by those agencies.⁽⁵⁷⁾ Then, why not require authorized person of those agencies to petition for compensation or return back the state property? If they intentionally fail to do so, why are they not responsible for compensation? Changing law in this way would be a better way to avoid the situation in which state property becomes the “property of no one”. For state property to be paid directly into the state budget, such as confiscated properties or payment of court fees, fines and so on, responsibility for petition would be with the financial agency, which is in charge of carrying of state budget or with the procuracy, who acts of behalf of the state to protect its interests.

The unequal treatment between a creditor-agency and a creditor-individual also appears in the time limitation, within which the creditor is eligible for petition for civil execution. The time limitation for individuals to file a petition is three years long and for an agency is one year.⁽⁵⁸⁾ This difference shows the intention of the lawmakers that socialist property is in priority and therefore, the damage to it should be as soon as possible restored. However, a long time limitation based on the subjects of the claims is unnecessary. The longer the period, the objects or subjects of enforcement may be changed; therefore, the harder will be the enforcement. Hence, the Ordinance should be changed in a way that all creditors should enjoy equal treatment and equal status.

The third limitation in the Ordinance of 1993 concerns the right of the creditor is that it does not protect enough right of the creditors in money enforcement. This can be seen through the distribution principle. The proceeds after deduction of execution expenses shall be distributed to creditors in order of preference as follows: a) alimony b) compensation for damage to life or health c) payment for labor d) payment for state and e) other payment. The remaining, if any, shall be returned to the debtor.⁽⁵⁹⁾

Here three shortages to this provision can be pointed out. First, it lacks a regulation on a point of time to determine the scope of creditors who are eligible for distributions. Then, there is a possibility,

as the law provides for no limitation, of disputes between creditors, who initiates the compulsory execution first and who joins later. There is also the risk that the debtor might conspire with someone to create new claims to have false creditors join in the distribution process.⁽⁶⁰⁾ If so, the debtor can keep for themselves a part of the property and thus avoid the fulfillment of obligation. Secondly, since the distribution of proceeds has to follow the above-mentioned order, it excludes hypothec creditors from priority over general creditors. In this way, it nullifies the provision of the Civil Code on priority of hypothec creditors towards the mortgaged assets.⁽⁶¹⁾ Thirdly, the rank of preference of three first orders appears unreasonable. It is hard to say that alimony is more important than compensation for lost of life or health or a salary or payment for labor. If alimony (derives from divorce) often in favor of a child, who likely has a mother (or father) to take care of, payment for labor is often the main source of income for the living of the whole family. Or in case of a fatal accident or murder or intentional injury and so on, then the loss of life or health definitely puts the creditor in a terrible bind not only mentally but also financially, therefore compensation is not less essential. Thus, the payments are in the same kinds of urgent need for keeping normal life of creditors. Therefore, this thesis argues, changing the distribution principle in the light to include a definite point of time for creditor to be eligible for distribution, an order of priority for mortgaged property, and a combination of the first three orders in the same rank of priority can eliminate the above discussed shortcomings.

4.2.2 A creditor is free from any duty to the state

One may ask what kinds of duties the creditor has procuring a judgment enforced in their favor? Amazingly, the answer is none, according to the Ordinance 1993. While failing to provide an effective instrument to protect the rights of the creditor, Ordinance 1993 does subsidize the creditor too much. After obtaining a judgment, the only thing the creditor has to do is simply send a copy of the judgment with a request to enforce it to a civil execution agency. The creditor has no responsibility to contribute to the expenses that the state bears

for civil execution. One may argue that this is the duty of the state to provide free service for society as it did in the past. This way of thinking is “a real product of socialism”.⁽⁶²⁾ Criticizing it, Nguyen Duc Chinh is also completely correct in commenting that the practice is irrelevant as civil execution is paid through the state budget, which means tax from all is now used for the benefit of some for free.⁽⁶³⁾ Let’s take an example of a case in which a rich person lends money with high interests to a poor person who obviously cannot pay the former back. The rich sues the poor, and then wins the suit against the latter. In such a case, the rich first has the court, and then civil execution agency worked for them to protect their interests for free.

This provision of Ordinance 1993 should be reconsidered since the policy of free service has changed with introduction of free market economy. Such fields as informatics, education, health care, sports, culture activities, and so on, which in the past were provided or funded solely by the state have recently undergone the “socialization” policy,⁽⁶⁴⁾ where people are encouraged to manage, invest in, pay for expenses including utilities, and share control and ownership with the state. It is still true that the state provides service for the people, which is accessible, quick and effective, but not for free. Changing this mechanism is also a way to educate people to care of their own rights and be responsible for common interests. Nevertheless, the question of how much or to what extent to “socialize” civil execution should be seriously considered.⁽⁶⁵⁾ This paper advocates that an execution fee should be introduced to avoid such unreasonableness.

Similar to the provision on free petition for compulsory execution, Ordinance 1993 does not provide a variant of prepayment of expenses necessary for carrying out compulsory execution. The only provision is that the expenses shall be born by the debtor, may be reduced or exempted,⁽⁶⁶⁾ and shall be deducted from the proceeds.⁽⁶⁷⁾ So the question is from which source to prepay the expenses, from which source to repay the amount reduced or exempted and what to do if the attached property becomes unsold? Lacking of an available financial source for executor to carry out compulsory execution is

also a cause of delay in the civil execution.

Furthermore, Ordinance 1993 does not require the creditor's duty to indicate debtor's whereabouts or property and its location to be attached for civil execution. The creditor has only the duty to make a petition, which means simply sending, together with a copy of judgment a piece of paper in writing or orally requesting the civil execution agency to commence civil execution.⁽⁶⁸⁾ The investigation on whether debtor has property has been considered as a duty of an executor, adding to their already full workload.

The Decree No 69/CP makes some progress, providing that the creditor can prove that the debtor has property 1) if the creditor wishes to re-petition and 2) in case the debtor denies that he owns the asset.⁽⁶⁹⁾ The limitation of the Decree No 69/CP concerning this provision is that, first, it applies only when a creditor wants to re-petition after the first petition has been returned to them on the grounds that the debtor had no property, and, second, it, even in this case, is a right, not a duty. This provision of law limits the initiatives and activeness of general people in protection of their own rights and creates the attitude of reliance totally on state agencies. Hence, provide available to the creditor general information concerning the debtor's whereabouts or their assets should be the duty of the creditor. At the stage the information becomes more available to public access it should be the duty of the creditor to indicate specific assets subject to civil execution. This paper maintains that this is the other available way of "socialization" for civil execution in Vietnam.

4.3 Debtor and their rights and responsibility

While Vietnamese law aims to ensure the court judgment to be successfully enforced for the sake of legitimate interests of creditors, it provides for debtors necessary means for protection of their basic rights. The balance, unfortunately, is not always successful. This appears at least through four principles in procedure for compulsory execution concerning the rights of debtors.

4.3.1 Debtor and principle of voluntary enforcement

Under provisions of the Ordinance 1993, a debtor shall enjoy voluntary enforcement basically twice. The debtor has the right to voluntarily enforce judgment before the creditor shall take any initiative to petition. Having in hand a court judgment in their favor, the creditor shall request the debtor to voluntarily obey the judgment.⁽⁷⁰⁾ This is the mere relationship between the two parties, without any intervention by a state agency. If the debtor fails to comply with the request of the creditor, the latter shall have the former complied by making a petition to a civil execution agency. From the date of issuance of a decision on enforcement by a civil execution agency, the debtor shall have up to 30 days for voluntary enforcement.⁽⁷¹⁾

The principle of voluntary enforcement is sound as it eases the tension in society and educates the debtor with the sense of honor of the law as well as gives the debtor the economical possibility to avoid unnecessary expenses, while saving the expenses of the state if compulsory execution takes place.

Nevertheless, the aim of voluntary enforcement sometimes cannot be satisfied or it even can be overused.⁽⁷²⁾ Since the Ordinance 1993 is silent on any action of the debtor concerning the assets that not yet attached, debtor's assets are generally supposed to be free of liability during the whole period of voluntary enforcement or until the attachment actually takes place. Then, if the debtor conveys, disperses or hides their assets in this period, no measure can be taken to deal with this action.⁽⁷³⁾ While the Decree No 69/CP makes progress, providing that an executor can impose a fine on the debtor if they convey assets with the aim to avoid attachment, the fine is too small to have any impact on the debtor.⁽⁷⁴⁾ Moreover, it is also difficult for the executor to prove the aim of the debtor is to avoid the attachment as well as to determine from which point of time the dispersion deems having the aim of avoiding the attachment. The biggest defect of this principle is that, except for the small amount of fine, no further measure, administrative, civil or criminal, is available to deal with such an act by the debtor. To assure that assets are available for enforcement, it is necessary, therefore, to introduce a new provision, which specifies a point of time, for example, the day the judgment of first instance

court become effective, after which any disposal of assets deemed avoiding attachment, and the disposal shall be void, for example, at the time the successful purchaser registers the asset. In addition, the sanction for the act of dispersion of assets should also be strengthened.

Second, since the Ordinance of 1993 is totally silent on the compulsory method for enforcement of court judgments in debtor-agency situations, voluntary enforcement is often forever lasting and the only method available.⁽⁷⁵⁾ Then, if a debtor-agency is willing to pay, but has no source specially designed for that purpose, or it has asset, but not willing to do so, the judgment shall not be successfully enforced. Liquidated damage compensation shall demonstrate this issue. An agency, under Vietnamese law, shall be liable for the liquidated damage occurred while carrying out the assigned duty by its members.⁽⁷⁶⁾ Aiming to ensure the quick compensation for damaged party, unfortunately, these cases become unenforceable, due to the lack of a source, which are specially designed for that purpose. This is true, when the debtor is a state agency; expenditure of their operation is from the planned in advance state budget. The other instance occurs in the enforcement of judgments rendered by administrative courts, when a state agency, such as a local people's committee⁽⁷⁷⁾ or an authorized person is likely to be a debtor. If so, how can the state authority educate or require general people to voluntarily obey the law, if those in power, regardless of reason, do not? Therefore, a new mechanism should be introduced so that the sum liable by a state agency is paid in a timely fashion.

4.3.2 Debtor and the right to be informed

The other right of a debtor is to be informed and allowed to participate in civil execution. The Ordinance 1993 requires the executor to send decisions rendered in process of civil execution to the debtor.⁽⁷⁸⁾ The debtor also has the right to be informed and present at the place of compulsory execution. This is to guarantee that the interest of the debtor is properly and timely protected.

The weakness of this provision is that it remains silent on how or in what way the executor should inform and notice the debtor

(and other concerned parties) on the matters of execution. The provision on sending different kinds of decisions to the debtor does not contain any further guidance on how to send them. Therefore, they may be sent at the discretion of the executor, by registered mail, by regular mail, or through the staff of the people's committee or may be served in person. Similarly, the Ordinance 1993 provides the mere right of the debtor to be present at, to have opinion to, or to participate in various actions of compulsory execution, but fails to provide concrete forms of notice to the debtor. It is also silent, for example, on the form of service in case a debtor is absent at their place of permanent residence, or their whereabouts are unknown. Hence, it is difficult for executor to continue any further steps if the notice to a debtor is not successful. The consequence of unclearness of this provision is that, on the one hand, it limits the chances of a debtor to personally and timely protect their rights, while on the other hand an intractable debtor to delay enforcement can overuse it. Therefore, this provision should be changed so that it ensures the debtor, by all available ways to be informed properly but also allows an executor to act in case the presence of the debtor is not available. In relation to this provision, there also should be made the proper changes in address of the debtor available to the executor. The provision of the Civil Code on a declaration of a missing person and a declaration of death also should be studied for the sake of civil execution. The service for the debtor can also be easier if succession or representation is available in civil execution. It is natural and necessary to have succession or representation in civil execution, for example, in cases of merger, dissolution of a debtor-agency, and in the absence or death, of a debtor-individual.

4.3.3 Assets, which are not subject to attachment

The duty to comply with the court judgment does not mean that all the assets of a debtor are liable for enforcement. Vietnamese law provides for the scope in four kinds of assets that are basic and essential for normal living that are not subject to attachment for compulsory execution.⁽⁷⁹⁾

There, however, exist some defects in this article that lead to violation of interests of a debtor or affect the smooth operation of compulsory execution. First, the Ordinance 1993 does not specify in concrete quantity the assets that are not subject to attachment.⁽⁸⁰⁾ While the Decree No 69/CP,⁽⁸¹⁾ followed by the Circular 119/TT-LT⁽⁸²⁾ makes an attempt to add some guidance, it is still far from being clear. For example, how much money or how many kilos of rice is considered necessary for maintaining the normal life? Having no quantitative measurement, it is at the discretion of an executor to decide. In such a situation, the executor may attach food that is necessary for the debtor and family to live or may not attach the surplus. Moreover, the quantity of the food that is “necessary for the debtor and family until a new harvest” is not necessarily reasonable. This provision was born when the major and almost the only income in society was the harvest through cooperatives (for those who worked in the agriculture) and a salary (for those who worked in fabrics and state sector). Now, not all Vietnamese work in agriculture and need not wait for a harvest. Even persons working in agriculture may have income sources other than from agriculture itself.

Second, the Ordinance of 1993 fails to include housing into the scope of assets that should not be subject to attachment. Actually, the limitation for attachment on housing is regulated by a provision concerning the procedure for attachment.⁽⁸³⁾ It is the fault not only of legislative technique, but also in the content of the law. This provision only prescribes generally the principle when an attachment of housing is permitted, but once the requirement is met, it does not have any limitation in terms of quantity. Being tied down by a general policy of a constitutional right of a person on the right to housing, an executor finds it difficult to convict the debtor and their assets out of the house; as well as lacking any limitations such treatment may vary case by case. Therefore, the law, on the one hand does not protect enough the right of the debtor if executor carries out attachment and auction; on the other hand, it affects the successful enforcement if executor stops, fearing to violate the policy.

Third, there are some other types of assets of the debtor, which

argued in this context, are not less important for the debtor and family. It includes those assets, which may or may not have much value in money to satisfy the claim of the creditor, nevertheless, have great emotional value for the debtor and family. These may be family photos, albums, medals or awards along similar items.

Therefore, keeping in mind that the proper protection of the right of a creditor without harming normal existence of a debtor and their family, as well as the need to speed up the procedure for compulsory execution in an equal necessity requires a change in the provision to include some other necessary assets, and to introduce a quantitative measurement to make the limitation of attachment clear.

4.3.4 Right of the debtors to make execution claims

According to the Ordinance 1993, a party to civil execution has the right to claim and denounce an illegal act of an executor in the process of compulsory execution.⁽⁸⁴⁾ Besides that, a people's procuratorate has competency to protest illegal decisions rendered by a chief executor or an executor.⁽⁸⁵⁾

There are some defects, which limit the possibility in having a fair settlement for claims of the debtor while contributing to a delay in compulsory execution. First, the Ordinance 1993 fails to specify the time limitation for parties to claim an illegal act of an executor. Hence, as the debtor is free to make a claim at any time, regardless of how long after the illegal act occurred or the enforcement of a judgment completed,⁽⁸⁶⁾ overuse this shortage of the law is a way to delay the enforcement. As a result, as the illegal act of an executor has happened for a long time ago, it is difficult to restore the debtor's damaged rights (if any) to the previous state. Second, while the Ordinance sets a clear period for a claim to be resolved, it does not specify any formality for a settlement, the consequence of a settlement, a method a settlement should be performed. Therefore, it limits the effectiveness in preventing or dealing with the wrongdoings of the executors. Third, current mechanism available for settlement of a claim on the wrongdoings of executors and civil execution agencies is mainly administrative in character.⁽⁸⁷⁾ That is to say, it is a mechanism where

the wrongdoings of its own staff is settled by the same and then by a higher in hierarchy civil execution agency. Therefore, it may appear to be bias toward the executors as to recognize the executor's act as illegal might harm the reputation of the civil execution work in general. Hence, this mechanism does not serve as a strong tool in eliminating the wrongdoings of executors.

5. Conclusion

Civil execution in Vietnam has an important role in ensuring the effectiveness of litigation to practically realize the protection of rights and legitimate interests of the state, organizations and individuals. Though some improvements have recently been achieved, there remains deep concern in society about the throughout the years the delay in compulsory execution. Along with the other problems caused by the situation, the underdeveloped nature of the Ordinance of 1993 is believed to be the main one. It leaves many questions unanswered or it under-regulates the rights and duties of parties involved in civil execution. Especially, the liability for the act of non-compliance is not clear. Therefore, unless an effective procedure where the right and duty of parties involved is clearly specified is soon adopted, it is hard to see any improvements in the system.

ANNEX I: THE RESULTS OF THE SURVEY ON THE EVALUATION OF THE CURRENT CIVIL EXECUTION SYSTEM

Issue I: General evaluation of current system:

- a) It is well- functioned: 18 (8%)
- b) Not well functioned: 185 (86%)
- c) No opinion/ other opinion: 11(5%)

Issue II: The fact that the current system is funded by the State is

- a) reasonable: 108(50%). These interviewees reason that

because the current system is a State agency.

- b) unreasonable: 96(45%). These interviewees explain that the State fund is limited, therefore affect the efficiency of civil execution.
- c) No opinion: 10 (5%)

Issue III: What do you think about the necessity of executor's profession?

- a) The profession is necessary, as important as other legal profession: 180 (84%)
- b) Not important: 16 (7%)
- c) Other opinion/ No opinion: 18 (8%)

Issue IV: How do you want to have the job as an executor?

Among 121 person who are now executors and staffs of civil execution agencies:

- a) want to continue the job?: 104(86%)
- b) No: 17 (14%)

Among 93 persons having other profession, such as judges, court secretaries, public notaries, legal experts:

- a) want to become an executor:35(38%)
- b) No: 58 (62%)

For person looking for a job

- a) is your first wish is to find a job in civil execution system?:
Not available
- b) No: Not available

Issue V: How do you think about the current salary for executors:

- a) It is quite high compared with other similar work, enough for a standard level of living: 18 (8%)
- b) Average, enough for a minimum living: 87 (41%)
- c) Low, not enough for the living: 109 (51%)

ANNEX II: THE SURVEY ON THE SUGGESTIONS FOR THE FUTURE OF CIVIL EXECUTION

Issue I: Which status an executor should have?

- a) a civil servant, a salaried man: 58 (27%)
- b) a civil servant, a salaried man plus certain amount formed from the commission paid by creditors: 138 (64%)
- c) a civil servant but receive only commission from creditors: 11 (5%)
- d) not a civil servant, doing business and receiving commission from creditors for the service: 7 (3%)

Issue II: Which scope of duties an executor should have:

- a) Status quo: 136 (64%)
- b) Some other works should be added: 78 (36%)

Issue III: Measures for strengthen the civil execution work:

Civil execution work should be:

- a) a private matter, a kind of service: 23 (11%)
- b) a public service, provided by state: 191 (89%)

To give more power as well as increase the benefits for an executor

- a) Is necessary: 189 (88%)
- b) Not necessary to do so,/No opinion: 7/18 (3% / 8%)

How about the duties of a creditor?

- a) a creditor needs to bear certain fee when petitions for compulsory execution: 156 (73%)
- b) Not necessary to do so/ No opinion: 15/38 (7%/18%)

Is there the need to employ more sanctions to deal with debtors:

- a) Need to employ more drastic sanctions: 186 (87%)
- b) Not necessary to do so/ No opinion: 3/25 (1%/12%)

Issue IV: Mechanism for management over civil execution work:

Civil execution agencies are

- a) to be managed by the same level judicial departments: 29 (14%)
- b) to be managed by the same level Court: 24 (11%)
- c) to be managed by a higher in hierarchy civil execution agency: 157 (73%)

d) other opinion: 6(2%)

Issue V: What do you think of possibility of reorganizing civil execution in the future:

For those who think civil execution should be a private matter or reorganized into a service for commission.

The reform in this way can be taken:

- a) from now on, at present time: 6 (2%)
- b) in 10-15 years: 25 (12%)
- c) in 20-30 years: 18 (8%)
- d) after 30 years: 20 (9%)

ENDNOTES

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- (1) See Le Thi Kim Dzung, *Civil Execution in Vietnam (1): From the Stages of Development to Current State*, Nagoya University Journal for Law and Politics,
- (2) Ordinance on Civil Execution was enacted by the Standing Committee of National Assembly on April 21, 1993 (*hereafter* Ordinance 1993).
- (3) Nghi dinh so 69/CP cua Chinh phu Quy dinh thu tuc Thi hanh an [Decree No 69/CP of Government on Civil Execution Procedure] was promulgated on Oct.18, 1993 (*hereafter* Decree No 69/CP).
- (4) Nghi dinh so 30/CP cua Chinh phu ve Co quan quan ly thi hanh an, Co quan thi hanh an va Chap hanh vien [Decree No 30/CP of Government on Civil execution management Agencies, Civil execution Agencies and Executors], art.7 (*hereafter* Decree No 30/CP).
- (5) See Phap lenh Cong nhan va Thi hanh tai Vietnam Ban an, Quyet dinh

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Dan su cua Toa an nuoc ngoai [Ordinance on Recognition and Enforcement of Judgment, Decision of Foreign Court] was enacted by Standing Committee of National Assembly on Apr.17, 1993.

- (6) See Phap lenh Cong nhan va Thi hanh tai Vietnam Quyet dinh cua Trong tai Nuoc ngoai [Ordinance on Recognition and Enforcement of Foreign Arbitration awards in Vietnam] was enacted by Standing Committee of National Assembly on Sept. 14, 1995.
- (7) See Thong Tu lien nganh Bo tu phap, Toa an nhan dan toi cao, Vienkiem sat nhan dan toi cao so 981-TT/LN huong dan thuc hien mot so quy dinh cua Phap lenh Phap lenh Thi Hanh An Dan Su [Circular No 981-TT/LN of Ministry of Justice, Supreme Court and Supreme Procuracy on implementation of some provisions of Ordinance on civil execution], Sept. 21, 1993 (*hereafter* Circular No 981).
- (8) Thong Tu lien tich so 119-TT/LT cua Bo tu phap va Bo tai chinh huong dan ke bien tai san cua doanh nghiep de dam bao thi hanh an [Circular No 119-TT/LT on seizure of assets of enterprise for civil execution], June 4, 1997(*hereafter* Circular No 119-TT/LT).
- (9) In Vietnam, legal normative documents consist of system of documents enacted by National Assembly, central state agencies as well as state agencies at provincial level. See Luat ban hanh van ban quy pham phap luat [Law on Promulgation of Legal Normative Documents], Nov.12, 1996, art 1. This Law has recently been amended by the Law on Amendment, Supplement of Some Provisions of the Law on Promulgation of Legal Normative Documents] on Dec.11,2002. See Quoc hoi thong qua Luat sua doi, bo sung mot so dieu cua Luat ban hanh van ban quy pham phap luat [National Assembly promulgated the Law on Amendment, Supplement of Law of on Promulgation of Legal Normative Documents],available online at <http://www.na.gov.vn/vietnam/index.html> (last visited February 25,2003).
- (10) The first Ordinance on Civil Execution was enacted by the State Council on Aug. 28, 1989 (*hereafter* Ordinance 1989).
- (11) See Ordinance 1993, *supra* note 2, at arts. 5, 10, 11, 17, 23, 46 and 49.
- (12) *Id.*, at arts. 4, 19, 20.
- (13) *Id.*, at art. 20.
- (14) *Compare*, Ordinance 1993, *supra* note 2, at arts.18-43 and Ordinance 1989, *supra* note 10, at arts.13-37.
- (15) For a better understanding of the reform in 1993, see Le Thi Kim Dzung,

Civil execution in Vietnam: From the Stages of Developments to Current State, Nagoya University Journal of Law and Politics,

- (16) See Nghi quyết số 01/NQ-QH9 của Quốc hội nước Cộng hòa Xã hội chủ nghĩa Việt Nam quy định một số điểm về thi hành Luật tổ chức Tòa án nhân dân [Resolution No 01/NQ-QH9 of National Assembly of Socialist Republic of Vietnam on some issues of implementation of Law on Court Organization], Oct. 6, 1992, at 1 (requiring civil execution be transferred to Government in June 1993 as the latest)
- (17) See Tran Ngoc Duong, *Tiếp tục cải cách bộ máy Nhà nước, xây dựng và hoàn thiện Nhà nước cộng hòa xã hội chủ nghĩa Việt Nam theo đường lối của Đại hội Đảng công sản Việt Nam lần thứ VIII [Continue to reform State machinery, build and enhance Socialist republic of Vietnam under the light of direction of VIII congress of Vietnam Communist Party]*, 6 Law Journal 12, 15 (1996).
- (18) See Báo cáo công tác của Quốc hội nhiệm kỳ khóa X [Report on operation of National Assembly X], at 11th session, March 15, 2002, available online at <http://www.na.gov.vn/vietnam/index.html> (last visited January, 27, 2003).
- (19) Ordinance 1993, *supra* note 2, at art. 12. Recently, for the sake of strengthening and enhancing the effectiveness of civil execution, an initiative was introduced to transfer four kinds of judgments to the ward people committees for enforcement. See Thông tư số 52/2002/TT-BTP của Bộ tư pháp Hướng dẫn chuyển giao một số vụ việc trong thi hành án cho Ủy ban nhân dân xã, phường, thị trấn trực tiếp đơn đốc thi hành [Circular of Ministry of Justice in guide-lining the transfer of some cases to commune committees for direct enforcement], Feb. 27, 2002, I, 1(a,b,c,d).
- (20) Ordinance 1993, *supra* note 2, at art.31 (requiring Appraisal Committee consist of executor, representatives of financial agency and agency specialized in management of that property). See also Decree No 69/CP, *supra* note 3, at art.15 (providing that in case of dwellings, it includes also the representatives of housing management agency and construction management agency).
- (21) The management over property was the practice of central planned economy, when the state controlled the distribution of all the necessary products in society. In a market economy, products are various; sometimes it is very difficult to say which agency, which level, or who is competent for management of some kinds of property.

- (22) Brian J.M. Quinn criticized it as can be used by the local governments to interfere into compulsory execution, if they are interested in. See Brian J.M. Quinn, *Legal reform and its context in Vietnam*, 15 Columbia Journal of Asian Law 219, 246-249 (2002) (*hereafter* Brian J.M Quinn). This provision is also criticized as it can lead to undervaluing the assets. See PHAP LUAT THANH PHO HO CHI MINH, *Dinh gia tai san thi hanh an nao cho hop?* [*How to have a suitable appraised price?*], July 16, 2001, available online at <http://vnexpress.net/Vietnam/Phap-luat/2001/07/3B9B27DE/> (visited Dec. 24, 2002)
- (23) See Ordinance 1993, *supra* note 2, at art.34 (2). The draft of the Revised Ordinance even adds more grounds for an appraisal committee to be established. See 16th Draft of revised Ordinance, Oct.1, 2002, art. 45 (4)(on file with author) (introducing new provision that allows the person who has competence to resolve the claims the right to establish new appraisal committee if first appraisal appears incorrect). Other author also proposes to maintain the provision of appraisal committee. See Nguyen Cong Long, *Cac bien phap cuong che thi hanh an dan su: thuc tien va huong hoan thien* [*Measures of compulsory execution: practice and improvement*] [unpublished Law Master's Thesis] (2000)(on file with Hanoi Law University library), at 82 (*hereafter* Nguyen Cong Long).
- (24) See Ordinance 1993, *supra* note 2, at art.7 (1).
- (25) In the centrally-planned economy, bureaucratic directives were used to ensure most of transactions. See John Bentley, *Completion of Vietnam's legal framework for economic development*, available online at <http://www.undp.org.vn/undp/docs/1999/legal/eng/index.htm>
- (26) See Brian J.M. Quinn, *supra* note 22, at 247-248.
- (27) A typical example is the enforcement of *Decision No 03/QD-KT* rendered by People Court of Thanh Hoa province dated July 19, 1995 determining the Thanh Hoa Border Trading Company pays Hanoi Thanh Ha Company VND 1,250,000,000 (USD100,000 approximately). The Supreme Court and the Supreme Procuracy has affirmed the correctness of the Decision, the period for its review has expired, and the Prime Minister and Vice Prime Minister has requested the Ministry of Justice and Thanh Hoa Governor to instruct the firm compulsory execution as debtor has assets. Despite that, the Governor of Thanh Hoa has issued the Official Letter No 2094/UB-NC dated Aug. 16, 2000 to ask for review of the Decision. Thus, the Decision, after 7 years, though final and

enforceable, became unenforceable and unsuccessfully enforced. In another case, according to *Judgment No 170/HSST* rendered by People Court of Ho Chi Minh city, dated Feb. 18, 1995, the ship named Duong Thuy I is to be disposed from Canadian citizen Chor Hang Chow for Khanh Hoa Sea Transportation Company. As the result of civil execution, the ship was sold for 595,000,000 VND and transferred to Khanh Hoa Treasury. The Judgment was then reversed by *Judgment No 980/HSPT* of Ho Chi Minh Branch Supreme Court dated Sep.14, 1995. According to latter judgment, Chor Hang Chow became the creditor, has petitioned for 595,000,000 VND, but Khanh Hoa People Committee's instruction is not to make the payment. See Bao cao so 782/THA ve cong tac thi hanh an dan su [Report No 782/THA on civil execution], Oct.16, 2000, at 8-9 (*hereafter* Report No 782/THA).

- (28) See LAO DONG [THE LABOR], *Mat chuc Truong phong thi hanh an vi de ton dong an* [The post of Chief Executor was lost due to backlog], Sept 20, 2002, available online at <http://vnexpress.net/Vietnam/Phap-luat/2002/09/3B9C0645> (last visited Feb. 20, 2002).
- (29) Ordinance 1993, *supra* note 2, at art.10 (2).
- (30) The 16th Draft of revised Ordinance even strengthens this provision, introducing, for example, the establishment by each provincial and district Governors of a permanent steering committee, consisting of authorized persons of people's committee, procuracy, court, police, justice department and motherland front for supplying concrete guidance, for coordinating in compulsory execution, and for resolving claims of civil execution. See 16th Draft of revised Ordinance, Oct. 1, 2002, art.12 (on file with author).
- (31) See, for example, *Judgment No 1281/HSST* rendered by the Supreme Court dated October 15, 1992, which orders the Vinh long town People's Committee to compensate different individuals and organization VND 2,645,026,166; US\$ 333,155 and 376 kg of 24K gold.; *Judgment No 92/HSST* rendered by the Supreme Court dated December 3, 1994, which orders the Vinh long provincial People's Committee and Vung liem town to compensate HoChiMinh branch Commercial Bank VND 11,293,871,047, Ho Chi Minh city Custom Office VND1,215,547,263; *Judgments No 39/HSST* rendered by the Central Military Court dated December 30,1994, which orders the Vinhlong town People's Committee to pay Zone I Ho Chi Minh City Bank VND 2,260,000,388,333. Though ten years have passed, these judgments

- not yet enforced. *See* Report No 782/THA, *supra* note 27, at 9.
- (32) Ordinance for Litigation of Civil Cases, art. 58 (1989) (providing that the parties shall have the right to appeal; the Procuracy at the same level with the court and the superior Procuracy shall have the right to protest the judgment of the first instance court).
- (33) *Id.* at art.72 (1989) (providing that the Chief Justice, the Chief Procurator can protest for review judgments of all courts; a Vice Chief Justice and a Vice Chief Procurator can protest for judgments of all inferior courts; the Chief Judge and the Chief Procurator of a provincial court can protest for judgments of inferior courts), and at art. 73 (providing that the time limitation for protest is generally three years, but it will not be limited, if not affect the interests of parties).
- (34) *See* Nghi dinh cua Chinh phu so 70/CP ve An phi, Le phi Toa an [Decree of Government No 70/CP on Court's Fees and Charges], June 12, 1997, art.8 (providing that the appeal fee for civil, labor and administrative cases costs US\$3 approximately), art.16 (stating that the fee for economic case costs US\$18 approximately).
- (35) At present time, there are still 400 judges, among them even chief judges and vice chief judges, who lack of degree of bachelor of law. *See* Bao cao Cong tac cua Toa an Nhan dan Toi cao [Report of the Supreme Court on Operation of Courts to National Assembly XI], Nov.21, 2002.
- (36) The overall quality of adjudication is still low to have good judgments; there are many mistakes in adjudication not only at local levels, but also even at Supreme Court. This year, concerning marriage and family matters alone, there are as many as 800 judgments, which have mistakes. *See* Speech of Depute Nguyen Van Nhuong at Discussion session at National Assembly XI, session 2, Nov. 21, 2002, available online at <http://www.na.gov.vn/vietnam/index.html> (last visited Feb. 22, 2002).
- (37) It is strongly criticized, for example, by Nguyen Khac Hieu, Vice Director of the General Department for Management of Civil Execution. *See* Bao cao so 702/THA cua Bo tu phap ve cong tac thi hanh an dan tu nam 1998 den nam 2000 [Report No 702/THA on the civil execution from 1998 to 2000], Dec.11, 2000, at 12 (*hereafter* Report No 702/THA). It is also voiced by the participants of the workshop on the problems of civil execution currently held by Ministry of Justice. *See* Toa dam ve nhung vuong mac trong thi hanh an hien nay [Workshop on the current problems of execution], Tap chi Dan chu va Phap luat [Democracy and Law], 37, 38 (2001). There was a comment that justice

is like a ghost as many cases last for decades with sets of judgments but without outcome or with an outcome that is exactly with the first one. For example, the Ms Dau's claim of return back the rented house started in 1982, with 2 judgments of court of first instance, 3 judgments of court of appeal, 3 judgments of court of appeal of final judgment, after 20 years, as at July 2002, not yet to finish. See LAO DONG [THE LABOR], *HDND TP HCM chat van vu doi nha keo dai 20 nam [People Council of HCM city questioned on the claim lasted for 20 years]*, July 1, 2002, available online at <http://vnexpress.net/Vietnam/Phap-luat/2002/07/3B9BDB4B/> (last visited July 2, 2002).

- (38) Ordinance 1993, *supra* note 2, at art 29(2).
- (39) In Vietnamese language, it is “viet tay”, which means the concerned parties only write to keep for themselves a piece of paper describe the contract, without formality and a due registration procedure. This practice was well observed by Brian J.M Quinn. See Brian J.M.Quinn, *supra* note 22, at 269. It is reported, for example, in Hai phong, among the attached dwellings, 80% of them lack legal certification on the ownership. See Bao cao so 109/THA cua Phong THA thanh pho Hai phong [Report No 109/THA of the Haiphong city civil execution agency], May 14, 1999.
- (40) Ordinance 1993, *supra* note 2, at art.34 (1).
- (41) Compare Ordinance 1989, *supra* note 10, at arts.35-37 and Ordinance 1993, *supra* note 2, at arts. 41-43
- (42) See Ordinance 1993, *supra* note 2, at art. 47. See also Decree No 69 /CP, *supra* note 3, at art. 21(providing the fine that a chief executor can apply to an agency-debtor is VND200 to 500,000 (US\$13 to 33 approximately).
- (43) See Nguyen Cong Long, *supra* note 23, at 65. Recently, it has been made clearer the duty of the bank to provide information based on legal request of relevant agency. Nevertheless, the liability remains unclear. See Nghi Dinh so 70/2000/ND-CP Ve viec giu Bi mat, Luu tru va Cung cap Thong tin lien quan den Tien gui va Tai san gui cua Khach hang [Decree on Keeping Secrecy, Storing and Providing Information Relating to Customer's Money and Assets], Nov.21, 2000, arts.5 (d), 9.
- (44) See LAODONG [THE LABOR], *Chu tich huyen viet thu tay can tro thi hanh an [The district Governor wrote a letter to obstruct the compulsory execution]*, July 28, 2001, available online at <http://vnexpress.net/Vietnam/Phap-luat/2001/07/3B9B2E91/> (last visited July 29, 2002)

- (prescribing that the bank allowed the debtor to withdraw all the money on the attached account, based on the letter of the Governor of a District).
- (45) Aimed to collect the opinions of practitioners, the author conducted a survey in a form of questionnaire containing ten questions. Five of them are designed for evaluation of current system, (**Annex I**) and other five are for suggestions to improve the situation (**Annex II**). A total of 214 questionnaires were sent to various agencies in different parts of Vietnam in the period from February to August 2002. 100% of interviewees were responded to them. Among the interviewees, 59% are executors or civil execution staff, 41% are others (21% are judges and court secretaries; 7% are public notaries; 13% are legal experts and person doing management work at the justice departments).
- (46) For example, in 2000 it was reported that 30 executors petitioned for the job changing, 18 petitioned to quite job. *See* Report No 782/THA, *supra* note 27, at 3.
- (47) In 2000, 1,951 claims concerning compulsory execution were received by the General Department for management of civil execution, 1,134 of them were claims on delay of execution. *See id.* at 5. Recently, Ministry of Justice has strengthened the control over the activities of executors. *See* Report No 782/THA, *supra* note 27, at 3. The wrongdoings of executors also have been seriously treated. *See* TUOI TRE[THE YOUTH], Buoc thoi viec hai chap hanh vien doi hoi lo[To be forced to resign two executors for bribetaking], Dec. 12, 2002, available online at <http://vnexpress.net/Vietnam/Phap-luat/2002/12/3B9C34E4/> (last visited Dec.13,2002)
- (48) *See* Chi thi so 20/CT-TTg cua Thu tuong Chinh phu Ve viec tang cuong va nang cao hieu qua cong tac Thi hanh an Dan su [Directive No 20/CT-TTg of Prime Minister on Strengthening and Enhancing the Capacity of Civil execution], Sept.11, 2001(requesting that the construction of headquarters of judgment enforcement agencies to be completed in 2005).
- (49) *See* Qui tac cua Trung tam Trong tai Quoc te Vietnam, ban hanh kem theo Quyét dinh so 204/Ttg cua Thu tuong Chinh phu [Statutes of the Vietnam International Arbitration Center, issued in conjunction with Decision No. 204/Ttg of the Prime Minister] April 28, 1993, art.8. This situation is one of the facts to cause foreign investors to worry as cannot ensure the protection of their invested assets. *See* for example, Nippon Keidanren, *Toward for the Creation of International Investment Rules*

- and Improvement of the Japanese Investment Environment*, available at <http://www.keidanren.or.jp/english/policy/2002/042/proposal.html> (last visited February 1, 2003).
- (50) Nghi dinh cua Chinh phu ve To chuc va Hoat dong cua Trung tam Trong tai [Decree 116/CP of Government on Organization and Operation of Economic Arbitration Center] Sep. 5, 1994, art 31.
- (51) The low ineffectiveness of arbitration awards is also criticized by foreign observers. See Brian J.M. Quinn, *supra* note 22, at 250-252. It is one of the reasons, why business tends to seek court to resolve their problems though acknowledge the benefits of arbitration. See Vnexpress's Interview with Do Cao Thang, Chief Judge of Economic Court of Supreme Court, "Doanh nghiep co tranh chap thich ra Toa hon Trong tai" ["Disputed Enterprise likes court more than arbitration"], available online at <http://vnexpress.net/Vietnam/Phap-luat/2002/05/3B9BC8F8> (last visited May 29, 2002).
- (52) Ordinance 1993, *supra* note 2, at art. 19.
- (53) *Id.* at art.20
- (54) This word in Vietnamese is "bat kha xam pham", which was used to show the importance of socialist property, and was derived from the Russian word "ne pricosnovennui". This word was used only in the Constitution 1980 of Vietnam. See Hien Phap nuoc Cong hoa Xa hoi Chu nghia Vietnam [Constitution of Socialist Republic of Vietnam] art.79 (1980).
- (55) See Hien Phap nuoc Cong hoa Xa hoi Chu nghia Vietnam [Constitution of Socialist Republic of Vietnam] art 15 (1992); See also Bo Luat Dan Su [Civil Code], art.179 (1995).
- (56) See Criminal Code, arts.113-145 (1999) (prescribing the criminal liability for the abuse on all types of ownership in the same chapter, while the previous Code treated them differently by separate chapters).
- (57) See Civil Code, art. 205-213 (1995) (providing the principle of assigning the State property to agencies).
- (58) Ordinance 1993, *supra* note 2, at arts. 19-20.
- (59) *Id.* at art. 37; Decree No 69/CP, *supra* note 3, at art. 18.
- (60) See Ordinance on Litigation of Civil cases, art.44 (1989) (providing that a mutual agreement between parties shall be effective after 15 days from the date the court recorded). This provision may be easily overused by the debtor. Meanwhile, Vietnamese law has no concept concerning the responsibility of debtor for an act as creation of fault debts.

- (61) See Civil Code, art.359 (1995).
- (62) Quoted as words of Professor Honma Yasunori, Nagoya University, discussing with author on civil execution in Vietnam, in Nagoya, Japan (December 20, 2001).
- (63) See Nguyen Duc Chinh, *Xa hoi hoa hoat dong thi hanh an dan su-Mot so van de ly luan va thuc tien [Socialization of operation of civil execution-some theoretical and practical issues]* [5Legal Science Information] (2001), at 112 (*hereafter* Nguyen Duc Chinh)
- (64) See Nghi quyet cua Chinh phu so 90 ngay 21-8-1997 ve Phuong huong va Chu truong Xa hoi hoa cac Hoat dong Giao duc, Y te, Van hoa [Order No 90-CP of Government on Direction and Policy of Socialization of Activities in Education, Health Care, Culture], Aug. 21, 1997; Nghi Dinh cua Chinh phu so 73/1999/ND-CP Ve Chinh sach khuyen kich xa hoi hoa doi voi cac hoat dong trong linh vuc Giao duc, Y te, Van hoa, The thao [Decree of Government No 73/1999/ND-CP on Policy to Encourage Socialization of Activities in Education, Health, Culture, Sport], Aug. 19, 1999.
- (65) Nguyen Duc Chinh, studying the workload of executors has found that the low salary and insufficient state budget for civil execution are the main reason to cause the inefficiency of civil execution. This research comes to the proposal of “socialization” of civil execution, which means to organize civil execution agencies in the form of providing service or doing business pursuant to the Law of Enterprise. In other words, civil execution shall not be any longer a state agency. The state shall not be responsible for funding the civil execution, but instead it will be the responsibility of the judgment creditors). See Nguyen Duc Chinh, *supra* note 63, 113-155. The same view is shared by Le Xuan Hong. See Le Xuan Hong, *Xa hoi hoa thi hanh an dan su [Socialization of civil execution]* 63-76 [unpublished Law Master’s Thesis] (2000) (on file with Hanoi Law University library) (*hereafter* *Le Xuan Hong*).
- (66) Ordinance 1993, *supra* note 2, at art. 23.
- (67) *Id.* at art. 37.
- (68) *Id.* at art.19; Decree No 69/CP, *supra* note 3, at art 6.
- (69) Decree No 69/CP, *supra* note 3, at art. 9 (2,3).
- (70) Ordinance 1993, *supra* note 2, at art.19.
- (71) *Id.* at art. 22(1). See also art.22 (2) (providing the exception, when the executor deems the immediate attachment is necessary). Decree No 69/CP does not have any further guidelines for this issue. It should

- be noted that, in case a dwelling shall be attached for enforcement, the debtor shall have one month before attachment to find other assets for enforcement, and another month after attachment for the same purpose. See Decree No 69/CP, *supra* note 3, at art. 15(3). The attachment of a dwelling shall be allowed if the other assets of the debtor are not sufficient for enforcement of a judgment. Therefore, it is deduced that the voluntary enforcement in this case even much longer than usual.
- (72) Brian J. M.Quinn prefers automatic commencement of compulsory execution, therefore criticizes that the voluntary enforcement makes the enforcement situation even more difficult. See Brian J. M.Quinn, *supra* note 22, at 248.
- (73) See THANH NIEN [THE YOUTH], *Bi cao tau tai tai san do cac co quan cong quyen bat nhat [The criminal dispersed the assets while State agencies were discussing]*, May 8th, 2001, available online at <http://vnexpress.net/Vietnam/Phap-luat/2001/05/3B9B03F6/>
- (74) See Decree No 69/CP, *supra* note 3, at art 21(2d)(providing the fine from VND50,000 to 100,000, or US\$3 to 6 approximately).
- (75) Though, the Decree No 69/CP contains a provision that the attachment of assets of a state enterprise, a joint-venture, and a stock company shall be guided by Ministry of Justice and Ministry of Finance. See Decree No 69/CP, *supra* note 3, at art 15(1). Nevertheless, it was only four years latter; these two Ministries released a circular to guide the provision. It means that until 1997, no compulsory measure in relation to debtor-agency was available. Still, the Circular excludes a state agency, a socio-political organization, a socio-professional organization and a unit of people army out of subject to compulsory execution. It is silent on the method to enforce court judgments to this kind of debtors. See Circular 119-TT/LT, *supra* note 8, III(3) .
- (76) See Civil Code, art. 622-626 (1995) (regulating the liability of legal entity, State authority, investigation and judicial body or employer and other legal entity for damage caused by member, civil servant, competent person or employee, vocational trainee, respectively. Legal entities shall request persons, causing damage by their fault to reimburse the sum legal entities have paid. Schools, hospitals or other organizations, if they have committed fault in custody, be jointly with the parents or guardians liable for damage caused by person less than 15 years old or incompetent). See also Nghi dinh so 47/CP Ve viec giai quyet boi thuong thiet hai do cong chuc, vien chuc Nha nuoc, nguoi co tham quyen cua Co quan

tien hanh to tung gay ra [Decree 47/CP on the Compensation for The Damage caused by a Civil Servant, an Authorized Person of a Judicial Agency], May 3, 1997. arts. 1-3.

- (77) See Report 782/THA, *supra* note 27, at 8-9.
- (78) See Ordinance 1993, *supra* note 2, at art.28 (providing that decisions on enforcement, on application of compulsory measure, on postpone, on provisional stay, on stay, on restoration of time limitation for enforcement, on fine and on return of a petition shall be sent to the Procuracy, the Court rendered the judgment, parties and right-related person).
- (79) See Ordinance 1993, *supra* note 2, at art. 30 (providing scope of assets not subject to attachment, which are the food, medicine necessary for debtor and his/ her family; instrument for labor, cloths and belongings, which are necessary and common for use for debtor and family and worship instruments).
- (80) This general view is also shared by Nguyen Cong Long. See Nguyen Cong Long, *supra* note 23, at 58.
- (81) See Decree No 69/CP, *supra* note 3, at art.16 (specifying the following limits: food enough for debtor and family awaiting for the new harvest, medicine necessary for prevention and treatment need of debtor and family; common and necessary labor instrument, which serve as instrument for the main or the only source of livings for debtor and family; the cloths and belongings that deem minimum necessary in that locality for debtor and family; the instrument for worship common in that locality).
- (82) See Circular No 119-TT/LT, *supra* note 8, II (providing concrete procedure for attachment of the assets of enterprises for civil execution).
- (83) See Ordinance 1993, *supra* note 2, at art. 29 (3) (providing that the attachment of housing is permitted in case other assets of the debtor are not enough for enforcement).
- (84) Ordinance 1993, *supra* note 2, at art. 44 (1).
- (85) *Id.* at art. 45 (1).
- (86) The General Department for Management of Civil Execution alone received 232 claimants and 1,646 claims in 1998; 1,532 claims in 1999; 668 claimants and 3,246 claims in 2000. See Report No 702/THA, *supra* note 37, at 4.
- (87) *Id.* at art.44 (2)(providing the settlement of claim on an illegal act of an executor at a district level by the chief executor of the same level;

if the claimant does not agree with the settlement, it shall be reviewed as a final stage by a chief executor at a provincial level; claim on an illegal act of a executor at a provincial level by the chief executor of the same level, if the claimant does not agree with the settlement, it shall be reviewed as a final stage by the Director of the General Department for Management of Civil Execution).